



dated [■] 20[■]

[ICN Party]

and

[Contractor]

**JCT Minor Works Building Contract with Contractor's Design
(MWD) 2016 edition (as amended)**

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 following work carried out: [*insert nature of the works*] at [*insert location of the site*] (the **Works**) under the direction of the Architect/Contract Administrator referred to in Article 3;

Second 1 the Works include the design and construction of [insert elements of the works to be designed by the Contractor] (the **Contractor's Designed Portion**);

Third the Employer has had the following documents prepared which show and describe the works to be done:

2 [the drawings [numbered [insert drawing numbers]] [listed in [insert name of contract document in which the drawings are listed]] (the **Contract Drawings**)

3 [a Specification]

4 [Work Schedules]¹

5 other documents showing or describing or otherwise stating its requirements for the design and construction of the Contractor's Designed Portion (the **Employer's Requirements**)

and those documents together with the Conditions and, if applicable, a Schedule of Rates as referred to in the Fourth Recital (collectively the **Contract Documents**) are annexed to this Agreement;

Fourth the Contractor has supplied the Employer with a copy of the [priced Contract Specification or Work Schedules or provided a Schedule of Rates]²;

Fifth For the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

¹ Delete bracketed options as appropriate.

² Delete options as appropriate.

- Sixth for the purposes of the Construction (Design and Management) Regulations 2015 (the **CDM Regulations**) the status of the project that comprises or includes the Works is stated in the Contract Particulars;
- Seventh where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;
- Eighth whether any of Supplemental Provisions 1 to 6 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 carry out and complete the Works in accordance with the Contract Documents, where "**Agreement**" means this Agreement consisting of the Recitals, the Articles and the Contract Particulars. Terms not otherwise defined in the Agreement shall be given the meaning ascribed to them in the conditions of contract referred to in Appendix 1 to the Agreement.

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

Architect/Contract Administrator

For the purposes of this Contract the Architect/Contract Administrator is [■] of [■] or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer nominates (such nomination to be made within 14 days of the cessation). No replacement appointees as Architect and/or Contract Administrator shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so. Save to the extent that the Employer may otherwise specify by notice to the Contractor, the Architect/Contract Administrator shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and otherwise to act for the Employer under any of the Conditions.

Article 4

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 it 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 its duties as Principal Designer.]³

Article 5

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 it 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 its duties as Principal Contractor.

Article 6

Adjudication

If any dispute or differences arises under this Contract, either Party may refer it to adjudication in accordance with clause 7.2.

Article 7

Legal Proceedings

Subject to Article 6, if any dispute or difference as to any matter or thing of whatsoever nature arising under this Agreement 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 be determined by legal proceedings and the parties agree that the English courts shall have jurisdiction over any such dispute or difference.

Article 8

Limitations

The parties hereby agree that in any adjudication or court proceedings in connection with this Agreement the limitation period shall be twelve (12) years from the date of practical completion.

Article 9

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

³ Only include if the Contractor is appointed as the Principal Designer

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**

Clause etc	Subject	
Fifth Recital and Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)	Base Date	The date of the Contractor's final tender submission
Fifth Recital and clause 4.2	Construction Industry Scheme (CIS)	Employer at the Base Date is a contractor/is not a contractor* for the purposes of the CIS
Sixth Recital	CDM Regulations	The project is/is not notifiable*
Seventh Recital	Framework Agreement (<i>if applicable</i>)	Innovation Chain North
	<i>(State date title and parties)</i>	
Eight Recital and Schedule 3	Supplemental Provisions <i>(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)</i>	

Clause etc	Subject	
	Collaborative working	Supplemental Provision 1 applies / does not* apply
	Health and safety	Supplemental Provision 2 applies
	Cost savings and value improvements	Supplemental Provision 3 applies / does not apply*
	Sustainable development and environmental considerations	Supplemental Provision 4 applies / does not apply*
	Performance indicators and monitoring	Supplemental Provision 5 applies
	Notification and negotiation of disputes	Supplemental Provision 6 does not apply
2.1B	Environmental Report	[the report dated [] (reference []) prepared by [] in relation to [.] / does not apply] ⁴
2.3	Works commencement date	[■]
2.3	Date for Completion	[■] or such other date for completion as is fixed under clause 2.8
2.9	Liquidated damages	At the rate of £[■] per [■] or part thereof
2.11	Rectification Period	[■] months from the date of practical completion of the Works (or twelve months if no other period is stated)
3.10.1	Parent Company Guarantee	Required/Not required*
3.10.2	Performance Bond	Required/Not required*
3.10.3	Contractor warranties	Required/Not required*
3.10.4	Sub-Contractor/ sub consultant warranties	Required/Not required*

