

DATED

[EMPLOYER] (1)

AND

[CONTRACTOR] (2)

**SCHEDULE OF AMENDMENTS TO JCT
INTERMEDIATE BUILDING CONTRACT
WITH CONTRACTOR'S DESIGN 2016**

relating to []

MILLS & REEVE

Recitals

Sixth Recital: After the word “design” in the first bullet point delete “and” and replace with a comma and after the word “construction” insert “and commissioning”.

After the words “(‘the Contractor’s Proposals’)” in the first bullet point add “which the Contractor is satisfied will meet in all respects the Employer’s Requirements”.

Seventh Recital: Delete “the Employer has examined the Contractor’s Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer’s Requirements. The” and replace with “the”

Articles

Article 1: Before “the Works” add “the design of the Contractor’s Designed Portion and the construction and commissioning of”.

Article 3: After the words “the Conditions” in line 3 add “and shall be the Specified Person, as defined in Section 110A(6) of the Housing Grants, Construction and Regeneration Act 1996 (as amended)”.

Article 10: Add a new Article 10:

Article 10 Schedule of Amendments - incorporation

“The amendments to the JCT Intermediate Building Contract with Contractor’s Design 2016, set out in the Schedule of Amendments attached to this Contract are hereby incorporated into this Contract and the provisions of the Agreement, the Conditions and the Schedules shall have effect as so amended by the Schedule of Amendments.”

Contract Particulars

Delete the whole of the section which references clause 2.34.3.

Delete the whole of the section which references “4.3 and 4.9 Fluctuations Provision”.

In the reference to clause “6.19 Contractor’s Designed Portion (CDP) Professional Indemnity insurance”, where the insurance is in the aggregate, it shall be for an amount with not less than two automatic reinstatements in any year during which the policy is current

Delete the whole of the section which references clause 7.3.

Delete the whole of the section which references clause 9.4.1.

Conditions

Section 1: Definitions and Interpretations

1.1 Definitions

Add new definitions:

“Bribery Act: the Bribery Act 2010.”

“Consultant: any consultant appointed by the Contractor, whether directly or by novation, to design all or part of the Works.”

“Contract: the Articles of Agreement, the Conditions and the Schedules all as amended by the Schedule of Amendments”.

Amend the following definitions:

“Contractor’s Design Documents:” add at the end of the definition “whether in hard copy, on disk, or any other format and whether in existence or to come into existence”.

CDM Regulations: add at the end of this definition after “2015” the words “together with any guidance requirements issued under these by the Health and Safety Executive from time to time”.

Conditions: add after “Conditions” the words “(as amended by the Schedule of Amendments)”.

Add the following new definitions:

“Contract: the Agreement and Conditions, and the Schedules, each as amended by the Schedule of Amendments.

Contractor’s Programme: see clause 2.10.

Coronavirus: The disease known as COVID-19 (the official designation of the disease which can be caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)).”

Amend definition:

Employer: before the full stop at the end of this definition, add: “and his successors and assignees”.

Delete the definition of **“Employer Rights”**.

Add a new definition:

“Employer’s Representative: [] whose address for service of notice is [] or such other address as notified.”

Delete the definition of **“Fluctuations Provision”**.

Add a new definition:

“Force Majeure: an event hindering or delaying the progress of the Works caused by circumstance not within a party's reasonable control including acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic (but excluding Coronavirus), terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom.”

Amend the following definition:

Interest Rate: Delete: “5%” and replace with: “2%”. At the end of the definition add new sentence: “The Contractor acknowledges that this is a substantial remedy pursuant to sections of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).”

Add new definitions:

“Practical Completion: when the Works or relevant Section (as appropriate) are complete and free from apparent defects save for any minor issues with the Works or relevant Section the existence, completion or rectification of which, in the opinion of the Architect/Contract Administrator (acting reasonably), would not prevent or interfere with the use (or the fitting out or equipping for use) of the Works or the relevant Section for the intended purpose as indicated in the Specification / Work Schedules.”

“Prohibited Acts:

- (i) offering, giving, promising or agreeing to give any officer or employee of the Employer any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this Contract or any other agreement with the Employer or for showing or not showing favour or disfavour to any person in relation to this Contract or any other agreement with the Employer; or
- (ii) in connection with this Contract paying or agreeing to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Employer; or
- (iii) requesting, agreeing to receive or accepting a financial or other advantage from any person in relation to the performance or award of this or any other agreement with the Employer or any agreement with another person relating to the Works or this Contract.”

Add new definition:

“Schedule of Amendments: the document entitled “Schedule of Amendments to the JCT Intermediate Building Contract with Contractor’s Design 2016 edition” attached to this Contract.

Amend the following definitions:

Scheme: add at the end of the definition “(as amended)”.

Add the following definition:

“Specified Person: the Architect/Contract Administrator.”

Interpretation

Agreement etc. to be read as a whole

1.3 Add at the end after the full stop “In the event of an inconsistency, discrepancy or ambiguity in or between the Schedule of Amendments and any other Contract Document, the Schedule of Amendments shall take precedence”.

1.4.5 Delete “and” from the end of the sub-clause.

1.4.6 Delete the full stop and replace with a semi colon.

Insert new sub-clauses 1.4.7 to 1.4.9 as follows:

1.4.7 the word "including" and the words “shall include” shall be construed as being followed immediately by the words "without limitation";

1.4.8 references to the words “practical completion” shall be construed as “Practical Completion”; and

1.4.9 references to the words “force majeure” shall be construed as “Force Majeure”.

Contracts (Rights of Third Parties) Act 1999

1.6 Before the full stop at the end of this clause, add: “but without derogating from clause 7.1”.

Notices and other communications

1.7.2 In the first line change “clause” to “clauses” and before “1.7.4” add “1.7.3,” and after “1.7.4” add “and 1.7.5”.

Delete clause 1.7.3 and replace with:

“1.7.3 Subject to clause 1.7.2, any notice, communication or document shall be duly given to or served on either Party if delivered by hand or sent by Royal Mail special delivery to its address stated in the Contract Particulars or such other address as either Party may specify from time to time by written notice to the other Party.”

Delete clause 1.7.4 and replace as follows:

1.7.4 “Any notice expressly required by this Contract to be given in accordance with this clause 1.7.4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery. Any such notice shall be deemed to have been received on the day of delivery if delivered by hand (or on the next Business Day if delivered on a non-Business Day), the second Business Day after the day of posting if sent by Recorded Signed for or by Special Delivery post.”

Effect of Final Certificate

- 1.9.1.1 Delete this clause and replace with: "number not used".

Effect of certificates other than Final Certificate

- 1.10 Delete "Save as stated in clause 1.9 no" and replace with "No".

Insert new clause 1.13:

- "1.13 References in this Contract to the "Contractor" shall, where appropriate, be deemed to include references to the Contractor's Persons."

Section 2: Carrying out the Works

Contractor's Obligations

General obligations

- 2.1 After "out" in the first line delete "and" and replace with "," and after "complete" add "and commission". After "shall" in the fourth line add "check and assume responsibility for the Employer's Requirements and".

- 2.1.1 In the third and fourth lines delete "so far as not described or stated in the Employer's Requirements or the Contractor's Proposals".

- 2.1.2 Delete this clause and replace with "ensure the proper integration, co-ordination and compatibility of the various components and elements that comprise the Works with one another and with the remainder of the Works; and".

Add new clauses 2.1.4 to 2.1.14:

- "2.1.4 It is agreed that the Contractor will not be entitled to any increase in payment in respect of any additional, changed or varied work, system or sequence of construction from that included in the Employer's Requirements as a consequence, wholly or partly, of a preference of the Contractor (whether or not approved by the Employer), or as a result of any error, failure, omission or default in its execution of the Works.

- 2.1.5 No enquiry, inspection, admission, consent, appraisal, comment, sanction, approval, direction, confirmation, acknowledgement, guideline or advice, made or given by or on behalf of the Employer or the Architect/Contract Administrator under this Contract shall, in any way, exclude, qualify or limit the duties, responsibilities, obligations and liabilities of the Contractor under it.

- 2.1.6 The obligations and liabilities of the Contractor under this Contract shall not be released, diminished or in any other way affected by the Architect/Contract Administrator including the value of any work, materials or goods in any certificate or payment, or issuing the Practical Completion Certificate or, in relation to a Section, a Section Completion Certificate or the certificate of making good, where any non-compliance of workmanship, materials or goods with the requirements of this Contract becomes apparent after the date of such certificate or payment.

“2.1.7 The parties warrant that:

- 2.1.7.1 they have not committed any offence under the Bribery Act or done any of the Prohibited Acts;
- 2.1.7.2 they have in place adequate procedures to prevent bribery and corruption as contemplated by section 7 of the Bribery Act; and
- 2.1.7.3 they shall comply, and the Contractor shall ensure that its sub-contractors shall, comply with the Modern Slavery Act 2015 and any anti-slavery policy of the Employer.

