

JCT DESIGN AND BUILD CONTRACT 2016 (DB 2016)

SCHEDULE OF AMENDMENTS

Between Eastleigh Borough Council and **[CONTRACTOR]** for design and construction
of a residential development at Lower Acre, One Horton Heath, Horton Heath
Eastleigh, Hampshire

Articles of Agreement

First Recital

After “The Employer wishes to have the design and construction of the following work”
insert:

“, including all ancillary facilities and services as detailed in the Employer's Requirements
or such other alternative schemes as may be approved by the Employer,”

Third Recital

Delete:

“the Employer has examined the Contractor's Proposals and, subject to the Conditions, is
satisfied that they appear to meet the Employer's Requirements;”

Insert:

“The Contractor has examined the Employer's Requirements and, subject to the Conditions,
is satisfied:

- .1 as to the feasibility and practicability of the Employer's Requirements with respect to
the design and construction of the Works;
- .2 that the Contractor's Proposals are in conformity therewith; and
- .3 that the Employer's Requirements can be carried out within the timescale envisaged
therein and at the cost indicated in the Contract Sum Analysis.”

Articles

Article 1

After “The Contractor shall” insert “carry out and”.

Article 8

Delete this article and insert “Number not used”.

Insert new Article 10 and 11 as follows: **[Note: This amendment is to be endorsed in
manuscript on the standard form.]**

“Article 10: Incorporation of Schedule of Amendments

The Agreement and the Conditions shall have effect as modified by the attached Schedule
of Amendments.

Article 11: Site Operating Procedures

The Contractor confirms that in agreeing the period between the Date of Possession of the site and the Date for Completion of the Works and in calculating the Contract Sum, it has taken into account and made proper allowance for:

- .1 the Construction Leadership Council's publication "Construction Sector - Site Operating Procedures: Protecting Your Workforce During Coronavirus (Covid-19)" version 6 dated 20 October 2020 ("the SOP") in relation to the method of working and the volume of labour able to work on the Site;
- .2 the availability at the Base Date of labour, materials, goods and plant required for undertaking the Works

and subject to the occurrence of the events set out in clause 2.26.15, the Contractor shall have no entitlement to an extension of time in relation to an occurrence of Coronavirus unless there is a change in the SOP whether by amendment of the issue of a subsequent revision which has the effect of reducing or slowing the work being undertaken on Site."

Contract Particulars

Clause etc.	Subject	
Article 8	Arbitration <i>(If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and clauses 9.3 to 9.8 apply.)</i>	Article 8 and clauses 9.3 to 9.8 (Arbitration) do not apply
2.17.3	Limit of Contractor's liability for loss of use etc. <i>(if any)</i>	Clause 2.17.3 does not apply
4.2, 4.12 and 4.13	Fluctuations Provision <i>(Unless another option or entry is selected, JCT Fluctuations Option A applies.)</i>	No Fluctuations Provision applies
	JCT Fluctuations Option A (paragraph A.12) or Option B, (paragraph B.13) – percentage addition	Not used
	JCT Fluctuations Option C (paragraph C.1.2) – Formula Rules	Not used
	<i>(Unless Part II is stated to apply, Part I applies.)</i>	Not used
6.15	Expiry of required period of Professional Indemnity insurance is <i>(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works.)</i>	Twelve (12) years
7.2	Sections: rights under clause 7.2 <i>(If clause 7.2 applies, amend the entry if rights under that clause are to apply to certain Sections only.)</i>	Rights under clause 7.2 apply to each Section
7.3.1	Performance bond or guarantee from bank or other approved surety <i>(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required)</i>	Is required (see clause 7.3.1 of the Conditions)
	The required form of bond or guarantee is set out in	Schedule 9 (see clause 7.3.1 of the Conditions)

	Initial Value	10% (ten percent) of the Contract Sum
	Reduction in value – if not specified in the required form and if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is <i>(if no other percentage is stated, it shall be 50%)</i>	As specified in the required form
	Period of validity – if not specified in the required form, the expiry date of the performance bond or guarantee is to be <i>(If no entry is selected, the date shall be the date of practical completion of the Works.)</i>	the date of practical completion of the Works
7.3.2	Guarantee from the Contractor's parent company	Is required (see clause 7.3.2 of the Conditions)
	Parent company's name and registration number	Delete entry and insert "not used"
	The required form of parent company guarantee is set out in	Schedule 10 (see clause 7.3.2 of the Conditions)
7.4	Collateral Warranties – details of the requirement for the grant by the Contractor and sub-contractors of P&T Rights, Funder Rights and/or (in the case of sub-contractors) Employers Rights in respect of the Works, either as third party rights or by collateral warranties (" Rights Particulars ") are set out in the following document. <i>(State reference number and date of other identifiers of the relevant documents.)</i>	Not used – see clauses 7A (for Contractor) and clause 7E (for sub-contractor) of the Conditions respectively in respect of third party rights and/or collateral warranties
8.11.1.7	Period of suspension <i>(if none is stated, the period is 2 months)</i>	6 (six) months
9.2.1	Adjudication	The Adjudicator is to be named by the nominating body
	Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) <i>(Where an Adjudicator is not named and a nominating body</i>	Chairman of TeCSA

has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)

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| 9.4.1 | Arbitration – appointor of Arbitrator (and of any replacement) (If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Institute of British Architects.) | Does not apply |
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Conditions

Section 1 Definitions and Interpretation

Definitions

Amend clause 1.1 as follows:

<i>Definition</i>	<i>Amendment</i>
Insert "Affiliate:	means, in respect of any person, any company which is a subsidiary undertaking (whether immediate or otherwise) of that person or of which that person is a subsidiary undertaking or which has the same parent undertaking (whether immediate or otherwise) as that person;"
Insert "All-Inclusive Rates:	the all-inclusive rates for labour referred to in clause 5.5 part 1 of the Contract Particulars."
Insert "Architect:	[FULL NAME OF ARCHITECT] or such other architect as may be appointed in connection with the Works."
Amend "Business Day:"	After "Holiday" insert ", and shall include all references to 'working day' in this Contract".
Insert "Concurrent Delay:	any period of delay which is caused by more than one event, whether or not the events occurred at the same time, and at least one of those events is not a Relevant Event."
Insert "Consents:	all permissions, certificates, licences, awards, consents approvals or discharge of conditions (including any reserved matters approvals and building regulations approvals) that may be necessary pursuant to the Statutory Requirements or required by Third Parties or otherwise for the execution of the Works and, if they are destroyed or damaged, the reinstatement of the Works."
Insert "Consents Responsibility Matrix:	the matrix detailing the Consents at Schedule 11 to these Conditions."

Amend "Construction Phase Plan:"	After "revisions" insert "and any further development of the plan by the Principal Contractor during the progress of the Works".
Insert "Construction Products Regulations:	the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC) or any remaking of or amendments to them."
Amend "Consultants:"	Delete definition and replace with "any consultants providing design services to the Employer in connection with the Works which shall include for the avoidance of doubt the Architect, the Services Engineer and the Structural Engineer (excluding the Novated Consultants)".
Insert "Contractor's Consents:	those Consents which are stated in the Consents Responsibility Matrix to be the responsibility of the Contractor to procure, satisfy, secure and/or discharge."
Amend "Contractor's Design Documents:"	After "Proposals)" insert "required by the Employer's Requirements and/or for the carrying out and completion of the Works in accordance with this Contract".
Insert "Contractor's Management of Statutory Undertakers:	the Contractor using all reasonable endeavours to carry out and perform all actions which a contractor experienced in carrying out works of a similar size, scope, type and complexity to the Works would be expected to carry out and perform in order to achieve the performance of the Statutory Undertaker so that the Works are carried out and completed in accordance with the Contract (including, but not limited to, making a reasonable allowance in the Master Programme for the appropriate notice period to the Statutory Undertaker)."
Amend "Contractor's Persons:"	After "therewith" insert "(including, but not limited to, any sub-contractor, sub-consultant and/or supplier)".
Insert "Coronavirus:	has the meaning given to it in the Coronavirus Act 2020."
Insert "Delivery Period:	each rolling six (6) monthly periods for delivery of certain activities of the Social Value Requirements that are set out withing the Social Value Requirements."
Insert "EIRs:	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
Insert "Employer's Consents:	those Consents which are stated in the Consents Responsibility Matrix to be the responsibility of the Employer to procure, satisfy, secure and/or discharge."
Amend "Employer's Persons:"	After "Employer" insert ", including but not limited to, the Employer's contractors, Consultants, suppliers and/or workmen (including those of the Tenants) and (for the

purposes of clause 2.6 only) those of any Statutory Undertaker".

Delete definition of
"Employer's Rights"

Insert "Environmental
Contamination:

any release, leakage, discharge, deposit, emission, spillage or other escape of Hazardous Substances into the atmosphere, water or on land or from the Site and any buildings, plant and equipment situated therein or thereon."

Insert "Environmental Law(s):

all laws and regulations together with all codes of practice, circulars and guidance notes having statutory authority or legal effect in the United Kingdom concerning the prevention of pollution of land, water or the atmosphere, the protection of human health or the environment or the condition of the work place or the generation, transportation, storage, treatment, disposal, release, discharge, spillage, entry, deposit, emission or other escape of Hazardous Substances, noise, odour or other nuisances and the production, transportation, storage, treatment, recycling or disposal of waste."

Insert "Environmental
Liabilities:

- (a) any fines or penalties in respect of breaches of any Environmental Law and all costs and expenses reasonably incurred in connection with such proceedings;
- (b) any liability to third parties resulting wholly or partly from the state or condition of the Site or activities or operations at the Site;
- (c) all cost of remedial or clean-up action incurred or suffered in order to meet the requirements of any competent authority or a court of competent jurisdiction and arising in consequence of Hazardous Substances;
- (d) the cost of reasonable measures required to be taken in respect of the Site in accordance with Environmental Law to prevent or mitigate any risks presented by the Site to human health or safety, property, air quality, surface or underground water or soil by reasons of Environmental Contamination."

Insert "Execution Date:

the date the Employer and the Contractor executed this Contract."

Insert "FOIA:

the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.W

Delete definition of
"Fluctuations Provision:"

Insert "Force Majeure:

any unpredictable occurrence which is beyond the responsibility and control of either Party, attributable either to the forces of nature or to other circumstances not confined in their effects wholly or principally to the Parties, the Site or the Works (which shall not include the occurrence and/or any impact of a Coronavirus outbreak)."

Amend "Funder:"

Delete existing text and replace with "any person or persons providing or which has agreed to provide finance in connection with the Works or any part thereof and/or the acquisition of the Site or any part thereof".

Amend "Funder Rights:"

Delete this definition and replace with "the rights in favour of the Funder to be granted by the Contractor or those to be granted by sub-contractors as set out in the appropriate form of collateral warranty at **Schedule 8**".

Insert "GDPR:

see clause **2.40.2.1**.

Insert "Hazardous
Substances:

any natural or artificial substance (whether in solid or liquid form of gas or vapour and whether alone or in combination with other substances) capable of causing harm to man or any other significant living organism supported by the environment or damaging the environment or public health or welfare, including but not limited to any controlled, hazardous, toxic or dangerous waste."

Insert "Information:

has the meaning given under section 84 of FOIA."

Insert " Request for
Information:

a request for information or an apparent request under the FOIA or the Environmental Information Regulations."

Amend "Interest Rate:"

Delete "5%" and insert "4%".

Insert "Landlord:

any person who has a freehold or leasehold interest in the whole or any part of the Works and/or the whole or any part of the Site."

Insert "Master Programme:

the programme for the carrying out and completion of the whole of the Works which shall include:

- (a) the duration, and sequencing where relevant, of all pre-construction activities (including design and procurement) and the latest dates by which drawings, specifications and any other details are to be prepared or provided including the review period for any Contractors Proposals by the Employer;
- (b) all logic links and dependencies between activities included in the programme and the critical path (using techniques for identifying the critical path

and the underlying logic which have been agreed with the Employer);

- (c) identification of the earliest and latest start and finish dates for each activity;
- (d) key dates and milestones including, but not limited to, the expenditure of Provisional Sums, lead in times for Statutory Undertakers and any other Employers actions (where relevant);
- (e) As-planned and actual start and finish dates for tasks having started or finished within the reporting period; and
- (f) actual progress achieved on each activity, including any relevant mitigation or resequencing of activities and its effect on the remaining work to be completed on the Contractors drop line

which shall be revised and provided by the Contractor to the Employer from time-to-time in accordance with this Contract and any such revised programme will include the details in paragraphs (a) to (f) above and in the agreed native format."

Insert "Other Works:

see **clause 2.6.1.**"

Delete definition of "P&T Rights"

Insert "Principal Sub-Contractor:

any sub-contractor or sub-consultant appointed by the Contractor who is undertaking responsibility for any design or any other material responsibility as indicated in the Contract Documents."

Amend "Purchaser:"

Delete existing text and insert "any person who has acquired or is to acquire a freehold or leasehold interest in the whole or any part of the Works and/or the whole or any part of the Site".

Insert "Road Management Requirements:

those requirements for the management of the condition of the roads forming part of the Site that are set out in the document entitled as such that is included in the Employer's Requirements (with such requirements including, without limitation, condition surveys of such roads at the commencement of the Works and in good time prior to practical completion being achieved)."

Insert "Services Engineer:

[FULL NAME OF SERVICES ENGINEER] or such other building services or mechanical and electrical engineer as may be appointed in connection with the Works."

Insert "Site/site:

the part of the site on which the Works are to be constructed."

Insert "Site Information Data:

such surveys, reports, data and/or other information in respect of and relating to conditions, risks, contingencies

	and/or other circumstances of and/or affecting the Site that are set out in the Contract Document and clearly labelled as such therein."
Insert "Site Manager:	such site manager as may be appointed by the Contractor pursuant to clause 3.2."
Insert "Social Value Dividend:	the cumulative value of the activities comprising the Social Value Requirements that are detailed in the Social Value Requirements and which shall not exceed £[AMOUNT IN FIGURES] ([AMOUNT IN WORDS])).
Insert "Social Value Requirements:	the activities for delivering social value to the local community in which the Site is located that are set out in the document entitled as such in the Employer's Requirements."
Amend "Statutory Requirements:"	<p>After "this Contract" insert ", any code of practice or guideline being in force under the Health and Safety etc. at Work Act 1974 or the Environmental Protection Act 1990 or similar applicable legislation, as amended from time to time"</p> <p>after "local authority or statutory undertaker" insert "or relevant public body"</p> <p>after "Requirements" insert "and in particular so as to comply with any requirements relating to them which may be stipulated as pre-requisites for the adoption of any services, drains, sewers, pipes, wires, cables or other service transmission media by any such authority or body (where the same are to be adopted)".</p>
Amend "Statutory Undertaker:"	After "statutory undertaker" in line 1 insert "or relevant public body or utility company".
Insert "Structural Engineer:	[FULL NAME OF STRUCTURAL ENGINEER] or such other structural engineer as may be appointed in connection with the Works."
Insert "TeCSA:	Technology and Construction Solicitors' Association"
Amend "Tenant:"	Delete existing text and replace with "any person who has acquired or is to acquire a leasehold interest (whether a lease or sub-lease) in the whole or any part of the Works and/or the whole or any part of the Site".
Insert "Third Parties:	any Affiliate of the Employer, Purchaser, Tenant, Funder, Landlord and/or other third party with an interest in the Works and/or the Site."
Insert "Third Party Agreements:	any document notified as such to the Contractor by the Employer (to include any executed versions of draft agreements previously disclosed to the Contractor if in substantially the same form as the disclosed draft) including, but not limited to, the following agreements in respect of the Works and the Site:

- (i) [DESCRIPTION OF AGREEMENT] dated [DATE] between the Employer and [PARTY NAME]; and
- (ii) [DESCRIPTION OF AGREEMENT] dated [DATE] between the Employer and [PARTY NAME],

with the Contractor acknowledging that as at the date of this Contract it has received copies of such Third Party Agreements."

Insert "Third Party Rights: the rights vesting in the Third Parties by operation of clause 7A and as set out in Schedule 5 (Third Party Rights)."

Clause Amendment

Interpretation

Contracts (Rights of Third Parties) Act 1999

- 1.6 In line 1 delete "Purchasers, Tenants and/or Funders" and replace with "Third Parties". In line 1 to 2 delete "clauses 7A and/or 7B" and replace with "clause 7A".

Effect of Final Statement

- 1.8.1.1 Delete this clause and insert "Number not used".

Consents and approvals

- 1.10 In line 3 delete "either Party's" and insert "the Employer's" and delete "7.1" and replace with "7.1.1, which shall be at the Employer's sole discretion,".

Insert a new clause 1.10.2 as follows:

- "1.10.2 Notwithstanding any other provision of this Contract, the Employer shall be deemed to have relied and to rely upon the Contractor's skill care and judgement in the exercise of its duties and responsibilities relating to the Works and no approvals, consents, proposals, comments, endorsements, inspections and testings which may be given by the Employer's Agent or by any third party (including but not limited to by operation of the Design Submission Procedure) shall detract from limit or reduce the Contractor's obligations and liabilities to the Employer or amount to any waiver or estoppel or relieve the Contractor from any of his obligations to the Employer."

Insert new clauses 1.12 to 1.16 and headings as follows:

"Severability

- 1.12 The invalidity or unenforceability of any provisions or parts of this Contract shall in no way affect the validity or enforceability of any other provisions or parts of this Contract. Any invalid or unenforceable provision or part of this Contract shall be severed from the Contract and the remaining parts shall be enforced as if this Contract did not contain such invalid or unenforceable provision or part.

Liability Period

Clause

Amendment

- 1.13 No action shall be brought by the Employer against the Contractor under this Contract after the expiration of 12 (twelve) years from practical completion or the termination of the Contractor's employment under this Contract.

