



dated [■] 20[■]

[ICN Party]

and

[Contractor]

**JCT Design and Build Contract 2016 edition (as amended) for
MMC Projects with a specialist MMC sub-contractor**

in relation to works at [■]

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Agreement

dated [■] 20[■]

Parties

- (1) [■] (company number [■]) of/whose registered office is [■] (the **Employer**) and
- (2) [■] (company number [■]) of/whose registered office is at [■] (the **Contractor**).

Recitals	First	the Employer wishes to have the design, construction, completion and defects rectification of [■] (the Works) at [■] (the Site) in accordance with the conditions of the JCT Design and Build Contract (2016 edition) and schedules annexed thereto subject to the amendments and insertions set out in these Articles of Agreement and Appendix 1 hereto (hereinafter together called the Conditions) and the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements (the Employer's Requirements);
	Second	in response to the Employer's Requirements the Contractor has supplied to the Employer: <ol style="list-style-type: none">1 documents showing and describing the Contractor's proposals for the design and construction of the Works (the Contractor's Proposals) and2 an analysis of the Contract Sum (the Contract Sum Analysis) which the Contractor would require for carrying out that which is necessary for completing all the Works in accordance with the Conditions;
	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;
	Fourth	for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004 the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;
	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;] [Not used.]
	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 10 apply is stated in the Contract Particulars subject to the relevant amendments set out in this Agreement.

Operative clauses

Now it is hereby agreed as follows

Article 1

Contractor's Obligations The Contractor shall complete the design for the Works and carry out and complete the construction of the Works in accordance with the Contract Documents.

Article 2

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

Article 3

Employer's Agent For the purpose of this Contract the Employer's Agent is [■] or such other person as the Employer nominates in his place. Save to the extent that the Employer may otherwise specify by written notice to the Contractor, 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.

Article 4

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

Article 5

Principal Designer The Principal Designer for the purposes of the CDM Regulations and the Competency Regulations is [insert legal name of principal designer] of [insert address of principal designer] or such replacement as the Employer at any time appoints to fulfil that role.

[The Contractor warrants to the Employer that he has the necessary skills, knowledge and experience to undertake the role of Principal Designer as defined in the CDM Regulations and the Competency Regulations (as the case may be) and has sufficient resources and will allocate those resources to the fulfilment of his duties as Principal Designer.]¹

Article 6

¹ Only include if the Contractor is going to be the Principal Designer.

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

The Contractor warrants to the Employer that he has the necessary skills, knowledge and experience to undertake the role of Principal Contractor as defined in the CDM Regulations and the Competency Regulations (as the case may be) and has sufficient resources and will allocate those resources to the fulfilment of his duties as Principal Contractor.

Article 7.1

Negotiation If any dispute or difference shall arise between the Parties at any time out of or in connection with this Contract or the Works then without prejudice to the rights of the Parties under the remainder of this Article the Party who believes that a dispute has arisen shall give written notice to the other Party including all available details as soon as it is aware of such dispute and the Parties shall meet with the Employer's Agent in attendance and shall through discussions, correspondence and further meetings endeavour to resolve such dispute by negotiation during a period of up to 28 days thereafter.

Article 7.2

Dispute or Difference Adjudication – If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 9.2 and enter into the appointment at Appendix 6 with the Adjudicator.

Article 7.3

Dispute or Difference – Legal Proceedings – If any dispute or difference as to any matter or thing of whatsoever nature arising under this Contract or in connection therewith shall arise between the Parties either during the progress or after the completion or abandonment of the Works or after the determination of the employment of the Contractor it shall subject to Articles 7.1 and 7.2 be determined by legal proceedings and the parties agree that the English courts shall have jurisdiction over any such dispute or difference.

Article 7.4

Limitations The parties hereby agree that in any adjudication, court or other proceedings in connection with this Contract the limitation period for all claims and causes of action of any nature shall be no less than twelve (12) years from the date of Practical Completion.

Article 8

Prior Agreements This Contract represents the entire agreement between the Employer and the Contractor and supersedes any previous agreement or understanding between them in relation to the Works including, but not limited to any letter of intent, pre-construction services agreement,

consultancy appointment or similar agreement (**Prior Agreement**). This Contract subsumes and extinguishes any Prior Agreement in its entirety and payment for works or services undertaken pursuant to any Prior Agreement shall be deemed to be payment under the terms of this Contract which the parties shall give due credit for.

Contract Particulars

* Delete as appropriate

Subject	Clause etc.	
Construction Industry Scheme (CIS)	Fourth Recital and clause 4.5	Employer at the Base Date is a contractor/is not a contractor* for the purposes of the CIS

Description of Sections (if any)	Fifth Recital	[■]
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(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)²

Framework Agreement (if applicable)	Sixth Recital	Innovation Chain North
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(State date title and parties)

Supplemental provisions – Part 1	Seventh Recital and Part 1 of Schedule 2	
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(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision does not apply)

Named Sub-Contractors	Supplemental Provision 1 does not apply
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Valuation of Changes – Contractor's estimates	Supplemental Provision 2 applies / does not apply
-----------------------------------------------	---------------------------------------------------

Loss and expense – Contractor's estimates	Supplemental Provision 3 applies / does not apply
-------------------------------------------	---------------------------------------------------

Supplemental Provisions ³ – Part 2	Seventh Recital and Part 2 of Schedule 2	
-----------------------------------------------	------------------------------------------	--

(Where neither entry against one of Supplemental Provisions 4 to 10 below is deleted, that Supplemental Provision applies)

² If the relevant document or set of documents takes the form of an Annex to this Contract, it is sufficient to refer to that Annex.

³ Supplemental Provision 11 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 12 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

Subject	Clause etc.	
Acceleration Quotation		Supplemental Provision 4 applies / does not apply
Collaborative working		Supplemental Provision 5 applies / does not apply
Health and safety		Supplemental Provision 6 applies
Cost savings and value improvements		Supplemental Provision 7 applies / does not apply
		The Incentive(s) are as follows:
		[■]
Sustainable development and environmental considerations		Supplemental Provision 8 applies / does not apply
Performance indicators and monitoring		Supplemental Provision 9 applies
Notification and negotiation of disputes		Supplemental Provision 10 does not apply
Employer's Requirements	Article 4	[■]
<i>(State reference numbers and dates or other identifiers of the relevant documents).</i>		
Contractor's Proposals	Article 4	[■]
<i>(State reference numbers and dates or other identifiers of the relevant documents).</i>		
Contract Sum Analysis	Article 4	[■]
<i>(State reference numbers and dates or other identifiers of the relevant documents).</i>		
Base Date	clause 1.1	The date of the Contractor's final tender submission
BIM Protocol (where applicable)	clause 1.1	[■]
<i>(State title, edition, date or other identifiers of the relevant documents)</i>		

Subject	Clause etc.	
Date for Completion of the Works	clause 1.1	[■]
<i>(Where completion by Sections does not apply)</i>		
Sections: Dates for Completion	clause 1.1	Section [■]: [■] Section [■]: [■] Section [■]: [■]
Addresses for service of notices etc. by the Parties	clause 1.7	Employer [■] Contractor [■]
<i>(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement).</i>		
Date of Possession of the Site	clause 2.3	[■]
<i>(where possession by Sections does not apply)</i>		
Sections: Dates of Possession of Section		Section [■]: [■] Section [■]: [■] Section [■]: [■]
Deferment of possession of the Site	clauses 2.4 and 2.26.2.3	Clause 2.4 applies and the maximum period of deferment may be up to twelve (12) calendar weeks
<i>(Where possession by Sections does not apply)</i>		
Sections: deferment of possession of Sections		Section [■]: [■] Section [■]: [■] Section [■]: [■]
Liquidated damages	clause 2.29.2	At the rate of £[■] per [■] or part thereof
<i>(Where completion by Sections does not apply)</i>		
<i>(Where no liquidated damages are specified or the words 'nil' or 'not applicable' (or similar or equivalent) are used, then the Employer shall be entitled to claim general damages in respect of the Contractor's failure to achieve Practical Completion prior to</i>		

Subject	Clause etc.	
<i>the Date for Completion)</i>		
Sections: rate of liquidated damages for each Section		Section [■]: £ [■] per [■] or part thereof
		Section [■]: £ [■] per [■] or part thereof
		Section [■]: £ [■] per [■] or part thereof
Sections: Section Sums	clause 2.34	Section [■]: £ [■]
		Section [■]: £ [■]
		Section [■]: £ [■]
Rectification Period	clause 2.35	[Twelve (12) / twenty four (24 ⁴)] months from the date of Practical Completion of the Works (or twelve months if no other period is stated)
<i>(Where completion by Sections does not apply) (If no other period is stated, the period is 12 months)</i>		
Sections: Rectification Period		Section [■]: Twelve (12) months
		Section [■]: Twelve (12) months
		Section [■]: Twelve (12) months
		from the date of Practical Completion of each Section
Novation of members of the Employer's Professional Team	clause 3.18	The following members of the Employer's Professional Team shall be novated to the Contractor in accordance with clause 3.18:
		*[Not applicable] / [List consultants / MMC Sub-Contractor] ⁵
VAT Reverse Charge	clause 4.4	Option [A / B] applies ⁶
4.6	Advance payment	[Clause 4.6 does not apply] / [Clause 4.6 does apply] ⁷
4.6	Advance Payment Bond	[An advance payment bond is required in respect of advance payment(s) to be made in relation to the MMC Sub-Contract Works for the value below]

⁴ Amend as applicable to match the Latent Defects Insurance period.

⁵ If MMC Sub-Contractor has been appointed by the Employer and is being novated to the Contractor, then the MMC Sub-Contractor needs to be listed in here as well

⁶ Clause 4.4 Option A is the default position in that the VAT Reverse Charge will apply and the Employer has to account for VAT. Clause 4.4 Option B is to be used where the Employer wants to use the "end user" exception, being someone that does not on supply construction so that VAT is charged in the normal way. Each ICN member will need to take tax advice on the correct position.

⁷ Consider requiring an Advance Payment Bonds on MMC Projects

Subject	Clause etc.	
	The required form of the bond is set out in	Part 1 of Schedule 6
	Value	£[■] ⁸
Method of Payment- alternatives	clause 4.7.1	periodically in accordance with Alternative B (clause 4.13)
Interim Payments - Interim Valuation Dates <i>(If no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)</i>	clause 4.7.2	The first Interim Valuation Date is [■] 20[■][■] and thereafter the same date in each month or the nearest Business Day in that month ⁹
Listed Items – uniquely identified <i>(Delete the entry if no bond is required)</i>	clause 4.15.4	*For uniquely identified Listed Items a bond as referred to in clause 4.15.4 in respect of payment for such items is required for £[■]
Listed Items – not uniquely identified <i>(Delete the entry if clause 4.15.5 does not apply)</i>	clause 4.15.5	*For Listed Items that are not uniquely identified a bond as referred to in clause 4.15.5 in respect of payment for such items is required for £[■]
Contractor's Retention Bond <i>(Not applicable unless stated to apply with relevant particulars given below)</i>	clause 4.17	Clause 4.17 applies / does not apply If clause 4.17 applies: The maximum aggregate sum for the purposes of clause 2 of the bond is £[■]; and For the purposes of clause 6.3 of the bond the expiry date shall be [■]
Retention Percentage <i>(The percentage is 3 per cent unless a different rate is stated or a Retention Bond is being provided).</i>	clause 4.18.1	[■] per cent
Daywork	clause 5.5	The Percentage Additions to each section of the prime cost, or if they apply in respect of

⁸ For MMC Projects, the value should be equivalent to the amount of the payment(s) being advanced ahead of the delivery of the materials to site

⁹ If the Employer wishes to use monthly valuations, then the first Interim Valuation Date should not be more than one month after the Date of Possession.

Subject	Clause etc.	
Contractor's Public Liability insurance – injury to persons or property- the required level of cover is not less than	clause 6.4.1	labour, the All-Inclusive Rates, are set out in the following documents: [■] £[■] for any one occurrence or series of occurrences arising out of one event
Insurance – liability of Employer	clause 6.5.1	Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event £[■] ¹⁰
Works insurance– Insurance Option applicable	clause 6.7 and Schedule 3	Schedule 3: *Insurance Option A applies/ *Insurance Option B applies/ *Insurance Option C applies
Percentage to cover professional fees		[■] per cent
<i>(If no other percentage is stated, it shall be 15 per cent)</i>		
Where Insurance Option A applies and cover is to be provided under the Contractor's Annual policy (paragraph A.2), the annual renewal date is		[■]
<i>(As supplied by the Contractor)</i>		
Where Insurance Option C applies, paragraph C.1 ¹¹		*Applies/ Is replaced by the provisions of the following document(s)
<i>(Unless otherwise stated, paragraph C.1 applies. If it is not to apply, state the reference number and date or</i>		[■]

¹⁰ Insert an amount where it is stated in the Employer's Requirements that insurance under clause 6.5.1 is required. If the indemnity is to be for an aggregate amount and not for any one occurrence or series of occurrences, the entry should be amended to make this clear.

¹¹ **Insurance Option C** is for use in the case of alterations of or extensions to Existing Structures. Under that option, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements and amendments will be necessary. See the Design and Build Contract Guide.

Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with insurance option C- in particular any Employer who is a tenant or domestic homeowner- or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

Subject**Clause etc.**

other identifier of the replacement document(s.)

(the **C.1 Replacement Schedule**)

Terrorism Cover – details of the required cover

clause 6.10 and Schedule 3

Are set out in the following document(s):

[■]

(Unless otherwise stated, Pool Re Cover is required)¹²

Professional Indemnity insurance

clause 6.15

[■]

(If no period is selected, the expiry date shall be no earlier than 12 years from the date of Practical Completion of the Works)

Level of cover

Amount of indemnity required relates to claims or series of claims arising out of one event and is not less than:

[■ £5,000,000 for each and every claim]¹³

[■ £10,000,000 for each and every claim]

Level of cover for pollution/contamination claims

£[■]

(If none is stated, the required level of cover shall be the full amount of the indemnity cover stated above).

Joint Fire-Code

clause 6.17

The Joint Fire Code

(If not stated the Joint Fire Code shall be deemed to apply)

*Applies/Does not apply

If the Joint Fire Code applies, state whether the insurer under Insurance Option A,

*Yes/No

B or C (paragraph C.2) has specified that the Works are a 'Large Project'

¹² Obtaining Terrorism Cover for the Works, which unless otherwise agreed is necessary in order to comply with the requirements of Insurance Option A, B or C, will involve an additional premium and in certain situations has been difficult to effect. If any difficulty might arise, there should be immediate pre-contract discussion between the Parties and their insurance advisers. See the Design and Build Contract Guide.

¹³ Insert the relevant minimum levels of professional indemnity cover to be provided. If the indemnity is to be for an aggregate amount and not for each and every claim, the entry should be amended to make this clear.

Subject	Clause etc.	
Joint Fire Code – amendments/ revisions <i>(The cost shall be borne by the Contractor unless otherwise stated)</i>	clause 6.20	The cost, if any, of compliance with amendment(s) or revisions(s) to the Joint Fire Code shall be borne by *the Employer/Contractor
Assignment/grant by Employer of rights under clause 7.2 <i>(If neither entry is deleted clause 7.2 applies)</i>	clause 7.2	Applies
Sections: rights under clause 7.2 <i>(Delete the entry if rights are not to apply to each Section or amend if they are to apply to certain Sections only)</i>	clause 7.2	Rights under clause 7.2 apply to each Section.
Performance bond or guarantee from bank or other approved surety ¹⁴ <i>(If this entry is not completed, a performance bond or guarantee is not required)</i>	clause 7.3.1	*Is required/ Is not required
The required form of the bond or guarantee is set out in		Appendix 5 (or such other substantially similar form as the Employer may approve)
Initial value		[■] ¹⁵ per cent of the Contract Sum
Period of validity - if not specified in the required form, the expiry date of the performance bond or guarantee is to be <i>(If no entry is selected, the date shall be date of the Notice of Completion of Making Good for the Works)</i>		From the commencement of the Works until *[the date of issue of the Notice of Completion of Making Good for the Works] / [Practical Completion is achieved (where the Works are sectionalised, then Practical Completion of all Sections)]
Guarantee from the Contractor's parent company	clause 7.3.2	*Is required/ Is not required
Parent company's name and registration number <i>(This should be the Contractor's ultimate holding company (where applicable) or (in the Employer's sole</i>		Company name: [■] Limited / PLC Registered number: [■] Registered office: [■]

¹⁴ If a performance bond is required, the identity of the bondsman as well as the operative terms of the bond should be agreed prior to execution of the contract

¹⁵ Normally expressed to be 10% of the Contract Sum

Subject**Clause etc.**

discretion) such other company as the Employer may accept).

The required form of the guarantee is set out in

Appendix 9

Sub-contractor / sub-consultant warranties

Clause 7.8

Required from any sub-consultant or sub-contractor contributing to the design of the Works, together with any other parties specifically listed below:

[Insert non-design sub-contractors / consultants who are required to provide a warranty (if applicable)] / [Not applicable]

Period of suspension

clause 8.9.2

Two months

Period of suspension

clauses 8.11.1.1 to 8.11.1.7

Six months

Adjudication – Nominator of Adjudicator

clause 9.2.1

The adjudicator is not named herein

The adjudicator nominating body shall be the Royal Institution of Chartered Surveyors

Provisions only applicable to the Building Safety Legislation

Accountable Person

1.1

[the Employer / insert other party / does not apply]

Principal Accountable Person

1.1

[the Employer / insert other party / does not apply]

Higher Risk Building

1.1

[Higher Risk Building applies / Higher Risk Building does not apply]¹⁶

Gateways Regulations

1.1

[Gateways Regulations apply / Gateways Regulations do not apply]¹⁷

Higher Risk Building Clauses

Appendix 15

[Appendix 15 applies / Appendix 15 does not apply]¹⁸

Golden Thread Documents

Appendix 16

[Appendix 16 applies / Appendix 16 does not apply]¹⁹

Building Safety Regulator

Appendix 17

Appendix 17 applies / Appendix 17 does not

¹⁶ Higher Risk Building applies if the building is over 18m and residential occupation.

¹⁷ Gateways Regulations apply if the building is over 18m and residential occupation

¹⁸ Appendix 15 applies if the building is over 18m and residential occupation

¹⁹ Appendix 16 applies if the building is over 18m and residential occupation.

Subject

Clause etc.

Document Checklist

*apply*²⁰

²⁰ Appendix 17 applies if the building is over 18m and residential occupation

Provisions only applicable in relation to MMC Projects (Schedule 8):

Schedule 8 generally	Applicability of Schedule 8	of [Schedule 8 applies] ²¹ / [Schedule 8 does not apply]
	<i>Where Schedule 8 does not apply, the Contract Particulars below shall not apply</i>	
	Identity of MMC Sub-Contractor (if known)	Company name: [■] Company number: [■]
	<i>If the identity is not known, the approval process in Schedule 8 will apply</i>	Registered office: [■]
	Brief description of MMC Sub-Contract Works	[■]
	Date or stage when the MMC Sub-Contractor is to be appointed by	[Date of this Contract] / [<i>Insert date or stage of works</i>]
	MMC Sub-Contractor Agreement	Where Schedule 8 is stated to apply, then an MMC Sub-Contractor Direct Agreement is required
	Agreed Payment	Direct [Does not apply] ²² / [The sum of £[■]]
	Employer's Representative	MMC [■] ²³

²¹ Only apply Schedule 8 on MMC projects which have a conventional main contractor, who sub-contracts the MMC works to a specialist MMC supplier

²² If there is to be an advance payment (aka a deposit) but the Contractor is unable to provide an advance payment bond (see Contract Particular 4.6 above), then consider the making of a specified 'direct payment' to the MMC Sub-Contractor. No direct payment should be made in relation to any materials until a Vesting Certificate and a Direct Agreement, both to be jointly signed by the Contractor and MMC Sub-Contractor, has been provided

²³ Please insert any MMC Representative appointed by the Employer, for example OSHA PMO, or such other third party who may be appointed to advise the Employer on the MMC aspect of the Works

BUILDING CONTRACT EXECUTION PAGE:

EXECUTED and **DELIVERED** as a deed by both the Employer and the Contractor on the date which first above appears:

[INSERT APPROPRIATE EXECUTION AS DEED CLAUSES FROM APPENDIX 8]

Appendix 1

Schedule of Amendments to Conditions of Contract

Clause 1.1

- Insert: "Accountable Person: the individual or organisation performing the functions of the Accountable Person as defined in the Building Safety Legislation as specified in the Contract Particulars."
- Insert: "Adoptable Works: that part or those parts of the Works (if any) which is or are required to be adopted and maintained at the public expense and any works which are ancillary thereto."
- Insert: "Anti-Corruption Policy: the Employer's ethics, anti-bribery and anti-corruption policies as available on the Employer's website from time to time."
- Insert: "Approved Warranty Provider: means the NHBC, Premier Guarantee, LABC or such other warranty provider who may be approved in writing by the Employer acting in their absolute discretion."
- Delete: "Arbitrator: an individual appointed under clause 9.4 as the Arbitrator".
- Insert: "Associated Person: a person (including an employee, agent or subsidiary) who performs services for or on the Contractor's behalf."
- Insert: "Best Environmental Practice: the best practice generally followed by design and build contractors skilled and experienced in the remediation and redevelopment of contaminated sites and shall be deemed to include (as a minimum) compliance with:
- (a) all Statutory Requirements; and
 - (b) all guidance issued by the Department for the Environment, Food and Rural Affairs, the Inter Departmental Committee on the redevelopment of contaminated land, the Building Research Establishment, the Institution of Civil Engineers, British Standards Institution, the Construction Industry and Information Association and like bodies; and
 - (c) the Requisite Consents."
- Insert: "Bribery Act: the Bribery Act 2010."
- Insert: "Building Control Applications: in respect of the planning, design, construction and completion of the Works, the applications to be made and approvals to be received by the Employer and / or the Accountable Person to and from the Building Safety Regulator which are required by the Building Safety Legislation and which are necessary for the carrying out and completion of the Works in accordance with the Building Safety Legislation."
- Insert: "Building Liability Order: a building liability order as defined in s.130 of the Building Safety Legislation."

Insert: "Building Safety Legislation: the Building Safety Legislation 2022 and any other associated legislation or regulations supplementing or implementing that Act (including for the avoidance of doubt the Building Act 1984), together with any guidance, regulations, codes of practice or directions issued by the Building Safety Regulator, the Health and Safety Executive, The Secretary of State for Levelling Up, Housing and Communities or any of their respective statutory successors carrying out a similar regulatory function."

Insert: "Building Safety Regulator: the regulatory body established pursuant to Part 2 of the Building Safety Legislation 2022 who carries out regulatory functions under the Building Safety Legislation."

Insert: "Building Warranty Policy: in respect of each and every part of the Works which is intended for occupation as a residential dwelling and the common parts relating thereto, a building warranty and insurance policy in favour of the Employer from an Approved Warranty Provider and which shall include the following features as a minimum:

- (a) Insolvency cover for no less than 10% of the Contract Sum applicable before Practical Completion of all of the Works;
- (b) A coverage period of 12 years from Practical Completion;
- (c) Coverage for all defects arising in the first 2 years following Practical Completion, which may revert to lesser coverage in the remaining 10 years but which must as a minimum must insure structural defects in the latter 10 years;
- (d) The policy must be appropriate for the tenure of the dwelling under construction. Mixed tenure schemes will require different policies, which the Contractor makes all due allowance for procuring;
- (e) The policy must not name the Employer as either 'the builder', 'the developer' or any similar or equivalent role in which the Employer assumes any liability for defects under the policy. Only the Contractor may be specified in any such role;
- (f) Where the Employer is a subsidiary development company within a larger group, then the Contractor will ensure that the role of the development company is brought to the attention of the warranty provider and noted on the policy prior to incepting cover."

Delete: "Conditions: the clauses set out in sections 1 to 9 of these Conditions, together with and including the Schedules hereto."

Insert: "Conditions: the clauses set out in sections 1 to 9 of these Conditions, together with and including the Schedules and Appendices hereto subject to the further amendments set out in this Appendix 1."

Insert: "Competency Regulations: the Building Regulations etc. (amendment) (England) Regulations 2023."

Insert: "Competency Requirements : that the Contractor, any sub-consultants, any sub-contractors and any suppliers (including the individuals employed or appointed by them to carry out any works or services in relation to the Works) have the skills, knowledge, experience, behaviours and capabilities required to properly and competently perform the

functions of a Dutyholder in relation to the Works in accordance with the Competency Regulations, together with any further competency standards published from time to time by any authorised body, including without limitation, the British Standards Institution."

Insert: "Contractor's Report: means a report prepared by the Contractor which shall include all such items that an experienced and prudent contractor would include, including without limitation:

- (a) A list of information or instructions required from the Employer (including in respect of the instruction of any Provisional Sums, as applicable);
- (b) An estimate of the final cost of the Works (which shall take account of any monies which are due or may become due to the Contractor in accordance with the Conditions);
- (c) A comparison of progress of the design and execution of the Works with the then current Critical Path Programme and in the event of any delay or disruption a summary of the measures the Contractor is taking or proposes to take to minimise or make good such delay or disruption;
- (d) An up to date Critical Path Programme."