⁴ Delete as applicable

Clause etc	Subject	
4.1	VAT Reverse Charge	Option [A / B] applies ⁵
4.3	Interim Payments-Interim Valuation Dates (<i>unless otherwise stated, the first Interim Valuation Date is one month after the Works commencement date is specified in these Particulars</i>) (<i>against the reference to clause 2.3 and thereafter at monthly intervals.</i>)	The first Interim Valuation Date is [■] and thereafter at intervals of [■]
4.3	Payments due prior to practical completion – percentage of total value of work etc.	[■] per cent
4.3	Payments becoming due on or after practical completion- percentage of the total amount to be paid to the Contractor.	[■] per cent
4.8.1	Supply of documentation for computation of amount to be finally certified	3 months from the date of practical completion
5.3	Contractor's Public Liability insurance: injury to persons or property – the required level of insurance cover is not less than	£[■] (for any one occurrence or series of occurrences arising out of one event)
5.4A, 5.4B and 5.4C	Insurance of the Works etc - alternative provisions	<p>*[Clause 5.4A (Works insurance by Contractor in Joint Names) applies]</p> <p>*[Clause 5.4B (Works and existing structures insurance by Employer in Joint Names applies)]</p> <p>*[Clause 5.4C (Works and Existing structures insurance by other means) applies]</p>

⁵ Clause 4.1 Option A is the default position in that the VAT Reverse Charge will apply and the Employer has to account for VAT. Clause 4.1 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 to choose for this option

Clause etc	Subject	
5.4A and 5.4B	Percentage to cover professional fees (<i>if no other percentage is stated, it shall be 15 per cent</i>)	[■] per cent
5.4C	Insurance arrangements – details of the required policy or policies	are set out in the following document (s):
5.8.1	Contractor's Designed Portion (CDP) Professional Indemnity Insurance	£[■] (in the annual aggregate/for each and every claim)
7.2	Adjudication Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (<i>whenever that is established</i>)	The Adjudicator nominating body is The Royal Institution of Chartered Surveyors

Provisions only applicable to the Building Safety Legislation

1.1	Accountable Person	<i>[the Employer / insert other party / does not apply]</i>
1.1	Principal Accountable Person	<i>[the Employer / insert other party / does not apply]</i>
1.1	Higher Risk Building	<i>[Higher Risk Building applies / Higher Risk Building does not apply]⁶</i>
1.1	Gateways Regulations	<i>[Gateways Regulations applies / Gateways Regulations do not apply]</i>
Appendix 10	Higher Risk Building Clauses	<i>[Higher Risk Building Clauses apply / Higher Risk Building Clauses do not apply]⁷</i>

⁶Higher Risk Building applies if the building is over 18m and residential occupation

⁷ Appendix 10 applies if the building is over 18m and residential occupation

Clause etc **Subject**

Appendix 11	Golden Thread Documents	<i>[Appendix 11 applies / Appendix 11 does not apply]⁸</i>
Appendix 12	Building Safety Regulator Document Checklist	<i>[Building Safety Regulator Document Checklist applies / Building Safety Regulator Document Checklist does not apply]⁹</i>

⁸ Appendix 11 applies if the building is over 18m and residential occupation

⁹ Appendix 12 applies if the building is over 18m and residential occupation

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

The conditions of contract are the Conditions of the JCT Minor Works Building Contract with contractor's design (MWD) 2016 edition subject to the following amendments:

Clause 1.1

The definition of "**Agreement**" shall be deleted and the definition of this term contained in the foregoing agreement shall apply in its place.

The definition of "**Conditions**" shall be amended by the insertion of the words " , all as amended by the amendments set out in Appendix 1 of the Agreement" prior to the full stop at the end of the definition.