2.1.8 If the parties, their sub-contractors, sub-consultants, employees or agents (or anyone acting on their or associated with them in accordance with section 8 of the Bribery Act) have done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act in relation to this Contract or any other agreement (the “defaulting party”):

2.1.8.1 the innocent party shall be entitled to:

- (i) terminate this Contract and recover from the defaulting party the amount of any loss arising from or connected with the termination;
- (ii) recover from the defaulting party the amount or value of any gift, consideration or commission concerned; and
- (iii) recover from the defaulting party any other loss or expense sustained as a consequence of the carrying out of the Prohibited Act or the commission of the offence,

2.1.8.2 any termination under clause 2.1.8.1 shall be without prejudice to any right or remedy that has already been accrued or subsequently accrues to the innocent party.

2.1.9 The Contractor shall impose on any sub-consultants, sub-contractors or suppliers obligations substantially similar to those imposed on it by this clause 2.1.9.

2.1.10 Notwithstanding clause 9, any dispute relating to:

2.1.10.1 the interpretation of clauses 2.1.7.1 and/or 2.1.7.2; or

2.1.10.2 the amount or value of any gift, consideration or commission,

shall be determined by the Employer and the decision shall be final and conclusive.

2.1.11 Any price-fixing, collusion or any other form of anti-competitive behaviour with other tenderers, sub-contractors or suppliers by the Contractor, or any corrupt practices employed by the Contractor in relation to the Works, shall give the

Employer the right to terminate this Contract, and it may result in a reference being made to the Office of Fair Trading.

2.1.12 If the Contractor (or any of its directors or others exercising powers of representation, decision-making or control over the Contractor) is found to have breached EU or UK competition laws, to the extent that the Employer considers that (i) the breach is serious enough to amount to an act of grave misconduct and/or (ii) the breach constitutes a criminal offence, the Employer shall have the right to terminate this Contract.

2.1.13 In any of the situations envisaged in clauses 2.1.11 or 2.1.12, if the Employer terminates this Contract, the Contractor shall indemnify the Employer against any costs incurred as a result of retendering the contract for the Works.

2.1.14 In complying with this Contract and performing the Works, the Contractor shall comply with and take into account the obligations of the Employer under agreements it may have entered into with any third party in connection with the Works, provided that copies of these, or the relevant parts of them, have been made available to the Contractor to inspect (redacted to the extent that they contain sensitive information). The Contractor shall use all reasonable endeavours to ensure that no act, failure to act or default of the Contractor shall constitute, cause or contribute to any breach by the Employer of any of the Employer's obligations under any such agreement."

Materials, goods and workmanship

2.2.1 Delete clause 2.2.1 and replace with new clauses 2.2.1 to 2.2.4 (renumbering the existing clause 2.2.2 as 2.2.5):

"2.2.1 All materials and goods for the Works shall be of new and satisfactory quality and comply with standards, full specification or requirements set out in the Contract Documents.

2.2.2 The workmanship for the Works shall be of the standards described in the Contract Documents or documents referred to in clause 2.8.

2.2.3 Where and to the extent that approval of quality of materials or goods or of the standards of workmanship is a matter for the opinion of the Architect/Contract Administrator, such quality and standards shall be to his reasonable satisfaction and the Architect/Contract Administrator shall exercise its independent professional discretion fairly as between the Employer and the Contractor.

2.2.4 To the extent that the quality of materials and goods or standards of workmanship are neither described in the Contract Documents nor stated to be a matter for such opinion or satisfaction, they shall be of a standard appropriate to the Works."

2.2.2 Renumber clause 2.2.2 as clause 2.2.5. In the first line, delete "take all reasonable steps to encourage" and replace with "ensure that all". In the first line, delete "to be" and replace with "are".

2.2.6 Add new clause 2.2.6:

"The Contractor further undertakes and warrants to the Employer that unless otherwise authorised or instructed by or on behalf of the Employer it has not specified, selected and/or used and will not specify, select and/or use in the Works any materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

1. posing a threat to the health and safety of any person; or
2. posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
3. reducing, or possibly reducing, the normal life expectancy of the project or any part or component of the Works; or
4. not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
5. having been supplied or placed on the market in breach of the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC); or
6. being deleterious; or
7. being harmful to the health or safety of any person; or
8. threatening the structural stability, physical integrity or performance of the Works or the project or any part or component of the Works or the project; or
9. reducing the normal life-expectancy of the Works or the project or any part or component of the Works or the project."

Possession

Deferment of possession

- 2.5 In line three delete "6 weeks" and replace with "12 weeks".

Early use by the Employer

- 2.6.1 In the first line, delete: "with the Contractor's consent" and replace with: "but not so as to deliberately hinder or delay the progress of the Works". Delete the last sentence.

Work not forming part of the Contract

- 2.7.1 Before the semi-colon at the end of this clause, add: "by the Employer or by any of the Employer's Persons".
- 2.7.2 In the second line, delete "with the Contractor's consent" and replace with "but not so as deliberately to hinder or delay the progress of the Works". In the second and third

lines, delete “such consent not to be unreasonably delayed or withheld” and replace with “and shall ensure that the Employer and the Employer’s Persons comply with the Contractor’s health and safety procedures when carrying out this work”.

Supply of Documents, Setting Out etc.

Levels and setting out of the Works

Add “**and ground conditions**” to the end of the heading.

Renumber clause 2.9 as 2.9.1.

2.9.1 Delete “2.10.2.2,” and replace with “2.10”.

Add a new clause 2.9.2:

“2.9.2 The Contractor shall be deemed to have ascertained fully, and shall accept full responsibility for ascertainment of, the physical and other conditions that affect the site including, without limitation, the ground to be excavated and / or built upon and any existing structures on the site, including their composition. The Contractor shall not be entitled to rely on any surveys, reports or other documents supplied to it by or on behalf of the Employer or the Architect/Contract Administrator regarding these physical and other conditions. The Contractor shall not be entitled to any addition to the Contract Sum or to any extension of time for completion of the Works as a result of any such physical or other conditions.”

Construction Information

Add “**and Contractor’s Programme**” to the end of the heading.

2.10.2 Delete clause 2.10.2 and replace it with a new clause 2.10.2:

2.10.2.1 In relation to the CDP Works, the Contractor shall without charge submit to the Architect/Contract Administrator on request sufficient copies in an appropriate format of all documents, drawings, details and any other information which are:

- (i) necessary from time to time to explain or amplify the Employer’s Requirements or the Contractor’s Proposals; or
- (ii) necessary to explain, amplify, show or describe the Contractor’s Designed Portion, or to enable the Contractor to complete the Contractor’s Designed Portion or to comply with any instructions issued by the Architect/Contract Administrator; or
- (iii) stated in the Employer’s Requirements or the Contractor’s Proposals to be provided by the Contractor, and in a permitted form that enables judgement of either part of, or a complete system or element that is part of, the Works;

and, in any event, the Contractor shall supply the information stated in this clause 2.10.2.1 on the dates shown on a fully-detailed Contractor’s Programme which the Contractor is to provide to the Architect/Contract

Administrator for acceptance both before the commencement of the Works, and also within ten Business Days of the issue of any Variation under clause 5 or decision under clause 2.19, with copies of the amendments and revisions to the Contractor's Programme to take account of any such Variation or decision.

2.10.2.2 If within ten Business Days of receipt of any document, drawing or detail or any other information provided for in clause 2.10.2.1, the Architect/Contract Administrator returns the document, drawing, detail or information together with its comments, the Contractor shall immediately act on those comments and incorporate them and promptly return an amended copy of the document, drawing, detail or information showing that it has done so.

2.10.2.3 If the Architect/Contract Administrator does not return the document, drawing, detail or information referred to in clause 2.10.2.1 within ten Business Days of receipt, the Contractor may use the document, drawing, detail or information for the Works.

2.10.2.4 Any comments received from the Architect/Contract Administrator in accordance with the provisions of this clause 2.10.2 shall not negate or otherwise limit the Contractor's obligations under this Contract.

2.10.2.5 In relation to the CDP Works, the Contractor shall comply with Regulations 8 to 10 of the CDM Regulations."

Errors, Inconsistencies and Divergences

Divergences from Statutory Requirements

2.15.2.1 In the last line after "Requirements" add "provided that the change in the Statutory Requirements was not in the public domain on the Base Date; if it was, the alteration or modification shall not be treated as a Variation, and the Contractor shall complete the design and construction of the Works as altered or modified entirely at its own cost".