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

Insert: "Criminal Finances Act: the Criminal Finance Act 2017."

Insert: "Critical Path Programme: a programme produced by the Contractor, utilising recognised programming software, illustrating the critical path of the Works."

Insert: "Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including but not limited to the General Data Protection Regulation ((EU) 2016/679) (the "GDPR"); the UK GDPR (as such term is defined in the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019) (such legislation being referred to in this Agreement as the UK GDPR), the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), along with any associated guidance and Codes of Practice, in each case as may be amended, updated or supplemented from time to time.;"

Insert: "Data Subject's Rights means any rights of individuals under the Data Protection Legislation;"

Insert: "Data Controller, Data Subjects, Personal Data and Processing shall have the meaning as provided in the Data Protection Legislation;"

- Insert: "Deed of Novation: the deed of novation in the form set out in Appendix 11."
- Insert: "Dutyholder: the function of a dutyholder as prescribed under the Competency Regulations."
- Delete: "Employer's Person: all persons employed, engaged or authorised by the Employer excluding the Contractor, Contractor's Persons, and any Statutory Undertaker but including any such third party as s referred to in clause 3.15.2."
- Insert: "Employer's Person: all persons employed, engaged or authorised by the Employer including any member of the Employer's Professional Team but excluding the Contractor, Contractor's Persons, and any Statutory Undertaker but including any such third party as s referred to in clause 3.15.2."
- Delete: "Employer Rights: any rights in favour of the Employer to be granted by sub-contractors in accordance with the Rights Particulars."
- Insert: "Employer's Professional Team: means any contractor or consultant (including but not limited to any planner, architect or engineer) or Employer's MMC Representative that has been or continues to be engaged by the Employer in connection with the Works."
- Delete: "Funder: the person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars and in respect of whom the Employer gives notice under clause 7B.1."
- Delete: "Funder Rights: the rights in favour of the Funder to be granted by the Contractor as third party rights under Part 2 of Schedule 5 or by JCT collateral warranty CWa/F or those to be granted by sub-contractors in accordance with the Rights Particulars."
- Insert: "Hazardous Substances: any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) capable of causing harm to man or any other living organism supported by the environment, or damaging the environment or public health including but not limited to any controlled, hazardous, toxic or dangerous waste".
- Delete: "Insolvent: see clause 8.1."
- Insert: "Insolvent: in relation to a Contractor or Employer which is a body corporate, where any of the following events has occurred:
- (a) it applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
 - (b) a resolution is passed, or an order is made, for or in connection with its winding up (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;
 - (c) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed over it (being a company, partnership or limited liability partnership);

- (d) a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets; or
- (e) being an individual, it is the subject of a bankruptcy application or order;
- (f) in relation to the Contractor or Employer which is a partnership, the dissolution thereof."

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

Insert: "Moral Rights: moral rights under Chapter IV Part 1 of the Copyright Designs and Patents Act 1998."

Delete "P&T Rights: the rights in favour of a Purchaser or Tenant to be granted by the Contractor as third party rights under Part 1 of Schedule 5 or by JCT collateral warranty CWa/P&T or those to granted by sub-contractors in accordance with the Rights Particulars."

Delete: "Practical Completion Statement: see clause 2.27" and insert:

"Practical Completion: takes place when the Works are complete for all practical purposes pursuant to clause 2.27.1 and, in particular:

- (a) the relevant Statutory Requirements have been complied with and any necessary consents or approvals obtained;
- (b) neither the existence nor the execution of any items of minor outstanding works or defects would affect their use (which items may be specified in a Snagging List);
- (c) any documents, information or other deliverables identified in the Employer's Requirements as being required prior to Practical Completion;
- (d) where Higher Risk Building is specified to be applicable in the Contract Particulars, any certification or approval for compliance with the Building Safety Legislation has been obtained, including without limitation:
 - i. the Building Safety Regulator having issued the completion certificate or partial completion certificate pursuant to regulation 44 or 45 (respectively) of the Gateway Regulations but excluding the registration of the Works or the relevant Section as a Higher Risk Building in accordance with Section 78 of the Building Safety Act 2022; and
 - ii. the Golden Thread Documents and the building assessment certificate.

and Practically Complete and references to "practical completion" elsewhere in this Contract shall be construed accordingly."

Insert : "Owner/Occupier: means a person owning a freehold or leasehold interest in any individual unit constructed on the Site of the Works who occupies such part of the Site of the Works as his/her private residence."

Insert : "Principal Accountable Person: means the individual or organisation performing the functions of the Principal Accountable Person as defined in the Building Safety Legislation as specified in the Contract Particulars."

Insert : "Public Health Emergency: means the occurrence of any epidemic, pandemic or other serious widespread infection, disease, poisoning or biological contamination."

Insert : "Public Health Measures: means mandatory public health measures in connection with a Public Health Emergency which directly affects the execution of the Works at the Site in any of the following ways:

(a) unavailability of labour as a result of preventative measures to alleviate the outbreak spreading and/or due to infection, or potential infection, and the resulting quarantine, self-isolation or similar; or

(b) unavailability of plant, equipment or materials due to delays in their manufacture, importation or transportation; or

(c) the closure (whether in whole or in part) of the Site,

but only to the extent that any of the events in (a) to (c) above are:

- unforeseeable to a reasonably competent contractor undertaking works similar in nature, scale and cost to the Works; and
- not capable of mitigation or avoidance, either in whole or in part, by a reasonably competent contractor using best endeavours in respect of such mitigation or avoidance; and
- not caused or significantly contributed to by the Contractor's or the Contractor's Persons' negligence, default, breach of this Contract, failure to follow official governmental guidance (whether mandatory or otherwise) or Statutory Requirements relating to the Public Health Emergency."

Delete: "Purchaser: any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer transfers or agrees to transfer his interest in all or part of the Works."

Insert: "Residents' Engagement Strategy: the residents' engagement strategy produced by the Accountable Person or Principal Accountable Person in respect of a Higher-Risk Building in accordance with the Building Safety Legislation."

Insert: "Requisite Consents: means:

(a) all consents, licences, permissions, requirements, whether statutory or otherwise;

(b) approvals of the development control authority, the building control authority, the Building Safety Regulator and the Building Safety Legislation;

(c) consents required under the Building Warranty Policy;

- (d) consents of any local or any other competent authority whose consent to the Works is needed;
- (e) consents of all parties having an interest or right in or over the Property who by the lawful exercise of their powers in the absence of such consent could prevent or impede the carrying out of the progress of the Works and/or their use and/or enjoyment;

necessary for the Works."

Delete "Rights Particulars: see clause 7.4 and the Contract Particulars for that clause."

Insert: "Snagging List: A list of minor defects, shrinkages, other faults or incomplete works which are identified prior to Practical Completion of the Works or Section but which do not prevent the granting of Practical Completion;"

Insert: "Statutory Agreements: means any document or agreement that a Statutory Undertaker requires to be entered into in connection with the carrying out of the Works including but not limited to agreements under s.38, s.116, s.118 and s.278 of the Highways Act (1980), s.247 of the Town and Country Planning Act 1990 and s.104 and s.185 of the Water Industry Act (1991)."

Delete: "Statutory Requirements: any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the Works are, or are to be, connected including Development Control Requirements."

Insert: "Statutory Requirements: means any Acts of Parliament and any instruments, rules, orders, regulations notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them (including any which although they have not yet come into effect whether in whole or in part will or may do so as to affect the Works and/or the buildings and structures the subject of the Works once built), any retained EU legislation legally enforceable in England and Wales, and any rules, regulations, building regulations, orders, bye-laws or codes of practice of any local or other competent authority or of any statutory undertaker which has jurisdiction with regard to the Works or with whose systems the same are or will be connected including Development Control Requirements."

Delete "Statutory Undertaker: any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work."

Insert "Statutory Undertaker: any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including persons employed, engaged or authorised by it upon or in connection with that work provided always that where the Employer is also exercising a statutory function as a Statutory Undertaker in connection with the Works (including but not limited to local planning or highways functions) then the Employer's carrying out of its functions as a Statutory Undertaker shall, for the purposes of this Contract, be treated no differently to any other third party Statutory Undertaker and for the avoidance of doubt the Contractor's entitlement to relief under this Contract in respect

of the Employer's carrying out of functions as a Statutory Undertaker shall be limited to the Relevant Event at clause 2.26.7."

Delete "Tenant: any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer grants or agrees to grant a leasehold interest in all or part of the Works".

Clause 1.6

Renumber clause 1.6 as clause 1.6.1.

In lines one and two, delete "Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7A and 7B, nothing" and insert "Save for the provisions of this clause 1.6 and 1.14, nothing"

Insert at end of clause "pursuant to the Contracts (Rights of Third Parties) Act 1999. Any of the Employer's associated group, subsidiary or holding companies (as defined by section 1196 Companies Act 2006) may in its own right enforce a term of this Contract."

Clause 1.6.2

Insert new clause 1.6.2

"The rights of the Employer and/or the Contractor to:

1.6.2.1 terminate the Contractor's employment under this Contract (whether under section 8 or otherwise) or to agree to rescind this Contract; and/or

1.6.2.2 agree to amend or otherwise vary or to waive any terms of this Contract; and/or

1.6.2.3 agree to settle any dispute or other matter arising out of or in connection with this Contract in each case in or on such terms as they shall in their absolute discretion think fit;

shall not be subject to the consent of any third party."

Clause 1.6.3

Insert new clause 1.6.3

"Without limiting any other rights it may have the Contractor shall not have available to it by way of set off or counterclaim against any claim brought by any of the Employer's associated group, subsidiary or holding companies (as referred to in clause 1.6.1) those matters that would be available to the Contractor by way of set off or counterclaim against any claim brought by the Employer."

Clause 1.6.4

Insert new clause 1.6.4

"The rights of the Employer's associated group, subsidiary or holding companies (as referred to in clause 1.6.1) shall be subject to the same conditions, limitations and exclusions as apply to the Employer's rights under this Contract."

Clause 1.8.1

In the fourth line after "proceedings" delete "under or"

In the fifth line delete "arbitration or" and add at the end:

"and **provided always** that it shall not relieve the Contractor of its liability under the Contract in respect of any latent defects in the Works due to faulty goods, materials, designs or workmanship."

Clause 1.8.1.1

Delete this clause and insert "Not Used".

Clause 1.8.2

In the second line after "adjudication," delete "arbitration or other" and insert "or".

Clause 1.8.2.2

In the third line after "adjudication," delete "arbitration or".

Clause 1.9

Delete clause 1.9 and substitute:

"Neither any payment by the Employer nor the issue or agreement of the Final Account or Final Statement shall of itself be conclusive evidence that any design, works, materials or goods to which it or any of them relate are in accordance with this Contract."

Clause 1.11

Delete clause 1.11 and substitute:

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

Clause 1.12

Insert new clause 1.12

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

Clause 1.13

Insert new clause 1.13:

Liability period

"Without prejudice to any action or proceedings against the other that arise from a breach of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in respect of which the limitation

period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, neither Party shall commence any action or proceedings against the other under this Contract after 12 years from the date of Practical Completion of the Works, and any adjudicator's decision under clause 9.2 shall be finally binding on them unless either Party has referred that dispute for final determination by legal proceedings, or has commenced any action or proceedings to recover any overpayment to which the decision has led, before that date."

Clause 1.14

Insert new clause 1.14:

"Building Liability Orders

1.14.1 To the extent that the High Court issues a Building Liability Order against any associate of the Employer (as defined in s.131 of the Building Safety Legislation) the Contractor shall indemnify such associate in respect of any loss, expense, claim or damage incurred by such associate to the extent such loss, expense, claim or damage is caused by a breach by the Contractor of its obligations pursuant to this Contract.

1.14.2 The Parties agree that any associate of the Employer as defined in clause 1.14.1 shall be entitled to enforce for its benefit the provisions of clause 1.14.1 pursuant to the Contracts (Rights of Third Parties) Act 1999."

Clause 2.1.1

In the second line after the word "Plan" insert ", the requirements and recommendations of NHBC or such other equal approved body as agreed in writing by the Employer pursuant to clause 2.40.1".

In the third line after "Statutory Requirements" insert "(including, to the extent relevant, the requirements of clause 2.1A and Appendix 14)".

In the third line after the word "shall" the words "complete the" shall be deleted and after the word "design" the word "for" shall be deleted.

In the fifth and sixth lines the words "so far as not described or stated in the Employer's Requirements or Contractor's Proposals" shall be deleted.

Clause 2.1.4

In the third and fourth lines delete "under the dispute resolution procedures of this Contract" and insert "by a decision of the Adjudicator or is varied by a decision of the court."

Clause 2.1.5

Insert new clause 2.1.5:

"To the extent that the designs for the Works or any part thereof are not described in full in the Employer's Requirements or the Contractor's Proposals such designs shall be submitted for the Employer's approval (such approval not to be unreasonably withheld or delayed) within the time limits specified in the Employer's Requirements or otherwise not less than fourteen (14) days before the Contractor commences construction of the relevant part of the Works **provided that** no such

approval or any condition attaching to any such approval shall in any way lessen or otherwise affect the Contractor's liabilities under this Contract."

Clause 2.1.6

Insert new clause 2.1.6:

"Notwithstanding any other provision of this Contract, the obligations and liabilities of the Contractor under this Contract shall not be released, diminished or in any other way affected by any enquiry or inspection into or approval of any relevant matter which may be made or carried out by or on behalf of the Employer or the Employer's Agent or by the inclusion of the value of any work, materials or goods in any Interim Payment or by any act or omission of the Employer's Agent whether or not such act or omission might give rise to an independent liability of the Employer's Agent to the Employer. For the avoidance of doubt the provisions of this clause 2.1.6 shall apply in the event of any approval, signing-off or similar by the Employer or on the Employer's behalf of any issue concerning design, workmanship, materials and/or goods and/or similar and/or any matter relating to the Works and/or Contract not in accordance with the Employer's Requirements which the Employer or any person on the Employer's behalf may have sanctioned or approved unless and to the extent that the Contractor has strictly complied with the provisions of clause 2.1 and such compliance clearly highlighted the matter/issue in question."

Clause 2.1.7

Insert the following as a sub clause after sub clause 2.1.7:

"In performing its obligations under this Contract, the Contractor shall and shall ensure that each of its Sub-Contractors shall comply with the Modern Slavery Legislation."

Clause 2.1A

Insert new clause 2.1A:

"2.1A.1 Without prejudice to the generality of Appendix 15 or the generality of clause 2.1.1 and insofar as relevant to the Works, the Contractor shall observe and comply with:

2.1A.1.1 the provisions of the Building Safety Legislation; and

2.1A.1.2 the provisions of Appendix 14.

Clause 2.2.1

Delete clause 2.2.1 and insert:

"All materials, goods and workmanship used in the execution of the Works shall be of such kinds and of such quality as are necessary to enable the Contractor to comply with his obligations under this Contract and shall comply with any 'construction product requirement' as defined by the Building Safety Legislation."

Clause 2.2.6

Insert new clause 2.2.6:

"Without prejudice to clause 2.2.1, the Contractor shall not specify, authorise for use or use any materials or goods which are then known (or generally considered within the construction industry) to be deleterious to health and safety or to durability in the particular circumstances in which they are used."

Clause 2.6

Delete clause 2.6 and substitute:

- "2.6.1 Subject to the Employer's anticipated requirements and estimated timing for the execution of any work by any of the Employer's Persons being set out and identified within the Employer's Requirements, the Contractor shall permit subject to prior notice of at least fourteen (14) days and in compliance with the reasonable requirements of the Contractor's Construction Phase Plan the execution of work not forming part of this Contract by any of the Employer's Persons and the Employer/Employer's Persons may at any time re-enter those parts of the site for the purposes of executing such work or installing any goods equipment or other articles for fitting out.
- 2.6.2 The Employer will liaise with the Contractor regarding any access requirements and the extent and location of such works referred to in clause 2.6.1 before giving any authorisation for the same to be carried out and the Contractor shall advise the Employer of the information it shall require in order to programme and manage the integration of such works within the Works.
- 2.6.3 The Contractor shall use reasonable endeavours not to interfere with or impede the progress of any works being carried out by the Employer's Persons and shall observe all requirements of the same in relation to the carrying out of such works.
- 2.6.4 The Contractor undertakes and agrees to co-operate fully with the Employer's Persons with regard to the programming and access of such works and the shared use (if necessary) of the Contractor's temporary lifts hoists and other facilities necessary for carrying out the works and/or the Works.
- 2.6.5 The execution of work referred to in this clause 2.6 by the Employer's Persons shall not in any way be deemed to be or treated as taking possession of part or parts of the Works (or any Section) by the Employer as referred to in clause 2.30 and the provisions of clause 2.30 shall not apply to the execution of such work.
- 2.6.6 Compliance with its obligations pursuant to this clause 2.6 shall not give rise to any adjustment to the Contract Sum or to any extension of time or to any entitlement on the part of the Contractor to loss and/or expense or to any entitlement on the part of the Contractor to determine its employment under this Contract."

Clause 2.7.6

Insert new clause 2.7.6:

"The Contractor will from time to time promptly supply to the Employer's Agent such reasonable information, drawings and documents as set out and identified within the Employer's Requirements."

Clause 2.8A

Insert new clause 2.8A:

"Each month, on a date to be determined by the Employer's Agent, the Contractor shall provide to the Employer the Contractor's Report for the preceding month or if the Employer's Agent does not so determine a date, the Contractor shall submit its Contractor's Report along with any application for payment."

Clause 2.8B

Insert new clause 2.8B:

"Prior to the commencement of the Works, the Contractor shall supply a Critical Path Programme. The Contractor shall maintain and update the Critical Path Programme as required in order to reflect progress and shall issue a Critical Path Programme (duly updated) to the Employer with each Contractor's Report or whenever the Contractor notifies a delay event under clause 2.24.1. A failure by the Contractor to issue a Critical Path Programme in accordance with this clause 2.8B may prejudice the Contractor's ability to claim an extension of time to the Date(s) for Completion."

Clause 2.9

Delete clause 2.9 and insert new clause 2.9.1:

"The Contractor shall and will be deemed to have carried out a site survey prior to entering into this Contract and commencing the Works, the accuracy of which is entirely the Contractor's responsibility. The carrying out of the site survey by the Contractor and all aspects of the Works dependent thereon is the Contractor's responsibility and the Contractor shall be deemed to have satisfied himself as to the extent of the boundaries of the site and no matter arising from the extent of the boundaries of the site shall give rise to any adjustment to the Contract Sum or to any extension of time or to any entitlement on the part of the Contractor to loss and/or expense or to any entitlement on the part of the Contractor to determine its employment under this Contract."

Insert new clause 2.9.2:

"The Contractor shall comply with any restrictions on the carrying out of the Works including, without limitation, scaffold and crane oversailing arrangements, site access, working hours, noise levels and any other constraints on working space or conditions set out in or reasonably inferred from the Employer's Requirements or the Contractor's Proposals."

Clause 2.11

Delete clause 2.11 and insert "Not used."

Clause 2.12.1

In lines one and two, delete "and the Contractor under clause 2.11 is not responsible for verifying its adequacy, then,"

Clause 2.12.2

Delete clause 2.12.2 and insert:

"Any correction or alteration or modification under clause 2.12.1 shall not be treated as a Change."

Clause 2.13

Insert at the beginning of clause 2.13 "Without prejudice to the obligations of the Employer and Contractor under 2.13 and 2.14 if" and delete "if".

Clause 2.14.3

Insert new clause 2.14.3:

"Subject to clause 2.14.2 regarding discrepancies within the Employer's Requirements the Contractor shall be responsible for ensuring that there is no discrepancy between the Employer's Requirements and the Contractor's Proposals and if any such discrepancy shall occur, then within 7 days of discovery the Contractor shall bring it to the attention of the Employer and shall submit to the Employer recommendations for the resolution of such discrepancy at the Contractor's cost. For the avoidance of doubt, the Employer shall have the right, exercisable in its absolute sole discretion, to either accept the Contractor's recommendations or require the Employer's Requirements to prevail. Whichever solution is selected by the Employer shall be undertaken by the Contractor at its own cost with no adjustment to the Contract Sum and/or no extension of time and/or no claim for loss and expense."

Clause 2.14.4

Insert new clause 2.14.4:

"For the sake of clarity the Contractor shall undertake and rectify each and every omission, discrepancy, mistake and/or inaccuracy as referred to in clauses 2.14.1, 2.14.2, and 2.14.3 at its own cost and with no entitlement to an adjustment to the Contract Sum and/or an extension of time and/or loss and expense."

Clause 2.15.1.2

Insert at the end of the paragraph following clause 2.15.1.2:

"The Contractor shall until the date of Practical Completion of the Works comply with the provisions of any licences from or agreements with statutory undertakers relating to or affecting the Works or any property (including any Statutory Agreements), and whenever such licence or agreement is terminated or fails to be renewed the Contractor shall take such steps as are reasonably necessary to procure the renewal thereof or negotiate suitable alternative arrangements for the relevant supply upon terms reasonably acceptable to the Employer."

Clause 2.15.2.1

Insert at the end of 2.15.2.1:

"and the Contractor shall diligently and expeditiously effect such alteration or modification necessitated by such changes in the Statutory Requirements in an economical fashion. For the avoidance of doubt the provisions of this clause shall apply solely to changes effected either by statute or by amendments to local bylaws or by changes in regulations by statutory undertakings after the Base Date"

Clause 2.17.1

Insert at the end of clause 2.17.1:

"In addition to the foregoing the Contractor hereby accepts sole responsibility for the design of the Works and every part thereof and for the selection and standards of all materials, goods and workmanship forming part thereof, including without prejudice to the generality of the foregoing all and any design and other work undertaken in relation to the Works before the date of this Contract by any other person whether on behalf of the Contractor or on behalf of the Employer or by the Employer itself or any member of the Employer's Professional Team or after the date of this Contract by any other person on behalf of the Contractor and for the avoidance of doubt all such design and other work undertaken by any such other person shall be treated for all the purposes of this Contract as undertaken by the Contractor.

Without prejudice to the generality of the foregoing the Contractor warrants that the Works and the Site thereof shall as at the date of Practical Completion in relation thereto comply with the purposes set out in the Employer's Requirements and shall be suitable for occupation and shall comply with all Statutory Requirements and laws applicable at the date of this Contract. Without prejudice to the generality of the foregoing the Contractor shall exercise the skill and care reasonably to be expected of a professional firm experienced in the design and implementation of all measures necessary to eliminate or render negligible the risk of migration of Hazardous Substances remaining on or under the Site of the Works after any remediation and/or decontamination of the Site of the Works by the Contractor and all measures necessary to eliminate or render negligible the migration onto the Site of the Works of any Hazardous Substances present on or under any neighbouring land".

Clause 2.17.3

Delete clause 2.17.3 and insert "Not used."

Clause 2.22

Delete clause 2.22 and insert "Not used."

Clause 2.25.5.1

Insert after the words "Relevant Events" in the second line of clause 2.25.5.1 the words:

"including where a Relevant Event occurs after any Completion Date previously fixed any of the Relevant Events referred to in clauses 2.26.2 and 2.26.5 (but not for that purpose any other Relevant Event)"

Clause 2.26

In line one after "clause 2.24 and 2.25" insert "(but only to the extent that such events are not consequent upon or necessitated by any omission, default, negligence or breach of contract or breach of statutory duty of the Contractor, his servants or agents or any sub-contractor, sub-consultant or supplier or their respective servants or agents)"

Clause 2.26.2.3

Insert at the end of clause 2.26.2.3

"or unless the opening up for such inspection or test was reasonably required by reason of any similar, equivalent or associated work, materials or goods having been shown by a previous inspection or test not to be in accordance with this Contract"

Clause 2.26.7

Insert at the end of clause 2.26.7:

"**provided that** the Contractor shall not have delayed or disrupted the Statutory Undertaker in relation to such work"

Clause 2.26.8

Insert at the end of clause 2.26.8:

"as supported by the Met Office records for the area nearest to the site of the Works"

Clause 2.26.11

Insert at the end of clause 2.26.11:

"save to the extent that the same were caused by the Contractor's failure to comply with any employment legislation in force from time to time and save to the extent that the same was caused by a strike/lock-out or combination of workmen which only or primarily affects the employees of the Contractor and/or the sub-contractors and/or suppliers of the Contractor"

Clause 2.26.13

In line 1 after "statutory body" insert "(including, if relevant to the Works, the approval of the Building Safety Regulator to be granted pursuant to regulation 44 of The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023)".

Clause 2.26.15

Insert new clause 2.26.15:

"the implementation of Public Health Measures."

Clause 2.27

Re-number clause 2.27 as 2.27.1

Re-number clause 2.27.1 as 2.27.1.1

Re-number clause 2.27.2 as 2.27.1.2

Insert new clause 2.27.2:

"For the avoidance of doubt, the Employer's Agent shall not be obliged to issue the Practical Completion Statement and Practical Completion of the Works (or any Section) shall not be deemed to have been achieved unless and until the Contractor supplies to the Employer the deliverables and handover information set out and identified within the Employer's Requirements as being pre-requisites for the achievement of Practical Completion"

Insert new clause 2.27.3

"The Contractor shall comply with any relevant handover procedures notified to it from time to time prior to Practical Completion or as specified in the Employers Requirements and the achievement of Practical Completion in accordance with clauses 2.27.1 and 2.27.2 above shall be subject to the Contractor having complied with any such procedures."