Amend the definition of "**Joint Names Policy**" so that the words "and, if required by the Employer, the funder of the Works" after the word "Contractor" in line 1.

Insert new definitions as follows:

"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"

"Anti-corruption Policy: the Employer's ethics, anti-bribery and anti-corruption policies as available on the Employer's website from time to time;"

"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."

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

"Bribery Act: the Bribery Act 2010;"

"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 ."

"Building Liability Order: a building liability order as defined in s.130 of the Building Safety Legislation ."

"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."

"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 ."

"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."

"Competency Regulations : the Building Regulations (amendments) (England) Regulations 2023."

"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.

"Contractor's Design Documents: the drawings, details and specifications of materials, goods and workmanship and other related documents prepared by or for the Contractor;"

"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;"

"Data Protection Legislation all applicable data protection and privacy legislation in force from

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

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

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

"Dutyholder : the function of a dutyholder as prescribed under the Competency Regulations."

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

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

"Equality Act: the Equality Act 2010;"

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

"Modern Slavery Legislation: the legislation referred to in section 54 of the Modern Slavery Act 2015;"

"Moral Rights: moral rights under Chapter IV Part 1 Copyright Designs and Patent Act 1988;"

"Occupier: any person lawfully occupying a Property from time to time;"

"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."."

"Practical Completion : a state in which the Works or the relevant Section is complete in all respects and free from apparent defects save for any minor items of incomplete work the existence, completion or rectification of which in the opinion of the Employer's Agent would not prevent or interfere with the beneficial occupation or use of the Works or the relevant Section [and, as applicable for the Works or the relevant Section, any certification or approval for compliance with the Building Safety Legislation has been obtained (including where applicable as stated in the Contract Particulars to apply, for the avoidance of doubt, the Building Safety Regulator having issued the completion certificate or partial completion certificate pursuant to regulation 44 or 45 (respectively) of the Gateways 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 references elsewhere in this Contract to "practical completion" shall be construed as references to Practical Completion."

"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 ."

"**Site**" means the property comprising the Works as referred to in the First Recital."

"**Third Party Agreements**: any and all agreements between third parties and the Employer;"

Clause 1.2

Delete clause 1.2 and insert:

"The Agreement and these Conditions are to be read as a whole. In the event of any inconsistency occurring between the contents of respectively and in that order the amendments set out in Appendix 1 to the Agreement, the Agreement, the Contract Particulars, the clauses set out in sections 1 to 7 of the printed JCT Minor Works Contract with contractor's design 2016 and other contract documents, the contents of the document earlier in the order shall prevail over any document later in the order."

Clause 1.5

The words "Subject to the provisions of clauses 3.1 and 1.12" shall be inserted at the start of the clause.

Clause 1.7.2

In line 3 delete "either Party's consent under".

Clause 1.8

Delete clause 1.8 and insert:

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

Clause 1.9

Insert new clause 1.9:

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

Clause 1.10

Insert new clause 1.10:

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

Clause 1.11

Insert new clause 1.11:

"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 7.2 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 1.12

Insert new clause 1.12:

"Building Liability Orders

1.12.1 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.

1.12.2 The Parties agree that any associate of the Employer as defined in clause 1.12.1 shall be entitled to enforce for its benefit the provisions of clause 1.12.1 pursuant to the Contracts (Rights of Third Parties) Act 1999."

Clause 2.1

In the third line after "Statutory Requirements" insert "(including, to the extent relevant, the requirements of clause 2.1C and Appendix 9)".

Insert the following as a new second sentence in clause 2.1:

"The Contractor shall, in the execution of the Works, exercise the reasonable skill, care and diligence expected of a competent contractor experienced in carrying out works of a similar size, scope and nature to the Works."

Delete the first line of sub-clause 2.1.1 and substitute the following:

"complete the design of the Contractor's Designed Portion, exercising 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 nature to the Works,".

Clause 2.1.2

In line 3 delete ", subject to the provisions of clause 3.4.2".

Clause 2.1.4

Delete clause 2.1.4 and insert "shall have satisfied itself as to the requirements of the Contract Documents."