Confidentiality

- 1.14 The Contractor will keep confidential all correspondence, books, records, documents, agreements, photographs, quotations, invoices, files, plans, drawings and any other similar material relating in any way to the Works or the Employer's business. The Contractor will not disclose details of these to any persons other than to the Contractor's professional advisers, insurers and the Contractor's Persons without the consent of the Employer and then only insofar as such disclosure is necessary for the effective carrying out and completion of the Works, unless the Contractor is required by law or by any of the obligations contained in this Contract to do so. This clause 1.13 shall continue to apply notwithstanding the completion of the Works or any assignment or novation of this Contract or termination of the Contractor's employment under this Contract.

Entire Agreement

- 1.15 This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party acknowledges and agrees that it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

Waiver

- 1.16 A party's failure or delay to exercise a power or right under this Contract does not operate as a waiver of that power or right. A waiver of a power or right will only be effective:
- 1.16.1 if it is in writing and signed by the party who has the benefit of the power or right being waived; and
- 1.16.2 in respect of the specific instance to which it relates and for the specific purpose for which it is given."

Section 2 Carrying out the Works

Contractor's Obligations

General obligations

- 2.1.1 Insert "carry out and" before "complete the design".
- After "including" insert ("subject to clauses 2.2.1 and 2.2.2)".
- Before "shall give all notices" insert "shall comply with and".

Insert new clauses 2.1.5 to 2.1.8 as follows:

- "2.1.5 The Contractor shall:
- 2.1.5.1 be deemed to have fully acquainted himself with, and obtained all necessary information in relation to, the Third Party Agreements (including as to any risks,

<i>Clause</i>	<i>Amendment</i>
	contingencies and other circumstances relating to the same which may influence or affect the execution of the Works and/or the costs thereof) and shall not do or omit to do anything which may place the Employer in breach of any Third Party Agreement; and
2.1.5.2	provide to the Employer all necessary information in respect of the Works within the possession and control of the Contractor as required by the Employer's Requirements and/or under the Third Party Agreements; and
2.1.5.3	comply with all technical and/or administrative and/or other requirements of the Third Party Agreements around the Works and the development to which the Works relate (including, without limitation, all access, attendances and assistance as the Employer shall require to fully comply with its obligations under the Funding Agreement), always provided that any Third Party Agreement provided to the Contractor after the Execution Date shall, if not the executed version of an agreement provided before the Execution Date in substantially the same draft form, and to the extent the provisions of such Third Party Agreement provided to the Contractor after the Execution Date results in or requires a Change, constitute an instruction for the purposes of clause 3.9.
2.1.6	The Contractor shall comply, and shall ensure compliance by the Contractor's employees, agents, Principal Sub-Contractors, sub-consultants, sub-contractors, and suppliers with the following (insofar as is relevant to the Works or Site, as published from time to time):
2.1.6.1	the SOP;
2.1.6.2	UK Government guidance on "Working safely during coronavirus (Covid-19) - Construction and other outdoor work";
2.1.6.3	any updates, amendments supplementary guidance and recommendations relating to the above; and
2.1.6.4	any other public health measures, legislation or related guidance.
2.1.7	The Contractor shall ensure that at all times in relation to the Works (and shall provide evidence as reasonably requested by the Employer of the Contractor's compliance with the same):
2.1.7.1	the necessary risk assessments as required by the SOP have been produced and shared with the workforce;
2.1.7.2	the poster required to be displayed at the site as required by the SOP is being displayed; and
2.1.7.3	the Contractor has in place appropriate procedures regarding all site inductions, health and safety briefings, tool box talks and similar practices required by the SOP or any other public health measures.
2.1.8	For the avoidance of doubt, no admission, consent, comment, sanction, acknowledgement, review, confirmation, direction or advice made or given by or on behalf of the Employer in respect of Coronavirus and/or the Contractor's compliance with clauses 2.1.6 and 2.1.7 shall operate as or may be construed to be an instruction requiring a Change for the purposes of clause 3.9."

Materials, goods and workmanship

- 2.2.1 Delete ", so far as procurable,". Delete "described in the Contractor's Proposals or other Contractor's Design Documents" and replace with "shall be new and good quality materials and commensurate with and appropriate to the standards, specifications and requirements of other materials and goods set out in the Employer's Requirements".
- 2.2.2 Delete "described in the Contractor's Proposals or other Contractor's Design Documents" and replace with "in a good, proper and workmanlike manner and commensurate with and appropriate to the standards, specifications and requirements of workmanship set out in the Employer's Requirements".

Insert new clauses 2.2.6 and 2.2.7 as follows:

- "2.2.6 The Contractor warrants and undertakes to the Employer that he has not specified and shall not specify for use in the Works or has not used and shall not use in the construction of the Works any deleterious materials or any other goods, materials or substances not in accordance with the relevant British Standards or Codes of Building Practice or placed on the market in breach of the Construction Products Regulations or any goods, materials or substances not in accordance with the guidance contained in the British Council for Offices' publication in 2011 entitled "Good Practice in the Selection of Construction Materials" and/or not in accordance with good industry practice.
- 2.2.7 Without prejudice to any other rights which the Employer may possess under the Contract, the Contractor shall make good or re-perform without limitation and at no cost to the Employer, such part of the Works as are necessary to comply with the requirements of this Contract, to rectify discrepancies, errors, omissions or other defects, shrinkages or other faults during the course of the Works whether or not such Works have been approved by the Employer's Agent, or if appropriate, the Employer."

After clause 2.2 add the following heading:

"Site Conditions and Requirements"

Insert new clauses 2.2A.1 – 2.2A.3 as follows:

- 2.2A.1 The Contractor acknowledges that he has had an opportunity to fully inspect and review the details of the Site Information Data together with conducting certain inspections of the Site (to include satisfying himself as to access to and use of the site and the presence of existing mains and services) and to have fully satisfied himself as to all conditions, risks, contingencies and/or circumstance of and/or affecting the Site that ought reasonably have been discovered and/or foreseen by a competent and careful contractor experienced in carrying out and completing works of a similar size, scope, type complexity and value to the Works who has carried out the form and nature of review and inspection detailed by this clause. For the avoidance of doubt, the Contractor shall only be entitled to an adjustment of the Contract Sum or to any extension of time in respect of such conditions, risks, contingencies or circumstance which could not have been discovered and/or foreseen by a contractor of the nature described in this clause 2.2A.1 from the form and nature of review and inspection detailed by this clause.

<i>Clause</i>	<i>Amendment</i>
2.2A.2	The Contractor shall carry out the Works in such a manner so as to fully comply with all Environmental Laws (including in respect of the use, transportation, generation, release, disposal and/or installation of and/or contamination of the Site and/or its surrounding by Hazardous Substances) and so as not to give rise to any Environmental Contamination or any Environmental Liabilities and shall at all times indemnify and keep indemnified the Employer against any Environmental Liabilities arising directly out of the Works.
2.2A.3	The Contractor shall throughout the carrying out of the Works and in accordance with the Contract Documents and the Third Party Agreements:
2.2A.3.1	maintain the Works in good order and condition during the course of their erection and construction and shall protect any other works, installations or items in existence on the Site and keep the Site tidy and properly clear of surface materials, rubble, rubbish or waste;
2.2A.3.2	ensure that suitable fences and hoardings shall be erected around the boundaries of the Site in a secure manner and maintained in good condition to the satisfaction of the Employer. The Contractor shall keep all boundary walls, fences and hoardings free from all advertisement or other boards notices or signs other than a board indicating the names of the Employer and the Contractor's customary boards or notices indicating the name of the Contractor and its sub-contractors and the Consultants and any notice displayed in compliance with the CDM Regulations but subject in each case to any necessary planning consent being first obtained and the use or display of the name of the Employer being first approved in writing by the Employer;
2.2A.3.3	take all reasonable measures and precautions to protect the Works from damage by fire and other Specified Perils or any risks insured by the Employer under this Contract;
2.2A.3.4	take all reasonable steps to maintain such highways and temporary access roads and to prevent damage to them. The Contractor shall immediately rectify any damage caused to the temporary roads arising out of their use by the Contractor and/or the Contractor's Persons and the servants, agents, sub-consultants and sub-contractors of the Contractor and the Contractor's Persons;
2.2A.3.5	make proper provision for the support and use of any land, walls, buildings, roads and footpaths upon, adjacent or near to the Site and which are affected by the Works; and
2.2A.3.6	take full responsibility for, and shall carry out all Works with full regard for, the safety of all persons entitled to be upon the Site and shall keep the Site in an orderly state in order to avoid danger to such persons. The Contractor shall require that all sub-contractors and suppliers have the same regard for safety and the avoidance of danger.

Possession

Date of Possession – progress

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| 2.3.1 | Re-number clause 2.3 as clause 2.3.1 and insert "non-exclusive" before the three references to "possession" and remove references to "site" and replace with "Site". |
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Work not forming part of the Contract

2.6 Re-number clause 2.6 as clause 2.6.1.

Delete ":" at the end of the clause and insert "and/or by any Statutory Undertaker, the Contractor shall allow the Employer to arrange for the execution of such work on or near the Site or any work not in the Contract and/or ancillary to the Works, whether or not information concerning such work is provided within the Contract Documents ("the Other Works")."

2.6.1.1 Delete this clause and insert "Number not used."

2.6.1.2 Delete this clause and insert "Number not used."

Insert new clauses 2.6.2 – 2.6.5 as follows:

"2.6.2 The Contractor will not prevent, interfere with or obstruct any of such Other Works. The Contractor shall plan, programme and co-ordinate his work with all Other Works.

2.6.3 The Employer shall use best endeavours to ensure that both he and the Employer's Persons do not unreasonably interfere with the progress of the Works carried out by the Contractor.

2.6.4 Without prejudice to clause 2.6.5, the Contractor shall in accordance with the requirements of the Employer under this clause 2.6, afford all reasonable attendances, facilities and access for the Employer and/or the Employer's Persons who may be employed in carrying out the Other Works for no addition to the Contract Sum, including (but not limited to):

2.6.4.1 planning, programming and co-ordinating the Works with that of such Employer's Persons; and

2.6.4.2 accepting delivery, unloading and storing material for such Employer's Persons as required; and

2.6.4.3 allowing such Employer's Persons space for their site offices and all reasonable access and facilities for the proper execution of their work including the free use of craneage, scaffolding, ladders, stores, mess rooms, toilets, site services, including background lighting and distribution boards for the Employer's Persons' own localised lighting, and providing the necessary watching and lighting, provided that these facilities are normally available on-site at the time.

2.6.5 Without prejudice to clauses 2.6.2 and clause 2.26.6, it is agreed and declared for the purposes of clauses 2.23 to 2.26 and 4.19 to 4.21 inclusive (but without limitation) that the Contractor could reasonably foresee the activities of the Employer's Persons in carrying out the Other Works on or near the Site or parts thereof throughout the progress of the Works.

Supply of Documents, Setting Out etc.**Contract Documents**

2.7.3 After "accessible there to the Employer's Agent" insert "or the Employer's or Funder's surveyor and any other consultant employed by the Employer or the Funder".

Construction Information

- 2.8 Re-number clause 2.8 as clause 2.8.1. Delete "Save for any Contractor's Design Documents contained in the Contractor's Proposals" and replace "the" with "The".

Insert new clauses 2.8.2 – 2.8.6 as follows:

- "2.8.2 The Contractor shall provide to the Employer, on or before the 7th day of each month, in a format to be agreed with the Employer's Agent prior to the Execution Date, a report which shall include, but not be limited to, reports on the progress of the Works, information outstanding from the Employer and any matters which arise which may have a substantial effect on the Works and the anticipated final cost of the Works, having made adjustment for all Employer's instructions and Changes issued under this Contract and any anticipated changes which could reasonably be foreseen by the Contractor. The Contractor shall also procure from each of the Principal Sub-Contractors a report on the Works, the progress of the design and its compliance with the Employer's Requirements which shall be incorporated in its original and unedited form into the Contractor's monthly report. The Contractor acknowledges that the Employer shall be deemed to have relied upon such reports prepared by the Contractor pursuant to this clause 2.8.2.
- 2.8.3 The Employer has obtained and/or shall obtain the Employer's Consents. The Contractor shall obtain the Contractor's Consents at its own cost and risk. The Contractor shall be responsible for ensuring its and the Contractor's Persons' compliance with the Consents and any action required by or instruction issued to the Contractor for the purposes of obtaining the Contractors' Consents and/or such compliance with the Consents will not amount to or give rise to a Change.
- 2.8.4 The Contractor shall supply to the Employer copies of all of the Contractor's Consents procured together with all applications made for the Contractor's Consents and of all grants or refusals which may be made in response and shall provide all reasonable assistance to the Employer in obtaining the Employer's Consents.
- 2.8.5 The Contractor shall maintain full records of all relevant matters relating to the Works including without limitation details of the issue of drawings and plans (whether by or on behalf of the Contractor), Site or other meetings, correspondence in respect of Local Authority requirements, correspondence in respect of any statutory or planning notices or in respect of any claims however arising in respect of the Works or any other similar matter which may affect the operation, use or enjoyment of the Works and make copies of all or any of such documents available to the Employer's Agent on request following payment of the Contractor's reasonable costs in making such copies.
- 2.8.6 On, or as soon as reasonably practicable after, the Execution Date, the Contractor shall without charge to the Employer provide the Employer's Agent with one hard copy and one electronic copy of the Master Programme in a form agreed with the Employer's Agent. The Contractor shall review and update the Master Programme on a regular basis and promptly notify the Employer if he becomes aware for any reason of a departure from the Master Programme."

Site Boundaries

Clause Amendment

2.9 Delete this clause and insert:

"The Contractor shall as soon as reasonably practicable following the Execution Date check the boundaries of the Site."

Discrepancies and Divergences

Preparation of Employer's Requirements

2.11 Delete this clause and insert "Number not used".

Employer's Requirements – inadequacy

2.12.1 Delete this clause and insert "Number not used".

2.12.2 Delete this clause and insert "Number not used".

Discrepancies in documents

2.14.1 In the first sentence after "divergence" insert "or inadequacy". In the last line, after "Employer" insert "and without any adjustment to the Completion Date".

2.14.2 Delete the existing text and replace with the following:

"Where there is a discrepancy or inadequacy within the Employer's Requirements or a divergence between the Employer's Requirements and the Contractor's Proposals the Contractor shall notify the Employer in writing of such fact and if the discrepancy or divergence or inadequacy can be resolved by reference to the Employer's Requirements then unless the Employer shall instruct otherwise the Employer's Requirements shall prevail over that which is contained in the Contractor's Proposals (subject always to compliance with the Statutory Requirements) without any adjustment to the Contract Sum or the Completion Date. Where the Employer's Requirements do not deal with any such discrepancy or divergence or inadequacy or if the Employer shall instruct that the Employer's Requirements should not prevail in order to deal with such discrepancy or divergence the Contractor shall inform the Employer in writing of the manner in which he would propose dealing with the discrepancy or divergence and the Employer and the Contractor shall endeavour to agree upon how the discrepancy or divergence or inadequacy should be dealt with. If the Employer and the Contractor agree upon how the discrepancy, divergence or inadequacy should be dealt with then the Employer shall issue an instruction confirming the agreed manner in which the discrepancy or divergence or inadequacy should be resolved. If the Employer and the Contractor fail to so agree the Employer shall direct how the discrepancy or divergence or inadequacy shall be addressed (having due regard to the Employer's Requirements). The Contractor shall be obliged to comply with the Employer's directions and/or instructions without affecting in any way or to any degree the responsibility of the Contractor under this Contract and without any adjustment to the Contract Sum or Completion Date."

Divergences from Statutory Requirements

2.15.2.1 In line 2, after "Works" insert "of which the Contractor was not aware and which could not reasonably have been foreseen by a contractor using Good Industry Practice at the Base Date".

Clause Amendment

2.15.2.2 In line 3, after "Requirements" insert "which could not reasonably have been foreseen by a contractor using Good Industry Practice as at the Base Date".

2.15.2.3 Delete this clause and insert "Number not used."

Insert new sub-clause 2.15.2.4 as follows:

"2.15.4 The Contractor acknowledges and agrees that the provisions of clauses 2.15.2.1 and 2.15.2.3 shall not apply and may not be relied upon in respect of such an alteration, modification or amendment relating to a change in the Statutory Requirements that is directly caused by or is materially contributed to by Coronavirus, for which event, the Contractor acknowledges that (without prejudice to clause 4.21) clause 2.26.15 contains the sole and exclusive entitlements available to the Contractor under this Contract."

Design Work – liabilities and limitation

Delete Clause 2.17.1 and insert a new clause as follows:

"2.17 In respect of the design of the Works, the Contractor:

2.17.1.1 shall exercise in the design of the Works, all the reasonable skill, care and diligence to be expected of a properly qualified and competent designer who is experienced in the provision of like professional services for works of a similar size, type, scope, complexity and value to the Works;

2.17.1.2 shall be fully responsible in all respects for such design including, but not limited to, all design and design development work and selection of goods and materials; and

2.17.1.3 undertakes and warrants to the Employer that the Works will, when completed, comply with the performance specifications, standards and/or requirements set out in the Contract Documents and, where applicable, European Standards, British Standards and Codes of Practice with the operation of this clause not imposing or being deemed to create any obligation of fitness for purpose on the Contractor in respect of the Works.

2.17.3 Delete this clause and insert as follows:

"Notwithstanding anything to the contrary contained in this Contract, the Contractor's total aggregate liability under or in connection with this Contract whether in contract or tort, in negligence for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed one hundred and fifty percent (150%) of the Contract Sum (as adjusted in accordance with the Conditions) ALWAYS PROVIDED THAT any liquidated damages levied, deducted and/or withheld in accordance with clause 2.29 shall not be held to contribute to or form part of the loss that is the subject of the limitations of liability expressed above and/or shall be disregarded when calculating whether the Contractor's liability has met and/ or exceeded such limits set out hereunder."