Clause 2.29.1.2

Insert at the end of clause 2.29.1.2 after "liquidated damages":

"and for the avoidance of doubt it is acknowledged that liquidated and ascertained damages at the rates stated in the Contract Particulars may be deducted at any time following the Date for Completion from any monies otherwise due or to become due to the Contractor under this Contract and the Contractor hereby agrees such rate of liquidated and ascertained damages to be a reasonable and genuine pre-estimate of the Employer's loss."

Clause 2.29.2

Delete clause 2.29.2 and insert:

"2.29.2 A notice from the Employer under clause 2.29.1 shall state that for the period between the Completion Date and the date of practical completion of the Works (or the relevant Section) by the Contractor, or the date of termination of the Contractor's employment under this Contract (whichever is earlier):

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

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

Clause 2.29.3

In line 3 before "." insert "provided that the fixing of such later Completion Date shall not invalidate the Employer's notice as to deduction of liquidated and ascertained damages and the payment or repayment of the amounts under this clause shall be limited to the net difference between the amounts deducted and the amounts properly due after the fixing by the Employer of the later completion date. Interest shall not be payable by the Employer on any amounts payable or repayable under this clause 2.29.3"

Clause 2.29.5

Insert new clause 2.29.5:

"Any liquidated damages payable under clause 2.29.2.1 shall be payable weekly in arrears and shall be due for payment on demand. Such demand shall take the form of an invoice from the Employer to the Contractor specifying the sum that the Employer considers to be due on the date of the demand (which for the purposes of this clause shall be the payment due date) and the basis on which that sum is calculated. Within 5 days of the payment due date the Contractor shall issue a notice confirming the sum that it considers to have been due on the payment due date and the basis on

which that is calculated provided that if the Contractor fails to serve such notice the Employer's demand shall be treated as the payment notice. The final date for payment for any such sum so demanded shall be 10 days after the payment due date."

Clause 2.30

Delete "The Contractor shall thereupon give to the Employer" in lines five and six and insert:

"The Employer shall thereupon issue to the Contractor"

Clause 2.35

Amend the final paragraph of the clause to read:

"Within any time period specified in the Employer's Requirements commensurate with such defect, shrinkage or fault and, in any event, within a reasonable time after receipt of such schedule or instructions, the defects, shrinkages and other faults shall at no cost to the Employer be made good by the Contractor unless the Employer shall (in its absolute discretion) otherwise instruct. If he does so otherwise instruct, an appropriate deduction shall be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good. Where the Contractor fails to comply with its obligations under this clause 2.35, the Employer may employ others to complete the necessary defect rectification work and recover its costs and losses so caused from the Contractor, including by way of deduction from any retention or claim on a Retention Bond (as applicable)."

Clause 2.35B

Insert new clause 2.35B:

"If the Employer issues a Snagging List prior to Practical Completion, the Contractor shall have twenty one (21) days from the date of Practical Completion of the Works (or any Section) to rectify or complete each item listed on the Snagging List at no cost to the Employer."

Clause 2.38.2

Delete in the first and second lines "Subject to all sums due and payable under this Contract to the Contractor being paid" and amend "the Employer shall have" to "The Employer shall have"

Clause 2.38.4

Change clause 2.38.4 to clause 2.38.5 and insert a new clause 2.38.4 as follows:

"Such licence granted pursuant to clause 2.38.2 above shall carry the right to grant sub-licences and shall be transferable to third parties. If any of the foregoing documents are prepared for the Contractor by any third party, the Contractor shall cause the property and copyright therein to pass to and vest in the Contractor on the same terms as set out above and on terms which permit the grant of the foregoing licence to the Employer".

Clause 2.38.6

Insert new clause 2.38.6:

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

Clause 2.38.7

Insert new clause 2.38.7:

"Notwithstanding the copyright of the Contractor as referred to in clause 2.38.1, the ownership of all drawings, reports, specifications, calculations and other documents and information prepared by or on behalf of the Contractor in connection with the Works shall pass automatically to the Employer in the event the Contractor becomes Insolvent and the Contractor shall forthwith upon request deliver all or any such documents to the Employer. To the extent that Copyright in any of the Contractor's Design Documents does not rest with the Contractor the Contractor shall procure from the copyright holder a licence to the Employer in respect of the relevant Contractor's Design Documents in the same terms as are set out in clause 2.38.2."

Clause 2.39

Insert new clause 2.39:

"The Contractor shall be deemed to have satisfied itself as to the state and condition of all sub-surface conditions, including soil, rock, contamination (including asbestos), utilities and unknown obstructions or difficulties of any nature whatsoever, comprising the site of the Works and, notwithstanding any other provision of this Contract, no matter arising from the state of the sub-surface conditions prevailing at the site of the Works nor any instructions which the Employer reasonably issues consequent upon the discovery of any such matter shall give rise to any adjustment of the Contract Sum, or to any extension of time (whether under clause 2.25 or otherwise) or to any entitlement on the part of the Contractor to loss and expense (whether under clause 4.20 or otherwise) or to any entitlement on the part of the Contractor to determine his employment under this Contract (whether under clause 8.9, clause 8.11 or otherwise). The Contractor shall not and shall not be entitled to rely upon any survey report or other document prepared by or on behalf of the Employer regarding any such matter as is referred to in this clause 2.39 and the Employer makes no representation or warranty as to the accuracy or completeness of any such survey report or document or for any representation or statement contained therein whether made negligently or otherwise."

Clause 2.40

Insert new clause 2.40:

- 2.40 Notwithstanding any other provision of this Contract the Contractor shall for the avoidance of doubt be obliged to carry out, deemed to have full knowledge of and to have made due allowance for the following matters within the Contract Sum and, at its sole cost, shall:
 - 2.40.1 issue to the Employer the Building Warranty Policy documents within seven (7) days of a request for the same or within such other time as set out in the Employer's Requirements. If the Contractor defaults in taking out or maintaining the Building Warranty Policy as required by this clause 2.40.1, the Employer may himself take out and maintain the Building Warranty Policy and the amount paid or payable by him in respect of any premiums or associated costs may be deducted by him from any sums due or to become

due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt;

- 2.40.2 do all works and things required by all statutes and comply with the lawful requirements of all authorities affecting the Works including, but not limited to, all the requirements of any water gas electricity and telecommunications authorities and any and all planning and/or Section 106 reserved matters, conditions and/or requirements;
- 2.40.3 be deemed to have satisfied itself as to:
- (d) any restriction in terms of access to and from the site; and/or
 - (e) feasibility of unloading and storage of materials; and/or
 - (f) all local conditions and difficulties at the site including, the location of all existing services and drainage and any other factors which may affect the carrying out of the Works or any part or parts thereof including, without limitation, the carrying out of works at the site by others including without limitation archaeological finds and/or requirements and/or required access rights to and from the site; and/or
 - (g) any and all requirements for inter alia off-site site huts, scaffolding, oversail licences and any permissions, consents, licences and/or similar necessary to effect such requirements from third parties; and/or
- 2.40.4 comply with all requirements of the Approved Warranty Provider and other regulatory bodies, which shall include without limitation, any requirements by any regulatory authority in terms of compliance with Statutory Requirements; and/or
- 2.40.5 use his best endeavours to procure that all Adoptable Works are adopted by or vested in the relevant authority as maintainable at public expense including, but without limitation, the negotiation of and submission to the Employer for execution of adoption agreements with the relevant authority (the Contractor leading all negotiations in that regard), the carrying out of the Adoptable Works in accordance with the terms of such adoption agreements and compliance with the requirements of the relevant authority in relation to the rectification of defects in the Adoptable Works (and which shall be maintained by the Contractor during the Defects Liability Period to the satisfaction of the adopting authority) and the provision of a surety or sureties in respect of all such adoption agreements and all costs in connection therewith; and/or
- 2.40.6 be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings whatsoever incurred by the Employer arising from the Adoptable Works and any adoption agreements and sureties provided in connection therewith, save to the extent that the same is due to any act or neglect of the Employer save that the Contractor shall not be liable for the costs of the Employer or its legal advisers incurred in the approval and execution of such adoption agreements and notwithstanding any other provision of this Contract, no matter arising from any of the matters noted above and whether arising directly or indirectly as a result of such matters nor any instructions which the Employer may issue (acting reasonably) consequent upon the discovery of any such matter shall give rise to any adjustment to the Contract Sum or to any extension of time or to any entitlement on the part of the Contractor to loss and expense and/or to any entitlement on the part of the Contractor to determine its employment under this Contract; and/or

2.40.7 notify the Employer immediately in writing if the Approved Warranty Provider threatens to terminate, does terminate, or takes any steps or intimates that it intends to restrict, limit or terminate the Building Warranty Policy. The Contractor shall provide to the Employer full particulars of any such notification from the Approved Warranty Provider including without limitation any and all correspondence and/or documents as exchanged between the Contractor and Approved Warranty Provider as may be required by the Employer from time to time."

Clause 2.41

Insert new clause 2.41:

"The Parties shall evaluate the time, cost and quality implications of any matter notified under paragraph 10 of Schedule 2 part 2 or arising from clause 2.10 and clauses 3.5 – 3.14 inclusive and shall take all practicable steps to minimise any adverse effects or to maximise any positive effects of such matters."

Clause 2.42

Insert new clause 2.42:

"2.42.1 Where clause 2.42.1 is stated to apply in the Contract Particulars, the Parties shall consider and seek to agree such incentives as may be appropriate to encourage the Parties to maximise their efforts pursuant to this Contract for the benefit of undertaking the Works.

2.42.2 The Parties shall implement any incentives agreed pursuant to clause 2.42.1."

Clause 2.43

Insert new clause 2.43:

"Statutory Agreements:

2.43.1 The Contractor shall procure the entry into any applicable Statutory Agreement subject to the following:

2.43.1.1 Where the Employer is not required to be a party to a Statutory Agreement, the Contractor shall (at its own cost) take all reasonable steps to procure that the relevant parties enter into the Statutory Agreement in a timely fashion and in accordance with the Contractor's programme for the Works;

2.43.1.2 Where the Employer is to be a party to a Statutory Agreement, the Contractor shall (at its own cost) procure the negotiation of that Statutory Agreement with the relevant Statutory Undertaker and shall present a draft document to the Employer for approval and (if the Employer approves the document) execution, all in a timely fashion and in accordance with the Contractor's programme of Works;

2.43.2 Where the Contractor requires information or approval from the Employer in order to comply with its obligations under clause 2.43.1, the Contractor shall request this in a timely fashion and in accordance with the Contractor's programme of Works;

2.43.3 For the avoidance of doubt, if the procuring of a Statutory Agreement in accordance with clause 2.43.1 requires the Contractor to first obtain a technical or other approval from the relevant Statutory Undertaker, the Contractor shall have sole responsibility for procuring that approval (at its own cost) and in a timely fashion and in accordance with the Contractor's programme of Works;"

Clause 2.44

Insert new clause 2.44:

"Engagement of Employer's Professional Team:

In circumstances where the Contractor engages any of the Employer's Professional Team in connection with the Works (whether by way of novation, new appointment or otherwise), the Contractor shall accept sole responsibility for the actions and works and services (including retrospectively) of that member of the Employer's Professional Team and the Contractor shall have no claim against the Employer in connection with the actions of that member of the Employer's Professional Team."

Clause 2.45

Insert new clause 2.45:

"Requests for information:

Should the Contractor require information or approvals from the Employer in connection with the carrying out of the Works (including in relation to Statutory Agreements), the Contractor must send such requests through the Employer's Agent only and not via the Employer directly."

Clause 2.46

Insert a new clause 2.46 as follows:

"2.46.1 Subject to clause 2.46A below the parties will each act in the capacity of Data Controller in respect of the Personal Data processed under this Agreement and each will Process the Personal Data as independent Data Controllers.

2.46.2 The parties (including their employees agents or officers) shall at all times during the period of this Agreement comply with the provisions and obligations imposed by this Clause 2.46 and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this Agreement.

2.46.3 The parties warrant and represent that they each have in place appropriate technical and organisational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.

2.46.4 Each party shall notify the other without undue delay on becoming aware of any breach of the Data Protection Legislation in relation to the Personal Data Processed under this Agreement.

2.46.5 Whilst each party shall be responsible for responding to any complaint in relation to the Personal Data Processed pursuant to this Agreement, or any request by individuals to exercise the Data Subject's Rights, the parties will co-operate with each other and provide reasonable assistance with any request, proceedings or inquiry by any affected Data Subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with data processed under this Agreement.

2.46.6 The provision of this Clause 2.46 and 2.46A shall apply during the continuance of the Agreement and indefinitely after its termination."

Clause 2.46A

Insert new clause 2.46A:

"Notwithstanding clause 2.46A, in the event that the Contractor is acting as a Data Processor it shall comply with the obligations set out in Appendix 10. In particular, the parties agree that the Contractor will be acting as a Data Processor for the Processing of Personal Data relating to Occupiers during the Rectification Period and for the purposes of discharging its obligations in relation to the same."

Clause 3.1

In line 1 after "Employer" insert "(including for the avoidance of doubt the Purchaser's Surveyor and/or Tenant's Surveyor and/or Funder's Surveyor and/or any persons carrying out functions connected with the Building Safety Legislation (including without limitation the Building Safety Regulator, and building control))"

Clause 3.1.2

Insert new clause 3.1.2:

"The Contractor shall inform the Employer's Agent before covering up any part of the Works which the Employer's Agent has specifically stated in writing that he wishes to inspect. If the Contractor fails to do so, he shall be required to uncover for inspection and to reinstate such part of the Works at his own cost."

Clause 3.3.1.2

Insert at the beginning of clause 3.3.1.2

"Subject to clause 3.3.3."

Insert at the end of clause 3.3.1.2:

"When requesting such consent the Contractor shall submit to the Employer a copy of the terms of engagement or sub-contract governing the proposed appointment of the relevant sub-consultant or sub-contractor."

Clause 3.3.3

Insert new clause 3.3.3:

"The Contractor shall comply with all and any requirements contained in the Employer's Requirements as to the appointment of any design sub-consultants and for the avoidance of doubt all and any such sub-consultants shall have the status of domestic sub-contractors of the Contractor."

Clause 3.3.4

Insert new clause 3.3.4

"As a condition of any consent under clause 3.3 the Contractor undertakes to make regular interim payments to the sub-contractor at the time and in the manner set out in any sub-contract to which clause 3.3 refers."

Clause 3.5.1

Delete in the first and second lines "need not comply to the extent that he notifies a reasonable objection to it to the Employer" and insert "the Contractor may, within a period of not less than seven (7) days following the date of such instruction, make written representations to the Employer in relation thereto and the Employer shall give due consideration to such written representations (but so that the Employer's decision shall nevertheless be final save only where the Contractor states expressly that compliance with such an instruction would place the Contractor in breach of its obligations under the CDM Regulations and indicates details of such breach and how it can be avoided)."

Clause 3.9.1

Delete in the third and fourth line "without the Contractor's consent" and substitute "without first allowing the Contractor a period of not less than fourteen (14) days to make written representations in relation thereto and giving due consideration to such written representations (but so that the Employer's decision shall nevertheless be final)"

Clause 3.9.4

Delete clause 3.9.4 and insert "Not used"

Clause 3.11

Delete clause 3.11 and insert the following:

"3.11.1 Subject to clauses 3.11.2 and 3.11.3 below, the Employer may issue instructions from time to time for the Contractor to expend Provisional Sums.

3.11.2 Where Provisional Sums are included whether instructed under clause 3.11.1 or otherwise in the Employer's Requirements (or otherwise incorporated into this Contract) the Provisional Sum shall be treated as a defined provisional sum (unless specifically identified in writing as an undefined provisional sum) and the Contractor shall make due allowance in its programme for undertaking works that are the subject of Provisional Sums and it shall be the Contractor's obligation to request in writing an instruction from the Employer to expend Provisional Sums in accordance with the Contractor's programme for the Works and otherwise in a timely fashion. For the avoidance of doubt, where Provisional Sums are incorrectly included in the Contract Sum Analysis such Provisional Sums shall not form part of the Works unless and until the Provisional Sums are instructed

by the Employer nor shall the Employer's omission of such Provisional Sums from the Contract Sum Analysis constitute a Change.

3.11.3 Where a request for an instruction pursuant to clause 3.11.2 will require the Contractor to obtain quotations, information or other estimates to establish any anticipated cost of Provisional Sums for approval by the Employer, the Contractor shall undertake all necessary steps (at its own cost) to procure such quotations information or estimates prior to requesting an instruction under clause 3.11.2 and when the Contractor requests an instruction under clause 3.11.2 it shall include copies of such quotations, information or other estimates with its request for an instruction."

Clause 3.13.2

Insert at line five of clause 3.13.2 after the words "be given)":

"or unless any instruction requiring the opening up for such inspection or test was reasonably required by reason of any similar, equivalent or associated work, materials or goods having been shown by a previous inspection or test not to be in accordance with this Contract"

Clause 3.16.6

Insert new clause 3.16.6

"Compliance with the requirements of clause 3.16 by the Contractor shall not be treated as a Change in the Works or to the Employer's Requirements or give rise to any claim for additional payment or extension of time or loss and/or expense or otherwise."

Clause 3.17

Insert new clause 3.17:

"The Contractor warrants that it has the competence and has allocated and will allocate adequate resources to fulfil its obligations as designer and Principal Contractor for the Works in compliance with the CDM Regulations and that all information provided by the Contractor regarding such competence and resources and its record in health and safety is accurate and complete and that it has fulfilled and will continue to fulfil the said obligations in such manner and at such times so that no act omission or default of the Contractor in relation thereto shall constitute cause or contribute to any breach by the Employer of its obligations under or pursuant to the CDM Regulations".

Clause 3.18

Insert new clause 3.18:

"The Contractor shall (to the extent that it has not already done so) forthwith sign as deeds and complete Deeds of Novation with the members of the Employer's Professional Team identified in the Contract Particulars."

Clause 4.4 Option A

Delete clause 4.4 and insert clause 4.4A:

"4.4.A This clause 4.4A shall only apply where the Contract Particulars indicate that it shall apply.

- 4.4A.1 The Parties agree and confirm that the procedure for the payment of VAT (if any) by either Party to the other shall be governed entirely and exclusively by the provisions of this clause 4.4A notwithstanding any other provision of this Agreement.
- 4.4A.2 Subject to clause 4.4A.8, any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this Agreement is to be treated as exclusive of any VAT. If the person making the supply (or the representative member of the VAT group of which it is a member) is required to account for VAT on any supply, the recipient of the supply shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of that VAT upon the later of:
- 4.4A.2.1 the time for payment or provision of the consideration; and
 - 4.4A.2.2 the receipt by the recipient of the supply of a VAT invoice in respect of that VAT.
- 4.4A.3 The Parties acknowledge that the Employer has not confirmed in writing whether the requirements specified in article 8(1)(b) of the Order are satisfied in respect of any Supply.
- 4.4A.4 The Parties consider that the Reverse Charge will apply to the Supplies so that it is for the Employer, on the Contractor's behalf, to account for and pay VAT on the Supplies and not for the Contractor.
- 4.4A.5 During such time as the Reverse Charge applies to the Supplies and no later than 5 (five) Business Days before any payment by the Employer for the Supplies, the Contractor will provide to the Employer an invoice (which is not a VAT invoice and which will not include any demand for any amount in respect of VAT) showing all the information normally required to be shown on a VAT invoice in respect of the payment in question, including without prejudice to the generality of the foregoing, the amount of VAT due on the payment (subject to the Reverse Charge) and a breakdown of values by VAT rate. The Contractor will also annotate such invoice as follows: "Reverse charge: VAT Act 1994 Section 55A applies".
- 4.4A.6 The Contractor shall promptly provide any information reasonably requested by the Employer to assist the Employer in complying with its obligations under the Reverse Charge or in providing any information requested of the Employer by HMRC.
- 4.4A.7 If the requirements in article (8)(2)(a) and (b) of the Order are met in relation to any Supply, the Employer and the Contractor, pursuant to article 8(2)(c) of the Order, agree to treat the Supplies as not being excepted supplies (within the meaning of articles 3(2) and 8 of the Order).
- 4.4A.8 Notwithstanding clause 4.4A.2, where the Employer has operated the Reverse Charge on Supplies but HMRC confirms in writing to the Employer that the Reverse Charge does not apply in respect of those Supplies and that, notwithstanding that the Employer has operated the Reverse Charge, the Contractor has to account for VAT in respect of those Supplies then, subject to receipt by the Employer of a valid VAT invoice from the Contractor, the Employer will pay the VAT due on those Supplies to the Contractor within 5 (five) Business Days after the later of:

4.4A.8.1 obtaining any net repayment or credit from HMRC arising from the incorrect operation of the Reverse Charge after correcting both:

- (a) the output tax overpaid to HMRC by the Employer (for which the Employer would obtain a repayment or credit); and
- (b) the input tax overpaid to the Employer by HMRC (which the Employer would owe to HMRC); and

4.4A.8.2 obtaining repayment or credit from HMRC in respect of the VAT due on the relevant Supplies to the Contractor,

and the Employer undertakes to claim such repayment or credit from HMRC without unreasonable delay after receiving confirmation from HMRC or a valid VAT invoice from the Contractor, each as mentioned above."

Clause 4.4B Option B

Delete clause 4.4 and insert clause 4.4B:

"4.4B This clause 4.4B shall only apply where the Contract Particulars indicate that it shall apply.

"4.4B.1 The Parties agree and confirm that the procedure for the payment of VAT (if any) by either Party to the other shall be governed entirely and exclusively by the provisions of this clause 4.4B notwithstanding any other provision of this Agreement.

4.4B.2 Any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this Agreement is to be treated as exclusive of any VAT. If the person making the supply (or the representative member of the VAT group of which it is a member) is required to account for VAT on any supply, the recipient of the supply shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of that VAT upon the later of:

4.4B.2.1 the time for payment or provision of the consideration; and

4.4B.2.2 the receipt by the recipient of the supply of a VAT invoice in respect of that VAT.

4.4B.3 The Employer confirms that the requirements specified in article (8)(1)(b) of the Order will be satisfied in respect of any Supply and the Parties consider that the Reverse Charge will not apply to the Supplies so that it is for the Contractor to account for and pay VAT to HMRC.

4.4B.4 Notwithstanding clause 4.4B.3, where the Contractor has accounted for VAT on Supplies (on the understanding that the Reverse Charge did not apply) but HMRC notifies the Employer in writing that:

4.4B.4.1 the Reverse Charge did apply in respect of those Supplies, and

4.4B.4.2 notwithstanding that the Contractor has accounted for VAT to HMRC in respect of those Supplies, the Employer has to account for VAT under the Reverse Charge on those Supplies,

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

Clause 4.7.3

At end of clause insert:

"A copy of each Interim Payment Application shall be submitted to the Employer's Agent at the same time as to the Employer."

Clause 4.7.4

At end of clause before "." insert:

"and such further information as the Employer's Agent may reasonably require."

Clause 4.9.1

In line one delete "14" and insert "21" and at the end of the clause insert "or receipt by the Employer of a VAT invoice from the Contractor whichever shall be later"

Clause 4.9.5

Replace the words "5 days" with "1 day" in the first line of the hanging paragraph.

Clause 4.9.6

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

Clause 4.10.4

In line one delete "The Employer's fiduciary interest in the Retention as stated in clause 4.16 shall not prevent him exercising" and insert "The Employer may exercise".

Clause 4.10.5

Insert new clause 4.10.5:

"4.10.5 Neither the issue by the Employer's Agent of any valuation nor the payment of any amount by the Employer to the Contractor pursuant thereto shall:

4.10.5.1 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's Agent shall be entitled to reconsider and if necessary adjust the assessments made by him in arriving at any previous valuation;

4.10.5.2 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 or shall relieve the Contractor of any of his obligations hereunder."

Clause 4.15

Delete clause 4.15 and insert "Not used."

Clause 4.16

Delete clause 4.16 and insert:

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

- 4.16.1 have no obligation to invest the Retention or any part of the Retention;
- 4.16.2 have no obligation to segregate the Retention or any part of the Retention in a separate bank account or in any other manner;
- 4.16.3 be entitled to the full and unencumbered beneficial interest in the Retention or any part of the Retention (including without limitation interest and income arising from the Retention)."

Clause 4.17.3

In line three after "issued after the date of failure" insert "**provided that** the Retention Percentage shall be calculated in relation to the amount of all Interim Payments made rather than the total amount included under clause 4.12.1 or 4.13.1 in any Interim Payment"

Clause 4.18

In line one after "(or last such notice)" insert ", subject to clause 4.17.3 where applicable,"

Clause 4.21

Insert the following after the words "Relevant Matters" in line one:

"(but only to the extent that such events 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)"

Clause 4.25

Insert new clause 4.25:

"Notwithstanding any other provision of this Contract no payment of any kind shall fall due or be made to the Contractor unless and until the Contractor has submitted to the Employer:

- 4.25.1 Any bond, as required in accordance with the Contract Particulars;
- 4.25.2 All and any collateral warranties required by the Employer in accordance with clauses 7.7 and 7.8;

- 4.25.3 Documentary evidence satisfactory to the Employer of the insurance policies referred to in clauses 6.4, 6.7 and 6.15 if applicable;
- 4.25.4 Any Parent Company Guarantee required in the Contract Particulars;
- 4.25.5 Evidence, where required by the Employer, that the Contractor has complied with its obligations to procure the Building Warranty Policy in accordance with clause 2.40.1."