Insert a new sub-clause 2.1.5 as follows:

2.1.5 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 2.1.5, 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;

Clause 2.1A

Insert new clause 2.1.A:

"The Contractor, using the skill and care required in clause 2.1.1, shall not specify, authorise, use or permit to be used in the Works any materials which by their nature or application contravene any UK Designated Standard or which contravene the recommendations set out in the publication entitled "Good Practice in the Selection of Construction Materials" published by the BPF/BCO current at the date of this Contract."

Clause 2.1.B

Insert new clause 2.1.B:

"The Contractor shall carry out and complete the Works in accordance with Best Environmental Practice, the recommendations of the Environmental Report and Environmental Laws."

Clause 2.1C

Insert new clause 2.1C:

"2.1C.1 Without prejudice to the generality of Appendix 10 or to the generality of clause 2.1.1 and insofar as relevant to the Works, the Contractor shall observe and comply with:

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

2.1C.1.2 the provisions of Appendix 9.

Clause 2.2

Insert the words "new, of satisfactory quality or proper and workmanlike (as the case may be) and" after the word "be" in line 5 of sub-clause 2.2.1.

Clause 2.2.2

In line 1 delete "encourage" and insert "procure".

Insert a new sub-clause 2.2.3 as follows:

"2.2.3 The Contractor hereby confirms and warrants to the Employer that it will not use or permit to be used in connection with the 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. The Contractor shall inform the Architect/Contract Administrator in

writing as soon as reasonably practicable upon becoming aware of any material being used or specified for use in connection with the Works which is not in compliance with this sub-clause 2.2.3.”

Clause 2.8

Insert the following sentence at the end of the clause:

“The Contractor shall provide such information reasonably required by the Architect/Contract Administrator for the purpose of this clause 2.8.”.

Clause 2.9.1

In line 1 after "not completed by" insert "the date of termination of the Contractor's employment under this Contract, or by". At the end of line 4 after "practical completion" add ", or the date of termination of the Contractor's employment under this Contract (whichever is the earlier)".

Clause 2.10

Insert the following new paragraph at the end of clause 2.10:

“Notwithstanding anything expressed or implied elsewhere in this Contract, the Architect/Contract Administrator shall not be obliged to issue a written statement stating that the Works have reached practical completion in accordance with this clause 2.10 and practical completion of the Works shall not for any purpose of this Contract have occurred:

2.10.1 unless and until the Contractor shall first supply to the Employer all documentation required by the Contract Documents in relation to the Works;

2.10.2 unless and until the Contractor shall first follow the procedure for handover of the completed Works set out in the Contract Documents; and

2.10.3 at any time excluded under the terms set out in the Contract Documents.”.

Clause 2.11

Insert the following new paragraph at the end of the clause:

“Without prejudice to the foregoing, where a defect which is due to a failure of the Contractor to comply with his obligations under this Contract and is within one of the categories defined in the Contract Documents where making good is required to be undertaken within a prescribed period (referred to as the response time) the Architect/Contract Administrator may issue instructions for the defect to be made good within that period of time. All instructions issued by the Architect/Contract Administrator requiring the making good of defects within the prescribed periods shall specify the relevant period and the contractor shall undertake the necessary works within that period of time. If the Contractor does not undertake the works within the relevant period the Employer may employ and pay other persons to execute the required works without the issue of a further notice and all costs thereby incurred by the Employer in connection with such employment may be deducted by him from any monies due or to become due to the Contractor under this Contract or may be recoverable from the Contractor by the Employer as debt.”.

Clause 2.13

Insert new clause 2.13 as follows:

- "2.13.1 The copyright in the Contractor's Design Documents shall remain vested in the Contractor, and the Contractor hereby grants to the Employer an irrevocable, royalty-free, non-exclusive licence to copy, use and reproduce the 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 Beneficiary to copy and use the 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 Employer hereby agrees that the Contractor shall not be liable for any use by the Employer or its licensees of the Contractor's Design Documents for any purpose other than that for which they were prepared.
- 2.13.2 The licence granted in favour of the Employer in sub-clause 2.13.1 shall be capable of sub-licence and the Contractor shall, forthwith upon the request of the Employer at any time, deliver a single copy of the Contractor's Design Documents to the Employer."

Clause 2.14

Insert new clause 2.14 as follows:

- "2.14.1 Subject to clause 2.14A 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.
- 2.14.2 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 2.14 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.
- 2.14.3 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.
- 2.14.4 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.
- 2.14.5 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.
- 2.14.6 The provision of this Clause 2.14 and 2.14A shall apply during the continuance of the Agreement and indefinitely after its termination."