2.15.3 Delete this clause and replace with: "number not used".

Adjustment of Completion Date

Relevant Events

2.20 After: "clause 2.19" in the first line add:

"but only to the extent that such events are not in any way consequent upon or necessitated by, or concurrent with, any other delay caused by, any negligence, omission, default, breach of contract or breach of statutory duty by the Contractor, his servants or agents or any sub-contractor or supplier or their respective servants or agents".

2.20.2.3 Before the semi-colon at the end of this clause add:

"or unless the Architect/Contract Administrator had reasonable grounds based on a previous opening up or testing having revealed that materials, goods or work of a similar nature were not in accordance with this Contract, for suspecting that such

materials or goods are not in accordance with this Contract”.

Add a new clause 2.20.14:

“2.20.14 Coronavirus Event, being any delay to the regular progress of the Works or any part thereof which arises directly as a result of a Coronavirus epidemic in the United Kingdom or a pandemic, both as declared by the World Health Organisation, provided always that a Coronavirus Event shall not be deemed to be a Relevant Matter and shall constitute the Contractor's entire entitlement to relief under this Contract.”

Practical Completion, Lateness and Liquidated Damages

Practical completion and certificates

Add new clauses 2.21A and 2.21B:

“2.21A.1 The Architect/Contract Administrator may at its discretion issue a list of incomplete or defective work before or at the time of issuing the Practical Completion Certificate or a Section Completion Certificate, as appropriate, and make the issue of the Practical Completion Certificate or a Section Completion Certificate subject to the completion and/or remedying by the Contractor of the incomplete or defective work included or referred to in this list.

2.21A.2 The Contractor shall complete and/or remedy this incomplete or defective work at no cost to the Employer at such times and within such periods as may be required by the Employer acting reasonably. The Contractor shall confirm in writing its agreement to complete and/or remedy this incomplete or defective work before the Practical Completion Certificate or a Section Completion Certificate, as appropriate, is issued. Even if the Contractor does not confirm its agreement, it shall complete and/or remedy the incomplete or defective work under this Contract.

2.21A.3 In completing and/or remedying this work following Practical Completion of the Works and/or any Section, the Contractor shall cause as little disturbance and inconvenience as possible to the Employer and any other occupier or user of the premises comprising the Works, and the Contractor shall co-operate fully with the Employer in working only in restricted areas outside normal working hours, during holiday periods, at weekends and on bank holidays.

2.21B Unless the Employer agrees otherwise in writing, which agreement may relate to one or to both of sub-clauses 2.21B(i) and 2.21B(ii), and to one, some or all of sub-clauses 2.21B(iii) to 2.21B(viii), and notwithstanding anything to the contrary elsewhere in this Contract:

2.21B(i) no part of the Works or any Section shall be deemed to have reached Practical Completion; and

2.21B(ii) no part of the Retention shall be released to the Contractor,

until the final copies of all of the following items which the Contractor is obliged under this Contract to procure or provide have been procured for and/or provided to the Employer:

- 2.21B(iii) as-built drawings;
- 2.21B(iv) operating and maintenance manuals;
- 2.21B(v) the Health and Safety File under the CDM Regulations;
- 2.21B(vi) manufacturers' guarantees; and
- 2.21B(vii) energy performance certificates as required under Part L of the Building Regulations;

and where it is required by the Specification/Work Schedules:

- 2.21B(viii) the testing, commissioning and adjustment of any mechanical or electrical services has been properly completed to the reasonable satisfaction of the Architect/Contract Administrator."

Partial Possession by Employer

Contractor's consent

- 2.25 Add at the start of the clause "Before the commencement of the Works the Employer and the Contractor may agree that the Employer is to possess a part or parts of the Works or a Section on a pre-agreed date (as may be extended under clause 2.19) before it or they have reached Practical Completion. Where such agreement is reached, the Contractor shall give up possession of the part or parts of the Works or the Section on the pre-agreed date for doing so (as may be extended under clause 2.19)."

Delete: "If" at the beginning of the next sentence and replace with: "Irrespective of this if".

Defects etc. – Relevant Part

- 2.27 Add to the end of the clause:

"provided that the Employer shall not be required to issue that certificate earlier than the expiry of the Rectification Period for the Relevant Part."

Defects

Rectification

- 2.30 In lines 1 and 7 after "other faults" add "(and any consequential damage to the remainder of the Works or to the existing structures and their contents)".

Certificate of Making Good

- 2.31 Add to the end of the first sentence:

"provided that the Architect/Contract Administrator shall not be required to issue that certificate earlier than the expiry of the Rectification Period."

Add a second sentence as follows:

“A certificate of making good shall not be issued if any item on the list of incomplete or defective work referred to in clause 2.21A, or any item to be provided or dealt with as referred to in clause 2.21B, remains incomplete or defective, or has not been provided or dealt with, at the end of the relevant Rectification Period, and the Employer shall not be required to issue a certificate of making good before the expiry of the relevant Rectification Period.”

CDP Design Work

As-built Drawings

2.32 After “installations” at the end add “to enable the Employer to operate and use fully all the parts of the Works or the relevant Section”.

Copyright and use

2.33.1 In the first line delete “Subject to all sums due and payable under this Contract to the Contractor having been paid, the” and replace with “The”. In the fourth line after “construction”, add “reconstruction, use,”. In the second sentence after the first reference to “the Works” add “, so that the Employer can interface the Works with any extension of the Works,”.

Add new clauses 2.33.3 to 2.33.6:

“2.33.3 The licence referred to in clause 2.33.1 includes the right to grant sub-licences and shall continue notwithstanding the termination, for any reason, of the Contractor’s employment under this Contract.

2.33.4 Insofar as the Contractor is the author (as referred to in the Copyright, Designs and Patents Act 1988) of the Contractor’s Design Documents and/or of the Works, the Contractor waives any moral rights which it might otherwise be deemed to possess under Chapter IV of that Act in respect of them.

2.33.5 The Contractor shall procure for the Employer a waiver corresponding to that in clause 2.33.4 from any Consultant, Sub-Contractor or supplier engaged by the Contractor, who is an author, as referred to in the Act, of any part of the Contractor’s Design Documents and/or of the Works in respect of them.

2.33.6 In the event of the termination, for any reason, of the Contractor’s employment under this Contract, without charge to the Employer, the Contractor shall provide the Employer with two copies of the Contractor’s Design Documents, all documents, drawings, details and other information that the Contractor has prepared or had prepared on its behalf, whether or not previously provided, together with any additional material and information required for the purposes referred to in clauses 2.32 and 2.33 in respect of those parts of the Works designed by or on behalf of the Contractor, whether or not completed before the termination of the Contractor’s employment under this Contract.”

Design liabilities and limitation

2.34.1 - 2.34.5 Delete these clauses and replace with new clauses 2.34.1 to 2.34.3:

“2.34.1 The Contractor undertakes and warrants to the Employer that:

- 2.34.1.1 the design of the Contractor's Designed Portion, whether or not prepared by or on behalf of the Contractor and whether contained in the Contractor's Proposals, the Employer's Requirements or in what the Contractor is to complete under this Section 2 in accordance with the Employer's Requirements and the Conditions (including any further design which the Contractor is to carry out as a result of a Variation in the Employer's Requirements), has been or will be prepared using all the skill, care, diligence and best up-to-date practice to be expected of a properly qualified and competent designer experienced in designing and carrying out work of a similar scope, nature, complexity and size to the Contractor's Designed Portion;
 - 2.34.1.2 the Contractor's Designed Portion which, for the avoidance of doubt, comprises all workmanship, manufacture and/or fabrication, in accordance with the standard required under clause 2.34.1.1, when completed, will comply with any performance specification or requirement included in the Employer's Requirements or reasonably to be inferred from them;
 - 2.34.1.3 the Contractor's Designed Portion, in accordance with the standard required under clause 2.34.1.1, has been and will be designed and specified using best up-to-date practice and will be to standards consistent with the intended use of the Works; and
 - 2.34.1.4 the Contractor's Designed Portion, in accordance with the standard required under clause 2.34.1.1, when completed, will comply with the Statutory Requirements.
- 2.34.2 The Employer shall be deemed to have relied exclusively upon the obligations of the Contractor in clause 2.34.1. The undertakings and warranties in clause 2.34.1 shall be without prejudice to any warranties implied by common law or statute.
- 2.34.3 There shall be no addition to the Contract Sum, the Contractor shall not have or make any claim for an extension of time under clause 2.19 or for loss and/or expense under clause 4.17, and clauses 4.19 and 8.9 shall not have effect where, and to the extent that, the cause of the progress of the Works having been affected, delayed, or suspended is any mistake, inaccuracy, discrepancy or omission in the Contractor's Proposals and/or the Employer's Requirements or any failure by the Contractor to provide necessary drawings or documents in due time.