Clause 4.26

Insert new clause 4.26:

- "4.26.1 In this clause 4.26 the payment due date shall be the date of any invoice submitted by the Client pursuant to clause 4.26.2.
- 4.26.2 Any sums:
 - 4.26.2.1 due to the Employer pursuant to clauses 2.18, 2.19, 6.1, 6.2, 8.7.5, 8.8.2 and/or 8.12.5 ; and/or
 - 4.26.2.2 which the Employer may seek to recover as a debt pursuant to clause 6.5 and/or paragraph A.2 in Schedule 1,

shall be due for payment on demand, such demand to take the form of an invoice from the Employer to the Contractor specifying the sum that the Employer considers to be due on the payment due date and the basis on which that sum is calculated. Within 5 (five) days of the payment due date the Contractor shall issue a notice confirming the sum that it considers to have been due on the payment due date and the basis on which that is calculated provided that if the Contractor fails to serve such notice the Employer's demand shall be treated as the payment notice. The final date for payment for any such sum so demanded shall be 28 days after the payment due date."

Clause 6.1

Insert in the third line "design or the" before the wording "carrying"

Clause 6.2

Insert in the third line "design or the" before the word "carrying"

Clause 6.4.1

In line 2 after "effect" insert "(with reputable insurers based in the UK)"

In line 2 after "maintain" insert "until the issue of the Notice of Completion of Making Good"

Insert at the end of clause 6.4.1 after the words "those clauses"

"including but not limited to the Contractor's contractual liability under those clauses"

Clause 6.6A

Insert new clause 6.6A:

"All insurance required by clause 6.4.1 and clause 6.5.1 shall be unlimited in respect of the number of occurrences arising and claims made in any period of insurance with each individual claim subject to the minimum level of cover specified in the Contract Particulars of the respective policy."

Clause 6.7.1

Insert at the end of clause 6.7.1:

"**provided that** the application of Option A or Option B or Option C as the case may be shall not affect the responsibility of the Contractor hereunder for any loss or damage not covered by any Joint Names Policy described therein"

Clause 6.8

Insert in the definition of All Risks Insurance after the words "physical loss or damage but" the additional words "subject to such excess and other customary exclusions and limitations as shall be approved by the Employer and"

Clause 6.11.3

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

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

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

Clause 6.15

Delete clause 6.15 and insert:

"6.15.1 Without prejudice or limitation to his responsibilities and liabilities under this Contract the Contractor shall take out with effect from the date of this Contract and shall maintain at all times until the expiry of the Rectification Period in respect of the whole of the Works and shall renew annually for a further period of twelve (12) years thereafter, **provided that** and for so long as it is possible for contractors of a size equivalent to that of the Contractor to obtain such insurance at commercially reasonable rates and terms a policy of professional negligence indemnity insurance on appropriate terms covering the Contractor's liability hereunder for any neglect, omission or error in the design of the Works or any part thereof for a total sum of not less than the amounts specified in the Contract Particulars in respect of each and every claim with the number of claims unlimited subject only to such excess and other customary exclusions and limitations as may be approved by the Employer and each individual claim further subject to the minimum level of cover specified in the Contract Particulars of the policy.

6.15.2 The Contractor shall place the insurance referred to in clause 6.15.1 with insurers of repute carrying on business in the UK and shall produce to the Employer within 21 days of this Contract written evidence of such policy signed by the Contractor's insurers or brokers

and copies of each annual renewal notice and written certification from the Contractor's insurers or brokers that each annual premium has been paid.

6.15.3 The Contractor undertakes not without the prior consent of the Employer to waive any rights which it has under the said professional negligence indemnity insurance policy where such claim relates to a claim brought against the Contractor by the Employer (subject only to such other variations as the Employer may approve).

6.15.4 The Contractor undertakes to ensure that equivalent cover (subject to such other variations as the Employer may approve) is so taken out and maintained by each sub-contractor of the Contractor approved to undertake design work in relation to the Works and to provide equivalent evidence of such cover to the Employer within a reasonable time of the appointment of any such sub-contractor."

Clause 7.1

Delete clause and insert:

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

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

Clause 7.3.2

Insert new clause 7.3.2:

"In circumstances where:

- (a) any bondsman or guarantor is unable to discharge their obligations under any bond or guarantee provided pursuant to this Contract, including in circumstances where any such party is Insolvent; or
- (b) any bond or guarantee provided pursuant to this Contract ceases to be valid or enforceable in any respect,

then the Contractor shall forthwith procure that a replacement bond or guarantee (as applicable) in the form designated by this Contract is provided by a bondsman or guarantor (as applicable) approved in writing by the Employer.

Clause 7.4

Delete clause 7.4 and insert "Not used."

Clause 7.5

Delete clause 7.5 and insert "Not used."

Clause 7.6

Delete clause 7.6 and insert:

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

Clause 7.7

Insert new clause 7.7

"The Contractor undertakes to enter into and duly execute as deeds one or more deeds of warranty in favour of any party acquiring an interest in or funding the Works and/or site of the Works or any part or parts thereof as the Employer may require by notice in writing in the forms set out in Appendix 2 to the Articles of Agreement (or in such other substantially similar form as the Employer may require) and to deliver the same duly executed to the Employer save that the Employer hereby agrees not to require the Contractor to enter into any such deed of warranty in favour of an Owner/Occupier or tenant or licensee of any individual housing unit constructed on the site of the Works."

Clause 7.8

Insert new clause 7.8

"Subject to the applicability of Schedule 8 in respect of the provision of an MMC Sub-Contractor Direct Agreement to the Employer, the Contractor shall obtain from any other approved sub-consultant or sub-contractor contributing to the design of the Works and shall submit to the Employer within twenty-one (21) days of the appointment of the relevant sub-consultant or sub-contractor (or, if later the date upon which the Employer gives notice to the Contractor of the third party in whose favour a warranty is required) a warranty or warranties in favour of the Employer and such other parties as the Employer may from time to time require each executed as a deed in the form set out in Appendices 3 and 4 respectively to the Articles of Agreement (or in such other substantially similar form as the Employer may require)."

Clauses 7A to 7E

Delete clauses 7A to 7E and insert "Not used." after each.

Clause 7F

Insert new clause 7F:

"The Contractor shall obtain all warranties and guarantees reasonably available from manufacturers and suppliers of all goods and equipment forming part of the Works whether or not expressly indicated in the Employer's Requirements and shall ensure that the same are issued in favour of the Employer and handed over to the Employer as a condition precedent to Practical Completion of the Works. For the purposes of this clause 7F, where the Contractor is unable to register any warranties or guarantees on behalf of the Employer the Contractor shall provide all information required to the Employer to enable the Employer to register the warranties or guarantees itself."

Clause 8.1

Delete clause 8.1 and insert "Not Used"

Clause 8.4.6

Insert new clause 8.4.6:

"fails to comply with its obligations under clause 7.3.2,"

Clause 8.6

Delete clause 8.6 and insert:

"8.6.1 The Contractor undertakes to the Employer that:

- 8.6.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;
- 8.6.1.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Employer in breach of section 7(1) of the Bribery Act or sections 45(1) or 46(1) Criminal Finances Act;
- 8.6.1.3 it has and shall maintain and implement:
 - a procedures to ensure compliance with clauses 8.6.1.1 and 8.6.1.2; and
 - b (in the case of section 7 Bribery Act) adequate procedures and (in the case of sections 45 and 46 Criminal Finances Act) reasonable procedures designed to prevent any Associated Person from undertaking any Corrupt Activity and/or conduct that would give rise to an offence under section 7 Bribery Act or sections 45(1) or 46(1) Criminal Finances Act;
- 8.6.1.4 it shall include undertakings similar to those contained in this clause 8.6 in any contract it may enter into with sub-contractors and suppliers;
- 8.6.1.5 from time to time, at the reasonable request of the Employer, it will confirm in writing that it has complied with its undertakings under clauses 8.6.1.1 to 8.6.1.4 inclusive and will provide any information reasonably requested by the Employer in support of such compliance;
- 8.6.1.6 it shall maintain adequate records to assist in verifying its compliance with the provisions of this clause 8.6.1 (including without limitation books of account showing all payments made by the Contractor in connection with this Contract) and shall permit the Employer and its third party representatives, on reasonable notice during normal business hours, but without notice in the case of any reasonably suspected breach of clauses 8.6.1.1 to 8.6.1.3 inclusive, to access and take copies of such records and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations under this clause 8.6.1. The Contractor shall give all necessary assistance to the conduct of such audits.

- 8.6.2 The Contractor shall indemnify the Employer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Employer as a result of any breach of clause 8.6.1 by the Contractor or any breach of provisions equivalent to clause 8.6.1 in any contract with a sub contractor or supplier.
- 8.6.3 The Employer may by notice to the Contractor terminate the Contractor's employment under this Contract and (if applicable) any other contract between the Employer and the Contractor:
- 8.6.3.1 in the event of breach of clauses 8.6.1.1 to 8.6.1.4 inclusive; and/or
 - 8.6.3.2 if an Associated Person (or anyone employed by or acting on behalf of them) engages or has engaged in Corrupt Activity or any activity, practice or conduct which could or would place the Employer in breach of section 7(1) of the Bribery Act or sections 45(1) or 46(1) of the Criminal Finances Act; and/or
 - 8.6.3.3 where the Employer is a local authority if the Contractor gives or has given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972."

Clause 8.7

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

Clause 8.7.2.4

Insert new clause 8.7.2.4:

"Leave the Site in a safe and secure condition".

Clause 8.7.6

Insert new clause 8.7.6:

"Notwithstanding clause 2.3 upon any determination of the Contractor's employment under this Section 8 or if this Contract is determined repudiated or discharged in any other manner and notwithstanding that the validity of such determination repudiation or discharge may be disputed by the Contractor the Contractor shall immediately deliver to the Employer possession of the Site."

Clause 8.11.1.4

Delete all words after "commotion" and insert:

"or the use or threat of terrorism resulting in death or injury to any person employed on the site of the Works or substantial damage to the Works or the reasonable apprehension thereof and/or any restriction of access to or egress from or any activity on the site of the Works by the relevant authorities in dealing with such use or threat"

Clause 8.11.1.7

Insert new clause 8.11.1.7:

"the implementation of Public Health Measures."

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

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

Schedules 1-8

Note: the following provisions shall apply only where the Contract Particulars specify that the relevant provisions apply.

Schedule 2

1 Part 2 paragraph 7

1.1 In line one of paragraph 7.1 delete "is encouraged to" and insert "shall, when it is reasonably practicable to do so,"

1.2 In line three of paragraph 7.2 before "." insert "together with such information as the Employer may reasonably request"

1.3 Delete paragraph 7.3 and insert:

"7.3.1 The Employer shall consider any proposal submitted pursuant to paragraph 7.2 and if the Employer wishes to accept any such proposal shall seek to agree it with the Contractor within 5 Business Days of receipt of the same. Upon agreement the Employer shall issue an instruction (which for the avoidance of doubt shall not be treated as a Change) confirming the change, the amount of any adjustment of the Contract Sum and any adjustment to the Completion Date.

7.3.2 The Incentive(s) set out in the Contract Particulars shall apply to any instruction issued pursuant to paragraph 7.3.1."

2 Part 2 paragraph 8

In line one delete "is encouraged to" and insert "shall"

3 Part 2 paragraph 9

3.1 Delete paragraph 9.1 and insert "The Contractor shall use reasonable skill and care to achieve the Key Performance Indicators (**KPIs**) set out at Appendix 7 and shall take all practicable steps to ensure that its sub-contractors, suppliers and sub-consultants are subject to the KPIs. The Employer shall monitor and assess the Contractor's performance by reference to the KPIs."

3.2 In line two of paragraph 9.2 delete "performance indicators" and insert "KPIs"

3.3 In line one of paragraph 9.3 delete "performance indicators" and insert "KPIs"

4 Schedule 5

Delete Schedule 5 and insert "Not used".

5 Schedule 6

Delete Schedule 6 and insert "Not used".

6 **Schedule 7**

Delete Schedule 7 and insert "Not used"

Insert the following Schedule 8:

Schedule 8: Modern Methods of Construction (MMC)

1 In this Schedule 8, the following definitions shall apply:

Employer's MMC Representative means the Employer's MMC Representative identified in the Contract Particulars or any replacement thereof as may be notified by the Employer to the Contractor from time to time.

Good Industry Practice means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced MMC contractor (engaged in the same type of undertaking as that of the MMC Sub-Contractor) under the same or similar circumstances.

MMC Direct Agreement means the direct agreement between the Employer, the MMC Sub-Contractor and the Contractor in the form set out in Appendix 12.

MMC Novation means the Deed of Novation in Part 2 of Appendix 11 to be entered into or entered into between the Employer, the MMC Sub-Contractor and the Contractor.

MMC Materials means all physical components, systems or other materials which form part of the MMC Sub-Contract Works.

MMC Sub-Contract means either the MMC Novation or the sub-contract entered into or to be entered into between the Contractor and the MMC Sub-Contractor, which form shall be based upon the JCT Design & Build Sub-Contract 2016 (comprising of DBSub/A and DBSub/C) or the OSHA MMC Contract unless otherwise agreed in writing with the Employer.

MMC Sub-Contractor means the Sub-Contractor(s) identified in the Contract Particulars or any replacement thereof agreed in accordance with paragraph 4 below.

MMC Sub-Contract Works means the element of the Works to be sub-contracted to the MMC Sub-Contractor in relation to which modern methods of construction (including off-site or modular construction) are intended to be utilised, such works being briefly described in the Contract Particulars and more particularly described in the Employer's Requirements.

Off-Site MMC Materials is as defined in paragraph 9.1 below.

OSHA MMC Contract means the contract for the design, manufacture, installation and delivery of goods for modular housing under the Off Site Homes Alliance frameworks for Cat 1 (Volumetric) suppliers or Cat 2 (panelised) suppliers.

Vesting Certificate means a vesting certificate in respect of MMC Materials in the form set out in Appendix 13 hereof to be provided by the MMC Sub-Contractor and the

Contractor.

2 Applicability of this Schedule 8

2.1 This Schedule 8 shall only apply where the Contract Particulars indicate that it shall apply.

2.2 Where this Schedule 8 applies, in the event of any conflict or discrepancy with this Schedule 8 and the balance of this Contract, the provisions of this Schedule 8 shall prevail.

3 **Appointment of MMC Sub-Contractor**

3.1 Where the Employer has already appointed the MMC Sub-Contractor under an MMC Sub-Contract, the Contractor shall on or before the date of this Contract sign as a deed and complete the MMC Novation with the Employer and the MMC Sub-Contractor and the Contractor may not make any amendments to the MMC Sub-Contract in the MMC Novation without the prior written approval from the Employer (not be unreasonably withheld or delayed).

3.2 Save where the MMC Sub-Contractor is novated to the Contractor under paragraph 3.1 above, prior to the appointment of the MMC Sub-Contractor by the Contractor in accordance with paragraph 3.4 below, the Contractor shall provide in sufficient time to the Employer and the Employer's MMC Representative :

3.2.1 The proposed form of the MMC Sub-Contract (including all technical and scoping documents) for the Employer's approval in writing (not to be unreasonably withheld or delayed), provided always that the Contractor may redact commercially sensitive pricing information from any such proposed MMC Sub-Contract;

3.2.2 Any other information regarding the MMC Sub-Contractor or the MMC Sub-Contract Works that the Employer or the Employer's MMC Representative considers to be relevant, including (but not limited to):

- (a) Credit checks or other financial information regarding the MMC Sub-Contractor;
- (b) Evidence that the MMC Sub-Contractor has sufficient expertise, experience and track record to deliver the MMC Sub-Contract Works;
- (c) References from previous customers of the MMC Sub-Contractor, which may include (at the Employer's discretion) a visit to the site of the installation of any previous works undertaken by the MMC Sub-Contractor;
- (d) Evidence that the MMC Sub-Contractor has all necessary registrations, certifications, accreditations and memberships such that its works can comply with the wider requirements of this Contract, including (but not limited to) registration with, or accreditation by, the Approved Warranty Provider;
- (e) Evidence that the MMC Sub-Contractor has passed all necessary testing in relation to the system(s) or component(s) (whether as a whole proprietary system or individually) which it intends to utilise in the MMC Sub-Contract Works;
- (f) Evidence that the MMC Sub-Contractor has sufficient capacity (including in any manufacturing facility) to deliver the MMC Sub-Contract Works or elements thereof in accordance with the Contractor's programme for the Works.

- 3.2.3 Where the proposed MMC Sub-Contractor and/or its Guarantor (as applicable) is domiciled in a country other than England, Scotland, Wales or Northern Ireland, the Contractor shall procure in conjunction with the Employer a legal opinion (at the Contractor's cost) from a reputable law firm (approved by the Employer) based in the MMC Sub-Contractor or its Guarantor's country of domicile which the Employer may rely upon and which covers such matters as the constitution of the MMC Sub-Contractor or its Guarantor and its ability to enter into the MMC Sub-Contract.
- 3.3 Once the Contractor has complied with the requirements of paragraph 3.2 above, the Employer, acting reasonably, shall then in writing either reject or approve the identity of the proposed MMC Sub-Contractor within 14 days of receipt of all items of information required provided that such rejection shall only be on the basis that the proposed MMC Sub-Contractor has failed to satisfy the various requirements set out in paragraph 3.2. Prior to making its decision, the Employer may in its absolute discretion waive any of the requirements set out in paragraph 3.2 above. Where the Employer rejects the proposed MMC Sub-Contractor the Contractor shall propose a further MMC Sub-Contractor and the provisions of paragraph 3.2 and this paragraph 3.3 shall continue to apply until such time as an MMC Sub-Contractor has been approved by the Employer in accordance with this paragraph 3.3.
- 3.4 Upon receipt of the Employer's approval in writing in accordance with paragraph 3.3 above, the Contractor shall proceed to enter into the MMC Sub-Contract on the basis of the approved form at the date or stage of the Works identified in the Contract Particulars.
- 3.5 Between the date of the Employer's approval in accordance with paragraph 3.3 above and the entry into the MMC Sub-Contract in accordance with paragraph 3.4 above, the Contractor may not make any amendments to the MMC Sub-Contract without prior written approval from the Employer (not be unreasonably withheld or delayed).
- 3.6 Following the entry into the MMC Sub-Contract, the Contractor shall observe and comply with the terms of the MMC Sub-Contract and may not, without the prior written consent of the Employer (not to be unreasonably withheld or delayed):
- 3.6.1 Make any material variations to the terms of the MMC Sub-Contract, including any technical, scoping or programme documents which form part of the MMC Sub-Contract, provided always that the Contractor is free to agree variations to the pricing of the MMC Sub-Contract;
- 3.6.2 Suspend or terminate the employment of the MMC Sub-Contractor under the MMC Sub-Contract.
- 3.7 Where the employment of the MMC Sub-Contractor is suspended or terminated in accordance with paragraph 3.6 above or otherwise, the Contractor shall supply to the Employer copies of all documents related to the suspension or termination upon the Employer's written request, save that any notice of suspension or termination issued to the MMC Sub-Contractor must simultaneously be copied to the Employer.
- 3.8 Where the MMC Sub-Contractor gives notice of the intended or actual suspension or termination of its employment (or part thereof) under the MMC Sub-Contract, the Contractor shall forthwith supply a copy of such notice to the Employer.

- 3.9 Upon the appointment of the MMC Sub-Contractor, the Contractor shall procure that the MMC Sub-Contractor enters into the MMC Direct Agreement, which the Contractor shall also duly execute and forthwith supply to the Employer.
- 3.10 For the avoidance of doubt, where this Schedule 8 applies, the provisions of clause 7.8 shall not apply in respect of the MMC Sub-Contractor being required to provide a Collateral Warranty to the Employer. However, clause 7.8 shall continue to apply to the provision of Collateral Warranties to the parties listed in clause 7.8.

4 Replacement of MMC Sub-Contractor

- 4.1 In circumstances where the MMC Sub-Contractor's employment is terminated under the MMC Sub-Contract prior to Practical Completion of the Works (whether in accordance with paragraph 3.6 above or otherwise), then the Contractor shall within 21 days of such termination propose a suitable alternative MMC Sub-Contractor(s).
- 4.2 The Employer, acting reasonably, shall then either reject or approve the proposed alternative MMC Sub-Contractor within 14 days of receipt. Prior to responding, the Employer or the Employer's MMC Representative may request that the Contractor provides any of the information set out in paragraph 3.2 above, in which case the timeframe for the Employer's response shall be 14 days from receipt of the last of the requested information.
- 4.3 Where the Employer approves the proposed replacement MMC Sub-Contractor, the Contractor shall as soon as reasonably practicable appoint the replacement MMC Sub-Contractor and the provisions of this Schedule 8 shall then apply to such replacement.
- 4.4 Where the Employer rejects the proposed replacement MMC Sub-Contractor in accordance with paragraph 4.2 above, the Contractor shall propose a further replacement and the provisions of paragraphs 4.1 to 4.3 shall continue to apply until such time as a replacement has been approved by the Employer in accordance with paragraph 4.2.

5 Inspection and monitoring of the MMC Sub-Contract Works

- 5.1 The Contractor shall procure that the Employer and all Employer's Persons are permitted access on reasonable notice to the place where any elements of the MMC Sub-Contract Works are being fabricated and / or tested for the purposes of inspecting the quality, quantity and progress of the MMC Sub-Contract Works, including for the purposes of assessing any application for payment, valuation of the Works or vesting of materials.
- 5.2 If at any time the MMC Sub-Contractor falls behind, or the Contractor anticipates that the MMC Sub-Contractor will fall behind, the programme for the MMC Sub-Contract Works, then the Contractor shall notify the Employer of such delay as soon as reasonably practicable and will set out the Contractor's proposals for recovering such delay.
- 5.3 The Contractor shall, and shall procure that the MMC Sub-Contractor shall, co-operate with any member of the Employer's Professional Team in respect of the design and construction of the Works as may be required by the Employer or any member of the employer's Professional Team from time to time.

6 Pre-installation testing

- 6.1 The Contractor shall procure that the MMC Sub-Contractor undertakes all pre-installation testing required of the MMC Materials by this Contract and Good Industry Practice. Records of such testing shall be maintained by the Contractor and made available to the Employer or the Employer's MMC Representative on request.
- 6.2 No MMC Materials should be delivered to the Site or packaged in readiness for transport until the requirements of paragraph 6.1 have been complied with.

- 6.3 Whenever the MMC Sub-Contractor or the Contractor intends to undertake a pre-installation test on any MMC Materials, the Contractor shall give the Employer and the Employer's MMC Representative 7 days written notice of such test and if so required by the Employer, the Contractor shall procure access for the Employer or the Employer's Persons to witness such tests and thereafter receive the results of those tests.
- 6.4 Regardless of whether the Employer elects to witness any pre-installation test, the Contractor shall notify the Employer and the Employer's MMC Representative of any failed pre-installation tests together with the reasons for such failure.
- 6.5 The Employer may at any time require that the Contractor supplies any or all of the information (duly updated) that was required to be supplied by the Contractor pursuant to paragraph 3.2 above. The Contractor shall comply with any request as soon as reasonably practicable but in any event within 14 days.
- 7 Transport, insurance and delivery to site**
- 7.1 The Contractor shall be responsible for, and accepts the entire risk in, the transport of the MMC Materials and their delivery to the Site.
- 7.2 Prior to the loading and transporting of any MMC Materials, the Contractor will ensure that there is goods in transit insurance in place until the completion of delivery and unloading of the MMC Materials at the relevant delivery address on the following terms:
- 7.2.1 all risks insurance in the joint names of the Contractor and the Employer covering the MMC Materials against all risks of loss or damage normally insurable in an amount of no less than the full reinstatement value of the MMC Materials plus fifteen per cent;
- 7.2.2 such insurances shall be placed with reputable UK insurers or with such other insurers as the Employer may approve in writing, and upon such terms and conditions as shall have been approved by the Employer (such approval not to be unreasonably withheld or delayed) and evidence of such insurances shall be supplied to the Employer by the Contractor prior to transportation of the MMC Materials.
- 7.3 The Contractor shall not deliver or cause to be delivered any MMC Materials to the Site until he has provided adequate facilities at the Site for the proper unloading and storage thereof.
- 7.4 The Contractor shall give the Employer 7 days notice of (a) the date on which the MMC Materials are anticipated to be packed, loaded and ready for dispatch from their place of manufacture, and (b) the anticipated delivery date of the MMC Materials to the Site. In each case, the Contractor will ensure that the Employer is afforded suitable inspection facilities in respect of the MMC Materials.
- 7.5 In circumstances where MMC Materials are to be stored at a location other than their place of manufacture pending delivery to the Site, then the Contractor shall ensure that such MMC Materials are stored at a suitable location in a fully bonded and insured warehouse, with all proper protection from loss and damage.