Clause 2.14A

Insert new clause 2.14A

"2.14A Notwithstanding clause 2.14A, in the event that the Contractor is acting as a Data Processor it shall comply with the obligations set out in Appendix 2. 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 2.15

Insert new clause 2.15 as follows:

"2.15.1 To the extent that the Contractor has been provided with copies of Third Party Agreements prior to the date of this Agreement, the Contractor shall be deemed to have full knowledge of such agreements and shall perform its obligations under this Agreement in such a manner so as not to constitute, cause or contribute to the Employer's breach of such agreements.

2.15.2 Upon being supplied with copies of, or relevant extracts from any further Third Party Agreements, the Contractor shall, with effect from the date on which it was provided with such copies or extracts perform its obligations under this Agreement in such a manner so as not to constitute, cause or contribute to the Employer's breach of such agreements it being acknowledged that such compliance may be treated as a variation pursuant to clause 3.6."

Clause 2.16

Insert new clause 2.16 as follows:

"2.16.1 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before the date of this Contract or commencing the Works (whichever is the earlier) as to the nature of the ground, the sub-surface conditions and sub-soil, the form and nature of the Site, flora, fauna, contamination, invasive plants, wildlife, manmade materials, the extent, nature and difficulty of the work and materials necessary for the completion of the Works, the means of communication with and restrictions of access to the Site, the accommodation he may require, and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the Works. The Contractor shall not be entitled to any extension of time or to any additional payment on the occurrence or discovery of any of the foregoing matters, nor shall the Contractor be released from any of the risks accepted or obligations undertaken by him under this Contract on the ground that he did not or could not have foreseen any matter which might affect or have affected the execution of the Works.

2.16.2 The Employer gives no warranty or representation as to:

2.16.2.1 the condition of the Site or any adjoining property or any services in or under the Site; or

2.16.2.2 the accuracy or sufficiency of any surveys, tests or investigations and/or any soils or survey data contained in any document made available to the Contractor by the Employer or on the Employer's behalf or any recommendations or conclusions made or reached in any such document."

Clause 2.17

Insert new clause 2.17 as follows:

"Without prejudice to the generality of clause 5.2 the Contractor shall at all times take all reasonable steps to prevent any nuisance (including, but without limitation, any noisy working operations noxious fumes or the deposit on public highways of any material or debris) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works or of any obligation pursuant to clauses 2.11 to 2.12 and shall defend or, at the Employer's option, assist the Employer in defending any action or proceeding which may be instituted in relation thereto. The Contractor shall be liable for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing his obligations under this clause 2.17."

Clause 2.19

Insert new clause 2.19 as follows:

"In performing his obligations under this Contract, the Contractor shall and shall ensure that each of his sub-contractors shall comply with the Modern Slavery Legislation"

Clause 3.1

Insert the following at the end of clause 3.1:

"Provided always that the Contractor shall be deemed to have consented to any assignment by the Employer of the whole or any part of the Employer's rights and obligations under this Contract to any bank, building society or financial institution or group company of the Employer requiring an assignment of or charge over this Contract to secure monies loaned to fund the Works."

Clause 3.3

Insert a new sub-clause 3.3.4 as follows:

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

Clause 3.4.2

Delete clause 3.4.2 and insert "Not Used".

Clause 3.7

Delete clause 3.7 and insert the following:

"3.7.1 Subject to clauses 3.7.2 and 3.7.3 below, the Employer may issue instructions from time to time for the Contractor to expend Provisional Sums.

- 3.7.2 Where Provisional Sums are included in the Employer's Requirements they shall be treated as a defined provisional sum (unless specifically identified in writing as an undefined provisional sum) and the Contractor shall at all times make all 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 included in the Contract Sum Analysis such Provisional Sums shall not form part of the Works unless and until the Provisional Sums are expressly accepted as being Provisional Sums by the Employer and are then instructed by the Employer, nor shall the Employer's omission of any such Provisional Sums from the Contract Sum Analysis constitute a variation under clause 3.6.
- 3.7.3 Where a request for an instruction pursuant to clause 3.7.2 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 3.7.2 and when the Contractor requests an instruction under clause 3.7.2 it shall include copies of such quotations, information or other estimates with its request.
- 3.7.4 Any item which is not clearly identified as a Provisional Sum within the Employer's Requirements (including any Provisional Sums contained within the Contractor's Proposals or the Contract Sum Analysis) shall not be a valid Provisional Sum and the Contractor shall be deemed to have allowed for such item within the Contract Sum.