Section 3: Control of the Works

Access and Representatives

Access for Architect/Contract Administrator

- 3.1 Re-number clause as 3.1.1.

Add a new clause 3.1.2:

- “3.1.2 The Architect/Contract Administrator shall be entitled to attend all site meetings.”

Sub-Contracting

Consent to sub-contracting

- 3.5 In the first sentence after “CDP Works” add “or any part of the CDP Works”.

At the end of the second sentence add “, and the Contractor’s obligations under this Contract shall remain unaffected and it shall remain wholly responsible for any design carried out on its behalf by Consultants or Sub-Contractors in connection with the CDP Works,”.

Add new third, fourth and fifth sentences:

“The Contractor shall provide the details of any Consultant or Sub-Contractor to whom the Contractor wants to sub-contract the whole or any part of the Works or the design of the CDP Works that the Employer acting reasonably may require. The Contractor shall satisfy itself prior to sub-contracting the whole or any part of the Works or the design of the CDP Works that the proposed Consultant or Sub-Contractor is competent and has allocated or will allocate adequate resources to enable it to comply with all its obligations under the CDM Regulations. The Contractor shall not appoint a Sub-Contractor or supplier if compulsory grounds for excluding the Sub-Contractor or supplier under Regulation 57 of the Public Contracts Regulations 2015 apply to it.”

Conditions of sub-contracting

- 3.6 Delete “Where considered appropriate, the” and replace with “The”, and replace “JCT Intermediate Building Sub-Contract” with “JCT Intermediate Sub-Contract with sub-contractor’s design Agreement and Conditions 2016”.

Add new clauses 3.6.2.6 to 3.6.2.8:

“3.6.2.6 for the Contractor to pay its sub-contractors no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;

3.6.2.7 for the Contractor to consider and verify invoices in a timely fashion and without undue delay; and

3.6.2.8 for the sub-contractors to pass the terms of this clause 3.6.2 down the sub-contractors’ supply chain.”

Add a new clause 3.6A:

“3.6A.1 The Contractor shall not be entitled to any extension of time to complete the Works, or to any addition to the Contract Sum, as a result of its sub-contracting the whole or any part of the Works or the design of the CDP Works.

3.6A.2 The Contractor shall not finalise with the Sub-Contractor the details of the JCT Intermediate Sub-Contract with sub-contractor’s design Agreement and Conditions 2016 without the Employer’s prior written consent. The sub-contract shall be amended to remove the automatic termination of the sub-contract if the Contractor becomes Insolvent, and the Contractor shall not agree with the Sub-Contractor to amend the sub-contract otherwise without the Employer’s prior written consent, which consent is not to be delayed or withheld unreasonably. The Contractor must disclose to the Employer the sub-contract in full for the purpose of confirming its compliance with this clause.”

Architect/Contract Administrator’s Instructions

Compliance with instructions

3.8. Delete from “which these Conditions empower the Architect/Contract Administrator” in line 1 to the end of the clause.

Provisions empowering instructions

3.10 Delete this clause and replace with: “not used”.

Instructions requiring Variations

3.11.2 Delete this clause and replace with: “not used”.

CDM Regulations

3.18.1 In lines 1 and 2, delete “ensure” and replace with “require”.

3.18.4 Replace the full stop at the end of this sub-clause with a semi-colon.

Add a new clause 3.18.5:

“3.18.5 where the Contractor is required by the Architect/Contract Administrator to deliver the health and safety file, the Contractor shall without charge prepare, and deliver to the Employer, the health and safety file before the issue of the Practical Completion Certificate or a Section Completion Certificate under clause 2.21;”.

Add a new clause 3.18.6:

“3.18.6 where it is the Contractor’s responsibility to prepare the Construction Phase Plan:

3.18.6.1 if, as a result of the Construction Phase Plan not being ready, the construction of the Works or the relevant Section does not start on the Date of Possession, the Contractor shall not be entitled to any extension of time or addition to the Contract Sum as a result of the Contractor being unable to commence the construction of the Works or the relevant Section on the Date of Possession; or

- 3.18.6.2 if the Construction Phase Plan has to be varied or supplemented during the execution of the Works as a result of the negligence, omission or default of the Contractor, the Contractor will not be entitled to any extension of time or any addition to the Contract Sum as a result,

and the Contractor will reimburse the Employer in respect of any loss or additional expense which the Employer incurs as a result.”

Add a new clause 3.19:

- “3.19 The Contractor undertakes and warrants to the Employer that it is competent to fulfil the roles of “principal contractor” and “designer” for the purposes of the CDM Regulations (as applicable) and that it will allocate adequate resources for health and safety to enable it to perform its duties as principal contractor and designer in accordance with the CDM Regulations.”

Add a new heading: “**Modern Slavery Act 2015**”.

Add a new clause 3.20:

- “3.23 The Contractor undertakes and warrants that it shall comply, and it shall ensure that its Sub-Contractors shall comply, with the Modern Slavery Act 2015 and any anti-slavery policy of the Employer.”

Section 4: Payment

Adjustment of Contract Sum

- 4.3.2 Delete this sub-clause 4.3.2 and insert “not used;”.

Fluctuations – Named Sub-Contractors

- 4.4 Delete this clause and replace with “The Contract Sum and the prices in the Contract Sum Analysis are deemed to allow for all price fluctuations, whether occurring before or after the Base Date, and no adjustment will be made to the Contract Sum in the event of any such fluctuations and all references in this Contract to Fluctuations are deemed to be deleted.”

Payments, Certificates and Notices – general provisions

Interim payments – due dates and certificates

- 4.8.2 In line 2 after “have been due” add the words “(which sum may be zero or a negative amount)”.

Interim payments – calculation of sums due

- 4.9.1.2 After “prematurely” and before “,” at the end add “and provided also that the Contractor has produced to the Employer satisfactory evidence that there is no term of any contract or other circumstance which might operate to prevent the passing of property in any of the Site Materials to the Employer”.

- 4.9.1 In lines 2 and 3 delete the words “those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision and,”.
- 4.9.2 Delete the two entries in the clause that refer to “Fluctuations”.
- 4.9.3 Delete “4.4 (Fluctuations – Named Sub-Contractors)”. Delete “any amount under any applicable Fluctuations Provision other than by means of an adjustment under clause 4.9.1” and add “8.5 (*Insolvency of Contractor*) or 8.7 (*Consequences of termination under clauses 8.4 to 8.6*)”.

Interim and final payments – final date and amount

- 4.12.1 Delete “14 days” and replace with “28 days”.
- 4.12.3 In line 3 after “stated as due” add the words “(which sum may be zero or a negative amount)”. After “Notice” at the end of the clause add the words “provided that at the same time the Payment Notice is copied and delivered to the Employer’s Representative.”

Add a new clause 4.12.8:

- "4.12.8 Notwithstanding clause 4.12, and without prejudice to clause 8 of this Contract, if the Contractor becomes Insolvent 5 or fewer days before the final date for payment, the Employer shall not be required to pay the Contractor the sum, or any part of the sum, due to it under clause 4.12.”

Pay Less Notices and other general provisions

- 4.13.3 Delete clause 4.13.3 and replace with: “The Employer shall be under no duty or obligation with regard to the Retention and shall be under no duty or obligation to set aside in a separate account any amount representing the Retention.”

Contractor’s right of suspension

- 4.14.1 In line 3 delete “7” and substitute with “21”. In line 5 after “suspension”, add “(subject to the Corporate Insolvency and Governance Act 2020)”.
- 4.14.3 Delete "or on request" and, at the end, add a new sentence: "The Contractor shall, on request, submit any further details that are reasonably requested by or on behalf of the Employer".

Loss and Expense

Matters materially affecting regular progress

- 4.15 After the words “subject to” in line 4 add “the support of contemporaneous evidence and records where appropriate and”. Delete “clause 4.15.2 ... clause 4.16” and add “the conditions precedent in clauses 4.15.2, 4.15.3 4.15.4, 4.15.5, 4.16.1, 4.16.2 and 4.16.3”.

Add new clauses 4.15.3, 4.15.4 and 4.15.5:

- “4.15.3 The Contractor shall make reasonable and proper efforts to avoid or reduce such

loss and/or expense.

4.15.4 The Contractor shall not be entitled to any loss and/or expense on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or any of the Contractor's Persons.

4.15.5 The Contractor shall not be entitled to claim any reimbursement of loss and/or expense to the extent that the Contractor would in any event have incurred such loss and/or expense for a reason which is not a Relevant Matter or Contractor's risk under this Contract."

Notification and ascertainment

4.16.1 Add after "apparent to him" before the full stop the words "and in any event no later than 12 weeks after the date on which it became apparent or the date on which it should have become apparent to a competent contractor acting reasonably".