- 7.6 When transporting the MMC Materials, the Contractor shall ensure that:
- 7.6.1 the MMC Materials are properly packed and secured in such manner so as to enable them to reach the relevant delivery address in good condition; and
 - 7.6.2 the outside of all containers and/or packages, as applicable, containing any of the MMC Materials are clearly addressed to the Employer at the relevant delivery address and are indelibly marked or labelled with details of the type and quantity (and code number if applicable) of the MMC Materials in each such container and/or package. Each container and/or package shall be marked to show the correct side up and the slinging points and shall confirm any special unloading or storage instructions.

7.7 Where the MMC Materials are stored off-site for a longer duration than originally anticipated in the Contractor's programme at the date of the Contract, the Contractor shall ensure that any manufacturer's warranties, guarantees or similar are extended by such prolonged period of storage.

8 **Ownership of MMC Materials**

The ownership of the MMC Materials shall pass to the Employer at whichever is the earlier of: (a) their delivery to Site or, (b) payment being made by the Employer to the Contractor in respect of such MMC Materials. The Contractor shall ensure that there are adequate provisions in MMC Sub-Contract as will cause this transfer of ownership to happen.

9 **Payment for MMC Materials off-site**

- 9.1 If the Contractor wishes to be paid for any MMC Materials prior to their delivery to the Site including in circumstances where an Advance Payment is to be made pursuant to clause 4.6 or an Agreed Direct Payment is to be made pursuant to paragraph 10 below (**Off-Site MMC Materials**), then it shall be a condition precedent to the Contractor's entitlement to such payment that the Contractor has provided to the Employer a duly completed Vesting Certificate in respect of such Off-Site MMC Materials.
- 9.2 The Contractor shall arrange for any Off-Site MMC Materials to be marked as the Employer's property and shall ensure that they are stored and handled separately from other materials in accordance with the terms of the Vesting Certificate.
- 9.3 When so requested by the Employer, the Contractor shall provide proof of title and its transfer to the Employer in respect of any Off-Site MMC Materials.
- 9.4 Upon transfer of ownership of the relevant Off-Site MMC Materials in accordance with paragraph 8 above, the relevant Off-Site MMC Materials shall become the absolute property of the Employer, and thereafter shall be in the possession of the Contractor for the sole purpose of delivering them and incorporating them into the Works, provided always that the Contractor shall be responsible for any loss or damage to all MMC Materials and for the cost of storing handling and transporting the same.
- 9.5 Neither the Contractor nor the MMC Sub-Contractor nor any other person shall have a lien on any MMC Materials which have been vested in the Employer under paragraph 8 for any sum due to the Contractor, any Sub-Contractor, or other person, and the Contractor shall take all such steps as may reasonably be necessary to ensure that the title of the

Employer (and the exclusion of any such lien) is brought to the notice of all persons dealing with any such MMC Materials.

9.6 Upon the termination of the employment of the Contractor under clause 8. before the Practical Completion of all of the Works has occurred, the Contractor shall deliver to the Employer any MMC Materials the property in which has been vested in the Employer by virtue of paragraph 8 and if it shall fail to do so the Employer may enter any premises of the MMC Sub-Contractor (or its sub-contractors) and remove such MMC Materials and recover the cost of so doing from the Contractor.

10 **Direct Payments**

10.1 In this paragraph 10, the following definitions shall apply:

Agreed Direct Payment means a Direct Payment, the amount of which is specified in the Contract Particulars;

Direct Payment means the payment of any sums by the Employer (as payment under this Contract) but which is made to the MMC Sub-Contractor, being equal to sums due to the MMC Sub-Contractor from the Contractor under the MMC Sub-Contract;

Direct Payment Notice means a notice from the Employer to the Contractor and the MMC Sub-Contractor informing the Contractor and the MMC Sub-Contractor that the Employer intends to make a Direct Payment. Such notice may be served by email by the Employer to any recognised email address of the Contractor and the MMC Sub-Contractor and shall take effect upon its transmittal by the Employer;

Payments Schedule means a written schedule created in Microsoft Excel setting out a forecast of all payments due to the MMC Sub-Contractor under the MMC Sub-Contract and payments already made and which shall include any payments that are overdue.

10.2 Within two (2) days of a written request to do so by the Employer from time to time, the Contractor shall supply a Payments Schedule to the Employer via an email address nominated by the Employer from time to time;

10.3 The Employer may serve a Direct Payment Notice on the Contractor and the MMC Sub-Contractor in any of the following circumstances:

10.3.1 No later than fourteen (14) days after the Employer's receipt of a Payments Schedule;

10.3.2 In circumstances where the Direct Payment relates to an Agreed Direct Payment;

10.3.3 Where paragraph 11 below applies in circumstances where the Contractor has failed to supply an Advance Payment Bond.

10.4 If the Employer serves a Direct Payment Notice in accordance with paragraph 10.3 above:

10.4.1 Insofar as the MMC Sub-Contractor has not already done so, the Contractor shall immediately procure that the MMC Sub-Contractor enters into the MMC Direct Agreement;

- 10.4.2 The Employer may within seven (7) days of the service of the Direct Payment Notice make the Direct Payment and if it elects to do so, immediately after the Direct Payment has been made, it shall inform the Contractor and the MMC Sub-Contractor in writing that such Direct Payment has been made;
- 10.4.3 Save where a Direct Payment Notice may have been withdrawn at the election of the Employer, the Contractor shall not during the 7 day period referred to in paragraph 10.4.2 make payment of the relevant corresponding sums due under the MMC Sub-Contract;
- 10.4.4 If the outstanding sum due to the MMC Sub-Contractor has been settled by the Contractor in full or in part after the service of a Direct Payment Notice, then the Contractor shall immediately inform the Employer.
- 10.5 If the Employer does not serve a Direct Payment Notice in accordance with paragraph 10.3 or does not make payment in accordance with paragraph 10.4, the Contractor's obligations to make payment under the MMC Sub-Contract continues and the Contractor shall remain fully and solely liable to make all payments due under the MMC Sub-Contract.
- 10.6 If the Employer makes any Direct Payment, the Parties acknowledge and agree that:
- 10.6.1 Save as provided for in the balance of this paragraph 10.6, for all purposes connected with this Contract and the MMC Sub-Contract, the Parties agree that any Direct Payment shall operate as a payment to the Contractor under this Contract (and the Contractor shall immediately issue a VAT invoice in respect thereof to the Employer) and under the MMC Sub-Contract from the Contractor to the MMC Sub-Contractor;
- 10.6.2 The Employer is under no obligation at any time to make any further Direct Payment and should it fail to make a further Direct Payment having served a Direct Payment Notice, the Contractor shall remain entirely liable to the MMC Sub-Contractor for any further delay in payment, including (without limitation) in relation to interest accruing on all payments due or any recovery action commenced by the MMC Sub-Contractor;
- 10.6.3 The Contractor must give credit for any Direct Payments made against any payments already due or further payments falling due under this Contract and for the avoidance of doubt the Employer shall be entitled to set-off any Direct Payments made against future payments falling due or payments already due to the Contractor under this Contract. To the extent that any Direct Payments made exceed the aggregate of sums already due and sums that will fall due to the Contractor at any time, the Contractor shall immediately be liable to repay such sums as a debt due to the Employer.
- 10.7 The Contractor shall permit and shall procure that the Employer is allowed to attend or arrange meetings with the MMC Sub-Contractor to discuss the possibility of the Employer making Direct Payments to the MMC Sub-Contractor.
- 10.8 The Contractor shall provide all assistance, cooperation and information requested by the Employer in connection with the MMC Sub-Contract in circumstances where the Employer is considering making a Direct Payment. A non-exclusive list of such information includes: a copy of the MMC Sub-Contract, payment notices or certifications issued under the MMC

Sub-Contract, notices and correspondence, manuals, test certificates, guarantees, vesting certificates and an account of payments made and outstanding to the MMC Sub-Contractor.

10.9 Notwithstanding any other provision of this paragraph 10, the Contractor acknowledges and agrees that the Employer shall be under no obligation to make any payment to the MMC Sub-Contractor whatsoever.

11 **Failure to provide an Advance Payment Bond**

11.1 Where clause 4.6 is stated to apply in respect of an Advance Payment for the MMC Sub-Contract Works but the Contractor fails to provide such Bond in accordance with clause 4.6, then without prejudice to the other rights and remedies of the Employer, the Employer may elect in its absolute discretion to make a Direct Payment to the MMC Sub-Contract pursuant to paragraph 10 above which is equivalent to the amount of the Advance Payment.

11.2 Where the Employer exercises the rights referred to in paragraph 11.1 above, the provisions of paragraphs 10.4 to 10.9 above shall apply.

12 **Adequacy of Contract Sum and programme**

12.1 Save in relation to any breach by the Employer of its obligations under this Schedule 8, nothing in this Schedule 8 shall entitle the Contractor to an extension of time or additional payment and the for avoidance of doubt, the MMC Sub-Contractor shall not be deemed to be a Named Sub-Contractor and the appointment of the MMC Sub-Contractor, whether directly or by novation under paragraph 3.1 of this Schedule 8, and all related performance issues of the MMC Sub-Contractor remain entirely the risk of the Contractor.

12.2 Without prejudice to the foregoing and the other terms of this Contract, the Contractor acknowledges that it has made all due allowance within the Contract Sum and its programme for compliance with this Schedule 8 including but not limited to:

12.2.1 the suitability and availability of routes to the Site or other storage locations and/or any restriction in terms of access to and from the Site or other storage locations;

12.2.2 the feasibility of storing, loading and unloading the MMC Materials from any locations or modes of transport;

12.2.3 the approval process relating to the identity of the MMC Sub-Contractor;

12.2.4 the provision of security relating to the MMC Sub-Contractor including any Direct Agreement or Advance Payment Bonds required by the Contract;

12.2.5 all customs clearances, taxes, duties and similar.

Appendix 2

JCT 2016 Contractor/Third Party Collateral Warranty

dated 20[■]

Parties

- 1 [■] (company number [■]) whose registered office is at [■] (the **Beneficiary**),
- 2 [■] (company number [■]) whose registered office is at [■] (the **Contractor**), and
- 3 [■] [(company number [■])] whose registered office is at [■] (the **Employer**).

Introduction

- (A) The Beneficiary has entered into a [■] agreement (the **Agreement**) with the Employer in relation to the Property as hereinafter defined and the completed Works thereon as hereinafter defined, and
- (B) The Contractor carries on business as a building contractor and has been appointed as such by the Employer under a contract dated [■] 20[■] (the **Building Contract**) for the carrying out of the Works

Agreed terms

- 1 In this Deed the following words and expressions shall where the context so admits be deemed to have the following meanings:

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

the Property means [■]

the Works means the works of design, construction, completion and defects rectification to be carried out on the Property pursuant to the Building Contract including any variations thereto.

- 2 In consideration of the sum of ten pounds (£10) from the Beneficiary to the Contractor (receipt of which is hereby acknowledged) the Contractor covenants with the Beneficiary as set out in this Deed.
- 3 The Contractor hereby warrants to the Beneficiary in relation to the Works that the Contractor has exercised and will continue to exercise all reasonable skill, care and diligence in the performance of its duties under the Building Contract and will comply in all respects with the terms of the Building Contract.
- 4 The Contractor hereby further warrants to the Beneficiary in relation to the Works that the Contractor will maintain in full force and effect throughout the period of performance of the Works and for a period equivalent to the period for which the Contractor is liable under this warranty pursuant to clause 20 a policy of professional indemnity insurance in an amount of not less than [■ no less an amount than as set out in the Build Contract] pounds (£[■]) [for any one occurrence or series of occurrences arising out of any one event / each and every

claim / in the aggregate] provided always that such type of insurance is available to professional persons acting in the capacity of the Contractor at commercially reasonable rates and terms.

- 5 The Contractor undertakes to provide to the Beneficiary within seven (7) days from the date hereof written evidence of the policy of professional indemnity insurance referred to in clause 4 above and further undertakes to provide to the Beneficiary copies of each annual renewal notice in respect of such policy and written confirmation from the Contractor's insurers or brokers that each annual premium has been paid or is being paid, within seven (7) days of each renewal date of such policy throughout the period referred to in clause 4 above.
- 6 Without prejudice to the generality of clause 3, the Contractor further warrants that it has not and shall not specify, authorise for use or use any material or goods which are then known (or generally considered within the construction industry) to be deleterious to health and safety or to durability in the particular circumstances in which they are used.
- 7 The Contractor hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use or license (as the case may be) and reproduce all drawings, specifications and other documents and information of any kind which have been or are to be written, originated or made by or for the Contractor pursuant to the Building Contract, for any purpose relating to the Works including without limitation the execution, completion, promotion, sale, letting, management, maintenance, repair, refurbishment, alteration or extension of the Works or any part thereof but so that the Contractor shall not be liable for any such drawings, specifications and other documents if and to the extent that the same are used for any purpose other than that for which the same were prepared as if when ascertaining such purpose and use the Beneficiary had been named jointly with the Employer in the Building Contract. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- 8 The Contractor agrees to provide the Beneficiary upon the Beneficiary's request with such documents and information as the Beneficiary may reasonably require to demonstrate the Contractor's compliance with the terms of the Building Contract.
- 9 The benefit of this Deed or any part or parts thereof may upon written notice to the Contractor be assigned, charged and/or transferred by the Beneficiary and then on one further occasion without the consent of the Contractor being required. No further assignments shall be permitted.
- 10 [Subject to clause 15 the] [The] Contractor covenants with the Beneficiary that if any event of default shall occur under the Agreement at any time the Contractor shall, if so required by notice in writing given by the Beneficiary in accordance with clauses 13.1 to 13.3 inclusive, accept the instructions of the Beneficiary or the Beneficiary's appointee to the exclusion of the Employer upon the terms and conditions of the Building Contract and the Employer acknowledges that the Contractor shall be entitled to rely on the notice given to the Contractor by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.
- 11 [Subject to clause 15 the] [The] Contractor hereby covenants that the Contractor shall not exercise nor seek to exercise any right to terminate or treat as terminated the Building Contract and/or the Contractor's employment or discontinue or suspend the performance of any of the Contractor's obligations under the Building Contract without first giving to the Beneficiary prior written notice specifying the Contractor's ground for terminating or treating as terminated the Building Contract and/or the Contractor's employment and/or discontinuing

- or suspending the Contractor's performance under the Building Contract. If the grounds are that sums which are due have not been paid by the final payment date and no effective pay less notice has been given and the Contractor intends to suspend performance of the Contractor's obligations under the Building Contract then the Contractor shall give 7 days notice otherwise the Contractor shall give 15 Working Days notice.
- 12 Compliance by the Contractor with the provisions of clause 11 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Contractor from exercising the Contractor's rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provisions of clause 13.
- 13 [Subject to clause 15, within] [Within] the relevant notice period referred to in clause 11 the Beneficiary or the Beneficiary's appointee may give written notice to the Contractor:
- 13.1 acknowledging that the Beneficiary assumes all the obligations of the Employer;
- 13.2 requiring the Contractor to continue with the performance of the Contractor's duties and obligations under the Building Contract;
- 13.3 undertaking unconditionally to the Contractor to pay to the Contractor within 15 Working Days after the date of the notice under this clause 13 any sums which have become properly due and payable to the Contractor under the Building Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Contractor from the appointee.
- 14 In the event of the Beneficiary or the Beneficiary's appointee giving notice to the Contractor in accordance with clause 13 the Building Contract shall continue in full force and effect and in all respects as if the Building Contract had been made between the Contractor and the Beneficiary or the Beneficiary's appointee (as applicable) to the exclusion of the Employer (but without prejudice to any rights of recovery as between the Contractor and the Employer) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.
- 15 [The Contractor and the Beneficiary acknowledge that:
- 15.1 The Contractor has entered into or will enter into a warranty with [insert name of other third party with step-in rights] concerning the Works;
- 15.2 That warranty includes similar step-in rights to those in these clauses 9 to 15; and
- 15.3 The rights of [insert name of other third party with step-in rights] referred to in clause 15.2 shall have priority over the rights of the Beneficiary under clauses 9 to 16 inclusive such that on the exercise by [insert name of other third party with step-in rights] (or their appointee) of those step-in rights the Contractor shall no longer be bound by, and the Beneficiary may no longer exercise its rights under, clauses 10 to 15.]
- 16 The Employer confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.

- 17 Any notice to be served under the terms of this Deed shall be in writing and if despatched by registered post or recorded delivery to another party at its aforementioned address shall be deemed to have been received by such party forty-eight hours after being posted.
- 18 Notwithstanding any other provision of this Deed nothing in this Deed confers or purports to confer any right to enforce any of its terms on any person who is not a party to it pursuant to the Contracts (Rights of Third Parties) Act 1999 save for permitted assigns pursuant to clause 8.
- 19 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.
- 20 Without prejudice to any action or proceedings that arise from a breach of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, it is acknowledged that whatever the manner in which the parties have executed this Deed the period of limitations applicable to any claim or claims arising out of or in connection with this Deed shall be twelve (12) years from Practical Completion.

In witness whereof the Contractor has executed and delivered this document as a deed on the day and year first above written

[INSERT THE APPROPRIATE EXECUTION AS DEED PROVISIONS FROM APPENDIX 8]

Appendix 3

JCT 2016 Sub-Contractor or Sub-Consultant/Employer

dated 20[■]

Parties

- 1 [■] [(company number [■]) whose registered office is at [■] (the **Employer**),
- 2 [■] (company number [■]) whose registered office is at [■] (the **Covenantor**); and
- 3 [■] (company number [■]) whose registered office is at [■] (the **Contractor**).

Introduction

- (A) The Employer has entered or will enter into a building contract dated [■] 20[■] (the **Building Contract**) with the Contractor for the carrying out of the Works at the Property, and
- (B) The Covenantor carries on business as a firm of [■] and has been appointed to provide [■] in that capacity by the Contractor under a contract dated [■] 20[■] (the **Sub-Contract**) in connection with the Works. A copy of the Sub-Contract is attached at Annex 1.

Agreed terms

- 1 In this Deed the following words and expressions shall where the context so admits be deemed to have the following meanings:

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

the Property means [■]

the Works means the works of design, construction, completion and defects rectification to be carried out on the Property pursuant to the Building Contract including any variations thereto.

- 2 In consideration of the sum of ten pounds (£10) from the Employer to the Covenantor (receipt of which is hereby acknowledged) the Covenantor covenants with the Employer as set out in this Deed.
- 3 The Covenantor hereby warrants to the Employer in relation to the Works that the Covenantor has exercised and will continue to exercise all reasonable skill, care and diligence which may be expected of a professional person acting in the capacity of the Covenantor in relation to the Works and within the scope of the Sub-Contract and will comply in all respects with the terms of the Sub-Contract.
- 4 The Covenantor hereby further warrants to the Employer in relation to the Works that the Covenantor will maintain in full force and effect throughout the period of performance of the Works and for a period equivalent to the period for which the Contractor is liable under this warranty pursuant to clause 18 a policy of professional indemnity/product liability insurance in

an amount of not less than [■ no less an amount than the amount stated as appropriate in the Building Contract] pounds (£[■]) [for any one occurrence or series of occurrences arising out of any one event / each and every claim / in the aggregate] provided always that such type of insurance is available to professional persons acting in the capacity of the Covenantor at commercially reasonable rates and terms.

- 5 The Covenantor undertakes to provide to the Employer within twenty-one (21) days from the date hereof written evidence of the policy of professional indemnity/product liability insurance referred to in clause 4 above and further undertakes to provide to the Employer copies of each annual renewal notice in respect of such policy and written confirmation from the Covenantor's insurers or brokers that each annual premium has been paid, within twenty-one (21) days of each renewal date of such policy throughout the period referred to in clause 4 above.
- 6 Without prejudice to the generality of clause 3, the Contractor further warrants that it has not and shall not specify, authorise for use or use any material or goods which are then known (or generally considered within the construction industry) to be deleterious to health and safety or to durability in the particular circumstances in which they are used.
- 7 The Covenantor hereby grants to the Employer an irrevocable royalty-free non-exclusive licence to use and reproduce all drawings, specifications and other documents and information of any kind which have been or are to be written, originated or made by or for the Covenantor pursuant to the Sub-Contract, for any purpose relating to the Works including without limitation the execution, completion, promotion, sale, letting, management, maintenance, repair, refurbishment, alteration or extension of the Works or any part thereof but so that the Covenantor shall not be liable for any such drawings, specifications and other documents if and to the extent that the same are used for any purpose other than that for which the same were prepared as if when ascertaining such purpose and use the Employer had been named jointly with the Contractor in the Sub-Contract. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- 8 The benefit of this Deed or any part or parts thereof may upon written notice to the Contractor be assigned, charged and/or transferred by the Employer and then on one further occasion without the consent of the Covenantor being required. No further assignments shall be permitted.
- 9 The Covenantor covenants with the Employer that if an event of default by the Contractor shall occur under the Building Contract at any time the Covenantor shall, if so required by notice in writing given by the Employer in accordance with clauses 12.1 to 12.3 inclusive accept the instructions of the Employer or its appointee to the exclusion of the Contractor upon the terms and conditions of the Sub-Contract and the Contractor acknowledges that the Covenantor shall be entitled to rely on the notice given to the Covenantor by the Employer as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Employer to give such notice.
- 10 The Covenantor hereby covenants that it shall not exercise nor seek to exercise any right to terminate or treat as terminated the Sub-Contract and/or its employment or discontinue or suspend the performance of any of its obligations under the Sub-Contract without first giving to the Employer prior written notice specifying the Covenantor's ground for terminating or treating as terminated the Sub-Contract and/or its employment and/or discontinuing or suspending its performance under the Sub-Contract. If the grounds are that sums which are due have not been paid by the final payment date and no effective pay less notice has been

- given the Covenantor shall give 7 days notice otherwise the Covenantor shall give 15 Working Days notice.
- 11 Compliance by the Covenantor with the provisions of clause 10 shall not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Covenantor from exercising its rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provisions of clause 12.
- 12 Within the relevant notice period referred to in clause 10 the Employer or its appointee may give written notice to the Covenantor:
- 12.1 acknowledging that it assumes all the obligations of the Contractor;
- 12.2 requiring the Covenantor to continue with the performance of its duties and obligations under the Sub-Contract;
- 12.3 undertaking unconditionally to the Covenantor to pay to the Covenantor within 15 Working Days after the date of the notice under this clause 12 any sums which have become properly due and payable to the Covenantor under the Sub-Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Employer the Employer shall guarantee all payments due to the Covenantor from the appointee;
- 13 In the event of the Employer or the appointee giving notice to the Covenantor in accordance with clause 12 the Sub-Contract shall continue in full force and effect and in all respects as if the Sub-Contract had been made between the Covenantor and the Employer or its appointee (as applicable) to the exclusion of the Contractor (but without prejudice to any rights of recovery as between the Covenantor and the Contractor) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination discontinuance or suspension.
- 14 The Contractor confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.
- 15 Any notice to be served under the terms of this Deed shall be in writing and if despatched by registered post or recorded delivery to the other party at its aforementioned address shall be deemed to have been received by such party forty-eight hours after being posted.
- 16 Notwithstanding any other provision of this Deed nothing in this Deed confers or purports to confer any right to enforce any of its terms or any person who is not a party to it pursuant to the Contracts (Rights of Third Parties) Act 1996 save for permitted assigns pursuant to clause 8.
- 17 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.
- 18 Without prejudice to any action or proceedings that arise from a breach of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation

period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, it is acknowledged that whatever the manner in which the parties have executed this Deed the period of limitations applicable to any claim or claims arising out of or in connection with this Deed shall be twelve (12) years from Practical Completion.

- 19 [The following shall apply for a partnership
- 19.1 Where the context so requires the term Covenantor shall be deemed to include any additional partner or partners who may be admitted into the partnership of the Covenantor during the currency of this Deed.
- 19.2 The Covenantor acknowledges that being a partnership the rights obligations and liabilities of the partners under this Deed as joint and several.
- 19.3 The Deed and the liabilities of the Covenantor and the Employer in this Deed shall not automatically terminate upon the death, retirement or resignation of any one or more of the partners or upon the admission of an additional partner or partners to the Covenantor.]

In witness whereof the Covenantor has executed and delivered this document as a deed on the day and year first above written

[INSERT THE APPROPRIATE EXECUTION AS DEED PROVISIONS FROM APPENDIX 8]

Annex 1
The Sub-Contract

Appendix 4

JCT 2016 Sub-Contractor or Sub-Consultant/Third Party

dated 20[■]

Parties

- 1 [■] (company number [■]) whose registered office is at [■] (the **Beneficiary**),
- 2 [■] (company number [■]) whose registered office is at [■] (the **Covenantor**), and
- 3 [■] (company number [■]) whose registered office is at [■] (the **Contractor**),

Introduction

- (A) The Beneficiary has entered into an agreement with [■] (the **Employer**) in connection with the Works at the Property (as hereinafter respectively defined), and
- (B) The Employer has entered into a building contract dated [■] 201[■] (the **Building Contract**) with the Contractor for the carrying out of the Works at the Property, and
- (C) The Covenantor carries on business as a firm of [■] and has been appointed to provide [■] in that capacity by the Contractor under a contract dated [■] 20[■] (the **Sub-Contract**) in connection with the Works. A copy of the Sub-Contract is attached at Annex 1.