Clause 3.9

Delete the words "ensure that the Principal Designer carries" in sub-clause 3.9.1 and substitute the words "instruct the Principal Designer to carry".

Clause 3.10

Insert a new clause after clause 3.10 as follows:

- "3.10.1 If the Contract Particulars so provide, the Contractor shall, at the date of this Contract, deliver to the Employer a parent company guarantee in the form set out in Appendix 3 and granted in favour of the Employer by the Contractor's ultimate holding company (as that term is defined under the Companies Act 2006) and executed as a deed by such holding company.
- 3.10.2 If the Contract Particulars so provide, the Contractor shall, at the date of this Contract, procure a performance bond in the form set out in Appendix 4 in the amount of 10% of the Contract Sum and granted in favour of the Employer from a surety approved by the Employer.
- 3.10.3 If the Contract Particulars so provide, the Contractor shall execute and deliver to the Employer within fifteen (15) Business Days of a request to do so from or on behalf of the Employer a collateral warranty or warranties in the form at Appendix 5 in favour of any third party that the Employer nominates.

3.10.4 If the Contract Particulars so provide, the Contractor shall procure that any sub-contractors and sub-consultants appointed by the Contractor with material design responsibility shall execute and deliver to the Employer within fifteen (15) Business Days of a request to do so from or on behalf of the Employer a collateral warranty or warranties

- (a) in the form at Appendix 6 in favour of the Employer; and
- (b) in the form at Appendix 7 in favour any third party that the Employer nominates."

Clause 3.11

Insert a new clause after clause 3.10 as follows:

"3.11 The Contractor acknowledges that breach of this Contract may cause the Employer to suffer loss and the Contractor hereby agrees not to contend in defence of any action or proceedings brought against it that its liability for any breach of this Contract shall be reduced or diminished on the grounds that the Employer is not the owner of the Works and has suffered no loss as a consequence thereof."

Clause 4.1 Option A

Delete clause 4.1 and insert:

"4.1 This Clause 4.1 Option A shall only apply where the Contract Particulars indicate that it shall apply.

4.1.1 The Parties agree and confirm that the procedure for the payment of VAT (if any) by either Party to the other shall be governed entirely and exclusively by the provisions of this clause 4 notwithstanding any other provision of this Agreement.

4.1.2 Subject to clause 4.1.8, 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:

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

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

4.1.3 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.

4.1.4 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.

4.1.5 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".

- 4.1.6 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.
- 4.1.7 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).
- 4.1.8 Notwithstanding clause 4.1.2, 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:
- 4.1.8.1 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
- 4.1.8.2 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 4.1 Option B

Delete clause 4.1 and insert:

- "4.1 This Clause 4.1 Option B shall only apply where the Contract Particulars indicate that it shall apply.
- 4.1.1 The Parties agree and confirm that the procedure for the payment of VAT (if any) by either Party to the other shall be governed entirely and exclusively by the provisions of this clause 4 notwithstanding any other provision of this Agreement.
- 4.1.2 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:
- 4.1.2.1 the time for payment or provision of the consideration; and

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

4.1.3 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.

4.1.4 Notwithstanding clause 4.1.3, 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:

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

4.1.4.2 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 4.5

Delete "5" in sub-clause 4.5.4 and substitute "1".

Clause 4.8

Delete "14" in sub clause 4.8.3 and substitute "28".

Clause 4.10

Insert a new clause 4.10 as follows:

"4.10 The Employer's interest in the percentage of the total value not included in the amounts of the interim payments to be certified under clauses 4.3 and 4.8 (the "**Retention**") shall be subject to the following rules:

4.10.1 the Employer's interest in the Retention shall not be fiduciary, either as trustee for the Contractor or any other person, or in any other capacity; the relationship of the Employer and the Contractor with regard to the Retention shall solely be that of debtor and unsecured creditor; and the Employer shall have no obligation to invest the Retention or any part;

4.10.2 the Employer shall have no obligation to segregate the Retention or any part in a separate banking account, or in any other manner whatsoever; and the Employer shall be entitled to the full beneficial interest in the Retention and every part (and, without limitation, interest thereon and income arising therefrom) unless and until the Retention is paid to the Contractor pursuant to this Contract.".