4.16.4 Delete this sub-clause and add new sub-clauses 4.16.4 and 4.16.5:

"4.16.4 The Employer assesses the Contractor's initial assessment in such reasonable period as is appropriate taking into account the information provided by the Contractor in support of its notification under clause 4.16 and any further information the Employer may reasonably require.

4.16.5 The Employer without binding itself aims to provide its initial assessment within 28 days of the receipt of the Contractor's initial assessment or monthly update and the information required from the Contractor or such other period as may be necessary taking into account the level of detail and quality of the information provided."

Delete clause 4.19 including the heading and insert:

"No further claims

4.19 The Contractor shall have no further claim, whether in contract, tort or otherwise arising generally at law, against the Employer for compensation in respect of deferment in granting possession of the site or the Relevant Matters beyond the entitlement to be reimbursed direct loss and/or expense under clause 4.15."

Add new clauses 4.19A to 4.19C:

"4.19A If the Contractor fails to comply with the provisions of clause 4.16 then the Employer cannot be obliged to make and the Contractor shall not be entitled to receive any addition to the Contract Sum in respect of the direct loss and/or expense to which such failure relates. Such addition shall not in any event include an addition in respect of loss of interest or financing charges incurred by the Contractor between the date of contractual failure to comply and the date of payment.

4.19B No direct loss and/or expense shall be added to the Contract Sum insofar as the matters in clause 4.15 identified as giving rise to the application have been caused or contributed to by any negligence, omission, default, breach of contract or breach of statutory duty by the Contractor, his servants or agents or any sub-contractor or supplier, or their respective servants or agents.

- 4.19C Notwithstanding anything in this Contract the Employer shall be entitled to deduct, by way of set-off or counterclaim, from any money otherwise due to the Contractor any sum or sums which the Contractor is, or may be liable to pay to the Employer under this Contract.”

Final Adjustment and Final Payment

Final Certificate and final payment

Add a new clause 4.21.4:

- "4.21.4 Notwithstanding clause 4.21, and without prejudice to clause 8 of this Contract, if the Contractor becomes Insolvent 5 or fewer days before the final date for payment, the Employer shall not be required to pay the Contractor the sum, or any part of the sum, due to it under clause 4.21.”

Section 5: Variations

The Valuation Rules

Daywork

- 5.4 Before the full stop at the end of the clause, add: “and the presentation of vouchers endorsed by or on behalf of the Employer shall not constitute any conclusive evidence that any sums are due to the Contractor”.

After clause 5.6, add a new heading: “**Variations Contractor wishes to make**”.

Add a new clause 5.6A:

- “5.6A.1 Clause 5.6A.2 applies only to proposed Variations to the Works that the Contractor wishes to make and suggests to the Employer.

- 5.6A.2 The Contractor shall not make a Variation to the Works without the Employer’s prior written approval. Provided that in seeking the Employer’s prior written approval, the Contractor both complies with clause 5.6A.2, and provides to the Employer adequate details of the proposed Variation (including relevant performance or qualitative criteria in relation to any materials) and highlights on any relevant drawings the nature of the proposed Variation, the Employer shall not unreasonably withhold or delay its approval where the proposed Variation does not detract from or materially alter the design, size, layout, appearance, form, substance or quality of the Works and will not put the Employer in breach of its obligations under any other agreement entered into by the Employer in relation to the site or the Works.”

Section 6: Injury, Damage and Insurance

Personal Injury and Property Damage

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

6.2 Renumber this clause as 6.2.1.

Add new clauses 6.2.2, 6.2.3 and 6.2.4:

- “6.2.2 The Contractor shall at all times use its best endeavours to prevent any nuisance (including noisy work operations) or other interference with the rights of any adjoining land owner, tenant or occupier or any Statutory Undertaker arising out of the carrying out of the Works and shall assist the Employer in defending any action or proceedings which may be instituted in relation thereto. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any failure or default by the Contractor in this regard.
- 6.2.3 The Contractor shall be responsible for and shall reimburse the Employer in respect of any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such trespass, nuisance or interference, except only where such trespass, nuisance or interference is the consequence of a Change or other instruction by or on behalf of the Employer (which is itself not due to any negligence, default or breach of contract by or on behalf of the Contractor, or any of the Contractor's Persons and has not been avoided despite the Contractor using all reasonable and practical means to avoid the same).
- 6.2.4 The Contractor shall at no cost to the Employer, obtain all necessary consents and licences for the carrying out of the Works from any adjoining owners, tenants or occupiers. Without prejudice to the generality of the foregoing, the Contractor shall carry out all negotiations with adjoining owners, tenants or occupiers and obtain any consents or licences which may be required for the over-sailing of tower crane jibs and shall thereafter comply in all respects with the terms thereof and any conditions contained therein.”

Insurance against Personal Injury and Property Damage

Contractor's insurance of liability of Employer

6.5.3 Delete this clause and replace with: “Number not used”.

Insurance of the Works and Existing Structures

Related definitions

6.8 In the definition of “Joint Names Policy”, after “Contractor” add: “and any other one or more third parties specified in writing by the Employer to the Contractor”.

CDP Professional Indemnity Insurance

Obligation to insure

Add a new clause 6.19A:

“6.19A.1 The terms and conditions of the Professional Indemnity insurance policy shall not include any term or condition to the effect that the Contractor must discharge the 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 1930, or any amendment or re-enactment of it. The Contractor shall not, without the prior approval in writing of the Employer, settle or compromise with the insurers any claim which the Contractor may have against the insurers and which relates to a claim by the Employer against the Contractor, or by any act or omission lose or prejudice the Contractor’s right to make or proceed with such a claim against the insurers.

6.19A.2 The insurance shall be placed with insurers operating in the London insurance market or another insurance market which is acceptable to the Employer with offices in the United Kingdom.

6.19A.3 The obligations under this clause 6.19A shall continue notwithstanding the termination of this Contract or the termination of the Contractor’s employment under it, in either case for any reason, including but not limited to by the Employer.”

Increased cost and non-availability

6.20 Renumber 6.20 as 6.20.1, delete the full stop at the end, replace with a comma, and the words “including but not limited to maintenance by the Contractor of a lower level of Professional Indemnity insurance at the Contractor’s own cost.”

Add a new clause 6.20.2:

“6.20.2 Any increased or additional premium required by insurers by reason of the Contractor’s own claims record or act, omission, matter or circumstance particular to the Contractor shall be deemed to be within the commercially reasonable rates referred to in clause 6.10.2 and shall not be taken into account determining the availability of the insurance.”

Section 7: Assignment and Collateral Warranties

In the heading delete “**and**” and replace with “,” and at the end add “**Parent Company Guarantee and Performance Bonds and Guarantees**”.

Assignment

7.1 Delete this clause and replace it with:

“7.1.1 The Employer shall be entitled to assign absolutely the entire legal benefit of this Contract without the Contractor’s consent on two occasions only. Any assignment to any subsidiary or holding company of the Employer and any

other subsidiary of the holding company of the Employer, as defined in section 1159 of the Companies Act 2006 and/or section 435 of the Insolvency Act 1986, shall not count towards the two assignments to which the Employer is entitled.

7.1.2 The Employer shall be entitled to charge and/or assign by way of security any part, share or interest in this Contract without the Contractor's consent to any party providing funding to the Employer or a subsidiary or holding company as referred to in clause 7.1.1.

7.1.3 The Contractor shall not be entitled to assign this Contract or any part, share or interest in this Contract or any right arising under it without the Employer's prior written consent."

Performance Bonds and Guarantees

7.2 Delete this clause and replace it with "Number not used".

Collateral Warranties

Rights Particulars

7.3 Delete all of the words in this clause and replace with "Number not used".

Notices

7.4 Delete "clauses 7.6 to 7.8" and replace with "clause 7".

Delete clauses 7.5 to 7.8 and their headings and replace with new headings and new clauses:

"7.5 Contractor's Warranties

The Employer requires that the Contractor, from time to time whether on, before or after the completion of the Works, executes as deeds and delivers to the Employer within 14 days of such request warranties in favour of any third party with an interest in the Works in the form in Appendix 1 to this Schedule of Amendments with such further amendments as the Employer (acting reasonably) may require.

The Employer shall be entitled to withhold an additional retention of 10% of the Interim Payments under this Contract at any time during which the Contractor is in breach of this clause 7.5.

7.6 Sub-Contractors' Warranties

The Employer may require that any Sub-Contractor, from time to time whether on, before or after the completion of the Works, executes as deeds and delivers to the Employer within 14 days of such request warranties in favour of the Employer and/or any third party with an interest in the Works in the form in Appendix 2 to this Schedule of Amendments with such further amendments as the Employer (acting reasonably) may require.

The Employer shall be entitled to withhold an additional retention of 10% of the

Interim Payments under this Contract in relation to works carried out by any Sub-Contractor until such Sub-Contractor shall have executed such deed in accordance with this clause 7.6.”