Agreed terms

- 1 In this Deed the following words and expressions shall where the context so admits be deemed to have the following meanings:

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

the Property means [■]

the Works means the works of design, construction, completion and defects rectification to be carried out on the Property pursuant to the Building Contract including any variations thereto.

- 2 In consideration of the sum of ten pounds (£10) from the Beneficiary to the Covenantor (receipt of which the Covenantor hereby acknowledges) the Covenantor covenants with the Beneficiary as set out in this Deed.
- 3 The Covenantor hereby warrants to the Beneficiary in relation to the Works that the Covenantor has exercised and will continue to exercise all reasonable skill, care and diligence which may reasonably be expected of a professional person acting in the capacity of the Covenantor in relation to the Works and within the scope of the Sub-Contract and will comply in all respects with the terms of the Sub-Contract.
- 4 The Covenantor hereby further warrants to the Beneficiary in relation to the Works that the Covenantor will maintain in full force and effect throughout the period of performance of the

Works and for a period of equivalent to the period for which the Contractor is liable under this warranty pursuant to clause 18 a policy of [**professional indemnity**]/[**product liability**] insurance in an amount of not less than [■] no lesser an amount than required under the Build Contract] pounds (£[■]) [for any one occurrence or series of occurrences arising out of any one event / each and every claim / in the aggregate] provided always that such type of insurance is available to professional persons acting in the capacity of the Covenantor at commercially reasonable rates.

- 5 The Covenantor undertakes to provide to the Beneficiary within seven (7) days from the date hereof written evidence of the policy of professional indemnity insurance referred to in clause 4 above and further undertakes to provide to the Beneficiary copies of each annual renewal notice in respect of such policy and written confirmation from the Covenantor's insurers or brokers that each annual premium has been paid, within seven (7) days of each renewal date of such policy throughout the period referred to in clause 4 above.
- 6 Without prejudice to the generality of clause 3, the Contractor further warrants that it has not and shall not specify, authorise for use or use any material or goods which are then known (or generally considered within the construction industry) to be deleterious to health and safety or to durability in the particular circumstances in which they are used.
- 7 The Covenantor hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use and reproduce all drawings, specifications and other documents and information of any kind which have been or are to be written, originated or made by or for the Covenantor pursuant to the Sub-Contract, for any purpose relating to the Works including without limitation the execution, completion, promotion, sale, letting, management, maintenance, repair, refurbishment, alteration or extension of the Works or any part thereof but so that the Covenantor shall not be liable for any such drawings, specifications and other documents if and to the extent that the same are used for any purpose other than that for which the same were prepared as if when ascertaining such purpose and use if the Beneficiary had been named jointly with the Contractor in the Sub-Contract. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- 8 The benefit of this Deed or any part or parts thereof may upon written notice to the Contractor be assigned, charged and/or transferred by the Beneficiary and then on one further occasion without the consent of the Covenantor being required provided. No further assignments shall be permitted.
- 9 The Covenantor covenants with the Beneficiary that if an event of default by the Contractor shall occur under the Building Contract at any time the Covenantor shall, if so required by notice in writing given by the Beneficiary in accordance with clauses 12.1 to 12.3 inclusive accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor upon the terms and conditions of the Sub-Contract and the Contractor acknowledges that the Covenantor shall be entitled to rely on the notice given to the Covenantor by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.
- 10 The Covenantor hereby covenants that it shall not exercise nor seek to exercise any right to terminate or treat as terminated the Sub-Contract and/or its employment or discontinue or suspend the performance of any of its obligations under the Sub-Contract without first giving to the Beneficiary prior written notice specifying the Covenantor's ground for terminating or treating as terminated the Sub-Contract and/or its employment and/or discontinuing or suspending its performance under the Sub-Contract. If the grounds are that sums which are

due have not been paid by the final payment date and no effective pay less notice has been given the Covenantor shall give 7 days notice otherwise the Covenantor shall give 15 Working Days notice.

- 11 Compliance by the Covenantor with the provisions of clause 10 shall not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Covenantor from exercising its rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provision of clause 12.
- 12 Within the relevant notice period referred to in clause 10 the Beneficiary or its appointee may give written notice to the Covenantor:
 - 12.1 acknowledging that it assumes all the obligations of the Contractor;
 - 12.2 requiring the Covenantor to continue with the performance of its duties and obligations under the Sub-Contract;
 - 12.3 undertaking unconditionally to the Covenantor to pay to the Covenantor within 15 Working Days after the date of the notice under this clause 12 any sums which have become properly due and payable to the Covenantor under the Sub-Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Covenantor from the appointee;
- 13 In the event of the Beneficiary or the appointee giving notice to the Covenantor in accordance with clause 12 the Sub-Contract shall continue in full force and effect and in all respects as if the Sub-Contract had been made between the Covenantor and the Beneficiary or its appointee (as applicable) to the exclusion of the Contractor (but without prejudice to any rights of recovery as between the Covenantor and the Contractor) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination discontinuance or suspension.
- 14 The Contractor confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.
- 15 It is acknowledged that whatever the manner in which the parties have executed this Deed the period of limitations applicable to any claim or claims arising out of or in connection with this Deed shall be twelve (12) years from Practical Completion.
- 16 Any notice to be served under the terms of this Deed shall be in writing and if despatched by registered post or recorded delivery to the other party at its aforementioned address shall be deemed to have been received by such party forty-eight hours after being posted.
- 17 Notwithstanding any other provision of this Deed nothing in this Deed confers or purports to confer any right to enforce any of its terms or any person who is not a party to it save for permitted assigns pursuant to clause 8.
- 18 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

- 19 Without prejudice to any action or proceedings that arise from a breach of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, it is acknowledged that whatever the manner in which the parties have executed this Deed the period of limitations applicable to any claim or claims arising out of or in connection with this Deed shall be twelve (12) years from Practical Completion.
- 20 [The following shall apply for a partnership:
- 20.1 Where the context so requires the term Covenantor shall be deemed to include any additional partner or partners who may be admitted into the partnership of the Covenantor during the currency of this Deed.
- 20.2 The Covenantor acknowledges that being a partnership the rights obligations and liabilities of the partners under this Deed as joint and several.
- 20.3 The Deed and the liabilities of the Covenantor and the Employer in this Deed shall not automatically terminate upon the death, retirement or resignation of any one or more of the partners or upon the admission of an additional partner or partners to the Covenantor.]

In witness whereof the Covenantor has executed and delivered this document as a deed on the day and year first above written

[INSERT THE APPROPRIATE EXECUTION AS DEED PROVISIONS FROM APPENDIX 8]

Annex 1
The Sub-Contract

Appendix 5
Form of Performance Bond

ABI Model form of Performance bond including insolvency provisions in Clause 1

This Guarantee Bond is made as a deed between the following parties whose names and registered office addresses are set out in the Schedule to this Bond (the **Schedule**):

- (1) The 'Contractor' as principal
- (2) The 'Guarantor' as guarantor, and
- (3) The 'Employer'

Whereas

- (A) By a contract (the **Contract**) entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the **Works**) upon and subject to the terms and conditions therein set out.
- (B) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

Now this deed witnesses as follows:

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor or in the event of the Contractor's employment being determined by reason of one of the events listed in Clauses 8.4 to 8.6 (inclusive) of the Contract the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge the costs, loss and damage sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the **Bond Amount**), but subject to such limitation and to clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract.
- 3 The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond
- 4 Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.
- 5 The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the

Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

- 6 This Guarantee bond and the benefits thereof shall not be assigned without the prior written consent of the Guarantor and the Contractor.
- 7 The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
- 8 This Guarantee Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

The Schedule

The Contractor: [NAME IN FULL] (Company number: [■]) whose registered office address is at [■]

The Guarantor: [NAME IN FULL] (Company number: [■]) whose registered office address is at [■]

The Employer: [NAME IN FULL] (Company number: [■]) whose registered office address is at [■]

The Contract: A contract dated the [■] day of [■] 201[■] [to be entered into] between the Employer and the Contractor in the form known as [■] for the construction of works comprising [■] at [■] for the original contract sum of £[■] ([SUM IN WORDS] POUNDS STERLING)

The Bond amount: The sum of £[■] ([SUM IN WORDS] POUNDS STERLING)

Expiry: Upon the issue of [■] which shall be conclusive for the purposes of this Guarantee Bond

In witness whereof the Contractor and the Guarantor have executed and delivered this Guarantee Bond as a Deed this [■] day of [■]

[INSERT THE APPROPRIATE EXECUTION AS DEED PROVISIONS FROM APPENDIX 8]

Appendix 6

Adjudication Agreement

Dated [■] 20[■]

Parties

- (1) [■] [(company number [■])] of/ whose registered office is at [■] (the **Employer**) and
- (2) [■] (company number [■]) whose registered office is at [■] (the **Contractor**) and
- (3) [■] of [■] (the **Adjudicator**).

Introduction

- (A) The Employer and the Contractor have entered into a contract (**the Contract**) for [■] in which the provisions on adjudication (**the Adjudication Provisions**) are set out in clause [■].
- (B) The Adjudicator has been nominated in accordance with the Adjudication Provisions.

Agreed terms

1 Appointment and acceptance

The Employer and the Contractor hereby appoint the Adjudicator and the Adjudicator hereby accepts such appointment in respect of any dispute that may arise on the Contract.

2 Adjudication Provisions

- 2.1 The Adjudicator shall observe the Adjudication Provisions as if they were set out in full in this Agreement.
- 2.2 The Adjudicator shall have complete discretion as to the conduct of the adjudication and shall establish the procedure and timetable subject to the Adjudication Provisions.
- 2.3 The Adjudicator shall not be required to observe any rule of evidence procedure or otherwise of any court.

3 Powers of the adjudicator

3.1 Without prejudice to the Adjudication Provisions the Adjudicator may:

- 3.1.1 use his own knowledge and/or experience,
- 3.1.2 open up, review and revise any certificate, opinion, decision, requirement or notice issued given or made under the Contract as if no such certificate, opinion, decision, requirement or notice had been issued given or made
- 3.1.3 require from the Employer or the Contractor further information than that contained in the notice of referral and its accompanying documentation or in any written statement provided by the Employer and the Contractor including the results of any tests that have been made or of any opening up provided

always that any further information or written statement from one party is provided to the other

- 3.1.4 require the Employer and the Contractor to carry out tests or additional tests or to open up work or further open up work
 - 3.1.5 visit the site of the Works or any workshop where work is being or has been prepared for the Contract
 - 3.1.6 obtain such information as he considers necessary from any employee or representative of the Employer and the Contractor provided that before obtaining information from an employee of a party he has given prior notice to that party
 - 3.1.7 obtain from others such information and advice as he considers necessary on technical and on legal matters subject to obtaining prior approval in writing from the Employer and the Contractor in respect of the estimate of cost involved
 - 3.1.8 having regard to any term of the Contract relating to the payment of interest decide the circumstances in which or the period for which a simple rate of interest shall be paid
 - 3.1.9 limit the length or scope of any written oral submissions
 - 3.1.10 proceed with the adjudication and reach a decision even if a party fails to cooperate with his requirements and requests and to draw such inference as may seem proper from such failure to co-operate.
- 3.2 The Adjudicator shall not disclose to any other person any information or document provided to him in connection with the adjudication which the party supplying it has indicated is to be treated as confidential, except to the extent that it is necessary for the purposes of or in connection with the adjudication.
- 3.3 The Adjudicator shall avoid incurring unnecessary expense.

4 **Unavailability of Adjudicator to act on the referral**

If the Adjudicator becomes ill or becomes unavailable for some other cause and is thus unable to complete the adjudication he shall immediately give notice to the Employer and the Contractor to such effect.

5 **Termination**

- 5.1 The Employer and the Contractor may together
- 5.1.1 terminate this Agreement at anytime on written notice to the Adjudicator,
 - 5.1.2 terminate an adjudication at any time and immediately give written notice to the Adjudicator.
- 5.2 Following such termination the Employer and the Contractor shall, subject to clause 5.3, pay the Adjudicator his fee or any balance thereof and his expenses reasonably incurred prior to the termination.

5.3 Where the decision of the Employer and the Contractor to terminate this Agreement under clause 5.1 is because of a failure by the Adjudicator to give his decision on the dispute or difference within the time scales in the Adjudication Provisions or at all, the Adjudicator shall not be entitled to recover from either the Employer or the Contractor his fee and expenses.

6 Miscellaneous provisions

6.1 In the event that any party seeks to challenge or review any decision of the Adjudicator in any subsequent litigation or arbitration, the Adjudicator shall not be issued with a writ or otherwise required to give evidence or provide his notes in such litigation or arbitration without being paid an appropriate fee.

6.2 All notices shall be sent by prepaid first class post to the address stated in the Contract for service of notices, or if none, the principal place of business or registered office (in the case of a company). Notice sent by first class post shall be deemed to have been delivered on the second business day after posting.

6.3 If any dispute or difference shall arise between the parties at any time out of or in connection with this Deed then such dispute or difference shall be resolved in accordance with Article 7 of the Building Contract.

In witness whereof the Employer, the Contractor and the Adjudicator have executed and delivered this document as a deed on the day and year first above written

[INSERT THE APPROPRIATE EXECUTION AS DEED PROVISIONS FROM APPENDIX 8]

Appendix 7

KPIs

[■ to be inserted or referenced if applicable] / [Not used]

Appendix 8

Standard execution as deed clauses

THE COMMON SEAL of [insert company name] was hereunto affixed in the presence of:) *[Common seal of company]*

Director

Director/Secretary

OR

EXECUTED as a **DEED** by [insert company name] acting by [insert name of director], a director and [insert name of director or secretary], a director *OR* its secretary)

Director

Director/Secretary

OR

EXECUTED as a **DEED** by [insert company name] acting by [insert name of director], a director)

in the presence of:)

Director

witness signature:

name:

address:

occupation:

OR

SIGNED as a **DEED** by [insert name of partner])
and [insert name of partner] for and on behalf of)
[insert name of partnership] under a power of)
attorney dated [insert date] in the presence of:)

[Signature of partner]

[Signature of partner]

witness signature:

name:

address:

occupation:

OR

EXECUTED as a **DEED** by affixing THE) *[Common seal of LLP]*
COMMON SEAL of [insert name of LLP])

in the presence of:)

Member

Member

OR

SIGNED as a **DEED** by [insert name of LLP])
acting by [insert name of member], member and)
[insert name of member], member:)

Member

Member

OR

Signed as a DEED by [insert name of attorney])
as attorney for [insert name of contracting entity])
under a power of attorney dated [insert date] in)
the presence of:)

[Signature of attorney]

in the presence of:)

witness signature:

name:

address:

occupation:

OR

Signed as a **DEED** by **[insert name of**)
contracting entity] acting by its attorney **[insert**)
name of attorney] under a power of attorney)
dated **[insert date]** in the presence of:)

[Attorney signs in the name of the principal and adds "by its attorney [insert name of attorney] acting by" and then signs in the attorney's own name]

witness signature:

name:

address:

occupation:

OR

SIGNED as a **DEED** by [insert name of attorney])
acting by [insert name of director], a director and)
[insert name of director or secretary], [a)
director][the secretary] as attorney for [insert)
name of contracting entity] under a power of)
attorney dated [insert date]:)

Director

Director/Secretary

OR

SIGNED as a **DEED** by [insert name of attorney])
acting by [insert name of director], a director, as)
attorney for [insert name of contracting entity])
under a power of attorney dated [insert date] in)
the presence of:)

Director

witness signature:

name:

address:

occupation:

OR

Executed as a **DEED** by affixing the common)
seal of **[insert name of attorney]** as attorney for)
[insert name of contracting entity] under a)
power of attorney dated **[insert date]** in the)
presence of:)

[Common seal of attorney]

Director

Director/Secretary

Appendix 9
Parent Company Guarantee

Parent company guarantee

dated [■]

Parties

- (1) [■] (registration number [■]) whose registered office is at [■] (the **Guarantor**)
- (2) [■] (registration number [■]) whose registered office is at [■] (the **Beneficiary**)

Introduction

- (A) The Beneficiary has entered into the Building Contract (defined below) with the Contractor (defined below) for the carrying out of the Project for the sum mentioned in the Building Contract.
- (B) The Guarantor has agreed to guarantee the due performance of the Building Contract in the manner set out in this Guarantee.

Agreed terms

1 Interpretation and definitions

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

Beneficiary shall include successors and assigns;

Contractor means [■] (registration number [■]) whose registered office is at [■];

Building Contract means the JCT (2016) (as amended) entered into between the Beneficiary and the Contractor dated [■] relating to the Project as amended or varied;

Obligations means the obligations, duties, undertakings, covenants and conditions by or on the part of the Contractor contained in the Building Contract and to be observed and performed by the Contractor;

Project means the design, construction, completion and defects rectification to be carried out at the Site pursuant to the Building Contract including any variations to the Building Contract;

Site means [■].

2 Consideration

In consideration of the payment of £10 (ten pounds) by the Beneficiary to the Guarantor (receipt of which the Guarantor hereby acknowledges) the Guarantor covenants with the Beneficiary as set out in this Guarantee.

3 Guarantee

The Guarantor irrevocably and unconditionally:

- 3.1 guarantees the due observance and punctual performance of all the Obligations by the Contractor;
- 3.2 undertakes with the Beneficiary that:
- 3.2.1 if the Contractor fails to pay any debt, damages, interest or costs due from the Contractor to the Beneficiary under or in connection with the Building Contract including pursuant to any judgement of a court or arbitrator's award or decision of an adjudicator against the Contractor in favour of the Beneficiary the Guarantor shall, on receipt of written demand, without deduction or withholding pay to the Beneficiary that amount as if it was the principal obligor;
- 3.2.2 if the Contractor fails to perform any of the Obligations (other than those referred to in clause 3.2.1) and/or the employment of the Contractor under the Building Contract is terminated by operation of clause 8 of the Building Contract the Guarantor shall immediately on demand procure that a subsidiary of the Guarantor or that the Guarantor itself carries out, observes and performs all of the Obligations in substitution for the Contractor.

4 **Indemnity**

The Guarantor (as principal obligor and as a separate, primary and independent obligation from the obligations set out in clause 3) undertakes to indemnify and keep indemnified the Beneficiary immediately on demand against any cost, loss or liability suffered and expenses suffered or incurred by the Beneficiary:

- 4.1 as a result of the Contractor's failure to carry out, observe or perform all or any of the Obligations; and/or
- 4.2 if the Contractor fails to pay any debt, damages, interest or costs due from the Contractor to the Beneficiary under or in connection with the Building Contract; and/or
- 4.3 if the employment of the Contractor under the Building Contract is terminated by operation of clause 8 of the Building Contract; and/or
- 4.4 if any of the Obligations are or become unenforceable, invalid or illegal on any ground whatsoever as if the Obligations had not become unenforceable, invalid or illegal

provided that the amount payable by the Guarantor under this clause shall not exceed the amount which would have been payable by the Contractor under the Building Contract and on the basis that the Building Contract is valid and enforceable.

5 **Amendments to the Building Contract and/or the Obligations**

The Building Contract and/or any or all of the Obligations may be modified, amended or supplemented in any way without the Guarantor's consent and the Guarantor expressly confirms that it intends that this Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition to or of the Building Contract and/or to or of any or all of the Obligations including, without limitation, any alteration to the nature of extent of the works to be carried out under the Building Contract and/or any allowance of time by the Beneficiary under the Building Contract.

6 **Waiver of defences**

The Guarantor shall not be discharged or released from this Guarantee by any act, omission, matter or thing which, but for this clause, would or might reduce, release or prejudice any of its obligations under this Guarantee including, without limitation, any one or more of the following:

- 6.1 any alteration to the nature or extent of the Project or any amendment to or variation, express or implied, waiver or release of the terms of the Building Contract;
- 6.2 any allowance of time, forbearance, indulgence or other concession granted to the Contractor under the Building Contract or any other compromise or settlement of any dispute between the Beneficiary and the Contractor **provided that** the Beneficiary shall not pursue against the Guarantor a remedy contrary to the terms of any such compromise or settlement insofar as the Contractor shall have complied with the terms of such compromise or settlement;
- 6.3 the liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity, amalgamation, reconstruction or any change in the name, composition, status, function, ownership or control of the Contractor or the Guarantor;
- 6.4 any disclaimer of the Building Contract by any liquidator or administrator appointed to the Contractor (and the Building Contract shall for the purposes of this Guarantee be deemed to continue notwithstanding any such disclaimer);
- 6.5 any provision of the Building Contract being or becoming illegal, invalid, void, voidable or unenforceable for any reason whatsoever;
- 6.6 the suspension or termination of the Building Contract or of the employment of the Contractor under the Building Contract for any reason whatsoever; and
- 6.7 any failure to take or to realise (or fully to take or to realise), or any release, discharge, exchange or substitution of, any security, guarantee or indemnity in respect of the Building Contract.

7 **Continuing Guarantee**

This Guarantee is a continuing guarantee and shall remain in operation until all the obligations, duties, undertakings, covenants, conditions and warranties now or hereafter to be carried out or performed by the Contractor under the Building Contract shall have been satisfied or performed in full.

8 **Calls on the Guarantee**

- 8.1 The Beneficiary may make more than one (1) demand under this Guarantee.
- 8.2 The Beneficiary shall not be obliged to pursue any means of recourse against the Contractor before being entitled to enforce this Guarantee against the Guarantor **provided that** if the Beneficiary does seek recourse against the Contractor any money judgement of a court or arbitrator's award or decision of an adjudicator against the Contractor in favour of the Beneficiary under the Building Contract shall be conclusive evidence for the purposes of this

Guarantee as to any liability of the Contractor to which such judgement award or decision relates (unless and until the same is set aside by any competent tribunal).

- 8.3 The Beneficiary is not bound to make demand on or enforce any rights against any other guarantor or person before enforcing this Guarantee.

9 **Representations**

The Guarantor represents and warrants to the Beneficiary that:

- 9.1 this Guarantee constitutes a valid and legally binding obligation of it in accordance with its terms;
- 9.2 it has the power and has taken all corporate and other action required to enter into this Guarantee and to authorise its execution and delivery and the performance of its under obligations under it;
- 9.3 the execution, delivery and performance of this Guarantee does not violate its constitution, any law applying to it or any agreement or other obligation binding on the Guarantor or any of its assets;
- 9.4 it is not insolvent or in liquidation or administration or subject to any other insolvency procedure and no receiver, manager, trustee, custodian or analogous officer has been appointed in respect of any part of its property, undertaking or assets in any jurisdiction.

10 **Deferral of Guarantor's rights**

- 10.1 Insofar as any sums are payable (contingently or otherwise) by the Contractor to the Beneficiary under the Building Contract the Guarantor shall not exercise any right of set-off or counterclaim against the Contractor or any other person or prove in competition with the Beneficiary in respect of any payment by the Guarantor under this Guarantee. If the Guarantor receives any sums from the Contractor or any other person in respect of any payment of the Guarantor under this Guarantee the Guarantor shall hold such monies in trust for the Beneficiary so long as any sums are payable (contingently or otherwise) under this Guarantee.
- 10.2 The Guarantor will not, without the prior written consent of the Beneficiary, hold any security from the Contractor or any other person in respect of the Guarantor's liability under this Guarantee or in respect of any liability or other obligations of the Contractor to the Guarantor. The Guarantor will hold any security held by it in breach of this provision in trust for the Beneficiary.

11 **Additional security**

This Guarantee is in addition to and not in substitution for any present and future guarantee lien or other security held by the Beneficiary. The Beneficiary's rights under this Guarantee are in addition to and not exclusive of those provided by law.

12 **Interest on late payment**

If the Guarantor defaults in the payment when due of any sum payable under this Guarantee (whether determined by agreement or pursuant to an order of court or otherwise) its liability shall be increased to include interest on such sum from the date

when it is due for payment up to and including the date of actual payment (after as well as before judgement) at the rate of 5% above the bank rate from time to time of the Bank of England. Interest shall accrue on a daily basis and shall be compounded monthly.

13 **Invalidity of any of the terms of this Guarantee**

If any provision of this Guarantee is held by any competent authority to be invalid unlawful or unenforceable in whole or in part, the validity lawfulness and enforceability of the other provisions of this Guarantee and the remainder of the provision in question shall not be affected thereby.

14 **Assignment**

The Beneficiary shall be entitled to assign this Guarantee and/ or the benefit of it to a party to whom it has simultaneously assigned the benefit of the Building Contract in accordance with the terms of the Building Contract or to a person who has replaced the Beneficiary by the exercise of its right to step into the Building Contract, or that party's nominee.

15 **Notices**

15.1 Any notice to be given under this Guarantee shall be in writing and shall be deemed to be duly given if delivered in the case of a corporation to the parties' registered office for the time being or in any other case to the parties' principal place of business.

15.2 Notices shall be delivered by:

15.2.1 hand delivery; or

15.2.2 pre-paid registered or recorded delivery mail; or

15.2.3 facsimile transmission (transmitted before 4.00 pm on a working day) and confirmed by first class pre paid post.

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

15.3.1 hand delivery on the date of delivery;

15.3.2 pre-paid registered or recorded delivery mail on the second working day after the notice of communication is posted;

15.3.3 facsimile transmission sent in accordance with clause 15.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

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

The parties hereby confirm that nothing in this Guarantee shall confer on any person any right to enforce any term of this Guarantee which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

17 **Limitation**

The Beneficiary may not start proceedings against the Guarantor under this Guarantee in respect of any claim if any proceedings against the Contractor in respect of that claim would be statute-barred.