Clause 4.11

Insert new clause 4.11 as follows:

"Any sums due to the Employer pursuant to clauses 5.1, 5.2, 6.7.2 and/or 6.7.4 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 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 [28] days after the payment due date."

Clause 4.12

Insert new clause 4.12:

"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:

- 4.12.1 Any bond, as required in accordance with the Contract Particulars;
- 4.12.2 All and any collateral warranties required by the Employer in accordance with clause 3.10;
- 4.12.3 Documentary evidence satisfactory to the Employer of the insurance policies pursuant to clause 5.5;
- 4.12.4 Any Parent Company Guarantee required in the Contract Particulars;
- 4.12.5 Evidence, where required by the Employer, that the Contractor has complied with its obligations to procure the Building Warranty Policy in accordance with clause 2.1.5"

Clause 5.1

In line 3 after "Works" insert "or the performance of the Contractor's obligations under clause 2.11,".

Clause 5.2

In line 5 after "Works" insert "or the performance of the Contractor's obligations under clause 2.11,".

Clause 5.4C

Insert the following new sentence at the end of clause 5.4C:

"The application of clause 5.4C shall not affect the responsibility of the Contractor hereunder for any loss or damage not covered by any Joint Names Policy described herein.".

Clause 5.8

Insert the following new clause after clause 5.7

- "5.8.1 The Contractor confirms and warrants that it holds and will maintain professional indemnity insurance at all times until the expiry of 12 years from the date of practical completion of the last section of the Works in an amount not less than and on the basis stated in the Contract

Particulars 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.

- 5.8.2 If the amount of professional indemnity insurance cover referred to in clause 5.8.1 ceases to be available in the open market at commercially reasonable rates and terms, the Contractor shall effect such insurance in such lesser amount that is so available and shall notify the Employer accordingly.
- 5.8.3 As and when reasonably requested to do so by the Employer, the Contractor shall produce documentary evidence that such insurance is being maintained in accordance with the provisions of this clause 5.8."

Clause 5.9

Insert new clause 5.9:

"5.9 The Contractor shall obtain all warranties available from the manufacturers and suppliers of all goods and equipment forming part of the Works whether or not expressly indicated in the Contract Documents 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."

Clause 6.1.3

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

"commencing negotiations with all or any class of his creditors with a view to rescheduling any of his debts, or making a proposal for or entering into any compromise or arrangements with any of his creditors"

Clause 6.1.4

Delete the full stop and insert "; or"

Clause 6.1.5

Insert a new clause 6.1.5:

"the application to court for, or obtaining of, a moratorium under Part A1 of the Insolvency Act 1986."

Clause 6.4.1.4

Insert new clause 6.4.1.4:

"commits any other breach of this Contract having or which may have consequences sufficiently serious to justify determination of the Contractor's employment,"

Clause 6.5.3

Insert new clause 6.5.3:

"Ownership in all existing Contractor's Design Documents and other physical embodiments of designs relating to the Works shall transfer from the Contractor to the Employer immediately prior the Contractor becoming insolvent."

Clause 6.6

Delete clause 6.6 and insert:

"6.6.1 The Contractor undertakes to the Employer that:

- 6.6.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;
- 6.6.1.2 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) of the Criminal Finances Act;
- 6.6.1.3 it has and shall maintain and implement procedures to ensure compliance with clauses 6.6.1.1 and 6.6.1.2 and (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 and it shall comply with the Employer's Anti-corruption Policy;];
- 6.6.1.4 it shall include undertakings similar to those contained in this clause 6.6.1 in any contract it may enter into with sub-contractors and suppliers;
- 6.6.1.5 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 6.6.1.1 to 6.6.1.4 inclusive and will provide any information reasonably requested by the Employer in support of such compliance;
- 6.6.1.6 it shall maintain adequate records to assist in verifying its compliance with the provisions of this clause 6.6.1 (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 6.6.1.1 to 6.6.1.3 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 6.6.1. The Contractor shall give all necessary assistance to the conduct of such audits.