Section 8: Termination

General

Clause 8.1 is amended as follows:

Delete the full stop after ‘Act’ in 8.1.1.4, and add ‘, or

8.1.1.5 if it provides or takes any step in relation to a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006 but excluding a Scheme of Arrangement as a solvent company for the purposes of amalgamation or reconstruction; or

8.1.1.6 it applies to the court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986”

Meaning of insolvency

Notices under section 8

8.2.1 Delete this clause and replace with: “Number not used”.

8.2.3 Delete "clause 1.7.4" and insert "clause 1.7".

Termination by Employer

Default by Contractor

8.4.1 Delete the words ", before practical completion of the Works,".

8.4.1.3 Delete clause 8.4.1.3 and replace with “refuses or neglects to comply with the instructions in a notice properly issued by the Employer; or”.

8.4.1.5 Replace the comma at the end of this clause with “; or”.

Add new sub-clause:

“8.4.1.6 fails to comply with clause 2.10,”.

Insolvency of Contractor

8.5.1 After "If the Contractor is Insolvent," add "then such Insolvency shall constitute a breach by the Contractor of this Contract and".

8.5.3.1 After the semi-colon add the word “and”.

8.5.3.2 Delete this clause.

8.5.3.3 Renumber existing clause 8.5.3.3 as 8.5.3.2.

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

- 8.6 At the start of the clause add "Without prejudice to clause 2.1.10," and change "The" to "the". After "acting on his behalf", add "or associated with him". After the words "Bribery Act 2010" add "or Modern Slavery Act 2015". At the end of the clause, after the full stop add: "For the purpose of this clause 8.6, whether a person is associated with another person shall be determined in accordance with Section 8 of the Bribery Act and a person associated with the Contractor includes, but is not limited to, any sub-contractor of the Contractor".

Consequences of termination under clauses 8.4 to 8.6

- 8.7.1 From line 3 delete "(subject to obtaining any necessary third party consents)". Renumber this clause as 8.7.1.1.

Add a new clause:

"8.7.1.2 the Employer may pay a supplier or sub-contractor for any goods delivered or works executed for the purposes of this Contract before the date of termination insofar as the price thereof has not already been paid by the Contractor, and the amount of any such payment may be deducted from any sum due to the Contractor or may be recoverable from the Contractor by the Employer as a debt;"

- 8.7.2.3 In lines 2 and 3 delete "(so far as assignable and so far as he may lawfully be required to do so)" and add "(without any requirement for the consent of, and without any objection from, the respective sub-contractor, supplier and/or professional consultant)" and add at the end of the clause add "including the benefit of each contract engaging any sub-contractor and/or professional consultant."

- 8.7.4.3 Add "(including work carried out under clause 8.13)" at the end of the clause.

- 8.7.6 Insert new clause:

- .1 At any time between the date of termination and the date on which the account is prepared under clause 8.7.4, the Employer may prepare and send to the Contractor an interim forecast of the amount which it reasonably estimates will become due under clause 8.7.4.
- .2 The amount shown in such forecast shall be a debt payable by the Contractor to the Employer or by the Employer to the Contractor as appropriate.
- .3 Any sum paid pursuant to clause 8.7.6.2 shall be treated as paid on account of the difference referred to in 8.7.5."

Employer's decision not to complete the Works

- 8.8.1 Delete "6 months" and replace with "12 months", and replace all references to "6 month period" with "12 month period".

- 8.8.1.1 Add "(including work carried out under clause 8.13)" between "work" and "properly" in the first line.

Termination by Contractor

Default by Employer

8.9.1.1 Add at the end before ";or" the words "within one calendar month from the date of receipt by the Employer of the Contractor's VAT invoice in respect of the amount due and payable as ascertained and certified in accordance with clauses 4.9, 4.10 and/or 4.11".

8.9.1.3 Delete this clause.

Add clause 8.9.5:

"8.9.5 This clause 8.9 is subject to the Corporate Insolvency and Governance Act 2020".

Insolvency of Employer

Amend clause 8.10.1 to add at the beginning "Subject to the Corporate Insolvency and Governance Act 2020".

Amend clause 8.10.3 to add at the beginning "Subject to the Corporate Insolvency and Governance Act 2020".

Amend clause 8.11.1 to add at the beginning "Subject to the Corporate Insolvency and Governance Act 2020".

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

8.11.1.2 After "Statutory Undertaker" add "(except where such Statutory Undertaker is employed or engaged by the Contractor)".

8.11.1.3 After "Works" add "at the site".

Consequences of Termination under clauses 8.9 to 8.11 etc.

8.12.3.3 Add "or under clause 8.13" to the end of the clause.

Add new clause 8.13:

"8.13 Upon termination of the Contractor's employment under clauses 8.4, 8.5, 8.6, 8.9, 8.10 or 8.11 or if this Contract is terminated, repudiated or discharged (notwithstanding the fact that the Contractor may dispute the occurrence of any of these events) the Contractor shall immediately vacate the site leaving it in a safe and tidy manner, and deliver possession of the site to the Employer. On application from the Contractor, the Employer will allow the Contractor an opportunity to visit the site to remove any equipment or plant belonging to the Contractor and which was not capable of being removed when the Contractor delivered possession of the whole of the site to the Employer."

Add new heading and clause:

“New Section 10: Confidentiality

- 10.1 The Contractor will not without the prior written approval of the Employer take or permit to be taken any photographs of the Works for use in any publicity or advertising and further shall not publish any publicity or advertising relating to the Employer, the project or the Works without prior written consent from the Employer.
- 10.2 The Contractor and its agents and employees, will not without the prior written approval of the Employer disclose to any other person (other than any person to whom disclosure must be made in order for the Contractor to fulfil its duties under this Contract, or as may be required by statute) any information about the Works including drawings, plans, sketches, calculations and other materials relating to them or any information about the Employer or its business, nor will the Contractor exploit any such information for the benefit of itself or any other person. The Contractor's obligations under this clause 10.2 will not apply to any information which is already in the public domain or to any information which came to it otherwise than in connection with its involvement in relation to the Works save where its entry into the public domain or its coming to the Contractor was as a result of a breach by the Contractor or any other person of any contractual obligation.
- 10.3 The Contractor will ensure similar provisions are included in its contracts with sub-contractors (including for the avoidance of doubt professional consultants) and will enforce such provisions.
- 10.4 The Contractor's obligations under this clause 10 shall survive any termination of the Contractor's employment under this Contract."

Appendix 1

Contractor's Collateral Warranty

DATED _____

[BENEFICIARY] (1)

and

[CONTRACTOR] (2)

[and

[EMPLOYER] (3)]

DEED OF WARRANTY
relating to the []

MILLS & REEVE

THIS WARRANTY is made on

BETWEEN:

- (1) **[BENEFICIARY]** [(company number [number])] whose [registered] [principal] office is at [address] ("**Beneficiary**" which expression shall include its successors in title and assigns); and
- (2) **[CONTRACTOR]** (company number [number]) whose registered office is at [address] ("**Contractor**")[: and] [.]
- (3) **[EMPLOYER]** (company number []) whose registered office is at [] ("**Employer**" which expression shall include its successors in title, assigns, transferees and related organisations, whether by reorganisation or under statute).

BACKGROUND:

- (A) The Beneficiary has entered or shall enter into a contract with the Employer ("**Agreement**") for [description] and has an interest in [] ("**Project**").
- (B) The Employer has entered into a contract with the Contractor dated ("**Contract**") for the carrying out of the work described in the Contract ("**Works**") for the Project.
- (C) It is a condition of the Contract that the Contractor gives this Warranty to the Beneficiary.

In consideration of the payment of £1 (a pound) by the Beneficiary to the Contractor (receipt of which the Contractor acknowledges) **IT IS AGREED:**

1 Works

1.1 The Contractor undertakes and warrants to the Beneficiary that:

- 1.1.1 the Contractor has complied and shall comply with the Contractor's obligations under and in connection with the Contract in accordance with it; and
- 1.1.2 the Contractor has used and shall use, in the construction of the Works, all the reasonable skill, care and diligence and the best up-to-date practice to be expected of a fully qualified and competent designer and contractor experienced in designing and constructing works for projects of a similar size, scope, nature, complexity and timescale to the Project.