Insert new clauses 2.17.4 – 2.17.5 as follows:

2.17.4 The Contractor warrants and undertakes that he shall design and construct the Works:

<i>Clause</i>	<i>Amendment</i>
2.17.4.1	in compliance with all Acts of Parliament (including but not limited to the Environmental Laws and the Energy Performance of Buildings (England and Wales) Regulations 2012) and any instruments, rules or orders made under any Acts of Parliament, Consents, Statutory Requirements, EC Directives, relevant British Standard Institute recommendations and requirements of the Environment Agency and the requirements of the insurers of the Employer, the fire officer and the Loss Prevention Certification Board, statutory regulations made under or deriving validity from them and any requirements and codes of practice of local authorities affecting the Works and/or the Site current at the time the Works are carried out; and
2.17.4.2	without infringement of any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding upon or affecting the Site (including but not limited to the Consents) save as may have been agreed with the Employer insofar as details of the same have been included or specifically referred to in the Contract Documents.

Adjustment of Completion Date

Notice by Contractor of delay to progress

- 2.24.1 Delete the existing text and replace with the following:
- "If an event occurs which delays or is likely to delay the Completion Date for the Works or a Section, the Contractor shall notify the Employer in writing as soon as reasonably practicable and in any event no later than 10 (ten) Business Days after the date on which the Contractor became aware (or the date on which a competent and careful contractor experienced in carrying out and completing works of a similar size, scope and value ought reasonably to have become aware) of the delaying event. In its notice, the Contractor shall detail the material circumstances, including the cause or causes of the delay, and identify any event which it considers a Relevant Event. Thereafter, the Contractor shall, as soon as reasonably practicable, provide the Employer with such further information as becomes available to the Contractor concerning such matters (including but not limited to that required by clause 2.24.4). If the Contractor fails to comply with this clause 2.24.1, it shall not be entitled to any extension of time or addition to the Contract Sum in respect of such delay."

Insert new clauses 2.24.4 – 2.24.5 as follows:

- "2.24.4 Without prejudice to the remainder of clause 2.24, as soon as the impact on the Master Programme of any delay notified in accordance with clause 2.24.1 becomes reasonably apparent to the Contractor (or ought reasonably to have become apparent to a competent and careful contractor experienced in carrying out and completing works of a similar size, scope and value) the Contractor shall reissue to the Employer one hard copy and one electronic copy of the Master Programme revised to reflect actual progress of the Works at that date and the likely effect of the delay so notified, together with any supporting information in respect of the Master Programme (as revised in accordance with this clause 2.24.4) that may be required by the Employer.
- 2.24.5 If the Contractor fails to reissue the Master Programme in accordance with the requirements of clause 2.24.4 then the Employer shall be entitled to rely on any programme prepared on behalf of the Employer for the purposes of assessing the Contractor's entitlement to an extension of time and adjustment to the

Completion Date for the Works. Without prejudice to the foregoing of this clause 2.24.5, in circumstances where the Contractor fails to provide the Master Programme revised in accordance with clause 2.24.4 then the Employer may instruct a programme consultant to update the Master Programme as contemplated by clause 2.24.4 and the cost of doing so shall be an amount due and owing by the Contractor to the Employer and the Employer may deduct such amount from any sums otherwise due and owing to the Contractor."

Fixing Completion Date

- 2.25.1 At the beginning of the second paragraph, after "then," insert "subject to the Contractor's strict compliance with clause 2.24.1 and".

Insert new clause 2.25.6.5 as follows:

- "2.25.6.5 Notwithstanding any other provision of this Contract, the Contractor shall not be entitled to any extension of time:

- 2.25.6.5.1 where and to the extent that the Relevant Event which is the cause of delay is caused or contributed to by, or is consequent upon or necessitated by, any negligence, omission, default, breach of contract or breach of statutory duty on the part of the Contractor and/or any of the Contractor's Persons save where (without prejudice to clause 4.19.4) such negligence, default or breach is caused by any of the Specified Perils (but only to the extent the Employer is able to recover its resultant losses and / or expenses from the Joint Names Policy for All Risks Insurance taken out and maintained in accordance with this Contract); and/or

- 2.25.6.5.2 in the event of Concurrent Delay."

Relevant Events

- 2.26.2.1 After "instructions" insert "or directions", after "divergence" insert "or inadequacy", after "the Contractor's Proposals" insert "the Employer's Requirements, the matters referred to in clause 2.14".
- 2.26.3 After "clause 2.4" insert "except where such deferment is on the grounds that the Contractor has not produced a satisfactory Construction Phase Plan".
- 2.26.7 At the end of the clause insert "provided that such failure is not caused or contributed to by the Contractor's failure to perform in accordance with the Contractor's Management of Statutory Undertakers".
- 2.26.8 At the end of the clause insert "(which for these purposes shall mean any weather condition which exceed by not less than 75% the 10 year average of the relevant condition recorded at the nearest weather station to the Site which records that condition and which causes delay to the execution of the Works)".
- 2.26.9 After "Specified Perils" insert "unless caused by reason of some negligence or default of the Contractor or any of the Contractor's Persons and to the extent that the Employer cannot recover its resultant losses and / or expenses under the Joint Names Policy for All Risks Insurance taken out and maintained in accordance with this Contract;".
- 2.26.10 Delete "civil commotion or".

<i>Clause</i>	<i>Amendment</i>
2.26.11	At the end of this clause insert "but which is not specific to the Contractor or the Contractor's Persons and which is beyond the reasonable control of the Contractor".
2.26.12	At the end of this clause insert "(which shall not include the impact of any such statutory power in response of the Coronavirus outbreak)".
2.26.13	Delete the existing wording and replace with "reasonable delay in receipt of the Contractor's Consents which the Contractor has used its best endeavours to avoid or reduce".
2.26.14	Delete existing wording in this clause and replace with "any other occurrence or circumstance amounting to Force Majeure."

Insert new clause 2.26.15 as follows:

- 2.26.15 delay to the progress of the Works:
- “2.26.15.1 to the extent directly attributable to restrictions on carrying out the Works as a result of advice from the UK Government, the National Health Service, Public Health England or other health or regulatory bodies in the United Kingdom in relation to Coronavirus provided such preventative measures and restrictions are more restrictive on the Contractor's execution of the Works than is required for the Contractor to comply with the guidance in the SOP; and/or
- 2.26.15.2 (save for those events described in clause 2.26.15.1 to which that clause applies exclusively) as a direct consequence of the Coronavirus outbreak which is beyond the reasonable control of the Contractor and to the extent that such delay would not have been reasonably foreseeable by a professionally qualified and competent Contractor experienced in carrying out works of a similar scope, nature, value, complexity and timescale to the Works at the date of the Contract."

Practical Completion, Lateness and Liquidated Damages

Practical Completion

- 2.27 Re-number clause 2.27 as clause 2.27.1.
- 2.27.1 Delete "When" in the first sentence, and replace with "Without prejudice to the operation of clauses 2.37.1 and 2.37.2, the Contractor shall give the Employer in writing not less than 15 Business Days' notice of the date by which he considers that a Section and/or the Works, as appropriate, will have reached practical completion. Provided that when".

At the end of the clause insert a new paragraph as follows:

"Where the Employer decides (at his absolute option and discretion) that minor defects and/or omissions which are apparent at practical completion of the Works or a Section may be remedied or made good after such practical completion, the Employer shall be entitled to issue instructions to the Contractor for the purposes of dealing with such defects and/or omissions, and the Contractor shall ensure that all such defects and/or omissions are remedied or made good together with any consequential damage to the Works caused by such remedy or making good as soon as reasonably practicable (or immediately in the case of emergency) after such practical completion and, in

any event, in a programmed manner prior to the end of the relevant Rectification Period."

Insert new clause 2.27.2 as follows:

"2.27.2 At the date set out on the Practical Completion Statement the Contractor shall leave the Site and the Works in full repair and good and clean condition clear of all unused building materials, plant and equipment used in the Works together with all or any temporary structures.

Payment or allowance of liquidated damages

2.29.1 Delete "5 days" and insert "1 day".

Insert new clauses 2.29.5 and 2.29.6 as follows:

"2.29.5 The payment, withholding or deduction of liquidated damages pursuant to this clause 2.29 shall be:

2.29.5.1 subject to the Contractor's total liability in respect of the liquidated damages payable under this Contract being limited to 15% (fifteen percent) of the Contract Sum (as adjusted in accordance with the Conditions), but with it being acknowledged and agreed by the Contractor that the Employer may immediately terminate the Contractor's employment under this Contract in the event of this total amount of liquidated damages being exceeded (with clauses 8.4 and 8.7 being read and construed accordingly); and

2.29.5.2 otherwise without prejudice to the Employer's rights to terminate the Contractor's employment under clauses 8.4 to 8.6 and any other rights or remedies of the Employer (whether under this Contract or otherwise) in relation to any breach of the Contract, or other matter, to which this clause 2.29 does not apply.

2.29.6 The Contractor acknowledges and agrees that the liquidated damages for which he may be liable pursuant to this clause 2.29 represent a genuine pre-estimate of the employer's loss flowing from delay in completion of the Works or of a Section, and are not a penalty for such delay."

Partial Possession by Employer

Contractor's consent

2.30 Before the sentence starting "The Contractor shall thereupon give the Employer notice..." insert: "Following possession of any part or parts of the Works or a Relevant Part to the Employer, the Contractor shall make reasonable provision for access to the Relevant Part to the Employer or any of the Employer's Persons executing further works of a fitting out nature."

Practical Completion date

2.31 After "...Relevant Part shall be deemed to have commenced, on the Relevant Date" add ", provided however that the Rectification Period for the Relevant Part shall be deemed to be extended and shall run until the issue by the Employer of the Notice of Completion of Making Good in respect of the whole of the Works."

Defects

Schedule of defects and instructions

- 2.35 After "faults" in line 2 of the second paragraph insert "and any consequential damage".

At the end of the clause add the following paragraphs:

"PROVIDED THAT where the Employer states in his instruction that, in his opinion, any such defect, shrinkage or other fault is likely to cause unreasonable inconvenience to any person lawfully in occupation of or using the whole or any part of the Works or that such defect, shrinkage or other fault is likely directly or indirectly to cause any further damage thereto the Contractor shall comply with the Employer's instruction forthwith and in any event from receipt of the Employer's instruction marked:

- (i) Emergency, (including but not limited to water leakages and power failures), within 2 hours; and
- (ii) Important, (including but not limited to ventilation and heating plant and/or equipment), within 7 hours; and
- (iii) General, all other defects, within 7 Business Days.

If the Contractor fails to comply with the Employer's instruction within the periods specified in this clause 2.35, the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instruction and all costs incurred in connection with such employment may be deducted by the Employer 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 a debt."

Contractor's Design Documents

As-built Drawings

Delete the heading '**As-built Drawings**' and replace with '**Documentation at practical completion**'.

- 2.37 Delete clause and insert as follows:

- "2.37.1 Before practical completion of the Works or relevant Section and as a condition precedent thereto, the Contractor shall have complied in full with its obligations under clauses 7A and 7E and to the extent reasonably available given the progress of the Works, and without further charge to the Employer, supply for the retention and use of the Employer all As-Built Drawings issued and/or prepared by the Contractor (or on his behalf), all test certificates, manuals, operation and maintenance manuals, all guarantees relating to plant and machinery and/or provided by any manufacturers, suppliers and/or sub-contractors in favour of the Employer, two copies of all energy performance certificates prepared in accordance with the Energy Performance of Buildings (England and Wales) Regulations 2012, all health and safety information which is required for the Health and Safety file (as defined in the CDM Regulations), all approvals from statutory authorities and all other information as may be specified in the Contract Documents as being reasonably required by the Employer and/or the Employer's Agent or as the Employer may reasonably

Clause

Amendment

require, all in as complete a form as reasonably practicable given the progress of the Works.

- 2.37.2 Within 20 (twenty) Business Days of the date of practical completion, the Contractor shall, without further charge to the Employer, supply for the Employer's retention and use full, final and complete forms of all the drawings, certificates and/or documents set out in clause 2.37.1 not already supplied to the Employer in accordance with that clause. For the avoidance of doubt, the Employer shall not be required to release to the Contractor any retained sums under this Contract until such time as the Contractor has fully complied with the provisions of this clause 2.37.2 to the reasonable satisfaction of the Employer (with clause 4.18 being read accordingly)."

Copyright and use

- 2.38.2 Delete "Subject to all monies due and payable to the Contractor under this Contract having been paid the Employer shall have an irrevocable" and replace with "The Contractor hereby grants to the Employer and all persons authorised by it an irrevocable,...".

After "Contractor's Design Documents" insert "(including any design undertaken as referred to in clause 2.17.1.2).

After "...sale, promotion, advertisement," insert "extension, funding".

After "repair of the Works" insert "and/or the Site and/or any part of it."

Insert new clauses 2.38.5 and 2.38.6 as follows:

- "2.38.5 Where the Contractor does not have the copyright he shall use best endeavours to procure that a royalty-free, irrevocable non-exclusive licence to reproduce and use any drawings, plans, specifications, schedules, designs, reports, calculations, setting out dimensions and other work forming part of the Works prepared by any of the Contractor's Persons shall be granted to the Employer.
- 2.38.6 Insofar as the Contractor is the author (as referred to in the Copyright, Designs and Patents Act 1988) of the Proprietary Material and/or Works, the Contractor waives any moral rights in respect of the same which he might otherwise be deemed to possess under Chapter VI of that Act."

Insert new clauses 2.39 to 2.43 and headings as follows:

"Anti- Corruption

2.39

- 2.39.1 The Contractor shall:

2.39.1.2 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010;

2.39.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

<i>Clause</i>	<i>Amendment</i>
2.39.1.3	comply with the Employer's anti-bribery and anti-corruption policies, as published and updated by the Employer from time to time;
2.39.1.4	have and maintain throughout the term of this Contractor its own anti-bribery and anti-corruption policies and procedures, including but not limited to adequate procedures to ensure compliance with the Bribery Act 2010 and the Employer's anti-corruption policy, and will enforce the same where appropriate;
2.39.1.5	immediately notify the Employer if a foreign public official becomes an officer or employee of the Contractor acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no public officials as officers, employees or direct or indirect owners at the date of this Contract);
2.39.1.6	ensure that all persons associated with the Contractor or other persons who are performing services or providing goods in connection with this Contract comply with this clause 2.39.1.
2.39.2	The Contractor warrants and represents that at the time of entering into the Contract it has not and none of its officers, employees, agents, representatives, subcontractors, consultants, or other persons acting with the authority of the Contractor have:
2.39.2.1	done anything that would have placed it or them in breach of the obligations at clause 2.39.1 above; or
2.39.2.2	without prejudice to clause 2.39.2.1, offered or given, or agreed to give, to any member, employee or representative of the Employer any gift or consideration of any kind as an inducement or reward for doing, or refraining from doing, or for having done, or refrained from doing, any act in relation to obtaining or executing this Contract.
2.39.3	If the Contractor is in breach of any obligation, warranty or representation as provided in this clause 22, then the Employer shall be entitled (without prejudice to any other right and/or remedy, including the right to immediately terminate this Contract under clause 8.4 (with that clause being read and construed accordingly)):
2.39.3.1	to suspend performance of this Contract for such period as the Employer may consider to be necessary in order to investigate any such breach. During any such period of suspension, the Employer shall be under no obligation to perform its part of this Contract, but the Contractor will continue to be bound by all of its obligations under this Contract insofar as they are compatible with this Contract being suspended and will continue to comply with all of its duties under this Contract. The Employer shall be entitled to require the Contractor to stay away from the Employer's premises and to have no contact with any employees, officers, customers, Employers, agents or suppliers of the Employer; and/or
2.39.3.2	to terminate this Contract with immediate effect on written notice and the provisions of clause 8.7 shall apply.
2.39.4	The Contractor is liable for and indemnifies the Employer against all payment, loss, damage, action, cost, fines, financial penalty or expense of whatsoever nature paid made or incurred by the Employer arising out of or in connection

with any breach by the Contractor of its obligations, representations and/or warranties under this clause 2.39.

Data Protection

2.40

- 2.40.1 This clause 2.40 is only applicable where and to the extent that the obligations and/or duties of the Contractor (including the carrying out of the Works) under and/or arising from this Contract relate to and/or are affected by any data protection legislation.
- 2.40.2 Each Party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including, without limitation:
 - 2.40.2.1 the General Data Protection Regulation ((EU) 2016/679) ("the GDPR") and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK; and
 - 2.40.2.2 any successor legislation to the Data Protection Act 2018 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law.
- 2.40.3 The Contractor shall indemnify and hold harmless the Employer from and against all costs, expenses, damages, loss, liabilities, demands, claims, actions or proceedings whatsoever which the Employer may suffer or incur as a consequence of any breach by and/or through the Contractor of this clause.
- 2.40.4 The data and/or information referred to in this clause is solely the property of the Employer. The Contractor hereby agrees that it has no interest whatsoever in such property (whether equitable, legal, and/or otherwise) and, accordingly, the Contractor's interaction with any such data and/or information is by way of a non-exclusive, revocable, non-assignable licence subject to the terms and conditions of this Contract.

Freedom of Information

- 2.41 The Contractor acknowledges that the Employer is subject to the requirements of the FOIA and the EIRs. The Consultant shall:
 - 2.41.1 provide all necessary assistance and cooperation as reasonably requested by the Employer to enable the Employer to comply with its obligations under the FOIA and EIRs;
 - 2.41.2 transfer to the Employer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
 - 2.41.3 provide the Employer with a copy of all Information belonging to the Contractor requested in the Request For Information which is in its possession or control in the form that the Employer requires within 5 working days (or such other period as the Employer may reasonably specify) of the Employer's request for such Information; and

<i>Clause</i>	<i>Amendment</i>
2.41.4	not respond directly to a Request for Information unless authorised in writing to do so by the Employer.