6.6.2 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 6.6.1 by the Contractor or any breach of provisions equivalent to clause 6.6.1 in any contract with a sub contractor or supplier.

6.6.3 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:

6.6.3.1 in the event of breach of clauses 6.6.1.1 to 6.6.1.4 inclusive; and/or

6.6.3.2 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

6.6.3.3 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; and/or

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

Clause 6.7

In line 1 delete "6.6" and insert "6.6.3"

Clause 7.3

Delete clause 7.3.

Schedule 1 Arbitration

Delete Schedule 1.

Schedule 2 Fluctuations Option

Delete Schedule 2.

Appendix 2 - Data protection (referred to in clause 2.14 and 2.14A)

- 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 2.14, 2.14A or this Appendix 2 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 it 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 its 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 5.1 of this Appendix 2 is bound by terms no less onerous than this Appendix 2 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 2;
- 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 2 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 2 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 2 shall apply during the continuance of the Contract and after its termination.

Appendix 3 – 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) 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 4 – 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 6.4 to 6.6 (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 5
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 the 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 14.
- 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 10 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 10 to 15 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 9 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.
- 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 6

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 [■] (company number [■]) of [■] (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 Covenantor 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 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 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 provision of clause 10.
- 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.
- 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) 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 7

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 [■] (company number [■]) of [■] (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 equivalent to the period for which the Covenantor 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 Sub-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.
- 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 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 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 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

(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 9 in:
- 1.4.1 each appointment of a sub-consultant; and
 - 1.4.2 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 9, 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 9, 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 9 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 9 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 6.7 shall apply.

Appendix 10

Higher Risk Building Clauses

Where this Appendix 10 is stated to apply in the Contract Particulars, the following clauses shall be incorporated into the Contract.

Where the terms of this Appendix 10 conflict with the general conditions of contract, this Appendix 10 shall prevail.

- 1 The Parties acknowledge that the Works or a Section(s) of the Works comprise a Higher-Risk Building and agree that:
 - 1.1 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
 - 1.2 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.
- 2 The Contractor shall:
 - 2.1 prior to the Date of Possession establish a mandatory occurrence reporting system that satisfies the requirements of section 32 of the Gateways Regulations;
 - 2.2 maintain such system until completion of the Works or the relevant Section;
 - 2.3 ensure that such system is made available to all "reporting persons" as defined in section 35 of the Gateways Regulations; and
 - 2.4 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.
- 3 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:
 - 3.1 notify the Employer and the Building Safety Regulator of the safety occurrence by the quickest practicable means without undue delay;
 - 3.2 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:
 - 3.2.1 the date and time of the safety occurrence;
 - 3.2.2 the address of the site at which the safety occurrence happened;

- 3.2.3 the name, address, telephone number and (if available) an email address of the person making the report;
 - 3.2.4 the type and details of the safety occurrence (including the nature of the risk); and
 - 3.2.5 details of remedial measures or mitigation carried out to make the relevant building or works or site safe.
- 4 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.
- 5 Notwithstanding the issuing of the Practical Completion Statement or Section Completion Statement (as the case may be) in accordance with clause 2.10, 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 certificate as an adjustment to the Contract Sum in accordance with clause 4.3.
- 6 Variations
- 6.1 In the event that any variation 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.
- 6.2 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:
- 6.2.1 In the case of a notifiable change, the notification to the Building Safety Regulator has occurred; or
 - 6.2.2 In the case of a major change, the Building Safety Regulator has granted the change control application.
- 6.3 In respect of any notifiable change or major change the Contractor shall:
- 6.3.1 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

- 6.3.2 Submit such documents for approval to the Employer prior to making the notification or application.
- 6.4 In respect of any application to the Building Safety Regulator for a major change the Contractor shall:
 - 6.4.1 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;
 - 6.4.2 Respond to any queries or requests for information made by the Regulator;
 - 6.4.3 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
 - 6.4.4 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.
- 7 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 6 of Appendix 10 shall be pursuant to clause 2.8 and/or clause 4.8, 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 11

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 [12]

[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]