2 Materials and building practices

2.1 The Contractor undertakes and warrants to the Beneficiary that (unless otherwise instructed or authorised by or on behalf of the Beneficiary):

- 2.1.1 the Contractor has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 not to specify, select and/or approve for use; and

2.1.2 the Contractor has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 to ensure that there shall not be used in the Project:

any material, substance, building practice or technique which is:

- (a) prohibited by the Contract;
- (b) not in accordance with any relevant British Standard, Eurocode, code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément;
- (c) not in accordance with the guidance and comment contained in the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011"; or
- (d) generally known within the construction industry at the time of specification, selection, approval or use (as the case may be) to:
 - (i) be deleterious;
 - (ii) be harmful to the health or safety of any person;
 - (iii) threaten the structural stability, physical integrity or performance of the Project or any part or component of the Project; or
 - (iv) reduce the normal life-expectancy of the Project or any part or component of the Project.

3 Documents

3.1 For the purposes of this Warranty, "**Documents**" means any and all activity schedules, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the Contractor (whether in existence or to be created) in connection with the Works and/or the Project.

3.2 The Contractor grants to the Beneficiary an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Works or the termination of the Contractor's engagement under the Contract, to copy and use the Documents and to reproduce the designs and contents of them for:

3.2.1 any purpose relating to the Project and/or the Beneficiary's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement,

repair, sale and use of the Project and/or the Beneficiary's interest in the Project; and

- 3.2.2 the extension of the Works or the Project, so that the Beneficiary can interface any extension of the Works or the Project with the existing Works or Project, but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project.
- 3.3 The Beneficiary shall be entitled to grant sub-licences under the Beneficiary's licence and both the Beneficiary's licence and any sub-licences shall be transferable to others.
- 3.4 The Contractor undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Beneficiary and it shall include any sub-licensees and assignees under clause 3.3, any assignees under clause 9, any successors in title to the copyright in the design under the Contract and any successors in title to the Beneficiary's business.
- 3.5 Notwithstanding practical completion of the Works or the termination of the Contractor's engagement under the Contract, the Contractor shall give to the Beneficiary any paper copies and electronic copies of the Documents that the Beneficiary reasonably requests. The Contractor shall give these copies to the Beneficiary within seven days of any request, and the Beneficiary shall pay the Contractor's reasonable copying costs. The Contractor shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Contractor gives to the Beneficiary.
- 3.6 The Contractor shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared for.

4 Insurance

- 4.1 Subject to clause 4.2, and provided that it is available at reasonable premium rates and on reasonable commercial terms, the Contractor shall take out and maintain professional indemnity insurance from the date of the Contractor's engagement under the Contract until the date that is 12 years after the date of practical completion of the Project:
 - 4.1.1 with a well-established insurance company or underwriter of good repute based in the United Kingdom;
 - 4.1.2 with a limit of indemnity of not less than £[],000,000 ([] million pounds) for each claim or series of claims arising from the same originating or underlying cause; and
 - 4.1.3 on terms that:

- (i) do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and
 - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.
- 4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the Contractor's claims record or other act, failure to act or circumstance particular to it, this shall be deemed to be within reasonable rates and terms.
- 4.3 Without the Beneficiary's prior written consent, the Contractor shall not:
 - 4.3.1 settle or compromise any claim against the insurers that relates to a claim by the Beneficiary against the Contractor; or
 - 4.3.2 by any act or omission lose or affect the Contractor's right to make, or to proceed with, any claim against the insurers that relates to a claim by the Beneficiary against the Contractor.
- 4.4 As and when it is reasonably required to do so by the Beneficiary, the Contractor shall make available for inspection by the Beneficiary documentary evidence that the insurance is being maintained in accordance with this Warranty.
- 4.5 Subject to clause 4.2, the Contractor shall inform the Beneficiary immediately if this insurance ceases to be available to the Contractor at reasonable premium rates or on reasonable commercial terms. If this happens:
 - 4.5.1 the Beneficiary and the Contractor shall discuss and agree on the best means of protecting themselves; and
 - 4.5.2 the Beneficiary may require the Contractor to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Contractor. If the Beneficiary exercises this right, subject to clause 4.2 it shall reimburse to the Contractor the difference between the premium paid and the premium that would have been reasonable.
- 4.6 If required by the terms of its insurance policy, the Contractor undertakes and warrants that:
 - 4.6.1 prior to the execution of this Warranty, it has:
 - (i) disclosed the contents of this Warranty to its insurers and brokers; and
 - (ii) received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy; and
 - 4.6.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance.]

5 Termination and suspension by Contractor

- 5.1 For the purposes of this Warranty, “**Another Person**” means the Beneficiary’s nominee or an administrator, an administrative receiver or a receiver appointed by the Beneficiary.
- 5.2 The Contractor shall not exercise any right which the Contractor has to rescind or terminate the Contract or its engagement under the Contract, or to suspend or discontinue the Works, unless the Contractor has given at least 31 days’ prior written notice to the Employer and the Beneficiary specifying:
- 5.2.1 the breach of the Contract which the Contractor considers entitles it to rescind or terminate the Contract or its engagement under the Contract, or to suspend or discontinue the Works; and
 - 5.2.2 full details of any amounts owed by and due from the Employer to the Contractor under the Contract for the last three outstanding payments covering the three payment periods before that in which the notice is given.
- 5.3 Within 31 days of receipt of a notice under clause 5.2, if the Beneficiary notifies the Contractor that it or Another Person wishes to enter into a new agreement with the Contractor on the same terms and conditions as the Contract to complete the Contractor’s obligations under the Contract in accordance with it:
- 5.3.1 the Contractor shall enter into a new agreement with the Beneficiary or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Contract and, if this happens, the Contract shall terminate but, subject to clause 5.3.2, without prejudice to the accrued rights of the parties;
 - 5.3.2 if the Contract is terminated in accordance with clause 5.3.1, the Contractor shall not have a claim against the Employer arising solely out of the termination; and
 - 5.3.3 subject to clause 5.2, if the Contract has been terminated in accordance with clause 5.3.1, pending entry into the new agreement, the Contractor shall comply with the instructions of the Beneficiary (or Another Person) under the Contract as if it had not been terminated, and the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Contractor all sums owed and due to it for the Works it has [designed and] constructed pursuant to those instructions.
- 5.4 The Beneficiary shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Contractor for the Works it [designs and] constructs from the date of the new agreement, but it shall have no other liability in respect of the Contract except that the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Contractor:
- 5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and

- 5.4.2 any amounts accrued and unpaid that are owed by and due from the Employer to the Contractor for the period from the date of the last payment referred to in clause 5.2.2 until the date of the new agreement.
- 5.5 If the breach of the Contract referred to in clause 5.2.1 has been remedied and the Contractor has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Employer, the rights of the Contractor and the Beneficiary to enter into (and the right of the Beneficiary to appoint Another Person to enter into) a new agreement shall cease.
- 5.6 If the Contractor has given rights relating to the Contract similar to those in clause **Error! Reference source not found.** to more than one person, and more than one person notifies the Contractor that it wishes to enter into a new agreement with the Contractor in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):
 - 5.6.1 a notice served by the Beneficiary;
 - 5.6.2 a notice served by the Employer;
 - 5.6.3 a notice served by any other beneficiary; and

all notices that the Contractor receives shall take effect in accordance with this order of priority.]

6 Termination of the Agreement

- 6.1 If the Beneficiary gives written notice to the Employer and the Contractor that the Agreement has been rescinded or terminated, at any time within 31 days of giving the notice, the Beneficiary may either:
 - 6.1.1 comply with the obligations of the Employer under the Contract and, if this happens, the Contractor shall comply with its obligations and [design and] construct the Works under the Contract, and the Beneficiary shall comply with the obligations of the Employer under the Contract, as though the Beneficiary was and always had been the employer under the Contract in the place of the Employer; or
 - 6.1.2 enter into (or appoint Another Person to enter into), and require the Contractor to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.
- 6.2 After it has received the notice given under clause 6.1, the Contractor shall comply with the instructions of the Beneficiary (or Another Person), and the Contractor shall enter into a new agreement at the Beneficiary's written request as described in clause 6.1.2.
- 6.3 The Contractor may treat the Beneficiary's notice under clause 6.1 that the Agreement has been rescinded or terminated as sufficient evidence that this has happened.

- 6.4 The Employer shall not have a claim against the Contractor arising solely out of the Contractor's compliance with the instructions of the Beneficiary (or Another Person) in accordance with clause 6.]

7 Conflict

- 7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Contract, the terms and conditions of this Warranty shall have priority.

8 Limitation

- 8.1 In any action, claim or proceedings brought against the Contractor by the Beneficiary, the Contractor may rely on the same limitations as are in the Contract and raise the equivalent rights in defence of liability as it would have if the Beneficiary were named as joint employer in the Contract, provided that the Contractor shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Beneficiary is of a different kind or type from that which would have been suffered by the Employer.

9 Assignment

- 9.1 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty without the consent of the Contractor to:

9.1.1 a mortgagee of the Beneficiary; or

9.1.2 any holding, subsidiary or associated company of the Beneficiary within the meaning of section 1159 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated company which becomes a legal entity and/or is incorporated after the date of this Warranty.