Social Value

- 2.42.1 Subject to its full and strict compliance with the Social Value Requirements (including any sequencing, programme and/or plan for performance of the same set out therein) the Contractor shall be paid the Social Value Dividend.
- 2.42.2 Without prejudice to the foregoing of this clause, that part of the Social Value Dividend shall become due at the end of the Delivery Period for the allotted value of the Social Value Requirements for that Delivery Period completed over each such Delivery Period and shall be paid at the next interim payment following the completion of that Delivery Period.
- 2.42.3 The Employer may (at its sole and absolute) agree to amend the Social Value Requirements and/or the Social Value Dividend (including, without limitation, reallocating activities of the Social Value Requirements to future Delivery Periods, substituting activities of the Social Value Requirements for those recommended by the Contractor and otherwise reordering the value of the activities comprising the Social Value Requirements that make up the Social Value Dividend). Following any such agreement, the Contractor shall reissue a copy of the Social Value Requirements that includes such agreed amendments.
- 2.42.4 As a condition precedent to the payment of any part of the Social Value Dividend the Contractor shall:
 - 2.42.4.1 provide such substantiation and/or evidence as the Employer shall reasonably require of the completion of the relevant activities of the Social Value Requirements (and in accordance its terms) to which those claimed parts of the Social Value Dividend relate; and,
 - 2.42.4.2 have complied with all requirements set out in the Social Value Requirements (including, without limitation, in respect of meetings and reporting on performance around the Social Value Requirements) for that Delivery Period.
- 2.42.5 Without prejudice to the operation of the foregoing of this clause, it is acknowledged and agreed that the Employer may expend those amounts and/or engage in such activities that are stated as being so permitted by the Social Value Requirements with such actions being credited as being taken by the Contractor for the purposes of payment of the Social Value Dividend save that amounts expended by the Employer under this clause shall be deducted from payments of the Social Value Dividend to the Contractor and with the foregoing of this clause being read and construed accordingly in respect of such parts of the Social Value Requirements.

Roads for the Site

- 2.43 The Contractor shall comply in full with the Road Management Requirements when carrying out and completing the Works."

Section 3 Control of the Works

Access and Representatives

Access for Employer's Agent

Clause Amendment

3.1 Re-number clause 3.1 as 3.1.1.

3.1.1 In line 1 after " Employer" insert "(including, without limitation, the Funder, Purchaser, Tenants and/or any representative, employees and/or agents of the same and/or the Quantity Surveyor)".

In line 5 delete "the Employer and any person authorised by him" and replace with "the Employer's Agent and any person so authorised under this clause 3.1.1".

Delete the final sentence.

After clause 3.1.1 insert new clause 3.1.2 as follows:

"3.1.2 The Contractor shall give to the Employer reasonable notice of the holding of all material meetings to take place between the Contractor and/or the Site Manager and/or any of the Contractor's Persons and permit the Employer, the Employer's Agent and/or any Employer's Persons to attend such meetings, and, without prejudice to the foregoing of this clause 3.1.2:

3.1.2.1 where reasonably required by the Employer or the Employer's Agent, convene project and/or site meetings (with the Contractor, the Site Manager and the relevant Contractor's Persons attending) at any time and permit the Employer, the Employer's Agent and/or any Employer's Persons to attend such meetings; and

3.1.2.2 (without prejudice to the operation of clause 2.8.2) promptly provide the Employer's Agent with copies of any agenda for, and the minutes of, all such project and/or site meetings."

Site Manager

3.2 In line 3 after "shall promptly" insert "and in any event no later than 5 (five) Business Days".

Sub-Contracting

Consent to sub-contracting

3.3.1 In the last sentence after "or any sub-contracting" insert ", or any instructions or comments made by the Employer or the Employer's Agent in relation to any sub-contracting,".

In the last sentence after "in any way" insert "exclude, limit, diminish or".

At the end of the clause insert as follows:

"The Contractor shall be wholly responsible for the acts, omissions, or defaults of all its sub-contractors."

Conditions of sub-contracting

3.4 Delete the first sentence, "Where considered.....Sub Contract".

3.4.2.5 Delete the first sentence and replace with "that in respect of each sub-contract of a Principal Sub-Contractor:".

<i>Clause</i>	<i>Amendment</i>
3.4.2.5.1	Delete the existing wording and replace with "the sub-contract shall be executed as a deed; and".
3.4.2.5.2	Delete the existing wording and replace with "the sub-contract shall contain terms so as to give full force and effect to the operation of clause 7.5 (including but not limited to appending the relevant forms of collateral warranty with third party rights schedule and notice of vesting in respect of such third party rights);".
3.4.2.5.3	Delete this clause and replace with "number not used".

After clause 3.4, insert the following heading:

"Principal Sub-Contractors"

Insert new clause 3.4A as follows:

"3.4A	In respect of the Principal Sub-Contractors, in addition to complying with the requirements of clause 3.4 (including, for the avoidance of doubt, clause 3.4.2.5) the Contractor shall:
3.4A.1	before entering into any sub-contract or deed of appointment with any Principal Sub-Contractor secure approval for the terms (including the level and basis of indemnity of such professional indemnity insurance and/or product liability insurance to be maintained under clause 6.15.3) of such sub-contract or deed of appointment from the Employer (with it being acknowledged by the Contractor that the Employer shall have behaved reasonably in withholding such approval where the terms of such sub-contract or deed of appointment are materially at variance with the terms of this Contract or where such terms do not allow for the Contractor to fully comply with its obligations under clause 7.5.2);
3.4A.2	on demand provide to the Employer certified copies of any sub-contract or deed of appointment (save for particulars of the sub-contract sum) of any Principal Sub-Contractor;
3.4A.3	not do or omit to do any act or thing in respect of such sub-contract and/or deed of appointment which may cause the rights of the Employer and/or any Third Party under a collateral warranty and/or third party rights issued in accordance with clause 7.5 to be prejudiced, compromised and/or diminished;
3.4A.4	not assign any sub-contract or deed of appointment of any Principal Sub-Contractor or discharge the employment of any Principal Sub-Contractor without the prior written consent of the Employer;
3.4A.5	give the Employer written notice immediately after becoming aware of any breach or alleged breach of any sub-contract or deed of appointment of any Principal Sub-Contractor or any other circumstances which may lead to the assignment or termination of any sub-contract or deed of appointment of any Principal Sub-Contractor by the Contractor; and
3.4A.6	not waive, release, alter, vary or estop itself in any material respect from enforcing or seeking redress from any obligation or duty owed to it by any Principal Sub-Contractor in connection with the Works (including by variation of the terms of any deed of appointment and/or sub-contract) without the prior written consent of the Employer.

Employer's Instructions**Instructions other than in writing**

Insert new clauses 3.7.4 as follows:

- "3.7.4 In an emergency, the Employer may issue an oral instruction which shall be of immediate effect and, notwithstanding the provisions of this clause 3.7 and clause 3.8, the Contractor shall immediately comply with such oral instruction. Such oral instruction shall be confirmed in writing by the Employer within 3 (three) Business Days of its issue."

Instructions requiring Changes

- 3.9.2 Delete this clause and replace with "Number not used".

Work not in accordance with the Contract

- 3.13.1 After "site" insert "and/or rectification".
- 3.13.2 Delete "(to which the proviso in clause 3.9.1 applies)".

CDM Regulations

- 3.16.2 Delete the clause and replace with the following:
- "3.16.2 where the Contractor is and while he remains the Principal Designer, he shall:
- 3.16.2.1 comply with the duties of a Principal Designer;
- 3.16.2.2 provide the Employer with sufficient information to satisfy the Employer that he has the skills, knowledge, experience and organisational capability to act as and carry out the functions and duties and bear the obligations of Principal Designer; and
- 3.16.2.3 without charge to the Employer, prepare and deliver to the Employer, the health and safety file."
- 3.16.3 At the end of this clause, insert "and the Contractor has allocated or will allocate adequate resources to be able to comply with these obligations."
- 3.16.5 Delete the full stop at the end of this clause and replace with a semi-colon.

After clause 3.16.5 insert new clauses 3.16.6 to 3.16.8 as follows:

- "3.16.6 the Contractor shall provide the Employer with sufficient information to satisfy the Employer that he has the skills, knowledge, experience and organisational capability to act as and carry out the functions and duties and bear the obligations of Principal Contractor;
- 3.16.7 in his capacity as Principal Contractor, the Contractor may issue such instructions as are necessary in order to comply with the CDM Regulations. Any such instructions shall be in writing and notified immediately to the Employer's Agent by the Contractor; and
- 3.16.8 where the Contractor is not the Principal Designer but is the Principal Contractor:

<i>Clause</i>	<i>Amendment</i>
3.16.8.1	the Contractor shall provide to the Principal Designer all information required by the CDM Regulations concerning the planning, management, monitoring and co-ordination of health and safety matters; and
3.16.8.2	the Principal Designer's appointment concludes before practical completion of the Works, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations at no cost to the Employer and which shall not entitle the Contractor to an extension of time."

Section 4 Payment

Contract Sum and Adjustments

Adjustment only under the Conditions

- 4.1 After "The Contract Sum" insert "is a fixed price lump sum and".

Items included in adjustments

- 4.2.3 Delete this clause and replace with "Number not used."

Payments and Notices – general provisions

Interim and final payments – final date and amount

- 4.9.1 Delete "14" and replace with "28".
- 4.9.5 In the last paragraph, delete "5 days" and replace with "1 day".
- 4.9.6 At the end of the clause insert "The Parties hereby agree that the provisions of this clause 4.9.6 constitute a substantial remedy for late payment for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998."
- 4.9.7 Delete "unpaid amount and any".

Pay Less Notices and other general provisions

- 4.10.4 Delete from "The Employer's fiduciary" to "prevent him exercising" (inclusive) and replace with "The Employer may exercise".
- After the words "due to the Contractor" insert "(whether arising under any term of this Contract or under any rule or law or in equity)".

Contractor's right of suspension

- 4.11.1 In line 4 after "suspend the performance of" insert "any or all of".
- In line 6 after "may", insert "(subject to it first complying in full with the obligations of clause 4.11.4)".
- 4.11.3 Delete "or on request".
- At the end of the clause, add the following new sentence:
- "The Contractor shall, on request, submit such further details as are reasonably requested by or on behalf of the Employer."

Insert new clause 4.11.4 as follows:

- "4.11.4 Prior to suspending performance of his obligations under clause 4.11.1, the Contractor shall undertake all necessary measures to:
- 4.11.4.1 make safe and secure the Site and adequately protect all goods and materials; and
- 4.11.4.2 ensure that all insurance that the Contractor has obtained in accordance with section 6 is kept in force during the period of suspension."

Interim Payments – calculation of sums due

Gross Valuation – Alternative A

- 4.12.1 In the last paragraph delete "any applicable Fluctuations Provision or".
- 4.12.2.5 Delete this clause and insert "Number not used."
- 4.12.3.2 Delete "or under any applicable Fluctuations Provision,".

Gross Valuation – Alternative B

- 4.13.1 In the last paragraph delete "any applicable Fluctuations Provision or".
- 4.13.1.2 Delete this clause and replace with the following;
- "4.13.1.2 Site Materials provided:
- (i) they are adequately protected against weather and other casualties;
- (ii) they are not on the Works prematurely; and
- (iii) the Contractor has produced evidence to the Employer's Agent's reasonable satisfaction that the property and/or title in all materials and goods that are the subject of the Interim Payment have passed to the Employer.
- 4.13.2.5 Delete this clause and insert "Number not used".
- 4.13.3.2 Delete "or under any applicable Fluctuations Provision,".

Sums due as Interim Payments

- 4.14 Re-number clause 4.14 as clause 4.14.1.

After clause 4.14.1 insert new clauses 4.14.2 to 4.14.3 as follows:

- "4.14.2 Notwithstanding any other terms of this Contract, it is agreed between the parties that:
- 4.14.2.1 the Contractor shall not be entitled to payment of any sums which would otherwise be due and payable under the terms of this Contract until it has provided the performance bond pursuant to clause 7.3.1 and/or the parent company guarantee pursuant to clause 7.3.2, and/or
- 4.14.2.2 in respect of the deed or deeds of collateral warranty required under clause 7A.2 where the Contractor fails to provide any such deed or deeds of collateral warranty the Employer shall be entitled to retain from any amounts due and owing to the Contractor a sum equal to 15% (fifteen percent) of the Contract

Clause

Amendment

Sum (as adjusted in accordance with the terms of this Contract) for any and all such deed or deeds of collateral warranty that the Contractor fails to provide in accordance with clause 7A.2; and/or

- 4.14.2.3 in respect of the deed or deeds of collateral warranty required under clause 7.5.1 where the Contractor fails to provide any such deed or deeds of collateral warranty in accordance with that clause (but not in circumstances where any such failure by the Contractor is as a result of a sub-contractor, sub-consultant being Insolvent; as defined in this Contract) the Employer shall be entitled to retain from any amounts due and owing to the Contractor the full value of the reasonable amount due and owing under each interim payment to the sub-contractor and/or sub-consultant from whom any such deed or deeds of collateral warranty have failed to be produced in accordance with that clause.
- 4.14.3 The Employer shall release all amounts withheld by it under clause 4.14.2 in the next Interim Payment that follows provision by the Contractor of the documents set out in clauses 4.14.2.1 to 4.14.2.3 above in accordance with this Contract and (without prejudice to the generality of the foregoing) section 4 of this Contract shall be read and construed accordingly."

Retention

Rules on treatment of Retention

- 4.16.1 Delete the clause and insert the following:
- "the Employer shall retain the full legal and beneficial ownership of and/or interest in the Retention (and any income and/or interest earned on it) without any fiduciary obligation to the Contractor or any third party in relation to the Retention and the relationship of the Employer and the Contractor with regard to the Retention shall solely be that of debtor and unsecured creditor, subject to the Conditions and the Employer shall have no obligation to invest the Retention or any part of it; and"
- 4.16.2 Delete the clause and insert the following:
- "the Employer shall not be obliged to place the Retention in a separate banking account or separately identify an account for the Retention or segregate the Retention from other funds held by the Employer in any way."

Retention Bond

- 4.17.5 Delete "7.3.1" and replace with "7.3".

Retention – amounts and periods

- 4.18.2.2 At the end of this clause delete the full stop and replace with a semi-colon.
- 4.18 At the end of this clause insert a new paragraph as follows:
- "PROVIDED ALWAYS that, notwithstanding any other provision of this Contract, the Employer shall not be obliged to pay to the Contractor any part of the Retention deducted prior to and upon practical completion unless and until the Contractor has carried out and completed to the reasonable satisfaction of the Employer all work and remedied all defects in the Works as may be notified to the Contractor as outstanding and to be carried out or remedied (as the case may be) as a condition of practical completion or as may be detailed in any list

annexed to the Section Completion Statement and/or the Practical Completion Statement produced by operation of clause 2.27.1 (or otherwise) and/or provided all documents and/or information required by operation of clause 2.37."

Loss and Expense

Matters material affecting regular process

4.19.1 In line 4 after "subject to clause 4.19.2" insert ", and 4.19.3".

In line 5 after "compliance with the" delete "provisions of" and replace with "conditions precedent set out in".

After clause 4.19.2 insert new clauses 4.19.3 to 4.19.4 as follows:

"4.19.3 Without affecting clause 4.19.2, no such entitlement arises and the Contractor shall not claim that such an entitlement arises where the Contractor fails to comply in full with clause 4.20.1.

4.19.4 Notwithstanding any other provision of this Contract, the Contractor shall:

4.19.4.1 only be entitled to receive a proportion or part of any loss and/or expense arising by reason of a Relevant Matter that is caused or contributed to by, or consequent upon or necessitated by, any negligence, omission, default, breach of contract or breach of statutory duty on the part of the Contractor and/or any of the Contractor's Persons to the extent that such proportion or part is recoverable by the Employer under the Joint Names Policy for All Risks Insurance taken out and maintained in accordance with this Contract); and/or

4.19.4.2 not be entitled to any addition to the Contract Sum in the event of Concurrent Delay; and/or

4.19.4.3 use best endeavours to carry out all actions which a contractor experienced in works of a similar size, scope, type and complexity to the Works would be reasonably expected to perform to prevent, minimise and/or mitigate the accrual of any direct loss and/or expense to which it is entitled under clauses 4.19 to 4.21."

Notification and ascertainment

4.20.1 After "as soon as" insert "(and in any event no later than 10 (ten) Business Days after)".

At the end of the clause insert "and the Contractor shall use all reasonable endeavours to avoid and/or reduce such loss and/or expense".

Relevant Matters

4.21 At the end of the clause insert:

"Notwithstanding any other provision of this Contract, the parties acknowledge and agree that any delay as referred to in clause 2.26.15 shall not be a Relevant Matter under this Contract."

Reservation of Contractor's rights and remedies

<i>Clause</i>	<i>Amendment</i>
4.23	Delete the existing text and insert "The Employer shall have no liability to compensate the Contractor, whether in contract, tort or otherwise, in connection with any Relevant Matter and its consequence save as to the extent expressly provided for in clauses 4.19 and 4.20."

Final Statement and Final Payment

- 4.24.1 At the end of the clause after "reasonably require" insert the following:
- "including, if requested by the Employer, information that reasonably identifies and schedules all of the costs relating to all plant and machinery comprised in the Works to enable a claim to be made in respect of capital allowances and/or any other tax allowances and such supporting documentation required by the Employer in respect of such costs."

Section 5 Changes

General

Definition of Changes

- 5.1.1 After "otherwise than" insert "pursuant to clause 2.14 and/or"
- 5.1.1.1 At the end of the clause insert "(provided that the value of any work omitted does not exceed in the aggregate 50% (fifty percent) of the value of the Contract Sum as stated at the Execution Date)".