18 **Law and jurisdiction**

This Guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts. Nothing in this clause shall affect the ability of the Beneficiary to enforce any judgement against the Guarantor in any jurisdiction.

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

[INSERT THE APPROPRIATE EXECUTION AS DEED PROVISIONS FROM APPENDIX 8]

Appendix 10

Data Protection (referred to in clause 2.46 and 2.46A)

- 1 For the avoidance of doubt the Processing to take place for the purposes of this Agreement shall include the following types of Personal Data and categories of data of any Occupiers:
 - 1.1 subject's name;
 - 1.2 subject's home address; and
 - 1.3 subject's home, mobile and email address contact details (together the **Shared Personal Data**).
- 2 The Contractor shall ensure that he shall at all times during the period of this Agreement comply with the provisions and obligations imposed by the Data Protection Legislation and shall indemnify the Employer and keep the Employer indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) whatsoever in respect of any breach of clause 2.46, 2.46A or this Appendix 10 which causes the Employer to be in receipt of any actions, claims, demands, proceedings and/or incur any damages, costs, charges and/or expenses (including reasonable legal expenses).
- 3 The Contractor warrants and represents that he has obtained all necessary registrations, notifications and consents required by the Data Protection Legislation to Process the Shared Personal Data for the purposes of performing its obligations under this Agreement.
- 4 The Contractor shall ensure that, to the extent that he and/or any of his employees, agents or officers receives, has access to and/or is required to store and Process Personal Data in connection with this Agreement, he shall comply with the provisions and obligations imposed on him by the Data Protection Legislation.
- 5 The Employer shall:
 - 5.1 act in the capacity of Data Controller of Shared Personal Data Processed by the Contractor in the performance of the Works; and
 - 5.2 be responsible to third parties for such data, including the individuals to whom the data relates.
- 6 As Data Processor the Contractor shall at all times in respect of the Shared Personal Data:
 - 6.1 not engage another Data Processor without prior written authorisation from the Employer and ensuring compliance with any conditions attached to that consent;
 - 6.2 ensure that any sub-Processor approved by the Employer pursuant to clause 6.1 of this Appendix 10 is bound by terms no less onerous than this Appendix 10 and where the sub-Processor fails to fulfil its obligations, the Contractor shall remain fully liable to the Employer for the performance of those obligations;
 - 6.3 process Shared Personal Data only to the extent and in such a manner as is necessary for the Works and/or the performance of the Contractor's obligations under this Agreement or as otherwise permitted by the Employer in writing;

- 6.4 in the event that the Contractor is under a legal obligation to process the Shared Personal Data outside of the terms of this Agreement, he shall notify the Employer of that legal requirement prior to processing unless the law prohibits this on important grounds of public interest;
- 6.5 implement appropriate technical and organisational measures to protect the Shared Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;
- 6.6 not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of the Employer, ensuring compliance with any conditions attached to that consent;
- 6.7 not disclose the Shared Personal Data to any third parties in any circumstances other than with the written consent of the Employer or in compliance with a legal obligation, save that the Contractor shall be entitled to disclose the Shared Personal Data to employees agents or officers to whom such disclosure is reasonably necessary in order for the Contractor to perform his obligations under this Agreement or to the extent required under a court order, subject always to compliance with clause 10 of this Appendix 10;
- 6.8 co-operate with the Employer and ensure the Contractor has appropriate technical and organisation measures in place to assist the Employer to comply with any request exercising the Data Subject's Rights;
- 6.9 co-operate with the Employer in respect of and contribute to any data protection impact assessments undertaken by the Employer in relation to the processing of the Shared Personal Data pursuant to this Agreement; and
- 6.10 notify the Employer within two (2) Business Days if he receives a request from a Data Subject to exercise the Data Subject's Rights or a complaint or request relating to the Employer's obligations under the Data Protection Legislation and take no further steps in relation to the same until such time that he receives written instructions to do so from the Employer.
- 7 Where the Employer requests data from the Contractor for the purpose of complying with the Data Subject's Rights, the Contractor will retrieve the relevant data and provide a full copy of such to the Employer as soon as is possible but in any event within three (3) Business Days of such a request being made.
- 8 The Employer shall on giving reasonable notice to the Contractor be entitled to request that the Contractor provides evidence of his compliance with this Appendix 10 and/or audit the procedures of the Contractor (which shall include the right to enter the Contractor's premises and/or view the Contractor's systems) for the purposes of ensuring compliance with this Appendix 10 and the Data Protection Legislation and to take any reasonable steps to satisfy himself that the Contractor is so complying.
- 9 The Contractor shall at the Employer's request from time to time prepare a report as to the Contractor's technical and organisational procedures in place to protect the Shared Personal Data.
- 10 In respect of any employees, agents or officers of the Contractor who are provided with access to Shared Personal Data for the purposes of this Agreement, the Contractor shall take such steps as regards to those persons which shall include but not be limited to:

- 10.1 taking reasonable steps to ensure the reliability of such persons;
 - 10.2 ensuring such persons are informed of the confidential nature of the Shared Personal Data and are under an obligation of confidentiality in relation to the same;
 - 10.3 have undertaken training in the law relating to the handling of Personal Data; and
 - 10.4 are aware of their obligations and those of the Employer and Contractor under the Data Protection Legislation and this Agreement.
- 11 In the event that the Contractor becomes aware of any unauthorised or unlawful Processing, accidental alteration, loss, destruction or disclosure of, or damage or access to the Shared Personal Data the Contractor shall:
- 11.1 record the details of the suspected incident in a security incident log and undertake an initial investigation immediately into the suspected incident;
 - 11.2 promptly, and within no later than 24 hours of becoming aware of the event, give written notice to the Employer with full details of such contravention and take no further steps in relation to the same until such time that he receives written instructions to do so from the Employer;
 - 11.3 fully co-operate with the Employer in the course of any investigation undertaken by the Employer and any subsequent corrective actions arising therefrom, including any report to and investigation by the Information Commissioner's Office and/or notification to any affected individuals; and
 - 11.4 implement any measure necessary to restore the security and integrity of any compromised Personal Data.
- 12 The Contractor shall co-operate and provide reasonable assistance with any proceedings or inquiry by the Employer, an affected data subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with Personal Data processed under this Agreement.
- 13 The Contractor shall on termination or expiry of this Agreement or at such time that the Contractor no longer requires access to the Shared Personal Data for the purposes of performing its obligations under this Agreement and at the request of the Employer either securely return to the Employer or securely destroy the Shared Personal Data Processed under this Agreement (and all copies of such data) in the Contractor's possession or as otherwise directed by the Employer.

The provisions of Appendix 10 shall apply during the continuance of the Contract and after its termination.

Appendix 11
Form of novation
Part 1

Novation agreement

dated

Parties

- (1) [■] (registered number: [■]) whose registered office address is [■] (the **Employer**);
- (2) [■] (registered number: [■]) whose registered office address is [■] (the **Substitute Employer**);
- (3) [■] (registered number: [■]) whose registered office address is [■] (the **Consultant**).

Introduction

- (A) The Employer has appointed the Consultant to provide [■] services (the **Services**) by an agreement dated [■] (the **Appointment**) in respect of a development at [■] (the **Project**).
- (B) The Substitute Employer has an interest in the Project and wishes to appoint the Consultant to carry out the Services.
- (C) The Employer, Consultant and Substitute Employer have agreed that from the date of this agreement the Substitute Employer shall assume the obligations of the Employer and that the Consultant shall perform its obligations under the Appointment in favour of the Substitute Employer and that the Employer and the Consultant shall subject to the terms of this agreement, each release the other from any obligations owed by the other to them under the Appointment.

Agreed terms

1 **Novation**

- 1.1 The Employer hereby releases and discharges the Consultant from any and all claims, obligations and liabilities owed to the Employer under the Appointment.
- 1.2 The Consultant undertakes to perform the Appointment and to be bound by its terms in every way as if the Substitute Employer were, and had been from the inception, a party to the Appointment in lieu of the Employer.
- 1.3 The Consultant hereby releases and discharges the Employer from any and all obligations and liabilities owed to the Consultant under the Appointment and accepts the liability of the Substitute Employer under the Appointment in lieu of the liability of the Employer.
- 1.4 Without prejudice to clause 1.2, the Consultant warrants to the Substitute Employer that it shall be liable for any reasonably foreseeable and properly mitigated loss or damage suffered or incurred by the Substitute Employer arising out of any negligent act, default or breach by the Consultant in the performance of its obligations under the Appointment (whether or not notified or complained of) prior to the date of this agreement. Subject to any limitation of liability in the Appointment, the Consultant shall be liable for such loss or damage notwithstanding that such loss or damage would not have been suffered or incurred by the Employer (or suffered or incurred to the same extent by the Employer).

1.5 The Consultant acknowledges that all fees and expenses properly due to the Consultant under the Appointment up to the date of this agreement have been paid by the Employer.

1.6 The Substitute Employer undertakes to perform the Appointment and to be bound by its terms in every way as if the Substitute Employer were, and had been from the inception, a party to the appointment in lieu of the Employer.

2 **Proper law and jurisdiction**

This agreement and the rights and obligations of the parties hereto shall be governed and construed according to English Law. Any dispute shall be subject to the jurisdiction of the English Courts save for the purposes of enforcement of any award.

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

Save for any third party rights granted under the Appointment, nothing in this agreement is intended to confer on any person any right to enforce any of the provisions of this agreement which such person would not have had, but for the Contract (Rights of Third Parties) Act 1999.

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

[INSERT THE APPROPRIATE EXECUTION AS DEED PROVISIONS FROM APPENDIX 8]

Form of novation

Part 2

Novation agreement

dated

Parties

- (1) [■] (registered number: [■]) whose registered office address is [■] (the **Employer**);
- (2) [■] (registered number: [■]) whose registered office address is [■] (the **Substitute Employer**);
- (3) [■] (registered number: [■]) whose registered office address is [■] (the **Sub-Contractor**).

Introduction

- (A) The Employer has appointed the Sub-Contractor to provide [■] supply, design and installation works relating to modular off site prefabricated works (the **Works**) by an agreement dated [■] (the **Sub-Contract**) in respect of a development at [■] (the **Project**).
- (B) The Substitute Employer has an interest in the Project and wishes to appoint the Sub-Contractor to carry out the Services.
- (C) The Employer, Sub-Contractor and Substitute Employer have agreed that from the date of this agreement the Substitute Employer shall assume the obligations of the Employer and that the Sub-Contractor shall perform its obligations under the Sub-Contract in favour of the Substitute Employer and that the Employer and the Sub-Contractor shall subject to the terms of this agreement, each release the other from any obligations owed by the other to them under the Sub-Contract.

Agreed terms

1 **Novation**

- 1.1 The Employer hereby releases and discharges the Sub-Contractor from any and all claims, obligations and liabilities owed to the Employer under the Sub-Contract.
- 1.2 The Sub-Contractor undertakes to perform the Sub-Contract and to be bound by its terms in every way as if the Substitute Employer were, and had been from the inception, a party to the Sub-Contract in lieu of the Employer.
- 1.3 The Sub-Contractor hereby releases and discharges the Employer from any and all obligations and liabilities owed to the Sub-Contractor under the Sub-Contract and accepts the liability of the Substitute Employer under the Sub-Contract in lieu of the liability of the Employer.
- 1.4 Without prejudice to clause 1.2, the Sub-Contractor warrants to the Substitute Employer that it shall be liable for any reasonably foreseeable and properly mitigated loss or damage suffered or incurred by the Substitute Employer arising out of any negligent act, default or breach by the Sub-Contractor in the performance of its obligations under the Sub-Contract (whether or not notified or complained of) prior to the date of this agreement. Subject to

any limitation of liability in the Sub-Contract, the Sub-Contractor shall be liable for such loss or damage notwithstanding that such loss or damage would not have been suffered or incurred by the Employer (or suffered or incurred to the same extent by the Employer).

1.5 The Sub-Contractor acknowledges that all fees and expenses properly due to the Sub-Contractor under the Sub-Contract up to the date of this agreement have been paid by the Employer.

1.6 The Substitute Employer undertakes to perform the Sub-Contract and to be bound by its terms in every way as if the Substitute Employer were, and had been from the inception, a party to the Sub-Contract in lieu of the Employer.

2 Proper law and jurisdiction

This agreement and the rights and obligations of the parties hereto shall be governed and construed according to English Law. Any dispute shall be subject to the jurisdiction of the English Courts save for the purposes of enforcement of any award.

3 Contracts (Rights of Third Parties) Act 1999

Save for any third party rights granted under the Appointment, nothing in this agreement is intended to confer on any person any right to enforce any of the provisions of this agreement which such person would not have had, but for the Contract (Rights of Third Parties) Act 1999.

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

[INSERT THE APPROPRIATE EXECUTION AS DEED PROVISIONS FROM APPENDIX 8]

Appendix 12
MMC Sub-Contractor Direct Agreement

MMC Sub-Contractor Direct Agreement

dated [■] 20[■]

Parties

- (1) [■] (CRN:[■]) whose registered office is at [■] (the **MMC Sub-Contractor**) of the first part;
- (2) [■] (CRN:[■]) whose registered office is at [■] (hereinafter called the **Contractor**) of the second part; and
- (3) [■] (CRN:[■]) whose registered office is situated at [■] (the **Employer**, which expression shall include its permitted assigns) of the third part.

Introduction

- (A) The Contractor has been appointed as contractor by the Employer in connection with [■] (the **Works**) at [■] (the **Site**) in terms of a building contract (the **Main Contract**);
- (B) The MMC Sub-Contractor has been appointed by the Contractor in terms of a sub-contract (the **MMC Sub-Contract**) in connection with the following part of the Works: [■] (the **MMC Sub-Contract Works**);
- (C) The MMC Sub-Contractor and the Contractor are required to enter into this Direct Agreement pursuant to the terms of the MMC Sub-Contract and the Main Contract respectively.

In consideration of the payment of ten pounds (£10.00) by the Employer to the MMC Sub-Contractor and the Contractor, receipt of which the MMC Sub-Contractor and the Contractor hereby acknowledge, it is agreed as follows:

1 Duty of care

- 1.1 The MMC Sub-Contractor hereby confirms and warrants to the Employer that it has complied with and shall continue to comply with the terms of the MMC Sub-Contract and that, without prejudice to the foregoing, the MMC Sub-Contractor has:
 - 1.1.1 exercised and will continue to exercise, in the execution of the MMC Sub-Contract Works, the reasonable skill, care and diligence expected of a competent contractor experienced in executing works of a similar size, scope and nature to the MMC Sub-Contract Works forming part of works of a similar size, scope and nature to the Works; and
 - 1.1.2 exercised and will continue to exercise, in the design of the MMC Sub-Contract Works, the reasonable skill, care and diligence expected of competent and properly qualified persons of the relevant disciplines who are experienced in designing works of a similar size, scope and complexity to the MMC Sub-Contract Works forming part of works of a similar size, scope and complexity to the Works.

1.2 The MMC Sub-Contractor acknowledges to the Employer that its obligations pursuant to this Agreement shall not be diminished by (a) the appointment of any person by the Employer to carry out any independent enquiry into any relevant matter or (b) the failure of the Employer to appoint any person or to carry out itself any enquiry into any relevant matter.

1.3 Notwithstanding the terms of the MMC Sub-Contract, the other terms of this Agreement, completion of the MMC Sub-Contract Works or the issue of any certificate in respect thereof, the obligations contained in this Agreement shall continue to subsist and shall not be reduced or diminished thereby **provided always that** the Employer hereby agrees that the MMC Sub-Contractor shall not be liable in respect of any action or proceedings for any breach of this Agreement commenced against the MMC Sub-Contractor by the Employer after the expiry of twelve years from the date of practical completion of the Works (the **Expiry Date**).

2 **Materials**

The MMC Sub-Contractor hereby confirms and warrants to the Employer that it has not and will not use or permit to be used in connection with the MMC Sub-Contract Works materials which are not in accordance with British Standards and Codes of Practice or EU equivalents and the version of the British Council of Offices Report entitled "Good Practice in the Selection of Construction Materials" current at the time of their use.

3 **Copyright**

3.1 The copyright in all valuations, details, drawings, specifications, schedules, reports, calculations and other documents prepared by the MMC Sub-Contractor in connection with the MMC Sub-Contract Works (the **MMC Sub-Contractor's Design Documents**) shall remain vested in the MMC Sub-Contractor, and the MMC Sub-Contractor hereby grants to the Employer an irrevocable, royalty-free, non-exclusive licence to copy, use and reproduce the MMC Sub-Contractor's Design Documents and the designs contained within them for any purpose related to the Employer's interest in the Site and/or the Works or part thereof. Such licence shall enable the Employer to copy and use the MMC Sub-Contractor's Design Documents for the extension of the Works but such use shall not include a licence to reproduce the designs contained in them for any extension of the Works. The MMC Sub-Contractor hereby consents to the Employer granting sub-licences in the same terms as the said licence being granted to the Employer hereunder to any third party acquiring an interest in the Site and/or the Works or part thereof. The Employer hereby agrees that the MMC Sub-Contractor shall not be liable for any use by the Employer or its licensees of the MMC Sub-Contractor's Design Documents for any purpose other than that for which they were prepared.

3.2 The MMC Sub-Contractor undertakes to the Employer to provide at any time to the Employer such copies of the MMC Sub-Contractor's Design Documents as the Employer may reasonably require and in such format and medium as the Employer may reasonably require, on payment of the MMC Sub-Contractor's reasonable and proper copying costs.

4 **Professional indemnity insurance**

4.1 The MMC Sub-Contractor confirms and warrants that it holds and will maintain professional indemnity insurance at all times for a period equivalent to the period for which the MMC Sub-Contractor is liable under this warranty pursuant to clause 17 in an amount not less

than [*Insert level of PI Insurance*] (£[■]) in the annual aggregate with insurers authorised to carry on general insurance business (including the provision of general liability cover) in the United Kingdom who have an office in the United Kingdom, provided always that such insurance is available in the open market at commercially reasonable rates and terms.

- 4.2 If the amount of professional indemnity insurance cover referred to in clause 4.1 ceases to be available in the open market at commercially reasonable rates and terms, the MMC Sub-Contractor shall effect such insurance in such lesser amount that is so available and shall notify the Employer accordingly.
- 4.3 As and when reasonably requested to do so by the Employer, the MMC Sub-Contractor shall produce documentary evidence that such insurance is being maintained in accordance with the provisions of this clause 4.

5 **Assignment**

The benefits of this Agreement and any rights arising hereunder may be assigned on two occasions only, without consent of the MMC Sub-Contractor being required, and such assignment shall be effective upon written notice thereof being given to the MMC Sub-Contractor. No further assignment of this Agreement or any rights arising hereunder shall be permitted.

6 **Step-in rights**

- 6.1 The MMC Sub-Contractor shall not without first giving the Employer not less than twenty one (21) days written notice (confirming the MMC Sub-Contractor's intention and the grounds for doing so) exercise or seek to exercise any rights the MMC Sub-Contractor may have to determine its employment under the Sub-Contract or treat it as having been determined by the Contractor (which expression in this clause 6 shall include a permitted assignee, liquidator, receiver, administrator, administrative receiver or manager of the Contractor) or to discontinue performance of any service or obligation thereunder. For the avoidance of doubt, suspension of the performance of the MMC Sub-Contractor's obligations (in whole or in part) pursuant to Section 112 of the Housing Grants, Construction and Regeneration Act 1996 shall not constitute discontinuance of the performance of any obligation under the MMC Sub-Contract for the purposes of this clause 6 but the MMC Sub-Contractor agrees to notify the Employer at the same time as notifying the Contractor of the MMC Sub-Contractor's intention to suspend its obligations (in whole or in part) pursuant to the aforementioned Act.
- 6.2 The MMC Sub-Contractor acknowledges that their right to determine their employment under the Sub-Contract or treat it as determined by the Contractor or to discontinue performance as aforesaid shall cease if within the said period of twenty one (21) days referred to in clause 6.1 hereof:
- 6.2.1 the Employer gives the MMC Sub-Contractor written notice requiring the MMC Sub-Contractor to fulfil the terms of the MMC Sub-Contract as if it or its nominees and not the Contractor were the employers under the MMC Sub-Contract; and
- 6.2.2 the Employer acknowledges in such notice that it or its nominees are assuming all of the rights and obligations of the Contractor under the MMC Sub-Contract in lieu of the Contractor, including without prejudice to the foregoing generality

the obligation to make payment of any sums due at the date of the notice or which may subsequently become due under the MMC Sub-Contract and in respect of which a valid payment or pay less notice has not been or is not issued.

- 6.3 Notwithstanding that as between the MMC Sub-Contractor and the Contractor a right of determination of its employment under the Contract by the MMC Sub-Contractor may not have arisen, the provisions of clause 6.4 hereof shall apply nonetheless if the Employer gives the MMC Sub-Contractor written notice (a copy of which shall be sent to the Contractor) to the effect that the Contractor is in breach of its obligations to the Employer under the Main Contract and provided that the Employer complies with the requirements on the Employer's part under clauses 6.2.1 and 6.2.2 hereof as part of such notice.
- 6.4 In the event of notice being given by the Employer in accordance with the provisions of clause 6.2 and/or clause 6.3, the MMC Sub-Contract will continue in full force and effect as if no right to determine the MCC Sub-Contract or treat it as determined had arisen. The MMC Sub-Contractor shall, where the Employer has given notice under clause 6.2 and/or clause 6.3 hereof, assume liability to the Employer or their nominees in terms of the MMC Sub-Contract in lieu of the liability to the Contractor.
- 6.5 Without prejudice to clauses 6.1 to 6.4 above, the MMC Sub-Contractor shall notify the Employer of the determination of its employment under the MMC Sub-Contract on the date that it is determined. The MMC Sub-Contractor shall also, if so required by the Employer following determination of its employment under the MMC Sub-Contract, contract direct with the Employer or its nominees by novation or otherwise on the same terms, mutatis mutandis, as are contained in the MMC Sub-Contract but with such revisions as the Employer shall reasonably require to reflect the altered circumstances provided that the Employer gives the MMC Sub-Contractor written notice requiring the MMC Sub-Contractor to do so within a period of twenty one (21) days from the date of determination of its employment under the MMC Sub-Contract.
- 6.6 In the event that any funders of the Works exercise rights similar to those that the Employer may exercise under this clause 6, the MMC Sub-Contractor shall comply with the notice given by the funders and not that given by the Employer.
- 6.7 The Contractor, by its execution hereof, acknowledges that the MMC Sub-Contractor in acting in accordance with clause 6 shall not by doing so incur any liability to the Contractor.

7 **Direct payments by the Employer to the MMC Sub-Contractor**

7.1 In this clause 7, the following definitions shall apply:

7.1.1 **Direct Payment** means the payment of any sums by the Employer (as payment under the Main Contract) which is made to the MMC Sub-Contractor, being equal to sums due to the MMC Sub-Contractor from the Contractor under the MMC Sub-Contract;

7.1.2 **Direct Payment Notice** means a notice from the Employer to the Contractor and the MMC Sub-Contractor informing the Contractor and the MMC Sub-Contractor that the Employer intends to make a Direct Payment. Such notice may be served by email by the Employer to any recognised email address of

the Contractor and the MMC Sub-Contractor and shall take effect upon its transmittal by the Employer.

7.2 The MMC Sub-Contractor acknowledges and agrees that:

- 7.2.1 The Main Contract permits the Employer to make Direct Payments to the MMC Sub-Contractor in accordance with Schedule 8 of the Main Contract;
- 7.2.2 Following the service of a Direct Payment Notice, the Employer may elect to make a Direct Payment;
- 7.2.3 The MMC Sub-Contractor shall accept any such Direct Payment and for all purposes this shall be a payment from the Contractor in accordance with the MMC Sub-Contract, which the MMC Sub-Contractor shall give proper credit for under the terms of the MMC Sub-Contract;
- 7.2.4 The Employer shall have no liability to the MMC Sub-Contractor whatsoever arising out of or in connection with the making of a Direct Payment;
- 7.2.5 The Employer may serve more than one Direct Payment Notice and consequently may make more than one Direct Payment;
- 7.2.6 The Employer is not obliged to make Direct Payment of any or the entire amount that may be due to the MMC Sub-Contractor from time to time and the Employer may make partial Direct Payments of sums due.

7.3 By entering into this Agreement, the MMC Sub-Contractor undertakes to:

- 7.3.1 Immediately return any Direct Payments (in whole or in part, as applicable) to the Employer in the event that the amount of the Direct Payment (either in whole or in part) is not due for payment under the MMC Sub-Contract including (without limitation) where the Contractor has settled (either in whole or in part) sums due under the MMC Sub-Contract before the Employer has made a Direct Payment;
- 7.3.2 Provide all assistance, cooperation, documents and information (including attending meetings with the Employer) to discuss the possibility of the Employer making Direct Payments to the MMC Sub-Contractor. A non-exclusive list of such documents and information includes: a copy of the MMC Sub-Contract (and any variations to it), payment notices or certifications issued under the MMC Sub-Contract, notices and correspondence, manuals, test certificates, guarantees, vesting certificates, other deliverables under the MMC Sub-Contract, an account of payments made and outstanding to the MMC Sub-Contractor and any other design, operating and maintenance and health and safety information in connection with the MMC Sub-Contract Works.