- 9.2 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Contractor on two occasions only. The consent of the Contractor, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers.

10 Contracts (Rights of Third Parties) Act 1999

- 10.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Non-waiver

- 11.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Beneficiary, the Employer, any of the Employer's consultants or any of their agents, or failure to give or make any of

these, shall exclude, limit, modify, qualify or reduce the Contractor's obligations or liability under the Contract or this Warranty.

- 11.2 Any delay, forbearance, indulgence or relaxation ("**Indulgence**") of a party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right, whether against that party or any other person.

12 Severability

- 12.1 If any provision of this Warranty is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Warranty and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Warranty.

13 Counterparts

- 13.1 This Warranty may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

- 14.1 Any written notice or communication given under this Warranty shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address at the beginning of this Warranty or another address which a party may specify by written notice to the other parties from time to time.
- 14.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery.

15 Governing law, dispute resolution and jurisdiction

- 15.1 This Warranty shall be governed by, and construed and interpreted in accordance with, English law.
- 15.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Warranty to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

16 Execution as a deed

- 16.1 This Warranty is executed as a deed and it was delivered when it was dated.

[RELEVANT EXECUTION BLOCKS]

Appendix 2

Sub-Contractor's Collateral Warranty

DATED _____

[NAME OF BENEFICIARY] (1)

and

[NAME OF SUB-CONTRACTOR] (2)

DEED OF WARRANTY

relating to the []

THIS DEED is made on

BETWEEN:

- (1) **[NAME OF BENEFICIARY]** (company number []) whose registered office is at [] (the “**Beneficiary**” which expression shall include its successors in title, agents and assigns); and
- (2) **[NAME OF SUB-CONTRACTOR]** (company number []) whose registered office is at [] (the “**Sub-Contractor**”).

WHEREAS:

- (A) [The Employer entered into an agreement (“**Agreement**”) with the Beneficiary for [] in connection with the Project.]
- (B) [The Employer has entered into a contract dated (“**Building Contract**”) with the Contractor for the carrying out and completion of remedial work defined in the Building Contract (“**Works**” which expression shall include any additional works carried out by the Contractor under the Building Contract in connection with any modifications or variations made thereunder) in connection with the Project.]
- (C) The Contractor has entered into a sub-contract dated [] (the “**Sub-Contract**”) with the Sub-Contractor for the carrying out and completion of works defined in the Sub-Contract (the “**Sub-Contract Works**” which expression shall include any additional works carried out by the Sub-Contractor under the Sub-Contract in connection with any modifications or variations made thereunder) in connection with the Project.

NOW in consideration of the payment of one pound by the Beneficiary to the Sub-Contractor (the Beneficiary agreeing to pay to the Sub-Contractor the sum of one pound if demanded) **THIS DEED WITNESSES** as follows:

1 The Sub-Contract Works

1.1 The Sub-Contractor warrants to the Beneficiary that:

- 1.1.1 the Sub-Contractor has carried out and completed the Sub-Contract Works and/or shall carry out and complete the Sub-Contract Works in accordance with the Sub-Contract;
- 1.1.2 the Sub-Contractor has complied with and/or shall comply with all the obligations of the Sub-Contractor under the Sub-Contract;
- 1.1.3 in relation to any design carried out by the Sub-Contractor, that it has exercised and shall continue to exercise in the performance of the design, all the reasonable skill, care and diligence to be expected of a properly qualified and competent designer experienced in designing and carrying out work of a similar scope, nature, complexity and size to the Sub-Contract.

2 Deleterious materials

2.1 Notwithstanding and without prejudice to the terms and conditions of the Sub-

Contract, the Sub-Contractor confirms to the Beneficiary that (unless otherwise authorised or instructed by or on behalf of the Employer):

- 2.1.1 the Sub-Contractor has not used and/or specified, selected and/or approved and will not use, specify, select and/or approve for use; and
- 2.1.2 (consistent with the Sub-Contractor's duties under the Sub-Contract) the Sub-Contractor has exercised and will continue to exercise the level of skill, care and diligence to be expected of a competent and qualified sub-contractor to ensure that none of the following shall be used in the Project:

any material, substance or building practice or technique which is:

- 2.1.3 prohibited by the Sub-Contract; and/or
- 1.1.1 which is not in accordance with relevant British Standard, Eurocode, code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément; and/or
- 2.1.4 which is generally known at the time of specification, selection, or approval or use (as the case may be) to be deleterious or hazardous to health and safety or to the stability or durability of the Sub-Contract Works in the particular circumstances in which such materials, substances, building practices or techniques are used and taking into consideration, as and where applicable, the guidance and comment in the British Council for Offices publication "Good Practice and Selection of Construction Materials 2011", or any successor replacement or equivalent guidance that both parties should agree applies.

3 Provision of Documents

- 3.1 The Sub-Contractor shall provide to the Beneficiary on demand and on payment of the Sub-Contractor's reasonable costs of producing the same copies of any plans, drawings, reports, specifications, bill of quantities, calculations and other similar documents (whether in existence or to be made and whether in hard copy, on disk, any other computer generated format or any magnetic or optical storage medium) made and/or amended by or on behalf of the Sub-Contractor (the "**Documents**") in connection with the Sub-Contract Works.
- 3.2 The Sub-Contractor hereby grants to the Beneficiary an irrevocable royalty-free licence to copy and use the Documents and to reproduce the works, designs and inventions contained in the Documents for all purposes related to the Project and/or the Beneficiary interest in the Project including, but without limitation, the construction, completion, reconstruction, alteration, extension, maintenance, letting, promotion, advertisement, reinstatement, use and repair of the Project or the Beneficiary interest in it. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- 3.3 The Sub-Contractor shall not be liable for any use of such designs or documents for any purpose which was not within the contemplation of the Sub-Contractor at the time the same are or were prepared.

4 Insurance

- 4.1 Without prejudice to its obligations under this Deed and/or at law or otherwise, the Sub-Contractor shall take out and maintain, until twelve years after the date of practical completion of the Sub-Contract, with a well-established insurance company or underwriter of repute, appropriate [professional indemnity] [product liability] insurance with a limit of indemnity of not less than [] million pounds (£[],000,000) for any one claim or series of claims arising out of a single incident and in the aggregate in any one year provided that such insurance continues to be available in the insurance market at reasonable premium rates and on reasonable terms.
- 4.2 The Sub-Contractor shall, as and when it is reasonably required to do so by the Beneficiary, make available for inspection by the Beneficiary documentary evidence that such insurance is being properly maintained. The Sub-Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at reasonable premium rates and on reasonable terms

5 Assignment

- 5.1 The Beneficiary may at any time assign or transfer all or any of its rights under this Deed to any party without the Sub-Contractor's consent on two occasions. The Sub-Contractor's consent (which shall not be unreasonably withheld or delayed) is required for any further such assignments.

6 Independent inspection

- 6.1 The liability of the Sub-Contractor under this Deed shall not be released, diminished or in any other way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary, nor by any failure or omission to carry out any such inspection, investigation or enquiry, nor by the appointment by the Beneficiary of any independent firm, company or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Project, nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary. Provided always that nothing in this clause shall modify or affect any rights which the Sub-Contractor might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

7 Conflict

- 7.1 In the event of any conflict between the terms and conditions of this Deed and the terms and conditions of the Sub-Contract, the terms and conditions of this Deed shall have priority.

8 Limitation

- 8.1 The Contractor shall be entitled to rely upon any limitation in the Sub-Contract and to raise the equivalent rights in defence of the liability (excluding set-offs and counterclaims) as it would have had against the Contractor under the Sub-Contract in any actions or proceedings brought against the Sub-Contractor by the Beneficiary.

9 Notices

- 9.1 Any notice or confirmation in writing provided for in this Deed shall be duly given if delivered by hand or sent by Royal Mail special delivery to a party at its address set forth above or such other address as each party may specify from time to time by written notice to the other party.
- 9.2 Such notice shall be deemed to have been received on the day of delivery if delivered by hand or the second working day after posting if sent by Royal Mail special delivery.

10 Rights of third parties

- 10.1 The application of the Contracts (Rights of Third Parties) Act 1999 to this Deed is hereby excluded.

11 Law

- 11.1 The construction, validity and application of this Deed is subject to English law and to the non-exclusive jurisdiction of the English Courts.

12 Execution as a deed

- 12.1 This instrument is executed as a deed and was delivered when it was dated.

Signed as a deed by **[NAME OF BENEFICIARY]** acting by either a director and its secretary or two directors

.....

Director

.....

Director/Secretary

Signed as a deed by **[NAME OF SUB-CONTRACTOR]** acting by either a director and its secretary or two directors

.....

Director

.....

Director/Secretary