Change of conditions for other work

- 5.6 At the end of the clause insert the following:
- "provided always that the substantial change in the conditions does not arise by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons".

Additional Provisions

Insert new clauses 5.7.3 - 5.7.4 as follows:

- "5.7.3 Where any part or parts of the Works is omitted pursuant to clause 5.1.1.1, the Contractor agrees that the Employer may itself carry out, or engage another contractor to carry out, such part or parts of the Works.
- 5.7.4 To the extent that the valuation relates to the omission of work no adjustment shall be made in respect of loss of contribution to incidental costs, profit or overheads."

Section 6: Injury, Damage and Insurance

Personal Injury and Property Damage

Contractor's Liability – personal injury or death

- 6.1 Following "caused by the carrying out of the Works" insert "or of any obligation pursuant to clause 2.35 or the presence of any person or property on Site for any reason,".

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

Re-number clause 6.2 as clause 6.2.1.

- 6.2.1 Following "by reason of the carrying out of the Works", insert "or of any obligation pursuant to clause 2.35". Following "to the extent that the same is due to any negligence, breach of statutory duty, omission" delete "or default of the Contractor" and insert "default or breach of contract by the Contractor".

Insert new clauses 6.2.2 and 6.2.3 as follows:

- "6.2.2 The Contractor shall at all times prevent any nuisance or other interference with the rights of any adjoining land owner, any tenant or occupier, any statutory undertaker or any other third party of which the Contractor is, or ought reasonably to have been aware, arising out of the carrying out of the Works. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all reasonable expenses, liabilities, losses, claims and proceedings ("the damages") resulting from any failure or default by the Contractor in performing his obligations under this clause 6.2.2 provided that the Contractor shall only be liable insofar as the damage can be conclusively proved and shall assist the Employer in the defence of any such action, claim or proceedings.
- 6.2.3 Without prejudice to the obligations of the Contractor under clause 6.2.2 above the Contractor shall at all times ensure that there is no trespass by the Contractor or the Contractor's Persons (including without limitation the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising out or in the course of or caused by the carrying out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons (including but without limitation the occupiers of adjoining or neighbouring property and members of the public)."

Insurance against Personal Injury and Property Damage

Contractor's insurance of liability of Employer

- 6.5.1 Delete "If the Employer's Requirements" and replace with "Where the Contract Particulars".
- Following "maintain" insert "from the Date of Possession up until the date stated on the Practical Completion Statement or the Section Completion Statement for the last section of the Works to achieve practical completion".
- Following "insurance in the names of the Employer," insert "Funder".
- Following "and the Contractor" insert "(under which insurance the insurers shall have no right of recourse against any person named as an insured)".
- Following "by reason of injury or damage to any property caused by collapse," insert "explosion, underground damage to property,".
- 6.5.1.1 Delete the existing text and replace with "for which the Contractor is liable under clauses 6.2.1, 6.2.2, 6.2.3; or".

Related Definitions

- 6.8 Delete the definition of Joint Names Policy and replace as follows:

"a policy of insurance which includes the Employer, the Funder and the Contractor and any other one or more third persons specified in writing by the Employer to the Contractor, being persons having or acquired an interest in or mortgage or charge over the Site as composite insured and under which the insurers have no right of recourse against any person named as an insured, or, pursuant to clause 6.9, recognised as an insured thereunder."

After clause 6.11, delete the heading "**Evidence of insurance**" and replace with "**Insurance – General obligations**".

Insurance – General obligations

6.12.1 Delete "and 6.10" and replace with ", 6.10 and 6.15".

6.12.2 Delete "If a Party required to provide such documentary evidence fails to provide it" and replace with "If the Contractor fails to provide such documentary evidence".

Delete all references to "other Party" throughout the clause and replace with "Employer".

In line 4 delete "defaulting Party" and replace with "Contractor".

Delete "Any costs payable to the Contractor shall be added to the Contract Sum; any" and replace with "Any".

Insert new clauses 6.12.3 and 6.12.5 as follows:

"6.12.3 In respect of such policies of insurance to be taken out by the Contractor pursuant to this Section 6 of the Contract and without prejudice to its obligations under the foregoing of this clause 6.12 the Contractor shall:

6.12.3.1 ensure that such policies shall be taken out in the United Kingdom office of a well-established and reputable insurer in the European Union and subject to the usual conditions and excesses in the United Kingdom market at that time and shall from the Date of Possession at all times ensure cover is in place with respect to the Contractor's liabilities under this Contract;

6.12.3.2 ensure that such policies shall be shall be free from any exclusion or liability arising from fire or explosion or storm damage to any land, structure, or culvert caused by subsidence, collapse, vibration or removal of or weakening of support;

6.12.3.3 be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings whatsoever which the Employer may suffer or incur as a result of not being able to recover fully under the terms of the insurance policy under this Section 6 to the extent that such inability giving rise to such expense, liability, loss, claim or proceedings is a direct result of any omissions to provide material information that would ordinarily expected by an insurer (or its agents) in all ordinary circumstances, the provision of incorrect information or failure to comply with the conditions and warranties of the insurance policies under this Section 6, by the Contractor;

6.12.3.4 not permit any material variation of insurance cover that is disproportionate to the project to which the Works form a part without the prior written approval of the Employer (which approval shall not be unreasonably withheld or delayed, and with it being acknowledged that no withholding of approval shall be

Clause

Amendment

reasonable where such material variation is in line with prevailing requirements or conditions in the relevant insurance market) and shall immediately notify the Employer of any material endorsements or other amendments to the relevant policies received from the insurers; and

- 6.12.3.5 not once a claim under this Contract has been notified to him voluntarily do anything (including, but not limited to, any act or thing that may vitiate such policy or policies) which would reduce the scope of indemnity under his insurance policies or the amount of indemnity monies which will be available thereunder to indemnify the Employer were the claim against him to succeed in full.
- 6.12.4 In the event that both the Employer and the Contractor take out and maintain insurance that responds to a loss arising out of or in connection with this Contract, the cover available under the Employer's insurance shall not be called upon in contribution, and shall only be called upon to pay any loss if and in so far as it is not recoverable under any other insurance(s), such other insurance(s) having been exhausted.
- 6.12.5 Where any policy of insurance required to be provided by the Employer under this Contract contains a policy excess and/or any deductibles that is notified to the Contractor and the Employer and/or the Contractor makes a claim under that policy, the Contractor shall be liable for and shall pay to the Employer the amount of any such policy excess and/or deductible and/or any other shortfall which sum may be deducted from any amounts due or which may become due and payable to the Contractor under this Contract or shall be recoverable from the Contractor as a debt save where the cause of the claim under such insurance is due to any negligent act or omission of the Employer."

Professional Indemnity Insurance

Obligation to insure

- 6.15 At the start of the clause delete "The" and replace with "Without prejudice to the operation of clause 6.12, the".
- 6.15.2 After "of the Works" at the end of the clause insert "and notwithstanding any determination of the Contractor's employment under this Contract".
- 6.15.3 Delete the clause and replace with:
- "Without prejudice to clause 3.4A, the Contractor shall ensure that any Principal Sub-Contractor shall effect and maintain during the Works and for 12 (twelve) years from the date of practical completion stated on the Practical Completion Statement or the Section Completion Statement of the last section of the Works to achieve practical completion, subject to the same being available at commercially reasonable rates, professional indemnity insurance or product liability insurance (as appropriate) agreed in accordance with clause 3.4A.1, to cover negligence, omission or default on the part of such Principal Sub-Contractor and the Contractor shall procure and send to the Employer within 7 (seven) days of a request for the same, documentary evidence to the Employer's reasonable satisfaction that such Principal Sub-Contractor's insurances required under this clause 6.15.3 are being maintained in full force.

Increased cost and non-availability

<i>Clause</i>	<i>Amendment</i>
6.16	<p>At the start of the clause delete "If" and replace with "Without prejudice to the operation of clause 6.12, if"</p> <p>After "commercially reasonable rates" in the first sentence, insert "and terms".</p> <p>Add to the end of the clause "With the approval of the Employer (such approval not to be unreasonably withheld) make alternative arrangements for protecting the interests of the Employer and Contractor. Any increased or additional premium required by the insurer by reason of the Contractor's own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within reasonably commercial rates."</p>

Section 7 Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties

Assignment

General

Replace clause 7.1 with clause 7.1.1 as follows.

"7.1.1 The Contractor shall not without the prior written consent of the Employer assign the benefit of all or any of the Employer's obligations under this Contract or any rights thereunder and/or benefit arising under or out of this Contract."

Insert new clauses 7.1.2 and 7.1.3 as follows:

"7.1.2 The Employer may without the consent of the Contractor assign the benefit of all or any of the Contractor's obligations under this Contract and/or any benefit arising under or out of this Contract to any person and the term "Employer" shall be construed accordingly.

7.1.3 Without prejudice to clause 7.1.2, the Employer may charge, or assign by way of security, the benefit of this Contract to any Funder (and the Funder may reassign the benefit of this Contract to the Employer on redemption of that security)."

Performance Bonds and Guarantees

Delete and replace clause 7.3 as follows:

"7.3 The Contractor shall, no later than the date of this Contract, procure the execution and delivery to the Employer of:

7.3.1 a performance bond in favour of the Employer in the amount specified in the Contract Particulars and in the form set out in **Schedule 9** (such performance bond shall be duly executed as a deed by the Contractor and by a reputable surety previously approved in writing by the Employer); and

7.3.2 a parent company guarantee in favour of the Employer in the form set out in **Schedule 10** (such a parent company guarantee to be duly executed as a deed by the Contractor's ultimate holding company)."

Delete the drafting of existing clauses 7.4 to 7E (inclusive) and insert "Number not used" for clauses 7.4 to 7.6 and 7B to 7D.

Replace the drafting of clause 7.A as follows:

"Third Party Rights from Contractor

- "7A.1 The Contractor agrees that, pursuant to the Contracts (Rights of Third Parties) Act 1999:
- 7A.1.1 the Employer shall, upon novation of this Contract be entitled to rely upon and enforce for its benefit any of the provisions set out in Schedule 5 (Third Party Rights);
- 7A.1.2 any Third Party shall be entitled to enforce for its benefit any of the provisions set out in Schedule 5 (Third Party Rights) on issue to the Contractor by the Employer (or its legal representatives) of a notice (substantially in the form set out in Schedule 5A (Form of Third Party Rights Notice)) confirming the identity and interest of such third party.
- 7A.2 Notwithstanding the foregoing of this clause 7A, the Contractor shall, as an alternative to the Third Party Rights vesting in a Third Party or the Employer, which shall be exercisable at the Employer's sole option and discretion, within 10 (ten) Business Days of receipt of an engrossment copy of the same, execute and deliver to the Employer a deed of collateral warranty in favour of such a Third Party or the Employer substantially on the terms set out in Schedule 3 (Third Party Rights).
- 7A.3 No right of either party to this Contract:
- 7A.3.1 to terminate the Contractor's engagement under this Contract;
- 7A.3.2 to agree to rescind, amend or otherwise vary (without prejudice to paragraph 10 (Variation) of Schedule 5 (Third Party Rights) or waive any of the terms of the Contract; or
- 7A.3.3 to settle any dispute under or in relation to this Contract,
- shall be subject to the consent of any Third Party."

Replace the drafting of clause 7E as follows:

Sub-contractors' and Sub-consultants' Collateral Warranties

- "7E The Contractor shall:
- 7E.1 procure the execution and delivery to the Employer within 10 (ten) Business Days of receipt of an engrossment copy of the same a deed of collateral warranty in the form set out in **Schedule 8** (with such amendments as the Employer may reasonably require or agree) in favour of the Employer and/or any Third Party from any Principal Sub-Contractor; and/or
- 7E.2 provide to the Employer a copy of the sub-contract to which such collateral warranty under this clause 7E relates (save that any subcontract provided under this clause may have information directly relating to the sub-contract redacted).

Section 8 Termination

General

Notices under section 8

Clause Amendment

8.2.2 Delete the existing text and replace with "Termination of the Contractor's employment under this Contract shall take effect upon service of the relevant notice of termination".

8.2.3 Delete and insert "Number not used".

Termination by Employer

Default by Contractor

8.4.1.3 After "remove" insert "or rectify".

Insert new clauses 8.4.1.6 to 8.4.1.7 as follows

"8.4.1.6 fails to comply with the provisions of clauses 6.12, 6.15, 6.16 or 7.3 to 7.4;

8.4.1.7 the total amount of liquidated damages accruing under clause 2.29 meets or exceeds the limit on the Contractor's liability in such regard set out in clause 2.29.5 (with it being acknowledged and agreed that this shall be grounds for immediate termination without requirement for recourse to clauses 8.4.2 and 8.4.3."

Insolvency of Contractor

8.5.3.3 After "the Employer may" insert ", at the Contractor's expense,".

Corruption and regulation 73(10(b))of the PC Regulations

8.6 Delete and insert "Number not used – see clause 2.39".

Consequences of termination under clauses 8.4 to 8.6

8.7.2 After "the Contractor shall" insert ", at the Contractor's expense".

Insert a new clause 8.7.2.4 as follows:

"8.7.2.4 if so required by the Employer or the Employer's Agent, co-operate fully and diligently with the orderly and complete transfer of the Works to any third party that the Employer may employ to carry out or complete the Works or any part of the Works."

8.7.4 At the end of the first paragraph after "by the Employer" insert ", at the Contractor's expense".

Employer's decision not to complete the Works

8.8.1 Delete each occurrence of "6 months" and replace with "12 months".

Termination by Contractor

Default by Employer

8.9.1.2 Delete this clause and insert "Number not used."

8.9.3 Delete both occurrences of "14 days" and replace with "21 days".

8.9.4 Delete this clause and insert "Number not used".

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

8.11.1.1 Delete "force majeure" and replace with "Force Majeure".

8.11.1.5 At the end of this clause insert "(which shall not include the impact of any such statutory power in response of the Coronavirus outbreak)."

Insert a new clause 8.11.1.7 as follows:

"8.11.1.7 the occurrence of an event under clause 2.26.15".

Consequences of Termination under clauses 8.9 to 8.11, etc.

8.12.2.1 At the beginning of the clause insert "give up possession of the Site and".

Insert a new clause 8.12.2.3 as follows:

"8.12.2.3 if so required by the Employer or the Employer's Agent, co-operate fully and diligently with the Employer for the orderly and complete transfer of the Works to any third party that the Employer may employ to carry out or complete the Works or any part of the Works."

Section 9 Settlement of Disputes

Mediation

9.1 Delete "which cannot...by the other" and insert "the Parties may by agreement seek".

Adjudication

Delete clause 9.2 in its entirety and replace with new clauses 9.2.1 – 9.2.5 as follows:

"9.2.1 If a dispute or difference arises between the Employer and the Contractor prior to practical completion or alleged practical completion of the whole of the Works or termination or alleged termination of the Contractor's employment under this Contract or abandonment of the Works it shall not be referred to legal proceedings but shall in the first instance be referred to adjudication under this clause 9.2.

9.2.2 Either the Employer or the Contractor may give to the other written notice that a dispute or difference as referred to in clause 9.2.1 has arisen. The notice shall include a brief statement of the nature of the dispute, where and when it has arisen and the nature of the redress sought. The notice shall be delivered in compliance with Section 115 of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 (**the 1996 Act as amended**).

9.2.3 The adjudication shall be conducted in accordance with the TeCSA Adjudication Rules from time to time in force which is hereby incorporated into this Contract.

9.2.4 Either party may apply to TeCSA for nomination of an Adjudicator within the time limits required by the 1996 Act as amended.

9.2.5 The party giving the notice shall deliver a copy of the notice to the Adjudicator immediately upon the Adjudicator confirming his/her readiness, willingness and

Clause

Amendment

ability to act, and the delivery of the notice to the Adjudicator shall constitute the referral of the dispute or difference to the Adjudicator and the date of referral shall be the date on which this notice is delivered to the Adjudicator."

Arbitration

9.3 – 9.8 Delete these clauses in their entirety and insert against each "Number not used".

Schedules

Schedule 1 Design Submission Procedure

Paragraph etc

Amendment

- 1 After the "Works" insert "and, in any event not later than 10 (ten) Business Days before such time of use)".
- 2 Delete "Within 14 days" and insert "As soon as reasonably practicable."

Delete "(if later) 14 days".

Insert a new paragraph 7A:

- "7A Without prejudice to the operation of paragraph 7, the Contractor shall not be entitled to an extension of time or addition to the Contract Sum for taking account of the Employer's comments on the Contractor's Design Documents in accordance with the Design Submission Procedure."

Schedule 2 Supplemental Provisions

Part 1

Named Sub-Contractors

- 1 Delete this section and insert "Number not used."

Part 2

In the introductory sentence delete "unless otherwise" and replace with "only if so".

Collaborative Working

- 5 Delete this section and insert "Number not used."

Cost savings and value improvements

- 7 Delete paragraphs 1 – 4 and in each case insert "Number not used".

Sustainable development and environmental considerations

- 8 Delete paragraph 1 and insert "Number not used".

Notification and negotiation of disputes

- 10 Delete this section and insert "Number not used."

Schedule 3 Insurance Options

[Note: Option A, B or C to apply as per Contract Particulars]

Insurance Option A

Insert Clause A.1.2 as follows:

"A.1.2 The Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings whatsoever which the Employer may suffer or incur as a result of not being able to recover fully under the terms of the Joint Names Policy under this Option A, to the extent that such inability giving rise to such expense, liability, loss, claim or proceedings is a direct result of any omission to provide material information, the provisions of incorrect information or failure to comply with the conditions and warranties of the Joint Names Policy under this Option A, by the Contractor."