8 **Information, access and assistance**

8.1 The MMC Sub-Contractor shall procure that the Employer is permitted access on reasonable notice to the place where any elements of the MMC Sub-Contract Works are being fabricated and / or tested for the purposes of inspecting the quality, quantity and progress

of the MMC Sub-Contract Works, including for the purposes of assessing any application for payment, valuation of the Works or vesting of materials.

8.2 If at any time the MMC Sub-Contractor falls behind, or the MMC Sub-Contractor anticipates that it will fall behind, the programme for the MMC Sub-Contract Works, then it shall notify the Employer of such delay as soon as reasonably practicable and will set out its proposals for recovering such delay.

8.3 Whenever the MMC Sub-Contractor intends to undertake a pre-installation test on any element of the MMC Sub-Contract Works, the MMC Sub-Contractor shall give the Employer 7 days written notice of such test and if so required by the Employer, the MMC Sub-Contractor shall procure access for the Employer to witness such tests and thereafter receive the results of those tests.

9 **Late or missed payments under the MMC Sub-Contract**

The MMC Sub-Contractor shall forthwith notify the Employer each and every time a payment that is due under the MMC Sub-Contract is not made by the Contractor by the relevant final date for payment.

10 **Vesting of materials**

The MMC Sub-Contractor acknowledges that as a condition of payment by the Employer to the Contractor in respect of materials off-site, the Employer may require the Contractor to procure a Vesting Certificate in the form at Appendix 6 of the Main Contract which the MMC Sub-Contractor is required to be a party to.

11 **Notices**

11.1 All notices under this Agreement shall be in writing and shall be served by sending the same by first class post or by hand, leaving the same at:

11.1.1 In the case of the Employer, at [■];

11.1.2 In the case of the MMC Sub-Contractor, at [■];

11.1.3 In the case of the Contractor, at [■].

11.2 Notices shall be effective:

11.2.1 by post, upon the earlier of actual receipt and two (2) Business Days after mailing, or

11.2.2 by hand, upon delivery.

11.3 Notices not served in accordance with this clause 8 shall not be valid.

12 **Third Party Rights**

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

13 **Counterparts**

This Agreement 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.

14 **Waiver**

Failure by any party at any time to enforce any provision of this Agreement or to require performance by the other parties of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

15 **Severability**

If any condition, any clause or provision of this Agreement not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby.

16 **Amendments**

No amendment to this Agreement shall be binding unless in writing and signed by the duly authorised representatives of the parties.

17 **Limitation Period**

Without prejudice to any action or proceedings that arise from a breach of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, it is acknowledged that whatever the manner in which the Parties have executed this Deed the period of limitations applicable to any claim or claims arising out of or in connection with this Deed shall be twelve (12) years from Practical Completion.

18 **Applicable Law and Jurisdiction**

The Parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English law. Each of the Parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

In witness whereof this document has been executed and, on the date set out above, delivered as a deed.

[INSERT THE APPROPRIATE EXECUTION AS DEED PROVISIONS FROM APPENDIX 8]

Appendix 13

Vesting Certificate for MMC materials

Vesting Certificate for MMC Materials

dated [■] 20[■]

Parties

- (1) [■] (registered number: [■]) whose registered office address is [■] (the **Employer**) and
- (2) [■] (registered number: [■]) whose registered office address is [■] (the **MMC Sub-Contractor**)
- (3) [■] (registered number: [■]) whose registered office address is [■] (the **Contractor**)

Background

- (A) Pursuant to a contract dated [■] entered into by the Employer and the Contractor in (the **Main Contract**), the Contractor has agreed to carry out the Works as more particularly described in the Main Contract.
- (B) The MMC Sub-Contractor has been appointed by the Contractor to design and build the MMC Sub-Contract Works.
- (C) In accordance with the Main Contract, the Contractor will be paid for certain MMC Materials before their delivery to the Site.
- (D) As a condition of such payment, the Contractor is required to provide this Vesting Certificate confirming, amongst other things, that the MMC Sub-Contractor has vested the MMC Materials in the Contractor and in turn the Contractor has vested the MMC Materials in the Employer.
- (E) This Deed is supplemental to the Main Contract and the MMC Sub-Contract.

Definitions

Capitalised terms used in this Deed shall have the meaning given to them in the Contract unless otherwise defined herein.

In this Deed, unless the context requires otherwise:

Insolvency means an event or arrangement falling within the definition of 'Insolvent' as set out in clause 8.1 of the Main Contract;

MMC Materials means those materials described in the Schedule of Off-Site MMC Materials attached hereto;

Payment Notice means a payment notice to be issued by the Employer pursuant to clause 4.7 of the Contract;

Schedule of Off-Site MMC Materials means the schedule to this Deed listing the quantity, description and value of the MMC Materials that are off-site and in respect of which payment is claimed by the Contractor.

Operative Clauses:

- 1 In consideration of the agreement of the Employer to include in the next Payment Notice for interim payment number [■] the sum of [■] (£[■]) the Contractor and MMC Sub-Contractor warrants and undertake to the Employer as follows:
 - 1.1 the MMC Materials have been manufactured, or, in circumstances where the payment described clause 1 above is in respect of a deposit or similar advance payment before the MMC Materials have been manufactured, then the MMC Materials will, after receipt of the payment, be manufactured in accordance with the MMC Sub-Contract;
 - 1.2 the MMC Materials are intended for incorporation in the MMC Sub-Contract Works, which in turn form part of the Works;
 - 1.3 the MMC Materials have been (or will be upon their manufacture) set apart and stored at the premises described in the Schedule of Off-Site MMC Materials and have been (or will be upon their manufacture) clearly and visibly marked as follows: **"These materials are for use at [■]"** or shall otherwise be identified to the satisfaction of the Employer;
 - 1.4 upon their manufacture, the title in the MMC Materials is vested absolutely in the Contractor and the MMC Materials are free from all encumbrances and charges and the Contractor is able to pass title in the MMC Materials absolutely. On request by the Employer, documentary evidence shall be provided by the MMC Sub-Contractor and the Contractor to the Employer that the title in the MMC Materials is vested in the Contractor;
 - 1.5 subject to clause 1.4, title in the MMC Materials shall unconditionally vest in the Employer upon receipt of the interim payment by the Contractor as described in Clause 1. Thereafter, the MMC Materials shall be in the possession of the MMC Sub-Contractor and the Contractor for the sole purpose of completing any necessary designs or works in respect of the MMC Materials and thereafter delivering them to the Employer in accordance with the Main Contract;
 - 1.6 the MMC Sub-Contractor and the Contractor consider the MMC Materials to be (or will be upon their manufacture) in every respect in accordance with the requirements of the Main Contract and the MMC Sub-Contract;
 - 1.7 the MMC Materials or any place of proposed manufacture can be inspected, at any time upon reasonable notice issued to the Contractor and the MMC Sub-Contractor, by the Employer and/or the duly authorised agents of any of them in accordance with and to the extent provided for by any relevant provisions of the Main Contract;
 - 1.8 in the event of the Insolvency of the Contractor or the MMC Sub-Contractor, then the Employer and/or the duly authorised agents of any of them shall be entitled to enter any of the premises where any MMC Materials are stored with or without equipment and/or vehicles and shall have the right to remove such MMC Materials and can recover the costs of doing so from the Contractor provided that they shall indemnify the MMC Sub-Contractor and the Contractor for any damage caused to property in the course of exercising such right of entry. The Contractor and the MMC Sub-Contractor shall procure such entry for such persons and/or equipment and/or vehicles into any such premises;
 - 1.9 the MMC Sub-Contractor and the Contractor shall not, except for use in the Works, remove or cause or permit the MMC Materials to be moved or removed from the premises

named in the Schedule of Off-Site MMC Materials without the Employer's prior written consent.

- 2 Nothing contained in this Deed or any payment that may be made to the Contractor in respect of the MMC Materials shall be taken as any approval by the Employer that the MMC Materials are in accordance with the Main Contract.
- 3 Neither the Contractor, the MMC Sub-Contractor nor any other person shall have a lien on the MMC Materials which have been vested in the Employer under this Deed for any sum due to the Contractor, the MMC Sub-Contractor or other person, and the MMC Sub-Contractor and the Contractor shall take all steps as may be necessary to ensure that the Employer's title and the exclusion of any such lien are brought to the notice of any other person dealing with such MMC Materials.
- 4 Upon the termination of the employment of the Contractor under the Main Contract (howsoever arising), where required in writing by the Employer from time to time, the MMC Sub-Contractor and the Contractor shall procure the delivery to the Employer of any MMC Materials the title of which has been vested in the Employer by virtue of clause 1.5 of this Deed and if the Contractor or the MMC Sub-Contractor shall fail to do so, the Employer shall be entitled to enter any of the premises where the MMC Materials are stored with or without equipment and/or vehicles and shall have the right to remove such MMC Materials and can recover the costs of doing so from the Contractor provided that the Employer shall indemnify the Contractor and the MMC Sub-Contractor for any damage caused to the property in the course of exercising such right of entry. The MMC Sub-Contractor and the Contractor shall procure entry for the Employer and/or any equipment and/or vehicles into any such premises for such purposes.
- 5 Payments to be made under this Deed by the Employer to the Contractor shall be made subject to receipt by the Employer of this Deed, duly executed by the Contractor and the MMC Sub-Contractor.
- 6 Subject to clause 7 below, the Contractor shall indemnify the Employer from and against any loss or damage or destruction of the MMC Materials howsoever arising prior to the MMC Materials being delivered to the Site.
- 7 The Contractor's liability under this Deed:
 - 7.1 shall not exceed the costs of the MMC Materials and any costs reasonably and properly incurred by the Employer in relation to enforcing the terms of this Deed;
 - 7.2 shall count towards the Contractor's liability under the Main Contract for the purposes of any limitations thereon; and
 - 7.3 shall not increase the Contractor's liability under the Main Contract.
- 8 The MMC Sub-Contractor's liability under this Deed:
 - 8.1 shall not exceed the costs of the MMC Materials and any costs reasonably and properly incurred by the Employer in relation to enforcing the terms of this Deed;
 - 8.2 shall count towards the MMC Sub-Contractor's liability under the MMC Sub-Contract for the purposes of any limitations thereon; and

8.3 shall not increase the MMC Sub-Contractor's liability under the MMC Sub-Contract.

9 This Deed is subject to English law and exclusive jurisdiction of the Courts of England.

10 In the event of any conflict between the provisions of this Deed and the provisions of the Contract, the provisions of the Contract shall prevail.

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

[INSERT THE APPROPRIATE EXECUTION AS DEED PROVISIONS FROM APPENDIX 8]

Schedule of Off-Site MMC Materials

The following MMC Materials are held by: [■] at: [■]

Quantity	Description (including identifying marks)	Value
[■]	[■]	[■]
[■]	[■]	[■]

Appendix 14

(referred to in clause 2.1A)

1 Competency Regulations

- 1.1 The Contractor warrants to the Employer that it meets and shall continue to meet for the duration of the Works the Competency Requirements.
- 1.2 The Contractor has completed and returned to the Employer an assessment questionnaire to confirm that Contractor has sufficient skills, knowledge, experience and organisational capability to carry out its duties under the Competency Requirements. The Contractor further warrants that the assessment questionnaire is an accurate and complete representation of its skills, knowledge and experience and organisational capability to properly and competently perform the functions of a Dutyholder in relation to the Works.
- 1.3 The Employer confirms that it understands its obligations in respect of the Competency Requirements and has provided information to the other Dutyholders.
- 1.4 The Contractor shall include a warranty equivalent to that set out in paragraph 1.1 of this Appendix 14 in:
 - 1.4.1 each appointment of a sub-consultant; and
 - 1.4.2 in each sub-contract of a sub-contractor,entered into by the Contractor.
- 1.5 The Employer may at any point during the term of this Agreement require the Contractor to provide details and evidence of the professional qualifications of any persons employed on or appointed to carry out works or services in relation to the Works to ensure that the Contractor and any such persons comply with and continue to meet the Competency Requirements, and the Contractor agrees to provide all reasonable assistance to the Employer or its authorised inspectors as may be required from time to time to ensure compliance with this paragraph 1.3.
- 1.6 The Contractor shall notify the Employer as soon as reasonably practicable when there is any change in the organisational status or performance or professional accreditation of its employees or any individual or organisation performing works or services in relation to the Works that affects or could reasonably affect the Contractor's ability, or the ability of those persons or organisations, to meet the Competency Requirements.
- 1.7 If the Employer considers that any individual employed or appointed by the Contractor or any sub-consultant or sub-contractor does not meet the Competency Requirements then the Contractor shall at the Employer's direction replace or procure the replacement of such individual within a reasonable period.
- 1.8 The Contractor shall not and shall procure that any sub-consultant or sub-contractor shall not sub-contract any Dutyholder responsibilities to any third party.

2 **Provision of assistance and compliance**

- 2.1 Each Party undertakes to the other that it shall fulfil its respective responsibilities under the Building Safety Legislation including without limitation its responsibilities as Dutyholder or as the Accountable Person or otherwise, including without limitation the preparation of any construction control plan, fire emergency plans or building insurance certificate applications.
- 2.2 The Contractor shall (and shall procure that any sub-consultant, sub-contractor or supplier shall) at no cost to the Employer comply and cooperate with and provide all reasonable assistance to the Building Safety Regulator; building control; the Minister for Levelling Up, Housing and Communities; any person undertaking functions as the Accountable Person or Principal Accountable Person; and the Employer in respect of any matters falling within the scope of this Appendix 14, the Building Safety Legislation, or the Contractor's and any sub-consultant's or sub-contractor's functions as Dutyholders.
- 2.3 The Contractor shall (and shall procure that any sub-consultant, sub-contractor or supplier shall) at no cost to the Employer comply or cooperate with and provide all reasonable assistance to the Employer to allow the Employer to comply (as the case may be) with any requirements of the Building Safety Legislation to the extent that they apply to the Works.
- 2.4 The Contractor shall comply and shall procure that any sub-consultants and sub-contractors comply at no cost to the Employer with the requirements of any building safety plan and any Residents' Engagement Strategy.
- 2.5 The Contractor shall at no cost to the Employer provide all reasonable assistance and supply such information and documentation to the Employer in a timely manner (and in any event to ensure compliance with any timescales required under the Building Safety Legislation) following any written request submitted by the Employer as is reasonably required in relation to the Works in order to satisfy the requirements of the Building Safety Legislation and/or the Building Safety Regulator, including for the avoidance of doubt in order to allow the Employer to comply with its future obligations as an Accountable Person under Part 4 of the Building Safety Legislation when the relevant provisions come into force.
- 2.6 The Contractor shall:
- 2.6.1 comply with any Compliance Notice or any Urgent Action Notice (each as defined in the Building Safety Legislation) issued by the Building Safety Regulator and/or provide all reasonable assistance to the Employer in complying with any such notice subject always to any right to appeal the Building Safety Regulator's decision; and
 - 2.6.2 notify the Employer if it becomes aware of anything that is or could be:
 - (a) a contravention of any Compliance Notice or Urgent Action Notice;
 - (b) a contravention of the Building Safety Legislation; or
 - (c) a contravention of the Building Safety Legislation where occupation or use of the Works without the contravention being remedied would be likely to present a risk of serious harm to people on or about the Works.

- 2.7 The Contractor shall procure that each sub-consultant, sub-contractor or supplier provides all reasonable assistance and supplies such information and documentation to the Employer at no cost to the Employer in a timely manner (and in any event to ensure compliance with any timescales required under the Building Safety Legislation) following any written request submitted by the Employer as is reasonably required in respect of any Building Control Applications or any registration requirements or any inspections (time being of the essence) relating to any Higher-Risk Buildings comprising the Works in order to satisfy the requirements of the Building Safety Legislation and/or the Building Safety Regulator.

3 Provision of information

- 3.1 In addition to its obligations under paragraph 2.1 of this Appendix 14, the Contractor shall (and shall procure that each sub-consultant, sub-contractor and supplier shall) share and supply (at no cost to the Employer) in a digital format reasonably accessible to the Employer (and for the avoidance of doubt, in such a format that complies with any requirements set out in the Employer's Requirements) in a timely manner (and in any event to ensure compliance with any timescales required under the Building Safety Legislation) all information and documents (including without limitation any notices, certificates, plans, drawings, specifications, orders, consents, demands, and documents relating to any Building Control Applications, construction control plans, and fire emergency plans) required by or in connection with the Building Safety Legislation.
- 3.2 In complying with its obligations under paragraph 3.1 of this Appendix 14 the Contractor shall where required utilise any information exchange facility prescribed by the Building Safety Regulator for the exchange of any relevant information and/or documents which is required to satisfy any matters or obligations owed under the Building Safety Legislation.
- 3.3 The Contractor acknowledges and agrees that any documentation and/or information produced in connection with the Works and falling within the scope of the Building Safety Legislation may be provided to and retained by the Building Safety Regulator and made available on a public register.

4 Termination

- 4.1 In the event that the Contractor is at any time in material breach of any of its obligations set out in this Appendix 14 and the Contractor fails to remedy such breach within ten (10) Business Days from the date of notice from the Employer specifying the relevant breach, the Employer may terminate the Contractor's employment under this Contract by further notice to the Contractor with immediate effect and the provisions of clause 8.7 shall apply.

Appendix 15

Higher Risk Building Clauses

- 1 Where this Appendix 15 is stated to apply in the Contract Particulars, the following clauses shall be incorporated into the Contract.
- 2 Where the terms of this Appendix 15 conflict with the general conditions of the Contract, this Appendix 15 shall prevail.

Insert new defined terms in clause 1.1:

Insert: "Gateways Regulations : the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023.

Insert: "Higher-Risk Building: has the meaning set out in section 65 of the Building Safety Legislation 2022."

Insert new clause 2.1B:

"2.1B The Parties acknowledge that the Works or a Section(s) of the Works comprise a Higher-Risk Building and agree that:

2.1B.1 the Contractor shall be responsible for applying for and obtaining the completion certificate from the Building Safety Regulator for the Works or the relevant Section pursuant to section 44 of the Gateways Regulations or (as the case may be) the partial completion certificate pursuant to section 45 of the Gateways Regulations and for compiling and coordinating all information required for such application in accordance with section 40 of the Gateways Regulations or (as the case may be) for such partial completion certificate in compliance with section 45(2)-(4) of the Gateways Regulations, and all costs associated with such application and information shall be deemed to be include in the Contract Sum; and

2.1B.2 the Employer shall be responsible for the registration of the Works or the relevant Section as a Higher-Risk Building in accordance with section 78 of the Building Safety Act 2022."

Clause 2.3A

Insert new clause 2.3A:

"The Contractor shall:

2.3A.1 prior to the Date of Possession establish a mandatory occurrence reporting system that satisfies the requirements of section 32 of the Gateways Regulations;

2.3A.2 maintain such system until completion of the Works or the relevant Section;

2.3A.3 ensure that such system is made available to all "reporting persons" as defined in section 35 of the Gateways Regulations; and

2.3A.4 follow and procure that any sub-consultant or sub-contractor shall follow such procedure so as to ensure compliance with sections 32 and 33 of the Gateways Regulations."

Clause 2.3B

Insert new clause 2.3B:

"Where there is a "safety occurrence" (as defined in section 35 of the Gateways Regulations) during the carrying out of the Works, the Contractor shall, upon becoming aware of the safety occurrence:

2.3B.1 notify the Employer and the Building Safety Regulator of the safety occurrence by the quickest practicable means without undue delay; and

2.3B.2 provide a written report of the safety occurrence to the Employer and the Building Safety Regulator within the period of ten (10) days beginning with the date the Contractor became aware of the safety occurrence, such report to include the following information:

2.3.B.2.1 the date and time of the safety occurrence;

2.3.B.2.2 the address of the site at which the safety occurrence happened;

2.3.B.2.3 the name, address, telephone number and (if available) an email address of the person making the report;

2.3.B.2.4 the type and details of the safety occurrence (including the nature of the risk); and

2.3.B.2.5 details of remedial measures or mitigation carried out to make the relevant building or works or site safe."

Clause 2.3C

Insert new clause 2.3C:

"The Contractor shall ensure an appropriate frequency of inspections of building work and design work for safety occurrences throughout the duration of the Works and, where the Contractor is not the Principal Designer for the purposes of the Competency Regulations, shall provide all necessary cooperation and facilities to the Principal Designer to ensure an appropriate frequency of inspections by the Principal Designer in respect of the same."

Clause 2.26.13

Delete clause 2.26.13 and insert "delay in receipt from the Building Safety Regulator of the completion certificate pursuant to section 44 of the Gateways Regulations or (as the case may be) the partial completion certificate pursuant to section 45 of the Gateways Regulations provided always that: (a) any such extension of time shall be limited to (i) the period commencing on the date that is 57 days from the date of submission by the Contractor of a valid application for such completion certificate in compliance with section 40 of the Gateways Regulations or (as the case may be) for such partial completion certificate in compliance with section 45(2)-(4) of the Gateways Regulations; and (ii) ending on the date that such completion certificate or partial completion certificate is received by the Contractor; and (b) the Contractor has taken all practicable and timely steps to avoid or reduce such delay, such steps to include (without prejudice to the generality of the foregoing) the submission of the information set out in Appendix 12 in the format, manner and timescales specified therein."

Clause 2.27A

Insert new clause 2.27A:

"Notwithstanding the issuing of the Practical Completion Statement or Section Completion Statement (as the case may be) in accordance with clause 2.27, the Contractor shall continue to provide site security in respect of the Works or relevant Section as specified in the Employer's Requirements until such time as the registration of the Works or the relevant Section as a Higher-Risk Building in accordance with section 78 of the Building Safety Act 2022 is completed. The cost of such security shall be deemed included in the Contract Sum save where the period for which it is required exceeds 5 working days from the date of issue of the Practical Completion Statement or Section Completion Statement (as the case may be), in which case the cost associated with the period in excess of 5 working days shall be included in the Final Statement as an adjustment to the Contract Sum in accordance with clause 4.2.6."

Clause 5.3A

Insert new clause 5.3A:

5.3A.1 In the event that any Change also comprises a "notifiable change" or a "major change", each as defined in section 26 of the Gateways Regulations, the Contractor shall notify (in the case of a notifiable change) or make an application for approval to (in the case of a major change) the Building Safety Regulator on behalf of the Employer.

5.3A.2 The Contractor shall create and maintain a change control log that complies with section 19 of the Gateways Regulations, and shall not commence the work to which the notifiable change or major change relates until:

5.3A.2.1 In the case of a notifiable change, the notification to the Building Safety Regulator has occurred; or

5.3A.2.2 In the case of a major change, the Building Safety Regulator has granted the change control application.

5.3A.3 In respect of any notifiable change or major change the Contractor shall:

5.3A.3.1 Collate, review and provide all documents required for the notification or application to the Building Safety Regulator, including liaising with other Dutyholders as necessary, to ensure that the notification or application satisfies the requirements of sections 20 – 21 (as the case may be) of the Gateways Regulations; and

5.3A.3.2 Submit such documents for approval to the Employer prior to making the notification or application.

5.3A.4 In respect of any application to the Building Safety Regulator for a major change the Contractor shall:

5.3A.4.1 Amend and resubmit the application in the event that the Building Safety Regulator issues a notice that the application is not valid in accordance with section 22 (2) of the Gateways Regulations or issues a rejection in accordance with section 24 (2) (a) of the Gateways Regulations;

5.3A.4.2 Respond to any queries or requests for information made by the Regulator;

5.3A.4.3 Comply with any requirement specified by the Building Safety Regulator as a condition of approval in accordance with section 24 (2) (b) of the Gateways Regulations; and

- 5.3A.4.4 Provide all reasonable assistance, documentation and other information as necessary to support the making of an appeal by the Employer pursuant to section 49 of the Gateways Regulations against a decision of the Building Safety Regulator.
- 5.3A.5 For the avoidance of doubt, the Contractor's sole and exclusive remedy for any delay to the progress of the Works or any additional costs or expenses arising directly or indirectly in relation to compliance by the Contractor with this clause 5.3A shall be pursuant to clause 2.26.1 and/or clause 4.21.1, provided always that should there be any delay in receipt from the Building Safety Regulator of the grant of approval to an application for a major change that exceeds the period of 6 weeks specified in section 22 (1) (b) of the Gateways Regulations then the Contractor shall be entitled to a further extension of time in respect of such delay subject to the Contractor having taken all practicable and timely steps to avoid or reduce such delay. The Employer shall have no liability for any additional costs or expense in respect of such delay."

Appendix 16

Golden Thread Documents

Golden Thread Documents means the documents specified in section 31 of the Gateways Regulations including, without limitation, the documents listed in the table below:

[Insert table of documents required – to be provided by the Employer's technical adviser. The TA should also be mindful that there are separate in-occupation golden thread requirements (under the Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023) and some of the construction-phase golden thread documents feed into that so the table should be forward-looking and anticipate that.]

Appendix 17

[Checklist of documents to be submitted by the Contractor with the application for the Building Safety Regulator completion certificate]

[Insert table of documents required – to be provided by the Employer's technical adviser. The table should specify the format of the documents and, if relevant, the timescales for submission]