Schedule 5 Third Party Rights

Delete the existing contents of Schedule 5 and insert as follows:

The Employer and Contractor agree that:

1 Interpretation

In this Schedule, unless the context otherwise requires or an alternative definition is provided for, words defined in the Contract shall have the same meaning. In addition:

Beneficiary means the Third Party granted Third Party Rights pursuant to Clause 7A (**Error! Reference source not found.** from the Contractor) of the Contract;

Fund means any Funder provided with a collateral warranty or in whom third party rights have vested in respect of the Contractor in accordance with the Contract;

Fund Rights means those rights contained within any Schedule or collateral warranty vested in the Fund or made between the Contractor, the Fund and the Employer or the Original Employer (as relevant) in respect of the Works under which the Fund has rights equivalent in all material respects to the rights granted in accordance with paragraphs 6.2 to 6.4 (Termination of the Contract) of this Schedule to the Beneficiary, save that the period for the exercise of those rights by the Fund shall expire 14 (fourteen) days after service of the Contractor's simultaneous notices on the Beneficiary and the Fund in accordance with paragraphs 6.2 to 6.5 (Termination of the Contract);

Original Employer means the employer under the Contract acting in the capacity of the Employer at the Commencement Date; and

Original Employer Rights means those rights contained within any Schedule or collateral warranty vested in the Original Employer or made between the Contractor, the Original Employer and the Employer (as relevant) in respect of the Services under which the Original Employer has the rights equivalent in all material respects to those granted by paragraphs 6.2 to 6.4 (Termination of the Contract) of this Schedule to the Beneficiary save that the period for the exercise of those rights by the Original Employer shall expire 14 (fourteen) days after service of the Contractor's simultaneous notices on the Beneficiary, the Original Employer and the Fund in accordance with paragraphs 6.2 to 6.5 (Termination of the Contract); and

Practical Completion means the date on which the whole of the Works (as defined in the Contract) is certified as achieving practical completion under the Contract;

Project means the residential development at Lower Acre, One Horton Heath, Eastleigh, Hampshire all as detailed in the Contract.

2 Duty of Care

2.1 The Contractor hereby warrants and undertakes to the Beneficiary that:

2.1.1 in carrying out and completing design of the Works it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent designer who is experienced in the provision of like professional services for works of a similar size, type, scope, complexity and value to the Works;

2.1.2 it has performed and will continue properly and diligently to perform all of its obligations under the Contract and will owe the same contractual duties (including

without limitation duties of care) to the Beneficiary as those owed under the Contract to the Employer; and

- 2.1.3 where the Contactor has carried out any of the Works prior to its engagement by the Employer under the Contract (including without limitation the preparation of documents and drawings for inclusion in the Contract) the warranties and undertakings of the Contractor under this paragraph 2 shall apply in respect of those parts of the Contract.
- 2.2 The Contractor hereby warrants and undertakes to the Beneficiary that it has exercised, and undertakes that it shall continue to exercise, the duty of care required by 2.1.1, so as not to specify for use, or within the scope of its inspection duties permit to be used, any goods, materials, substances or products generally known at the time the Contractor commences the Works and up to the time of Practical Completion to be deleterious to health or safety or the durability of the Project (in the circumstances in which they are used) and/or that are otherwise not in accordance with:
- (a) good building practice or techniques or any other materials or substances used in the design and construction of the Project;
 - (b) Statutory Requirements, current British Standards or Codes of Practice or the European Union equivalent (if applicable) and/or the Construction Products Regulations; and/or
 - (c) the relevant recommendations in The British Council for Offices' publication entitled "Good Practice in the Selection of Construction Materials 2011".

3 Insurance

- 3.1 The Contractor warrants that it currently maintains and shall continue to maintain professional indemnity insurance from the date of the Contract until 12 (twelve) years after Practical Completion with a limit of indemnity of not less than [AMOUNT IN WORDS] million pounds (£[AMOUNT IN FIGURES]) for any one occurrence or series of occurrences arising out of any one event¹, provided that such insurance is generally available in the market at commercially reasonable rates and terms. The Contractor shall maintain such professional indemnity insurance with a well-established and reputable insurance office or underwriter of repute carrying on business in the European Union or UK on customary and usual terms and conditions prevailing for the time being in the insurance market.
- 3.2 For the avoidance of doubt, it is hereby agreed and declared that any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts, omissions, matter or things particular to the Contractor shall be deemed to be within commercially reasonable rates.
- 3.3 The Contractor shall immediately inform the Beneficiary if the insurance required under this paragraph ceases to be generally available at commercially reasonable rates and terms or otherwise is not maintained in accordance with this Schedule or for any reason becomes void or unenforceable or if the insurer withdraws cover. In that event, the Contractor shall continue to maintain insurance on as equivalent terms and limit of indemnity as may then be available to the Contractor on a commercially reasonable basis.
- 3.4 As and when the Contractor is reasonably requested to do so by the Beneficiary, the Contractor shall produce for inspection sufficient documentary evidence (which may

¹ This should be set at the same limit and basis of indemnity as that set out in the Contract.

be in the form of broker's letter or certificate) that the insurance required under paragraph 3.1 is being maintained in accordance with the terms of this Schedule.

- 3.5 The Contractor shall not, once a claim is notified to it, knowingly act or omit to act so as to compromise, settle or waive any insurance claim which it may have in respect of any professional liability under this Schedule without the prior consent of the Beneficiary, provided that nothing in this paragraph 3 shall preclude the Contractor's insurers from taking over (in the name of the Contractor) the defence of any claim made by the Beneficiary under this Schedule and (in that capacity) from conducting and settling it as they see fit.

4 Intellectual Property Rights

- 4.1 The intellectual property rights in the Contractor's Design Documents shall remain vested in the Contractor. The Contractor hereby grants to the Beneficiary (and its nominees) an irrevocable, perpetual, non-terminable, worldwide, royalty-free licence to use and reproduce the Contractor's Design Documents for all purposes relating to the Project, including, but without limitation, the construction, completion, modification, maintenance, advertisement, reinstatement, repair, reconstruction, refurbishment, redevelopment, use, letting, marketing, promotion and sale of the Project, and to copy and use (but not to reproduce any designs contained therein) the Contractor's Design Documents for an extension to the Project. The Beneficiary shall also be entitled to grant sub-licences to others and these shall be transferable to third parties without the prior consent of the Contractor.
- 4.2 The Contractor shall not be liable for any such use by the Beneficiary or its nominees of any Contractor's Design Documents for any purpose other than that for which the same were prepared or provided and such purposes as are reasonably foreseeable as at the date the relevant parts of the Works are performed.
- 4.3 All royalties or other sums payable in respect of the supply and use of any patented article, processes or inventions required for and in relation to Project and the performance of the Works under the Contract shall be paid by the Contractor. The Contractor shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs or expenses suffered or incurred by the Beneficiary by reason of the Contractor infringing or being held to infringe any intellectual property rights in the performance of the Works.
- 4.4 The Contractor waives any right to be identified as the author of the Contractor's Design Documents in accordance with section 77 of the Copyright, Designs and Patents Act 1988 and waives any right not to have the Contractor's Design Documents subjected to derogatory treatment in accordance with section 80 of the same Act as against the Beneficiary, any successors in title, any assignee and/or any licensee.
- 4.5 The Contractor shall, at the request of the Beneficiary, provide to the Beneficiary such copies of the Contractor's Design Documents (in hard copy or electronic form) as the Beneficiary may reasonably require in connection with the Project.

5 Assignment

- 5.1 The Beneficiary may assign the benefit of the terms of this Schedule and/or any of the present or future rights, interests and benefits of the Beneficiary hereunder:
- 5.1.1 twice to any person with an interest in the Project without the Contractor's consent; and
- 5.1.2 without counting as an assignment under paragraph 5.1.1: and/or

- (a) by way of assignment and/or charge by way of security (including any reassignment on redemption of security); or
- (b) to any Affiliate of the Beneficiary,

but such benefit may not be further assigned without the written consent of the Contractor (such consent not to be unreasonably withheld or delayed). The Contractor shall not in defence of any claim under this Schedule of rights by an assignee of the Beneficiary seek to reduce or extinguish the claim by reason of the fact that the loss or damage is not suffered by the original Beneficiary but by the assignee and/or chargee.

6 Termination of the Contract

- 6.1 The provisions of each of paragraphs 6 and/or 7 of this Schedule shall only vest in and be relied upon by a Beneficiary for whom a validly served third party rights notice has been issued in accordance with the terms of the Contract that states on its face that such provisions do so vest and may be relied upon by the Beneficiary.
- 6.2 The Contractor hereby warrants to the Beneficiary that the Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Contract or discontinue or suspend the performance of any obligations thereunder without first giving to the Beneficiary not less than 28 (twenty-eight) days' prior written notice of its intention to do so. Such notice shall specify the Contractor's grounds for terminating or treating as terminated the Contract or discontinuing or suspending its performance thereof and full particulars of any amounts owed by the Employer to the Contractor under the Contract.
- 6.3 Within 28 (twenty-eight) days of receipt of such notice from the Contractor pursuant to paragraph 6.2, the Beneficiary may give written notice to the Contractor that the Beneficiary or its nominee shall thenceforth be treated as the employer under the Contract and thereupon (subject to payment by the Beneficiary of any sums due under the Contract whether accrued before or after the date of the notice referred to in paragraph 6.2), the Contractor shall treat the Beneficiary or its nominee as aforesaid as the employer under the Contract. All rights and obligations of the employer under the Contract shall thereafter be exercisable and performed by the Beneficiary or its as aforesaid nominee to the exclusion of the Employer and the Contract shall be and continue in full force and effect.
- 6.4 It is hereby agreed between the Beneficiary and the Contractor that, if any event shall occur in relation to the Project whereby the Beneficiary shall be entitled to and shall exercise its rights to forfeit or terminate the relevant agreement with the Employer on default of the Employer or otherwise, the Beneficiary shall be entitled to require, by notice in writing to the Contractor and upon payment of all sums due under the Contract whether accrued before or after the date of the notice referred to in paragraph 6.2, forthwith to be treated by the Contractor as employer under the Contract to the exclusion of the Employer, whereupon all the rights and obligations of the Employer under the Contract shall be exercised and performed by the Beneficiary.
- 6.5 Any notice served by the Contractor on the Beneficiary or by the Beneficiary on the Contractor pursuant to paragraphs 6.2 to 6.4 respectively shall be served simultaneously upon both the Fund and/or (where relevant) the Original Employer.
- 6.6 The Beneficiary shall have no right to give notice to the Contractor under paragraph 6.3 within the period referred to in paragraph 6.2 unless the Fund and (where

relevant) the Original Employer shall each previously have notified the Beneficiary that it will not exercise its equivalent rights under the Fund Rights or the Original Employer Rights.

- 6.7 The Beneficiary shall have no right to give notice to the Contractor under paragraph 6.4 if the Fund or (where relevant) the Original Employer has already exercised its equivalent right under the Fund Rights or the Original Employer Rights in response to the Contractor's simultaneous notice to the Fund and the Original Employer.
- 6.8 In the event that both the Fund and (where relevant) the Original Employer serve equivalent notices required under paragraphs 6.3 or 6.4, the Contractor acknowledges and agrees that the notice of the Fund shall take priority over that of the Original Employer and accordingly shall be complied with by the Contractor to the exclusion of that of the Original Employer.
- 6.9 Any notices given by the Contractor and/or Beneficiary in breach of this paragraph 6 shall be invalid and shall have no force for the purposes of this paragraph.
- 6.10 Following the full exercise of the Beneficiary's rights and compliance with its obligations under paragraphs 6.3 or 6.4, the Contractor shall comply with all reasonable instructions of the Beneficiary (or its nominee) to formalise the contractual position between the Beneficiary and the Contractor. Such instructions may include (but not be limited to) the novation of the rights and obligations of the Employer under the Contract to the Beneficiary or its nominee (in a form acceptable to the Contractor, acting reasonably) or, at the Beneficiary's sole option and discretion, entering into a new contract with the Beneficiary (in a materially similar form to the Contract) under which the Contractor warrants to the Beneficiary the full and proper performance of all of the Works performed prior to the exercise of the Beneficiary's rights under paragraphs 6.3 or 6.4.
- 6.11 The Contractor shall have no claim whatsoever against the Beneficiary in respect of any damage, loss or expense howsoever arising out of or in connection with any termination of the Contract.
- 6.12 The Beneficiary has no liability to the Contractor in respect of fees and expenses under the Contract unless and until the Beneficiary has given notice under paragraphs 6.3 or 6.4.
- 6.13 The Employer confirms its concurrence with any arrangements required, made and/or contemplated by the provisions of paragraphs 6 and 7 of this Schedule.

7 Third Party Rights or Collateral Warranties

- 7.1 The Contractor agrees that, pursuant to the Contracts (Rights of Third Parties) Act 1999, the provisions of this Schedule shall vest in and may be relied upon by any Third Party (without prejudice to the operation of paragraph 6.1) for whom a validly served third party rights notice has been issued by the Beneficiary to the Contractor in accordance with the relevant terms of the Contract and with the Beneficiary being held to be the Employer for the purposes of any such notice.
- 7.2 As an alternative to the exercise by the Beneficiary of its rights in paragraph 7.1 and at the Beneficiary's sole option and discretion, the Contractor shall, within 14 (fourteen) days of the Beneficiary providing an engrossment copy of the same, execute and deliver to the Beneficiary a deed of collateral warranty in favour of a Third Party containing substantially the same terms as set out in this Schedule (with such amendments as the Beneficiary shall reasonably require) and always save that this paragraph 7.2 may not be enforced in respect of any such third party that has

already been provided with a deed of collateral warranty or the benefit of third party rights from the Contractor in respect of the Project.

8 Liability

- 8.1 Notwithstanding the foregoing of paragraph 2 (Duty of Care), the Contractor owes to the Beneficiary the same duty of care in respect of its duties as aforesaid as it owes to the Employer, provided always that the Contractor shall have no greater liability to the Beneficiary under this Schedule than it had to the Employer under the Contract and shall be entitled to rely on the same defenses and rights of counter-claim as it would have had if the Beneficiary had been named as joint employer under the Contract, always excluding any rights of set-off or deduction.
- 8.2 This Schedule shall in no way prejudice or affect any other rights or remedies of the Beneficiary against the Contractor whether at common law or otherwise in respect of the Project or other matters referred to herein.
- 8.3 It is hereby agreed and declared that this Schedule operates notwithstanding that the Contractor may delegate or may have delegated any of its duties and responsibilities under the Contract in pursuance of its terms.
- 8.4 The Contractor acknowledges that no negligent or other act, omission or delay by or on behalf of the Beneficiary and its respective successors in title and assigns in inspecting, approving or informing itself about anything related to the Project shall abate or reduce the Contractor's obligations hereunder to the Beneficiary and its respective successors in title and assigns.
- 8.5 No action or proceedings for any breach by the Contractor under or relating to this Schedule shall be commenced against the Contractor after the expiration of 12 (twelve) years from the date of Practical Completion. For the avoidance of doubt, any term of the Contract preserving the Contractor's liability in respect of proceedings or arbitration commenced by the Employer shall apply *mutatis mutandis* to proceedings or arbitration commenced by the Beneficiary pursuant to or in connection with this Schedule.

9 Severance

- 9.1 If any provision of this Schedule is held to be illegal, void, invalid or unenforceable (in whole or in part) by any court or administrative body of competent jurisdiction, that provision shall to that extent be deemed not to form part of this Schedule but the enforceability of the remainder of this Schedule shall not be affected.
- 9.2 The parties agree, in the circumstances referred to in this paragraph 9, to attempt to substitute any illegal, void, invalid or unenforceable provision with a lawful, valid and enforceable provision, which achieves to the greatest extent possible the same effect as would have been achieved by the illegal, void, invalid or unenforceable provision.

10 Variation

The Contractor agrees with the Beneficiary not to vary or agree to vary or waive the terms of this Schedule without the prior written consent of the Beneficiary (such consent not to be unreasonably withheld or delayed).

11 Notices

Any notice provided for in this Schedule shall be in writing, either delivered personally or sent by first class recorded delivery post and addressed to the persons at the addresses stated in the Contract or such other addresses as shall be notified by each

party to the other from time to time. Such notice shall be deemed to have been delivered:

- (a) if delivered by hand, on the same day; and
- (b) if by post, two days after the same shall have been posted.

12 Adjudication

- 12.1 Any adjudication under the Housing Grants Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) shall be carried out in accordance with the TeCSA Adjudication Rules from time to time in force and either party may apply to TeCSA for nomination of an adjudicator by the Chairman of TeCSA.
- 12.2 No adjudication under this Schedule whether pursuant to the Housing Grants Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) or otherwise shall finally determine the matter in dispute.

13 Governing Law and Jurisdiction

The terms of this Schedule and any dispute or claim arising out of it or in connection with it shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this schedule or its subject matter.

14 Confidentiality

- 14.1 The Contractor warrants that it shall not disclose to any person this Schedule, details of any confidential information (written or oral) concerning the business, affairs, operating methods, customers, clients or suppliers of the Beneficiary, except as is necessary to perform the duties under this Schedule, and unless and until such information comes into the public domain, other than through disclosure or wrongful use by you, or as required by law.
- 14.2 The Contractor shall not make any announcement related to the Beneficiary's interest in the Project without the written consent of the Beneficiary.

After Schedule 5 insert a new Schedule 5A as follows:

Schedule 5A Form of Third Party Rights Notice

[CONTRACTOR'S NAME]

[CONTRACTOR'S ADDRESS FOR NOTICES]

[DATE]

Dear Sirs

You have entered into a building contract with Eastleigh Borough Council dated [DATE] in respect of the design and construction for and in connection with the residential development at Lower Acre, One Horton Heath, Eastleigh, Hampshire (**Contract**).

Schedule [5] of the Contract sets out the benefits and rights which may vest in and be enforced by a third party on the issue of this notice to you.

On behalf of the Employer, we hereby nominate [BENEFICIARY] (registered number [•]) whose registered office is at [REGISTERED ADDRESS] (**Beneficiary**), as a Third Party entitled to enforce the benefits and rights set out in Schedule [5] of the Contract in accordance with the terms of the Contract. We confirm that the Beneficiary is one of the categories of Third Party (as defined in the Contract) entitled to enforce the benefits and rights set out in Schedule [5] of the Contract as from the date of this notice.

We confirm that the Beneficiary [MAY][MAY NOT] exercise the rights under paragraphs [6] [and/or] [7] of Schedule [5] of the Contract.

Yours faithfully

For and on behalf of

[EMPLOYER][OR][BENEFICIARY]

Schedule 6 Forms of Bonds

Part 1 Insert "Not applicable".

Part 2 Insert "Not applicable".

Part 3 Insert "Not applicable".

Schedule 7 JCT Fluctuations Option A

Option A Delete and insert "Not applicable".

After Schedule 7 insert a new Schedule 8 as follows:

Schedule 8 Sub-Contractor's Collateral Warranty

[SUB-CONTRACTOR]
as Sub-Contractor

and

[CONTRACTOR]
as Contractor

and

[BENEFICIARY]
as the Beneficiary

Collateral Warranty (Contractor to [Purchaser/Tenant/Fund/Landlord/Other])
in respect of residential development at Lower Acre, One Horton Heath, Eastleigh, Hampshire

Deed

Dated

BETWEEN:

- (1) **[SUB-CONTRACTOR]** (registered number **[●]**) whose registered office is at **[REGISTERED ADDRESS]** (the **Sub-Contractor**);
- (2) **[CONTRACTOR]** (registered number **[●]**) whose registered office is at **[REGISTERED ADDRESS]** (the **Contractor**); and
- (3) **[PURCHASER/TENANT/LANDLORD/FUND/OTHER]** (registered number **[●]**) whose registered office is at **[REGISTERED ADDRESS]** (the **Beneficiary**) (**Beneficiary** which expression shall include its successors in title and permitted assigns),

together the **parties**.

BACKGROUND

- (A) The Beneficiary has entered into the Agreement (as defined below) conditionally upon the Sub-Contractor (inter alia) entering into direct obligations with the Beneficiary as set out in this Deed.
- (B) The parties enter into this Deed on the terms set out below.

In consideration of the sum of ten pounds (£10.00) (receipt of which is acknowledged by the Contractor) **THIS DEED WITNESSES** as follows:

1 Definitions and Interpretation

- 1.1 In this Deed, the following words and expressions shall have the following meanings:
 - (a) **Agreement** means an agreement dated **[DATE]** whereby the Beneficiary has agreed with the Employer to **[provide finance for]** **[purchase a freehold/leasehold interest in]** **[a part of]** **[DESCRIPTION OF OTHER INTEREST IN PROJECT]** the Project;
 - (b) **Contract** means the building contract dated **[DATE]** and made between the Employer and the Contractor for the design, construction and completion of the Project;
 - (c) **Construction Products Regulations** means the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC);
 - (d) **Deed** means this deed between the Sub-Contractor, the Contractor and the Beneficiary;
 - (e) **[Employer]** means **[INSERT NAME OF EMPLOYER]; IN FUND, PURCHASER, TENANT OR OTHER COLLATERAL WARRANTY ONLY**;
 - (f) **[Fund]** means any Funder (as defined in the Contract) provided with a collateral warranty or in whom third party rights have vested in respect of the Contractor in accordance with the Contract;

- (g) **Fund Rights** means those rights contained within any schedule or collateral warranty vested in the Fund or made between the Sub-Contractor, the Contractor and the Fund in respect of the Works, under which the Fund has rights equivalent in all material respects to the rights granted in accordance with Clauses 6.2 to 6.4(*Termination of the Contract*) of this Deed to those of the Beneficiary, save that the period for the exercise of those rights by the Fund shall expire 14 (fourteen) days after service of the Sub-Contractor's simultaneous notices on the Beneficiary and the Fund in accordance with Clauses 6.2to 6.5(*Termination of the Contract*); **IN EMPLOYER, FUND OR ADVANCE PURCHASER COLLATERAL WARRANTY ONLY**
- (h) **Material** means all drawings, reports, specifications, bills of quantities, calculations and other similar documents produced by the Sub-Contractor in connection with the Project;
- (i) **Employer Rights** means those rights contained within any schedule or collateral warranty vested in the Employer or made between the Sub-Contractor, the Contractor and the Employer in respect of the Works, under which the Employer has the rights equivalent in all material respects to those granted by Clauses to 6.2to 6.4(*Termination of the Contract*) of this Deed to the Beneficiary, save that the period for the exercise of those rights by the Employer shall expire 14 (fourteen) days after service of the Sub-Contractor's simultaneous notices on the Beneficiary, the Employer and the Fund in accordance with Clauses 6.2to 6.5(*Termination of the Contract*); **IN EMPLOYER, FUND OR ADVANCE PURCHASER COLLATERAL WARRANTY ONLY**
- (j) **Practical Completion** means the date on which the whole of the Works (as defined in the Contract) is certified as achieving practical completion under the Contract;
- (k) **Project** means **DESCRIPTION OF PROJECT** at **ADDRESS** as detailed in the Contract; and
- (l) **Sub-Contract** means the agreement dated **DATE** made between the Contractor and the Sub-Contractor in respect of the carrying out of the Sub-Contract Works; and
- (m) **Sub-Contract Works** means **INSERT DESCRIPTION OF WORKS** all as detailed in the Sub-Contract.

1.2 In this Deed, unless the context otherwise requires:

- (a) clause headings are inserted for convenience only and shall not affect the construction and interpretation of this Deed;
- (b) references to Clauses are to Clauses of this Deed;
- (c) unless the context otherwise requires, words denoting the singular number include the plural and vice versa;
- (d) unless the context otherwise requires, a reference to one gender shall include the other genders;
- (e) references to persons include reference to a natural person, corporate or unincorporated body (whether or not having separate legal personality);

- (f) references to companies shall include any company, corporation or other body corporate, wherever and however incorporated or established; and
- (g) references to statutes or statutory instruments include references to any consolidation, modification, extension, amendment, replacement or re-enactment of them from time to time and any subordinate legislation under it from time to time.

2 Duty of Care

2.1 The Contractor hereby warrants and undertakes to the Beneficiary that:

2.1.1 in carrying out and completing design of the Sub-Contract Works it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent designer or who is experienced in the provision of like professional services for works of a similar size, type, scope, complexity and value to the Sub-Contract Works;

2.1.2 it has performed and will continue properly and diligently to perform all of its obligations under the Sub-Contract and will owe the same contractual duties (including without limitation duties of care) to the Beneficiary as those owed under the Sub-Contract to the Contractor; and

2.1.3 where the Sub-Contractor has carried out any of the Sub-Contract Works prior to its engagement by the Contractor under the Sub-Contract (including without limitation the preparation of documents and drawings for inclusion in the Sub-Contract and/or the Contract) the warranties and undertakings of the Sub-Contractor under this Clause 2 shall apply in respect of those parts of the Sub-Contract and/or the Contract.

2.2 The Sub-Contractor hereby warrants and undertakes to the Beneficiary that it has exercised, and undertakes that it shall continue to exercise, the duty of care required by Clause 2.1.1, so as not to specify for use, or within the scope of its inspection duties permit to be used, any goods, materials, substances or products generally known at the time the Sub-Contractor commences the Sub-Contract Works and up to the time of Practical Completion to be deleterious to health or safety or the durability of the Project (in the circumstances in which they are used) and/or that are otherwise not in accordance with:

- (a) good building practice or techniques or any other materials or substances used in the design and construction of the Project;
- (b) Statutory Requirements, current British Standards or Codes of Practice or the European Union equivalent (if applicable) and/or the Construction Products Regulations; and/or
- (c) the relevant recommendations in The British Council for Offices' publication entitled "Good Practice in the Selection of Construction Materials 2011".

3 Insurance

3.1 The Sub-Contractor warrants that it currently maintains and shall continue to maintain professional indemnity insurance from the date of the Sub-Contract until 12 (twelve) years after Practical Completion with a limit of indemnity of not less than [AMOUNT IN WORDS] million pounds (£[AMOUNT IN

FIGURES] for any one occurrence or series of occurrences arising out of any one event², provided that such insurance is generally available in the market at commercially reasonable rates and terms. The Sub-Contractor shall maintain such professional indemnity insurance with a well-established and reputable insurance office or underwriter of repute carrying on business in the United Kingdom on customary and usual terms and conditions prevailing for the time being in the insurance market.

- 3.2 For the avoidance of doubt, it is hereby agreed and declared that any increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matter or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.
- 3.3 The Sub-Contractor shall immediately inform the Beneficiary if the insurance required under this clause ceases to be generally available at commercially reasonable rates and terms or otherwise is not maintained in accordance with this Deed or for any reason becomes void or unenforceable or if the insurer withdraws cover. In that event, the Sub-Contractor shall continue to maintain insurance on as equivalent terms and limit of indemnity as may then be available to the Sub-Contractor on a commercially reasonable basis.
- 3.4 As and when the Sub-Contractor is reasonably requested to do so by the Beneficiary, the Sub-Contractor shall produce for inspection sufficient documentary evidence (which may be in the form of a broker's letter or certificate) that the insurance required under Clause 3.1 is being maintained in accordance with the terms of this Deed.
- 3.5 The Sub-Contractor shall not, once a claim is notified to it, knowingly act or omit to act so as to compromise, settle or waive any insurance claim which it may have in respect of any professional liability under this Deed without the prior consent of the Beneficiary, provided that nothing in this Clause 3 shall preclude the Contractor's insurers from taking over (in the name of the Sub-Contractor) the defence of any claim made by the Beneficiary under this Deed and (in that capacity) from conducting and settling it as they see fit.

4 Intellectual Property Rights

- 4.1 The intellectual property rights in the Materials shall remain vested in the Sub-Contractor. The Sub-Contractor hereby grants to the Beneficiary (and its nominees) an irrevocable, perpetual, non-terminable, worldwide, royalty-free licence to use and reproduce the Materials for all purposes relating to the Project, including, but without limitation, the construction, completion, modification, maintenance, advertisement, reinstatement, repair, reconstruction, refurbishment, redevelopment, use, letting, marketing, promotion and sale of the Project, and to copy and use (but not to reproduce any designs contained therein) the Materials for an extension to the Project. The Beneficiary shall also be entitled to grant sub-licences to others and these shall be transferable to third parties without the prior consent of the Sub-Contractor.
- 4.2 The Sub-Contractor shall not be liable for any such use by the Beneficiary or its nominees of any Materials for any purpose other than that for which the same were prepared or provided and such purposes as are reasonably

² This should be set at the same limit and basis of indemnity as that set out in the Contract.

foreseeable as at the date the relevant parts of the Sub-Contract Works are performed.

- 4.3 All royalties or other sums payable in respect of the supply and use of any patented article, processes or inventions required for and in relation to the Project and the performance of the Sub-Contract Works under the Sub-Contract shall be paid by the Sub-Contractor. The Sub-Contractor shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs or expenses suffered or incurred by the Beneficiary by reason of the Sub-Contractor infringing or being held to infringe any intellectual property rights in the performance of the Sub-Contract Works.
- 4.4 The Sub-Contractor waives any right to be identified as the author of the Materials in accordance with section 77 of the Copyright, Designs and Patents Act 1988 and waives any right not to have the Materials subjected to derogatory treatment in accordance with section 80 of the same Act as against the Beneficiary, any successors in title, any assignee and/or any licensee.
- 4.5 The Sub-Contractor shall, at the request of the Beneficiary, provide to the Beneficiary such copies of the Materials (in hard copy or electronic form) as the Beneficiary may reasonably require in connection with the Project.

5 Assignment

- 5.1 The Beneficiary may assign the benefit of the terms of this Deed and/or any of the present or future rights, interests and benefits of the Beneficiary hereunder:
- 5.1.1 twice to any person with an interest in the Project without the Sub-Contractor's consent; and
- 5.1.2 without counting as an assignment under Clause 5.1.1: and/or
- (a) by way of assignment and/or charge by way of security (including any reassignment on redemption of security); or
 - (b) to any Affiliate (as defined in the Contract) of the Beneficiary,
- but such benefit may not be further assigned without the written consent of the Sub-Contractor (such consent not to be unreasonably withheld or delayed). The Sub-Contractor shall not in defence of any claim under this Deed of rights by an assignee of the Beneficiary seek to reduce or extinguish the claim by reason of the fact that the loss or damage is not suffered by the original Beneficiary but by the assignee and/or chargee.

CLAUSE 6 IN EMPLOYER, FUND AND ADVANCE PURCHASER COLLATERAL WARRANTY ONLY

6 Termination of the Contract

- 6.1 The Sub-Contractor hereby warrants to the Beneficiary that the Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any obligations thereunder without first giving to the Beneficiary not less than 28 (twenty-eight) days' prior written notice of its intention to do so. Such notice shall specify the Sub-Contractor's grounds for terminating or treating as terminated the Sub-

Contract or discontinuing or suspending its performance thereof and full particulars of any amounts owed by the Contractor to the Sub-Contractor under the Contract.

- 6.2 Within 28 (twenty-eight) days of receipt of such notice from the Sub-Contractor pursuant to Clause 6.2, the Beneficiary may give written notice to the Sub-Contractor that the Beneficiary or its nominee shall thenceforth be treated as the employer under the Sub-Contract and thereupon (subject to payment by the Beneficiary of any sums due under the Sub-Contract whether accrued before or after the date of the notice referred to in Clause 6.2), the Sub-Contractor shall treat the Beneficiary or its nominee as aforesaid as the contractor under the Sub-Contract. All rights and obligations of the Contractor under the Sub-Contract shall thereafter be exercisable and performed by the Beneficiary or its as aforesaid nominee to the exclusion of the Contractor and the Sub-Contract shall be and remain in full force and effect.
- 6.3 It is hereby agreed between the Beneficiary and the Sub-Contractor that, if any event shall occur in relation to the Project whereby the Beneficiary shall be entitled to and shall exercise its rights to forfeit or terminate the Contract on default of the Contractor or otherwise, the Beneficiary shall be entitled to require, by notice in writing to the Sub-Contractor and upon payment of all sums due under the Sub-Contract whether accrued before or after the date of the notice referred to in Clause 6.4, forthwith to be treated by the Sub-Contractor as contractor under the Sub-Contract to the exclusion of the Contractor, whereupon all the rights and obligations of the Contractor under the Sub-Contract shall be exercised and performed by the Beneficiary.
- 6.4 Any notice served by the Sub-Contractor on the Beneficiary or by the Beneficiary on the Sub-Contractor pursuant to Clauses 6.2 to 6.4 respectively shall be served simultaneously upon both the Fund and/or the Employer.
- 6.5 The Beneficiary shall have no right to give notice to the Sub-Contractor under Clause 6.3 within the period referred to in Clause 6.3 unless the Fund and the Employer shall each previously have notified the Beneficiary that it will not exercise its equivalent rights under the Fund Rights or the Employer Rights.
- 6.6 The Beneficiary shall have no right to give notice to the Sub-Contractor under Clause 6.4 if the Fund or the Employer has already exercised its equivalent right under the Fund Rights or the Employer Rights in response to the Sub-Contractor's simultaneous notice to the Fund and the Employer.
- 6.7 In the event that both the Fund and the Employer serve equivalent notices required under Clauses 6.3 or 6.4, the Sub-Contractor acknowledges and agrees that the notice of the Fund shall take priority over that of the Employer and accordingly shall be complied with by the Sub-Contractor to the exclusion of that of the Employer.
- 6.8 Any notices given by the Sub-Contractor and/or Beneficiary in breach of this Clause 6 shall be invalid and shall have no force for the purposes of this clause.
- 6.9 Following the full exercise of the Beneficiary's rights and compliance with its obligations under Clauses 6.3 or 6.4, the Sub-Contractor shall comply with all reasonable instructions of the Beneficiary (or its nominee) to formalise the contractual position between the Beneficiary and the Sub-Contractor. Such instructions may include (but not be limited to) the novation of the rights and

obligations of the Contractor under the Sub-Contract to the Beneficiary or its nominee (in a form acceptable to the Beneficiary, acting reasonably) or, at the Beneficiary's sole option and discretion, entering into a new contract with the Beneficiary (in a materially similar form to the Sub-Contract) under which the Sub-Contractor warrants to the Beneficiary the full and proper performance of all of the Sub-Contract Works performed prior to the exercise of the Beneficiary's rights under Clauses 6.3 or 6.4.

- 6.10 The Sub-Contractor shall have no claim whatsoever against the Beneficiary in respect of any damage loss or expense howsoever arising out of or in connection with any termination of the Sub-Contract.
- 6.11 The Beneficiary has no liability to the Sub-Contractor in respect of monies due and owing under the Sub-Contract unless and until the Beneficiary has given notice under Clauses 6.3 or 6.4.
- 6.12 The Contractor confirms its concurrence with any arrangements required, made and/or contemplated by the provisions of Clause 6 and 7 of this Deed.]

[CLAUSE 7 (AND RELATED ANNEXURES) IN EMPLOYER AND ADVANCED PURCHASER COLLATERAL WARRANTY ONLY

7 Third Party Rights or Collateral Warranties

- 7.1 The Sub-Contractor agrees that, pursuant to the Contracts (Rights of Third Parties) Act 1999 (the **Act**), the provisions of **Annexure 1** of this Deed shall vest in and may be relied upon by any Third Party (as defined in the Contract and without prejudice to the operation of Clause 7.3) for whom a validly served third party rights notice (in the form set out in **Annexure 2** of this Deed together with such amendments that are reasonably necessary to permit its intended effect) has been issued by the Beneficiary to the Sub-Contractor.
- 7.2 Notwithstanding the requirement for consent of any Third Party under Section 2 of the Act, the Contractor and the Sub-Contractor shall (without prejudice to paragraph Schedule 18 of Annexure 1 of this Deed) be entitled to agree any amendment, variation, waiver or release under or arising from or in respect of the Sub-Contract, and to terminate the Sub-Contract without the consent of any Third Party being required.
- 7.3 As an alternative to the exercise by the Beneficiary of its rights in Clause 7.1 and at the Beneficiary's sole option and discretion, the Sub-Contractor shall, within 14 (fourteen) days of the Beneficiary providing an engrossment copy of the same, execute and deliver to the Beneficiary a deed of collateral warranty in favour of a Third Party containing substantially the same terms as set out in this Deed (with such amendments as the Beneficiary shall reasonably require) and always save that this Clause 7.2 may not be enforced in respect of any such third party that has already been provided with a deed of collateral warranty or the benefit of third party rights from the Sub-Contractor in respect of the Project.]

8 Liability

- 8.1 Notwithstanding the foregoing of Clause 2 (*Duty of Care*), the Sub-Contractor owes to the Beneficiary the same duty of care in respect of its duties as aforesaid as it owes to the Contractor, provided always that the Sub-Contractor shall have no greater liability to the Beneficiary under this Deed than it had to the Contractor under the Sub-Contract and shall be entitled to rely on the same defenses and rights of counter-claim as it would have had

if the Beneficiary had been named as joint employer under the Sub-Contract, always excluding any rights of set-off or deduction.

- 8.2 This Deed shall in no way prejudice or affect any other rights or remedies of the Beneficiary against the Sub-Contractor whether at common law or otherwise in respect of the Project or other matters referred to herein.
- 8.3 It is hereby agreed and declared that this Deed operates notwithstanding that the Sub-Contractor may delegate or may have delegated any of its duties and responsibilities under the Sub-Contract in pursuance of its terms.
- 8.4 The Sub-Contractor acknowledges that no negligent or other act, omission or delay by or on behalf of the Beneficiary and its respective successors in title and assigns in inspecting, approving or informing itself about anything related to the Project shall abate or reduce the Sub-Contractor's obligations hereunder to the Beneficiary and its respective successors in title and assigns.
- 8.5 No action or proceedings for any breach by the Sub-Contractor under or relating to this Deed shall be commenced against the Sub-Contractor after the expiration of 12 (twelve) years from the date of Practical Completion. For the avoidance of doubt, any term of the Sub-Contract preserving the Sub-Contractor's liability in respect of proceedings or arbitration commenced by the Contractor and/or the Employer shall apply *mutatis mutandis* to proceedings or arbitration commenced by the Beneficiary pursuant to or in connection with this Deed.

9 **Severance**

- 9.1 If any provision of this Deed is held to be illegal, void, invalid or unenforceable (in whole or in part) by any court or administrative body of competent jurisdiction, that provision shall to that extent be deemed not to form part of this Deed but the enforceability of the remainder of this Deed shall not be affected.
- 9.2 The parties agree, in the circumstances referred to in this Clause 9, to attempt to substitute any illegal, void, invalid or unenforceable provision with a lawful, valid and enforceable provision, which achieves to the greatest extent possible the same effect as would have been achieved by the illegal, void, invalid or unenforceable provision.

10 **Variation**

The Sub-Contractor agrees with the Beneficiary not to vary or agree to vary or waive the terms of the Sub-Contract without the prior written consent of the Beneficiary (such consent not to be unreasonably delayed or withheld).

11 **Notices**

Any notice provided for in this Deed shall be in writing, either delivered personally or sent by first class recorded delivery post and addressed to the persons at the addresses stated in the Sub-Contract or such other addresses as shall be notified by each party to the other from time to time. Such notice shall be deemed to have been delivered:

- (a) if delivered by hand, on the same day; and
- (b) if by post, two days after the same shall have been posted.

12 **Adjudication**

12.1 Any adjudication under the Housing Grants Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) shall be carried out in accordance with the TeCSA Adjudication Rules from time to time in force and either party may apply to TeCSA for nomination of an adjudicator by the Chairman of TeCSA.

12.2 No adjudication under this Deed whether pursuant to the Housing Grants Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) or otherwise shall finally determine the matter in dispute.

13 **Governing Law and Jurisdiction**

The terms of this Deed and any dispute or claim arising out of it or in connection with it shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter.

14 **Confidentiality**

14.1 The Sub-Contractor warrants that it shall not disclose to any person this Deed, details of any confidential information (written or oral) concerning the business, affairs, operating methods, customers, clients or suppliers of the Beneficiary, except as is necessary to perform the duties under this Deed, and unless and until such information comes into the public domain, other than through disclosure or wrongful use by you, or as required by law.

14.2 The Sub-Contractor shall not make any announcement related to the Beneficiary's interest in Project without the written consent of the Beneficiary.

15 **Counterparts**

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

Annexure 1 - Third Party Rights

The Employer and Contractor agree that:

1 Interpretation

In this Schedule, unless the context otherwise requires, words defined in the Deed shall have the same meaning. In addition:

- (a) **Deed** means the deed of collateral between the Sub-Contractor, Contractor and a beneficiary to which this Schedule is annexed.

2 Duty of Care

2.1 The Sub-Contractor hereby warrants and undertakes to the Beneficiary that:

2.1.1 in carrying out and completing design of the Sub-Contract Works it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent designer or who is experienced in the provision of like professional services for works of a similar size, type, scope, complexity and value to the Sub-Contract Works;

2.1.2 it has performed and will continue properly and diligently to perform all of its obligations under the Sub-Contract and will owe the same contractual duties (including without limitation duties of care) to the Beneficiary as those owed under the Sub-Contract to the Contractor; and

2.1.3 where the Sub-Contractor has carried out any of the Sub-Contract Works prior to its engagement by the Contractor under the Sub-Contract (including without limitation the preparation of documents and drawings for inclusion in the Sub-Contract and/or the Contract) the warranties and undertakings of the Sub-Contractor under this paragraph 2 shall apply in respect of those parts of the Sub-Contract and/or the Contract.

2.2 The Sub-Contractor hereby warrants and undertakes to the Beneficiary that it has exercised, and undertakes that it shall continue to exercise, the duty of care required by paragraph 2.1.1, so as not to specify for use, or within the scope of its inspection duties permit to be used, any goods, materials, substances or products generally known at the time the Sub-Contractor commences the Sub-Contract Works and up to the time of Practical Completion to be deleterious to health or safety or the durability of the Project (in the circumstances in which they are used) and/or that are otherwise not in accordance with:

- (b) good building practice or techniques or any other materials or substances used in the design and construction of the Project;
- (c) Statutory Requirements, current British Standards or Codes of Practice or the European Union equivalent (if applicable) and/or the Construction Products Regulations; and/or
- (d) the relevant recommendations in The British Council for Offices' publication entitled "Good Practice in the Selection of Construction Materials 2011".

3 Insurance

3.1 The Sub-Contractor warrants that it currently maintains and shall continue to maintain professional indemnity insurance from the date of the Sub-Contract

until 12 (twelve) years after Practical Completion with a limit of indemnity of not less than [AMOUNT IN WORDS] million pounds (£[AMOUNT IN FIGURES]) for any one occurrence or series of occurrences arising out of any one event³, provided that such insurance is generally available in the market at commercially reasonable rates and terms. The Sub-Contractor shall maintain such professional indemnity insurance with a well-established and reputable insurance office or underwriter of repute carrying on business in the European Union or UK on customary and usual terms and conditions prevailing for the time being in the insurance market.

- 3.2 For the avoidance of doubt, it is hereby agreed and declared that any increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matter or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.
- 3.3 The Sub-Contractor shall immediately inform the Beneficiary if the insurance required under this paragraph ceases to be generally available at commercially reasonable rates and terms or otherwise is not maintained in accordance with this Schedule or for any reason becomes void or unenforceable or if the insurer withdraws cover. In that event, the Sub-Contractor shall continue to maintain insurance on as equivalent terms and limit of indemnity as may then be available to the Sub-Contractor on a commercially reasonable basis.
- 3.4 As and when the Sub-Contractor is reasonably requested to do so by the Beneficiary, the Sub-Contractor shall produce for inspection sufficient documentary evidence (which may be in the form of broker's letter or certificate) that the insurance required under paragraph 3.1 is being maintained in accordance with the terms of this Schedule.
- 3.5 The Sub-Contractor shall not, once a claim is notified to it, knowingly act or omit to act so as to compromise, settle or waive any insurance claim which it may have in respect of any professional liability under this Schedule without the prior consent of the Beneficiary, provided that nothing in this paragraph 3 shall preclude the Sub-Contractor's insurers from taking over (in the name of the Sub-Contractor) the defence of any claim made by the Beneficiary under this Schedule and (in that capacity) from conducting and settling it as they see fit.

4 Intellectual Property Rights

- 4.1 The intellectual property rights in the Materials shall remain vested in the Sub-Contractor. The Sub-Contractor hereby grants to the Beneficiary (and its nominees) an irrevocable, perpetual, non-terminable, worldwide, royalty-free licence to use and reproduce the Materials for all purposes relating to the Project, including, but without limitation, the construction, completion, modification, maintenance, advertisement, reinstatement, repair, reconstruction, refurbishment, redevelopment, use, letting, marketing, promotion and sale of the Project, and to copy and use (but not to reproduce any designs contained therein) the Materials for an extension to the Project. The Beneficiary shall also be entitled to grant sub-licences to others and these shall be transferable to third parties without the prior consent of the Sub-Contractor.

³ This should be set at the same limit and basis of indemnity as that set out in the Contract.

- 4.2 The Sub-Contractor shall not be liable for any such use by the Beneficiary or its nominees of any Materials for any purpose other than that for which the same were prepared or provided and such purposes as are reasonably foreseeable as at the date the relevant parts of the Sub-Contract Works are performed.
- 4.3 All royalties or other sums payable in respect of the supply and use of any patented article, processes or inventions required for and in relation to Project and the performance of the Sub-Contract Works under the Sub-Contract shall be paid by the Sub-Contractor. The Sub-Contractor shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs or expenses suffered or incurred by the Beneficiary by reason of the Sub-Contractor infringing or being held to infringe any intellectual property rights in the performance of the Sub-Contract Works.
- 4.4 The Sub-Contractor waives any right to be identified as the author of the Materials in accordance with section 77 of the Copyright, Designs and Patents Act 1988 and waives any right not to have the Materials subjected to derogatory treatment in accordance with section 80 of the same Act as against the Beneficiary, any successors in title, any assignee and/or any licensee.
- 4.5 The Sub-Contractor shall, at the request of the Beneficiary, provide to the Beneficiary such copies of the Materials (in hard copy or electronic form) as the Beneficiary may reasonably require in connection with the Project.

5 Assignment

- 5.1 The Beneficiary may assign the benefit of the terms of this Schedule and/or any of the present or future rights interests and benefits of the Beneficiary hereunder:
- 5.1.1 twice to any person with an interest in the Project without the Sub-Contractor's consent; and
- 5.1.2 without counting as an assignment under paragraph 5.1.1 and/or
- (e) by way of assignment and/or charge by way of security (including any reassignment on redemption of security); or
- (f) to any Affiliate (as defined in the Contract) of the Beneficiary,

but such benefit may not be further assigned without the written consent of the Sub-Contractor (such consent not to be unreasonably withheld or delayed). The Sub-Contractor shall not in defence of any claim under this Schedule of rights by an assignee of the Beneficiary seek to reduce or extinguish the claim by reason of the fact that the loss or damage is not suffered by the original Beneficiary but by the assignee and/or chargee.

6 Liability

- 6.1 Notwithstanding the foregoing of paragraph 2 (*Duty of Care*), the Sub-Contractor owes to the Beneficiary the same duty of care in respect of its duties as aforesaid as it owes to the Contractor, provided always that the Sub-Contractor shall have no greater liability to the Beneficiary under this Schedule than it had to the Contractor under the Sub-Contract and shall be entitled to rely on the same defences and rights of counter-claim as it would

have had if the Beneficiary had been named as joint employer under the Sub-Contract, always excluding any rights of set-off or deduction.

- 6.2 This Schedule shall in no way prejudice or affect any other rights or remedies of the Beneficiary against the Sub-Contractor whether at common law or otherwise in respect of the Project or other matters referred to herein.
- 6.3 It is hereby agreed and declared that this Schedule operates notwithstanding that the Sub-Contractor may delegate or may have delegated any of its duties and responsibilities under the Sub-Contract in pursuance of its terms.
- 6.4 The Sub-Contractor acknowledges that no negligent or other act omission or delay by or on behalf of the Beneficiary and its respective successors in title and assigns in inspecting, approving or informing itself about anything related to the Project shall abate or reduce the Sub-Contractor's obligations hereunder to the Beneficiary and its respective successors in title and assigns.
- 6.5 No action or proceedings for any breach by the Sub-Contractor under or relating to this Schedule shall be commenced against the Sub-Contractor after the expiration of 12 (twelve) years from the date of Practical Completion. For the avoidance of doubt, any term of the Sub-Contract preserving the Sub-Contractor's liability in respect of proceedings or arbitration commenced by the Contractor and/or the Employer shall apply *mutatis mutandis* to proceedings or arbitration commenced by the Beneficiary pursuant to or in connection with this Schedule.

7 Severance

- 7.1 If any provision of this Schedule is held to be illegal, void, invalid or unenforceable (in whole or in part) by any court or administrative body of competent jurisdiction, that provision shall to that extent be deemed not to form part of this Schedule but the enforceability of the remainder of this Schedule shall not be affected.
- 7.2 The parties agree, in the circumstances referred to in this paragraph 9, to attempt to substitute any illegal, void, invalid or unenforceable provision with a lawful, valid and enforceable provision, which achieves to the greatest extent possible the same effect as would have been achieved by the illegal, void, invalid or unenforceable provision.

8 Variation

The Sub-Contractor agrees with the Beneficiary not to vary or agree to vary or waive the terms of this Schedule without the prior written consent of the Beneficiary such consent not to be unreasonably withheld or delayed.

9 Notices

Any notice provided for in this Schedule shall be in writing, either delivered personally or sent by first class recorded delivery post and addressed to the persons at the addresses stated in the Sub-Contract or such other addresses as shall be notified by each party to the other from time to time. Such notice shall be deemed to have been delivered:

- (g) if delivered by hand, on the same day; and
- (h) if by post, two days after the same shall have been posted.

10 **Adjudication**

- 10.1 Any adjudication under the Housing Grants Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) shall be carried out in accordance with the TeCSA Adjudication Rules from time to time in force and either party may apply to TeCSA for nomination of an adjudicator by the Chairman of TeCSA.
- 10.2 No adjudication under this Schedule whether pursuant to the Housing Grants Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) or otherwise shall finally determine the matter in dispute.

11 **Governing Law and Jurisdiction**

The terms of this Schedule and any dispute or claim arising out of it or in connection with it shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Schedule or its subject matter.

12 **Confidentiality**

- 12.1 The Sub-Contractor warrants that it shall not disclose to any person this Schedule, details of any confidential information (written or oral) concerning the business, affairs, operating methods, customers, clients or suppliers of the Beneficiary, except as is necessary to perform the duties under this Schedule, and unless and until such information comes into the public domain, other than through disclosure or wrongful use by you, or as required by law.
- 12.2 The Sub-Contractor shall not make any announcement related to the Beneficiary's interest in the Project without the written consent of the Beneficiary.

Annexure 2 - Notice of Third Party Rights

[SUB-CONTRACTOR]

[SUB-CONTRACTOR'S ADDRESS FOR NOTICES]

[DATE]

Dear Sirs

You have entered into a deed of collateral warranty with [BENEFICIARY] [Beneficiary] dated [DATE] in respect of your Sub-Contract Works for the residential development at Lower Acre, One Horton Heath, Eastleigh, Hampshire (**Deed**). Unless otherwise specified in this notice, all capitalised terms in this letter shall have the meaning set out in the Deed.

Schedule [1] of the Deed sets out the benefits and rights which may vest in and be enforced by a Third Party on the issue of this notice to you.

On behalf of the Beneficiary we hereby nominate [THIRD PARTY] (registered number [●]) whose registered office is at [ADDRESS] as a Third Party entitled to enforce the benefits and rights set out in [Schedule 1] of the Deed as from the date of this notice.

Yours faithfully

For and on behalf of

[BENEFICIARY]

THIS DOCUMENT has been executed as a Deed and is delivered on the date stated at the beginning of this Deed.

Executed as a Deed by)
[SUB-CONTRACTOR])
acting by:)
) sign here: _____
Director/Member

_____ print name

_____ sign here
Director/Company Secretary/Member

_____ print name:

[OR]

Executed as a Deed by)
[SUB-CONTRACTOR])
acting by:)
) sign here: _____
Director/Member

_____ print name:

In the presence of:

Witness signature: _____ Witness sign here:

Witness name: _____ print name:

Witness address: _____

Witness occupation: _____

Executed as a Deed by
[CONTRACTOR]
acting by:

)
)
)
) sign here:

Director/Member

print name

sign here
Director/Company Secretary/Member

print name:

[OR]

Executed as a Deed by
[CONTRACTOR]
acting by:

)
)
)
) sign here:

Director/Member

print name:

In the presence of:

Witness signature:

Witness sign here:

Witness name:

print name:

Witness address:

Executed as a Deed by
[BENEFICIARY]
acting by:

)
)
)
)
sign here:

Director [] / Member []

print name

sign here
Director/Company Secretary [] / Member []

print name:

[OR]

Executed as a Deed by
[BENEFICIARY]
acting by:

)
)
)
)
sign here:

Director [] / Member []

print name:

In the presence of:

Witness signature:

Witness sign here:

Witness name:

print name:

Witness address:

