

Dated

20

(1) UNIVERSITY OF SOUTHAMPTON

and

(2) [CONTRACTOR]

DESIGN AND BUILD CONTRACT

incorporating the terms of the JCT Design and Build Contract

for the for the development of the existing design and construction of [
] at [] Southampton

KEYSTONE LAW

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London WC2A 1JF
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Joint Contracts Tribunal Design and Build Contract (2016)

This Agreement is made the 20

This Agreement records the terms of a contract made between the parties identified as the Contractor and Employer below. The Agreement incorporates the conditions and supplemental conditions of the JCT Design and Build Contract 2016 Edition (the "**JCT Contract**") as amended by the following provisions and schedules.

This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement.

This Agreement shall not be amended, modified or supplemented except in writing by duly authorised representatives of both Parties.

AGREEMENT

Employer	UNIVERSITY OF SOUTHAMPTON (a company incorporated by Royal Charter under number RC000668) of Highfield, Southampton, Hampshire SO17 1BJ
Contractor	[CONTRACTOR] (registered in England and Wales under company) whose registered office is at

RECITALS

First	The Employer wishes to have the design and construction of the following work carried out: <div style="text-align: center;">(the "Works");</div> and the Employer has supplied to the Contractor documents describing or otherwise stating his requirements (the " Employer's Requirements ");
Second	in response to the Employer's Requirements the Contractor has supplied to the Employer: <ul style="list-style-type: none"> • documents showing and describing the Contractor's proposals for the design and construction of the Works (the "Contractor's Proposals"); and • an analysis of the Contract Sum (the "Contract Sum Analysis");

Third	the Contractor has examined the Employer's Requirements and confirms that the Contractor's Proposals will meet the Employer's Requirements;
Fourth	for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, at the Base Date, as stated in the Contract Particulars;
Fifth	the division of the Works into Sections is shown in the Employer's Requirements or in such other documents as are identified in the Contract Particulars;
Sixth	where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;
Seventh	whether any of the Supplemental Provisions 1 to 10 apply is stated in the Contract Particulars;

ARTICLES	
Article 1	<p>Contractor's Obligations</p> <p>The Contractor shall complete the design of the Works and carry out and complete the construction of the Works in accordance with the Contract Documents and (for the avoidance of doubt) the Contractor will be responsible for the whole of the design of the Works, whether contained in the Employer's Requirements or the Contractor's Proposals.</p>
Article 2	<p>Contract Sum</p> <p>The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT exclusive amount of £[] (the "Contract Sum") or such other sum as becomes payable under this Contract.</p>
Article 3	<p>Employer's Agent</p> <p>For the purposes of this Contract the Employer's Agent is of or, such other person as the Employer shall nominate in his place. Save to the extent that the Employer may otherwise specify by notice to the Contractor, the Employer's Agent shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and otherwise act for the Employer under any of the Conditions.</p>
Article 4	<p>Employer's Requirements and Contractor's Proposals</p> <p>The Employer's Requirements, the Contractor's Proposals and the Contract Sum Analysis are those referred to in the Contract Particulars</p>

Article 5	<p>Principal Designer</p> <p>The Principal Designer for the purposes of the CDM Regulations is [the Contractor] or such replacement as the Employer at any time appoints to perform that role.</p>
Article 6	<p>Principal Contractor</p> <p>The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to perform that role.</p>
Article 7	<p>Adjudication</p> <p>If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.</p>
Article 8	<p>Arbitration</p> <p>This Article does not apply.</p>
Article 9	<p>Legal proceedings</p> <p>Subject to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.</p>

CONTRACT PARTICULARS

Note an asterisk * indicates text that is to be deleted as appropriate.

Fourth Recital and clause 4.5	<p>Construction Industry Scheme (CIS) The Employer at the Base Date, by virtue of being a registered charity, is exempt from the provisions of the CIS.</p>								
Fifth Recital	<p>Description of Sections (if any) Details of the Sections are set out in the following document(s):</p> <p><i>(State the reference numbers and dates or other identifiers of documents in which they are shown.)</i></p> <p>Brief details of the Sections are as follows:</p> <table border="1" data-bbox="360 864 1433 1122"> <thead> <tr> <th data-bbox="360 864 512 931">No.</th> <th data-bbox="520 864 1433 931">Section description</th> </tr> </thead> <tbody> <tr> <td data-bbox="360 931 512 999"> </td> <td data-bbox="520 931 1433 999"> </td> </tr> <tr> <td data-bbox="360 999 512 1066"> </td> <td data-bbox="520 999 1433 1066"> </td> </tr> <tr> <td data-bbox="360 1066 512 1122"> </td> <td data-bbox="520 1066 1433 1122"> </td> </tr> </tbody> </table>	No.	Section description						
No.	Section description								
Sixth Recital	<p>Framework Agreement (if applicable) <i>(State date, title and parties)</i> [Not applicable]</p>								
Seventh Recital and Part 1 of Schedule 2	<p>Supplemental Provisions – Part 1 Of the Supplement Provisions set out in Part 1 of Schedule 2 of the JCT Contract, the following do or do not apply: <i>(Where neither entry against one of the Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision <u>does not</u> apply.)</i></p> <p>Named Sub-Contractors Supplemental Provision 1 applies/does not apply*</p> <p>Valuation of Changes – Contractor’s estimates Supplemental Provision 2 applies</p> <p>Loss and expense – Contractor’s estimates Supplemental Provision 3 applies</p>								

<p>Seventh Recital and Part 2 of Schedule 2</p>	<p>Supplemental Conditions – Part 2</p> <p>Of the Supplement Provisions set out in Part 2 of Schedule 2 of the JCT Contract, the following do or do not apply:</p> <p><i>(Where neither entry against one of the Supplemental Provisions 4 to 10 below is deleted, that Supplemental Provision <u>applies</u>.)</i></p> <p>Acceleration Quotation Supplemental Provision 4 applies/does not apply*</p> <p>Collaborative working Supplemental Provision 5 applies*</p> <p>Health and safety Supplemental Provision 6 applies</p> <p>Cost savings and value improvements Supplemental Provision 7 applies</p> <p>Sustainable development and environmental considerations Supplemental Provision 8 applies</p> <p>Performance Indicators and monitoring Supplemental Provision 9 applies/does not apply*</p> <p>Notification and negotiation of disputes Supplemental Provision 10 applies</p> <p>Where Supplemental Provision 10 applies, the respective nominees of the Parties are:</p> <table border="1" data-bbox="360 1111 1430 1512"> <tr> <td data-bbox="360 1111 655 1312">Employer's nominee:</td> <td data-bbox="655 1111 1430 1312"></td> </tr> <tr> <td data-bbox="360 1312 655 1512">Contractor's nominee:</td> <td data-bbox="655 1312 1430 1512"></td> </tr> </table>	Employer's nominee:		Contractor's nominee:	
Employer's nominee:					
Contractor's nominee:					
<p>Article 4</p>	<p>Employer's Requirements The Employer's Requirements are set out in Schedule 8.</p> <p>Contractor's Proposals The Contractor's Proposals are set out in Schedule 9.</p> <p>Contract Sum Analysis The Contract Sum Analysis is set out in Schedule 9.</p>				
<p>Article 8</p>	<p>Arbitration Article 8 and clauses 9.3 to 9.8 (Arbitration) do not apply</p>				

Clause 1.1	Base Date The Base Date is: <i>[Date of Contractor's tender]</i>							
	BIM Protocol (where applicable): <i>(State title, edition, date or other identifiers of the relevant documents.)</i>							
	Date for Completion of the Works: <i>(where completion by Sections does not apply)</i>							
	Sections: Dates for Completion of Sections <table border="1"> <thead> <tr> <th>Section No.</th> <th>Date for Completion</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Section No.	Date for Completion					
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Clause 1.7	Addresses for service of notices by the Parties <i>(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of this Agreement.)</i> Employer: Contractor:							
Clause 2.3	Date of Possession of the site: <i>(where possession by Sections does not apply)</i>							
	Sections: Dates of Possession of Sections: <table border="1"> <thead> <tr> <th>Section No.</th> <th>Date of Possession of Section</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Section No.	Date of Possession of Section					
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Clauses 2.4 and 2.26.3	Deferment of possession of the site <i>(where possession by Sections does not apply)</i> Clause 2.4 applies/does not apply*. Maximum period of deferment (if less than 6 weeks):							

	<p>Sections: deferment of possession of Sections:</p> <p>Clause 2.4 applies/does not apply*.</p> <p>Maximum period of deferment (if less than 6 weeks):</p> <table border="1"> <thead> <tr> <th>Section No.</th> <th>Maximum period of deferment</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> </tbody> </table>	Section No.	Maximum period of deferment						
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Clause 2.17.3	<p>Limit of Contractor's liability for loss of use etc.</p> <p>Shall be limited to the minimum amount of Professional Indemnity Insurance the Contractor is required to maintain in accordance with clause 6.15 for any claim or series of claims arising out of one event.</p>								
Clause 2.29.2	<p>Liquidated damages</p> <p><i>(where completion by Sections does not apply)</i></p> <p>The rate of liquidated damages is £ per week and pro rata for parts of a week;</p> <p>Sections: rate of liquidated damages for each Section:</p> <table border="1"> <thead> <tr> <th>Section No.</th> <th>Rate of liquidated damages per week and pro rata for parts of a week</th> </tr> </thead> <tbody> <tr> <td></td> <td>£</td> </tr> <tr> <td></td> <td>£</td> </tr> <tr> <td></td> <td>£</td> </tr> </tbody> </table>	Section No.	Rate of liquidated damages per week and pro rata for parts of a week		£		£		£
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	£								
Clause 2.34	<p>Sections: Section Sums</p> <table border="1"> <thead> <tr> <th>Section No.</th> <th>Section Sum</th> </tr> </thead> <tbody> <tr> <td></td> <td>£</td> </tr> <tr> <td></td> <td>£</td> </tr> <tr> <td></td> <td>£</td> </tr> </tbody> </table>	Section No.	Section Sum		£		£		£
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	£								
Clause 2.35	<p>Rectification Period</p> <p>12 months from the date of practical completion of the Works.</p>								
Clauses 4.2, 4.12 and 4.13	<p>Fluctuations Provision</p> <p>The Fluctuations Provision does not apply.</p>								
Clause 4.6	<p>Advance payment</p> <p>Clause 4.6 does not apply</p>								

	<p>Advance Payment Bond</p> <p>An advance payment bond is not required</p>
Clause 4.7	<p>Method of payment</p> <p>Periodically in accordance with Alternative B (clause 4.13)</p>
	<p>Interim Payments – Interim Valuation Dates</p> <p>[The first Interim Valuation Date is one month after the Date of Possession and thereafter the same date in each month or the nearest Business Day in that month.]</p>
Clause 4.15.4	<p>Listed Items – uniquely identified</p> <p><i>(Delete the entry if no bond is required)</i></p> <p>For uniquely identified Listed Items a bond in respect of payment for such items is required for £[]*</p> <p>[Not applicable]</p>
Clause 4.15.5	<p>Listed Items – not uniquely identified</p> <p><i>(Delete the entry if clause 4.15.5 does not apply)</i></p> <p>For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for £[]*</p> <p>[Not applicable]</p>
4.17	<p>Contractor's Retention Bond</p> <p>Clause 4.17 does not apply</p>
Clause 4.18.1	<p>Retention Percentage</p> <p>[3] [5]* per cent</p> <p><i>(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert "Nil" or "0")</i></p>
Clause 5.5	<p>Daywork</p> <p>[Not applicable.]¹</p> <p>[The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in the following document:</p> <p style="text-align: right;">]</p>
Clause 6.4.1	<p>Contractor's Public Liability insurance – injury to persons or property</p> <p>The required level of cover is not less than: £[10] million pounds for any one occurrence or series of occurrences arising out of one event.</p>
Clause 6.5.1	<p>Insurance – liability of Employer</p> <p>Not applicable.</p>

¹ Dayworks are not usually applicable for University design and build projects.

Clause 6.7 and Schedule 3	Works Insurance – Insurance Options Schedule 3: [Insurance Option A applies]* [Insurance Option B applies]* [Insurance Option C applies]* [The Contractor shall maintain insurance in accordance with Insurance Option A (the reference in the heading to “New Buildings” being deleted) and the Employer shall maintain insurance in respect of the Existing Structures in its own name for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils.] ²
	Percentage to cover professional fees [15] per cent <i>(If no other percentage is stated, it shall be 15 per cent)</i>
	Where Insurance Option A applies and cover is to be provided under the Contractor’s annual policy (paragraph A.2), the annual renewal date is:
	Where Insurance Option C applies, paragraph C1 applies/is replaced by the provisions of the following document(s): (the “ C1 Replacement Schedule ”) <i>(Unless otherwise stated, paragraph C1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)</i> [Not applicable]
Clause 6.10 and Schedule 3	Terrorism Cover – details of the required cover are set out in the following document(s): <i>(Unless otherwise stated, Pool Re Cover is required.)</i>

² This wording may be used in place of the above standard Options if it is intended that the Contractor maintains All Risks Insurance in respect of the Works but the University maintains property insurance in respect of the existing structures.

<p>Clause 6.15</p>	<p>Professional Indemnity Insurance</p> <p>Level of cover</p> <p>Amount of indemnity required relates to claims or series of claims arising out of one event and is £[]³ million</p> <p>Sublevels within the overall level of cover</p> <p>Cover for pollution/contamination claims is required, with a sub-limit of indemnity of £[] million in an annual aggregate amount</p> <p>Expiry of required period of Professional Indemnity insurance</p> <p>12 years from the date of practical completion of the Works</p>									
<p>Clause 6.17</p>	<p>Joint Fire Code</p> <p>The Joint Fire Code applies/does not apply*.</p> <p>If the Joint Fire Code applies, state whether the insurers under Option A, B or C (paragraph C.2) has specified that the Works are a “Large Project”. Yes/No*</p>									
<p>Clause 6.20</p>	<p>Joint Fire Code – amendments/revisions</p> <p><i>(The cost shall be borne by the Contractor unless otherwise stated.)</i></p> <p>The cost, if any, of compliance with amendment(s) or revision(s) shall be borne by the Employer/the Contractor*.</p>									
<p>Clause 7.2</p>	<p>Assignment/grant by Employer of rights under clause 7.2</p> <p>Clause 7.2 applies</p>									
<p>Clause 7.3</p>	<p>Parent Company Guarantee or Performance Bond</p> <p>The Contractor shall within 14 days of the date of this Contract deliver to the Employer the Contractor a Parent Company Guarantee duly executed by its ultimate parent company in the form set out in Schedule 11 in favour of the Employer. If the Contractor does not have a parent company, or does not have a parent company reasonably acceptable to the Employer, the Contractor will procure that a guarantor enters into the form of performance bond in set out in Schedule 12 in favour of the Employer for an amount equal to 10% of the Contract Sum (rounded down to the nearest whole number).</p>									
<p>Clause 7.4</p>	<p>Third Party Rights and Collateral Warranties</p> <p>Third Party Rights will not be required.</p> <p>The following Collateral Warranties shall be provided in accordance with the amendments to the Conditions which follow in this document:</p> <table border="1" data-bbox="360 1630 1433 1924"> <thead> <tr> <th><i>Provider of warranty</i></th> <th><i>Beneficiaries</i></th> <th><i>Form of warranty to be entered into</i></th> </tr> </thead> <tbody> <tr> <td>Any consultants engaged by the Contractor</td> <td>The Employer</td> <td>As set out in Schedule 10</td> </tr> <tr> <td>Sub-contractors having responsibility for the packages of works set out</td> <td>The Employer</td> <td>As set out in Schedule 10</td> </tr> </tbody> </table>	<i>Provider of warranty</i>	<i>Beneficiaries</i>	<i>Form of warranty to be entered into</i>	Any consultants engaged by the Contractor	The Employer	As set out in Schedule 10	Sub-contractors having responsibility for the packages of works set out	The Employer	As set out in Schedule 10
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³ The amount of professional indemnity insurance needs to be adequate to cover the potential costs that could arise if the design of the Works is defective. As a rule of thumb, this is likely to be on less than the estimated construction cost.

	below																		
	<p>The sub-contractors responsible for providing all or part of the following sub-contract packages shall be required to provide Collateral Warranties in accordance with clause 7E:</p> <table border="1"> <thead> <tr> <th><i>Relevant sub-contract package</i></th> <th><i>Minimum level of professional indemnity insurance to be maintained by relevant sub-contractor</i></th> </tr> </thead> <tbody> <tr> <td>• [any packages including responsibility for design]</td> <td></td> </tr> <tr> <td>• [list relevant sub-contract packages]</td> <td></td> </tr> <tr> <td>•</td> <td></td> </tr> <tr> <td>•</td> <td></td> </tr> <tr> <td>•</td> <td></td> </tr> <tr> <td>•</td> <td></td> </tr> <tr> <td>•</td> <td></td> </tr> </tbody> </table>			<i>Relevant sub-contract package</i>	<i>Minimum level of professional indemnity insurance to be maintained by relevant sub-contractor</i>	• [any packages including responsibility for design]		• [list relevant sub-contract packages]		•		•		•		•		•	
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Clause 8.9.2	<p>Period of suspension 2 months <i>(If none is stated, the period is 2 months)</i></p>																		
Clauses 8.11.1.1 to 8.11.1.6	<p>Period of suspension 2 months <i>(If none is stated, the period is 2 months)</i></p>																		
Clause 9.2.1	<p>Adjudication The Adjudicator is to be the person nominated by the Chairman for the time being of the Technology and Construction Solicitors' Association.</p>																		
Clause 9.4.1	<p>Arbitration Clause 9.4 does not apply</p>																		

IN WITNESS whereof the Parties have executed this Agreement as a deed on the date stated on page 1.

THE COMMON SEAL of THE UNIVERSITY OF SOUTHAMPTON

was hereunto affixed in the presence of:

Chief Operating Officer

Member of Council

EXECUTED AS A DEED by **[CONTRACTOR]**

acting by a Director and the Company Secretary

or by two Directors whose signatures appear below:

Director:

Director/Secretary:

CONDITIONS

The following clauses in the JCT Contract shall be deemed to be amended as follows:

Clause 1.1 Definitions

Delete the following definitions:

- "Arbitrator"
- "Funder"
- "Funder Rights"
- "P&T Rights"
- "Purchaser"
- "Tenant"

Amend the following definitions:

- "Business Day"
is a day other than a Saturday, Sunday or a Bank Holiday in England or a day when the University of Southampton is officially closed;
- "Conditions"
means the clauses set out in sections 1 to 9 of the JCT Contract as amended by this Agreement and including the Schedules of the JCT Contract as amended by this Agreement;

Add the following definitions:

- "As Built Drawings"
means the latest construction issue of drawings, designs, specifications and schedules prepared by or on behalf of the Contractor (including by any sub-contractor) annotated and amended as necessary for record purposes;
- "Collateral Warranty"
means a collateral warranty in favour of the Employer provided by a sub-contractor and/or a sub-consultant appointed by the Contractor in the respective forms annexed at Schedule 10;
- "Confidential Information"
means the Contract and any information that ought to be considered as confidential (however so conveyed or on what media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person including pricing, trade secrets, intellectual property rights and know-how of either Party and all personal data within the meaning of the Data Protection Act 2018;
- "Contract"
means the contract comprising this Agreement and the Conditions;
- "Employer"
add "and his successors and assigns" to the existing definition;
- "Site"
means the site comprising the Works as shown edged red on the attached plan numbered [] and dated []

- **"Snagging List"**

means a list of defects, shrinkages or other faults in the Works (or a Section thereof);

Insert the following new clauses:

"Clause 1.12 Confidentiality and Data Protection"

Clause 1.12.1 Each Party shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly and shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of that Party, except to such persons and to such extent as may be necessary for the performance of this Contract or except where disclosure is expressly permitted by this Contract or required by law.

Clause 1.12.2 The Contractor shall comply (and shall ensure that its personnel, consultants and subcontractors shall comply) with any notification requirements or other obligations under the Data Protection Act 2018 (the "DPA") and the General Data Protection Regulations 2018 (the "GDPR") and shall fully comply with its obligations under the DPA and the GDPR and provide the Works in a manner that allows the Employer to be compliant with the DPA and the GDPR.

Clause 1.12.2 The Contractor shall (and shall procure that any of its personnel involved in the provision of the Works shall) comply with any notification requirements under the DPA and the GDPR and both Parties shall duly observe all their obligations under the DPA and the GDPR which arise in connection with this Contract.

Clause 1.12.3 Notwithstanding the general obligation in clause 1.12.2, where the Contractor is processing personal data as a data processor for the Employer, the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the DPA and the GDPR.

Clause 1.12.4 The Contractor shall:

Clause 1.12.4.1 provide the Employer with such information as the Employer may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA and the GDPR;

Clause 1.12.4.2 promptly notify the Employer of any breach of the security measures required to be put in place pursuant to clause 1.12.3; and

Clause 1.12.4.3 ensure it does not knowingly or negligently do or omit to do anything which places the University in breach of the Employer's obligations under the DPA and the GDPR.

Clause 1.12.5 The provisions of this clause 1.12 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

Clause 1.13 Freedom of Information

Clause 1.13.1 The Contractor acknowledges that the Employer is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations. The Contractor undertakes to assist and co-operate with the Employer to enable the Employer to comply with these information disclosures to the extent that such obligations relate to information held by the Contractor on behalf of the Employer otherwise in connection with this Contract.

Clause 1.13.2 The Contractor shall ensure that his sub-contractors shall:

Clause 1.13.2.1 transfer the request for information to the Employer as soon as practicable after receipt and in any event within one Business Day of receiving a request for information;

Clause 1.13.2.2 provide the Employer with a copy of all information in his possession or power in the form that the Employer requires within two Business Days (or such other period as the Employer may specify) of the Employer requesting that information; and

- Clause 1.13.2.3 provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to a request for information within the time for compliance set out in Section 10 of the Freedom of Information Act 2000.
- Clause 1.13.3 The Employer shall be responsible for determining at his absolute discretion whether:
- Clause 1.13.3.1 the information is exempt from disclosure under the Freedom of Information Act 2000 and the Environmental Information Regulations;
- Clause 1.13.3.2 the information is to be disclosed in response to a Request for Information and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Employer.
- Clause 1.13.4 The Contractor acknowledges that the Employer may, acting in accordance with the Department or Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged under the Freedom of Information Act 2000 or the Environmental Information Regulations to disclose Information following consultation with the Contractor and having taken his views into account.
- Clause 1.13.5 In accordance with the best practice recommendations in the Freedom of Information Act 2000 the Employer shall in all cases inform the Contractor of any request for information which may result in the disclosure of Contractor information and shall consult the Contractor,. The Contractor acknowledges that any consultation must be of short duration and shall respond expeditiously when informed of a request.
- Clause 1.13.6 The Contractor shall ensure that all information produced in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Employer to inspect such records as requested from time to time.
- Clause 1.13.7 The Contractor acknowledges that any lists or schedules provided by him outlining Confidential Information are of indicative value only and that the Employer may nevertheless be obliged to disclose Confidential Information in accordance with clause 1.12."

Clause 2.1 General Obligations

Clause 2.1.2 This clause shall not apply.

Clause 2.2 Materials, goods and workmanship

Insert the following new clauses:

"Clause 2.2.1A The Contractor warrants and undertakes to the Employer, as far as consistent with this Contract, that the Contractor has exercised and will continue to exercise all reasonable skill, care and diligence to ensure that the Contractor does not specify for incorporation or use or incorporate within the Works, or authorise for approval or authorise or approve the specification for use or incorporation by others any goods, materials and/or substances which are generally known at the time of use to be:

- (a) deleterious to health and safety; or
- (b) likely to adversely affect durability in the particular circumstances in which they are used; or
- (c) other substances or materials not in accordance with British and European Standards (where applicable), Codes of Practice, Good Building Practice, COSHH Regulations or Construction Regulations.

Clause 2.2.1B The Contractor also shall have regard to "Good Practice in the Selection of Construction Materials" 2011 (Hoare Lea & Partners) published by the British Council For Offices or any updated version thereof."

Insert the following new clause:

Clause 2.8A Construction information

"Not less than 3 months before the planned date for practical completion of the Works the Contractor shall provide:

- (a) a planned preventative maintenance schedule in Excel format or similar so as to be capable of being loaded into the Employer's "Plan On" system; and
- (b) a programme with full logic links and explanation showing all testing and commissioning to be carried out in respect of the Works."

Clause 2.11 Preparation of Employer's Requirements

Delete and substitute:

"The Contractor shall be responsible for verifying the adequacy of any and all design contained within the Employer's Requirements including satisfying himself that it fully complies with all Statutory Requirements."

Clause 2.12 Employer's Requirements - inadequacy

Clause 2.12.1 Delete and substitute:

"If an inadequacy is found in any design contained in the Employer's Requirements, the Contractor shall address that inadequacy in the Contractor's Proposals. If the inadequacy is not addressed in the Contractor's Proposals, the Contractor shall inform the Employer in writing of his proposal to modify the design in the Employer's Requirements to deal with the inadequacy, and with the Employer's consent (not to be unreasonably withheld or delayed), the Contractor shall take all steps necessary to implement the proposed modification in design without any addition to the Contract Sum or any extension of time".

Clause 2.12.2 Delete and substitute:

"For the avoidance of doubt, any correction, alteration or modification in accordance with clause 2.12.1 shall not be treated as a Change."

Clause 2.14 Discrepancies in documents

Clause 2.14.1 Delete and substitute:

"In relation to any discrepancy or divergence notified under clause 2.13, the Contractor shall inform the Employer in writing of his proposed amendment to remove the discrepancy; and (subject to compliance with Statutory Requirements) the Employer shall decide between the discrepant items or otherwise may accept the Contractor's proposed amendment and the Contractor shall be obliged to comply with the decision or acceptance by the Employer without cost to the Employer or any extension of time. For the avoidance of doubt, compliance with the decision or acceptance by the Employer shall be treated as a Change."

Clause 2.14.2 Delete this clause.

Clause 2.17 Design Work – liabilities and limitation

Clause 2.17 Delete and substitute:

"The Contractor accepts entire responsibility for the design of the Works (whether or not such design was prepared before or after the date of this Contract) as set out in the Employer's Requirements and as finalised in accordance with the Contractor's Proposals and these Conditions and for any mistake, inaccuracy, discrepancy or omission contained in the same. The Contractor on behalf of himself, his consultants and sub-contractors warrants that he has and will exercise the reasonable skill, care and diligence expected of a professional designer holding himself out as competent to take on work for such design who, acting independently under a separate contract with the Employer, had supplied such design for or in connection with the Works to be carried out and completed by a building contractor not being the supplier of the design in the design of the Works."

Insert the following new clauses:

"Clause 2.17A.1 The Contractor shall be fully responsible in all respects for the design of the Works and shall adopt and take responsibility for any design which may be carried out, or which may have been carried by out, professional consultants, specialist sub-contractors or by any other person at the request of the Employer. Any reference to the design which the Contractor has prepared or shall prepare or issue for the Works shall include a reference to

any design which the Contractor has adopted or shall adopt or has caused or shall cause to be prepared or issued by others.

Clause 2.17A.2 No comments, sanction or advice from the Employer or the Employer's Agent under clause 2.8 or otherwise in connection with any drawings, details, documents or information provided by the Contractor shall in any way relieve the Contractor from his responsibility for the same."

Clause 2.26 Relevant Events

Clause 2.26.2.3 At the end of the clause insert:

"or unless the opening up for such inspection or test was reasonably required by reason of any similar equivalent or associated works, materials or goods only shown by a previous inspection or test not be in accordance with this Contract but such additional opening up shall be reasonable in its extent".

Clause 2.26.7 At the end of the clause insert:

"provided that the Contractor shall have supplied any information required, placed any necessary orders and otherwise performed his obligations under this Contract in respect of the Works as soon as reasonably practicable after the date of this Contract so as not to delay or disrupt the Statutory Undertaker in relation to the Works."

Clause 2.26.11 At the end of the clause insert:

"provided that any such strike, lock out or local combination of workmen affecting any of the trades is not specific to either the Works, the site or the Contractor."

Clause 2.27 Practical Completion

Delete the opening paragraph and substitute:

"The Contractor shall notify the Employer in writing when the Contractor considers that the Works have reached practical completion. Provided that practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clauses 2.27A and 2.27C then:"

Insert the following new clauses:

"Clause 2.27A For the purposes of the foregoing, "**practical completion**" means the state in which the Works are complete in all respects and free from any apparent defects, save for any minor items of any incomplete works or minor defects the existence, completion, rectification of which will not prevent or interfere with the use and enjoyment (or the fitting out for use) of the Works, provided that where it is expressly stated in any provisions of the Contract Documents that the testing, commissioning, regulation or adjustment of any mechanical or electrical services is to be completed before practical completion of the Works, the Works shall not be considered practically completed until the same is done as the Contract Documents require.

Clause 2.27B For the avoidance of doubt, the Practical Completion Statement may have appended to it a Snagging List setting out minor, incomplete or defective works and the timescale within which such works are to be made good by the Contractor. Should the Contractor fail to make good the works set out on any Snagging List within the time set out on that list or such other reasonable period as the Employer's Agent may instruct, the Employer shall be entitled to complete or make good those items and make an appropriate deduction from the Contract Sum.

Clause 2.27C The Employer's Agent shall not be obliged to issue the Practical Completion Statement unless all documents required by the Employer's Agent have been provided to the Employer including but not limited to:

- (a) a complete set of draft as built drawings to an agreed mapped format;
- (b) a complete set of copies of test certificates and commissioning reports, full maintenance and operation manuals for the mechanical and electrical installation (if any) and any other plant and material installed at the Works;
- (c) one hard copy and one electronic copy of the health and safety file maintained in relation to the Works pursuant to the CDM Regulations;

- (d) copies of all manufacturers' guarantees and/or warranties which are available or should be available in respect of the Works or any part;
- (e) completion certificates from the Local Authority;
- (f) two copies of the fire, gas safety and electrical certificates; and
- (g) keys for all locks at the site are individually labelled indicating their location are delivered to the Employer's Agent; and
- (h) duly executed collateral warranties from all sub-contractors and/or consultants as required in accordance with this Contract;
- (i) a planned preventative maintenance schedule in Excel format or similar so as to be capable of being loaded into the Employer's "Plan On" system."

Clause 2.35 Schedules of defects and instructions

At the end of the first paragraph insert the following:

"In making good such defects, shrinkages and other faults, the Contractor shall at all times exercise his reasonable endeavours to minimise any disruption or inconvenience to any party occupying all or any part of the site, whether such party is the Employer and/or any other third party. The Contractor shall take into account all reasonable requirements of the Employer or any third party in carrying out his obligations pursuant to the Contract Documents. Subject to clause 2.35.3 below, the Contractor shall give not less than 48 hours written notice of the Contractor's intention to go on the Site."

Delete the final paragraph (from "Within a reasonable time after receipt ..." up to and including "in respect of the defects, shrinkages or other faults not made good") and substitute the following:

"Any defects affecting the potential safety of occupants of the completed Works or the ability of the Employer to occupy and use the Works for its intended use shall be rectified within 12 hours of notification on any Business Day provided that if the relevant defect cannot be completely rectified within the period (e.g. due to the non-availability of any parts or materials) the Contractor shall provide a temporary repair within the relevant period. Otherwise, within a reasonable time after receipt of such schedule or instructions, the defects, shrinkages and other faults shall at no cost to the Employer be made good by the Contractor unless the Employer shall otherwise instruct. If he so instructs otherwise, an appropriate deduction may be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good."

Clause 2.37 As built Drawings

Insert as an additional sentence:

"Without prejudice to the following obligation, the Contractor shall provide 3 complete sets of final as built drawings within 4 weeks of the issue of the Practical Completion Statement."

Clause 2.38 Copyright and use

Clause 2.38.2 Delete the opening words: "Subject to all sums due and payable under this Contract to the Contractor having been paid" and change the following word "the" to "The".

Insert new clauses as follows:

"Clause 2.38.5 The Contractor warrants that the use of the Contractor's Design Documents for the purposes of the Works will not infringe the rights of any third party.

Clause 2.38.6 The Employer shall on written request be entitled to be supplied by the Contractor with copies of the Contractor's Design Documents and other such information in relation to the Works in such format as the Employer shall request, subject to reimbursement of the Contractor's reasonable photocopying charges."

Clause 2.39 Minimising of risks

The Contractor shall take all reasonable steps to minimise risks that could have an adverse effect on the cost, the programme or quality of the Works and report to the Employer and the

Employer's Agent at, or before, each progress meeting on the nature, likelihood and possible effect of such areas of potential risk.

Clause 2.40 Management of risks

The Contractor immediately following his appointment shall carry out (with assistance from the Employer, the Employer's Agent and any other organisations engaged in relation to the Works as considered appropriate) an initial risk assessment to identify:

- Clause 2.40.1 potential risks relating to the carrying out of the Works, the occurrence of which are capable of adversely affecting the time for completion, cost or quality of the Works;
- Clause 2.40.2 the probability of these risks occurring;
- Clause 2.40.3 a financial estimate of the most likely consequences of each risk occurring; and
- Clause 2.40.4 those risks that are within the control, or are best managed by, the Employer, the Employer's Agent or the Contractor or any other organisation engaged in relation to the Works; and
- Clause 2.40.5 the results of this initial risk assessment will be set out in a risk register.

Clause 2.41 The Contractor (with assistance from the Employer, the Employer's Agent and any other organisations engaged in relation to the Works as considered appropriate), shall regularly review and update the risk register to consider:

- Clause 2.41.1 any new risks that have arisen since the date of the last review;
- Clause 2.41.2 the steps taken to prevent/mitigate previously identified risks;
- Clause 2.41.3 risks which have been successfully prevented/mitigated (which can be removed from the risk register); and
- Clause 2.41.4 the prioritisation of all continuing risks and agreement of an action plan in respect of, and risk owners for, all risks prioritised as serious risks.

Clause 2.42 In addition to, or as part of, any progress meetings, the Contractor or the Employer's Agent may arrange regular meetings to review the risk register in accordance with clause 2.41.

Clause 2.43 Compliance with anti-slavery and human trafficking laws

- Clause 2.43.1 In performing its obligations under the contract, the Contractor shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
 - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK."

Insert new clauses as follows:

Clause 3.2A Attendance at meetings

The Contractor shall attend project meetings convened by the Employer's Agent upon reasonable notice and at reasonable intervals and representatives of the Employer and of the Employer's other consultants (and any other person authorised by the Employer and notified to the Contractor in writing for the purpose) shall be permitted to attend such meetings."

Insert new clause as follows:

Clause 3.3A Novation of designers

If not already entered into prior to the date of this Contract, [on the date of this Contract] [within 14 days from a written request by the Employer]⁴ the Contractor shall enter into a novation agreement in the form attached at Schedule 11 in relation to the appointments of the following consultants:

- [Name of relevant consultant] as [insert relevant discipline of consultant]
- [Name of relevant consultant] as [insert relevant discipline of consultant]
- [Name of relevant consultant] as [insert relevant discipline of consultant]

(the "**Novated Consultants**") and shall perform and be bound by the terms of such novated appointments in every way as if the Contractor was and always had been a party thereto in place of the Employer.]

Insert new clauses as follows:

Clause 3.4A Where the Employer has consented to the appointment of a sub-contractor, the Contractor shall not thereafter dismiss or substitute the sub-contractor without the consent of the Employer (such consent not being unreasonably delayed or withheld).

Clause 3.4B For the avoidance of doubt, all sub-contractors howsoever appointed in relation to the Works shall be the responsibility of the Contractor and the Contractor shall remain wholly responsible for the carrying out and completion of the Works in all respects.

Clause 3.4C The Contractor shall ensure that any subcontract contains suitable provisions to require that:

Clause 3.9C.1 any payment due from the Contractor to the subcontractor under the relevant subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed; and

Clause 3.9C.2 any invoices for payment submitted by a subcontractor are considered and verified by the Contractor in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed;

Clause 3.9C.3 the subcontractor includes in any sub-subcontract which the subcontractor, in turn awards, suitable provisions to impose, as between the parties to that sub-subcontract, requirements to the same effect as those required by clauses 3.9C.1 and 3.9C2 above."

Clause 3.5 Compliance with instructions

Delete and substitute:

"The Contractor shall forthwith comply with all instructions issued to him by the Employer in relation to any matter in respect of which the Employer is expressly empowered by these Conditions to issue instructions, save that where an instruction requires a Change of the type referred to in clause 5.1.2 the Contractor shall be entitled within 7 days of the date of such instructions to make objections in writing to the Employer as to why he considers he should not be obliged to comply with the instructions of the Employer. The Employer shall duly consider the objections of the Contractor but after having done so shall be entitled to confirm or withdraw the instructions as the Employer considers appropriate, and the Contractor will forthwith comply with the same and shall have no further right to make other objections in relation to that instruction."

Clause 3.13 Work not in accordance with this Contract

Clause 3.13.3 Delete and substitute:

⁴ Delete as appropriate.

"having due regard to the Code of Practice set out in Schedule 4, issue such instructions under clause 3.12 to open up for inspection or to test as are reasonable in all the circumstances to establish to the reasonable satisfaction of the Employer the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that such instructions are reasonable, whatever the results of the opening up, no addition shall be made to the Contract Sum and clause 2.26.2.3 shall not apply to any instruction issued in accordance with this clause 3.13.3."

Insert new clause:

Clause 4.9 Interim Payments – final date and amount

Clause 4.9.1 Delete and substitute:

"The final date for payment of an Interim Payment and the final payment shall be 23 days from the later of its due date and the date of receipt by the Employer of a VAT invoice in respect of the amount due."⁵

Clause 4.16 Rules on treatment of Retention

Clause 4.16.1 Delete and substitute:

"The Employer shall be under no fiduciary obligation with regard to any Retention, and any right of the Employer to deduct or set-off any amount (whether arising under any express term or under any rule of law or equity) shall be exercisable against any monies due or to become due to the Contractor, whether or not such monies consist of or include any Retention."

Clause 4.16.2 Delete and substitute:

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

Clause 4.21 Relevant matters

Clause 4.21.2.2 After "Contract" insert "unless the opening up for such inspection or test was reasonably required by reason of any similar, equivalent or associated work, materials or goods having been shown by previous inspection or test not to be in accordance with the Contract."

Insert the following new clause:

"Clause 4.21A Notwithstanding any other provision, the Contractor shall not become entitled to the addition of any amount to the Contract Sum nor to any other financial adjustment under clause 4.20 in respect of any costs, loss or expenses incurred by reason of any error, omission, negligence or default of the Contractor or of any sub-contractor or supplier or of any of their employees or agents."

"Clause 4.24.7 The final date for payment of the final payment to the Contractor shall be 21 days from the later of its due date and the date of receipt by the Employer of a VAT invoice in respect of the amount due."

Insert the following new clauses:

"Clause 6.3A Avoidance of nuisance

The Contractor shall at all times take all reasonable steps to prevent public or private nuisance or any other interference with the rights of any adjoining or neighbouring land owner, tenant or occupier or any statutory undertaking arising from the carrying out of the Works and shall assist the Employer in defending any action or proceedings which may be instituted in relation thereto. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expense, liabilities, losses, claims and proceedings resulting from any such nuisance or interference caused by the Contractor or his sub-contractors, employees or agents. For the avoidance of doubt, the Employer shall use

⁵ The due date for payment is 7 days after the relevant Interim Valuation Date (clause 4.7.2) so the final date is 30 days (7+23 days) after the relevant Interim Valuation Date.

reasonable endeavours to mitigate such expense, liabilities and losses.

Clause 6.3B Trespass and interference with rights

Without prejudice to the Contractor's obligations under clause 6.3A, the Contractor shall take all reasonable steps to ensure there is no trespass on or over any adjoining or neighbouring property rising out of or in the course of carrying out the Works. Where the carrying out of the Works is likely to necessitate any interference with the rights of the adjoining or neighbouring owners or occupiers, the Contractor shall obtain the prior written agreement of such owners and or occupiers and comply with with any stipulations contained within any such agreement. Provided that where the carrying out of the Works is likely to necessitate any interference (including, without limitation, the oversailing of crane jibs) with the rights referred to above and for which no prior written agreement has been obtained by the Contractor, the Contractor shall not proceed with the Works until such an agreement has been obtained in writing from the neighbouring owner or occupier."

Clause 6.6 Excepted Risks

In the first line, after "clause 6.1, 6.2", insert "6.3A, 6.3B".

Collateral warranties

Delete clauses 7A, 7B, 7C and 7D

Delete clause 7E and substitute the following new clauses 7E and 7F

"Clause 7E Collateral Warranties from consultants engaged by the Contractor

The Contractor shall procure that any consultants it engages in connection with the design of the Works (other than any Novated Consultants, who will provide collateral warranties to the Employer in accordance with the terms of their novation agreements) will, within 14 days of their appointment, enter into the relevant form of collateral warranty set out in Schedule 10 in favour of the Employer.

If any of the above consultants fail to enter into collateral warranties in the relevant form within the above period, the Employer will be entitled to withhold all or any payments due to the Contractor in respect of the relevant consultant(s) until the relevant collateral warranties are provided (subject to the Employer issuing the necessary Pay Less Notice(s) in accordance with clause 4.10)."

"Clause 7F Sub-contractor warranties

The Contractor shall procure that any sub-contractors having responsibility for any of the sub-contract packages set out in the Contract Particulars will, within 14 days of their appointment, enter into the relevant form of collateral warranty set out in Schedule 10 in favour of the Employer.

If any of the above sub-contractors fail to enter into collateral warranties in the relevant form within the above period, the Employer will be entitled to withhold all or any payments due to the Contractor in respect of the relevant sub-contractor or sub-contractors until the relevant collateral warranties are provided (subject to the Employer issuing the necessary Pay Less Notice(s) in accordance with clause 4.10).

Clause 8.7 Consequences of termination under clause 8.4 to 8.6

Insert the following new clause:

"Clause 8.7.1A The Contractor shall immediately deliver to the Employer possession of the site and the Works, notwithstanding that the validity of such determination may be disputed by the Contractor. Upon termination of the Contractor's employment under this Contract, the Contractor shall forthwith vacate the site."

Clauses 9.3 to 9.8 – Arbitration

These clauses shall not apply

The following Schedules shall be deemed to be added to the JCT Contract

SCHEDULE 8 – EMPLOYER’S REQUIREMENTS

- 1. The design of the Works carried out to date by the Consultants engaged by the Employer which is provided for information only:⁶**

[List below details of the latest versions of all design drawings and any specifications that are not specifications of “requirements” in accordance with paragraph 3 below]

Drawing number	Date	Author

- 2. The Employer’s Requirements for the Works** are the development of the design of the Works to meet the [following requirements] [the requirements set out in the following documents]*:

Date	Document	Author

- 3. Constraints and other requirements relating to the carrying out the Works** - in carrying out its design and construction of the Works, the Contractor will comply with the following documents:

[List any Preliminaries, planning requirements or other documents setting out constraints on the Works].

Date	Document	Author
	[Preliminaries]	

⁶ This paragraph is intended to list existing design drawings which are NOT Employer’s requirements for the Works but simply represent the design developed by the University-engaged design consultants which has not been checked for compliance with the Employer’s requirements and is provided for information only. If all the drawings produced by the University-engaged design consultants represent design that the Contractor must follow, they should be listed in paragraph 3 below.

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4. **Priority of documents** - to the extent there is any inconsistency in, or conflict between, any of the documents listed in paragraph 1 and those set out in paragraph 3 above and/or between the requirements set out in paragraph 3, the Contractor will immediately notify the Employer's Agent. The requirements set out in the documents in paragraph 2 will prevail over the documents set out in paragraphs 1 and 3 unless the Employer instructs the Contractor otherwise.

5. **Provisional Sums**

The following elements of the Works will be the subject of Provisional Sums that will be instructed in accordance with clause 3.11.

Element of Works covered by Provisional Sums	Relevant Provisional Sums (£)

6. **Details of the site and information relating to the site** is set out in the following documents:

[List details of any site investigation reports, site drawings etc. setting out details of the site]

Date	Document	Author

Copies of the above documents are set out on the attached CD:

[Attach CD containing the Employer's Requirements here]

SCHEDULE 9 – CONTRACTOR’S PROPOSALS AND CONTRACT SUM ANALYSIS

The Contractor’s Proposals

[The Contractor is responsible for developing the existing design (set out in the documents listed in paragraph 2 of Schedule 8) so as to meet the Employer’s requirements set out in paragraph 3 of Schedule 8.]*

[The Contractor’s Proposals for meeting the above obligation are set out in the document entitled “Contractor’s Proposals” dated [20], a copy of which is set out on the attached CD.]

The Contract Sum Analysis

Comprises the document of the same name dated [].

Copies of the above documents are set out on the attached CD:

[Attach CD containing any Contractor’s Proposals and the Contract Sum Analysis here]

SCHEDULE 10 – FORMS OF COLLATERAL WARRANTY

Part 1 – Form of Consultant collateral warranty to Employer

Date of Agreement:
Project:
Client: of:
Consultant: Company Registration Number: of/whose registered office is at:
Beneficiary: Company Registration Number: of/whose registered office is at:
Services (as more particularly described in the Appointment)
Appointment dated:
Professional Indemnity Insurance: £[] million in respect of any claim or series of claims arising out of the same originating cause save in respect of claims arising from contamination or pollution in respect of which such insurance shall be in the aggregate (minimum cover)

1 INFORMATION

The information contained on page 1 of this agreement forms part of this agreement.

2 BACKGROUND

- 2.1 The Beneficiary has an actual or prospective interest in the Project.
- 2.2 The Consultant is or has been appointed by the Client under the terms of the Appointment to provide the services briefly described on page 1 of this Agreement and more particularly described in the Appointment.

3 CONSIDERATION

This agreement is made on the above date between the Beneficiary and the Consultant and is made in consideration of the payment of £1 by the Beneficiary to the Consultant receipt of which the Consultant acknowledges.

4 WARRANTY AND LIABILITY

- 4.1 The Consultant warrants to the Beneficiary that it has complied and will at all times comply with the terms of the Appointment and any specifications or requirements included or referred to in the Appointment, and that, in the performance of the Services, it has exercised, and will continue to exercise, the degree of skill, care and diligence reasonably to be expected from an appropriately qualified and competent member of its profession experienced in carrying out duties such as those under the Appointment in relation to works of a similar size, scope, nature and complexity as the Project;
- 4.2 The Consultant shall have no liability under this agreement which is greater or of longer duration than it would have had if the Beneficiary had been a party to the Appointment as joint employer and the Consultant shall be entitled in any action or proceedings by the Beneficiary under this agreement to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (but excluding set-offs or counterclaims) as it would have had if the Beneficiary had been named as the Client under the Appointment. However, it shall not be a defence to any action brought against the Consultant under this agreement that the Client has suffered no loss under the Appointment. Upon the expiration of 12 years from the date of completion of the Project in accordance with the Building Contract the liability of the Consultant under this agreement shall cease save in relation to any claims made by the Beneficiary against the Consultant and notified in writing by the Beneficiary to the Consultant before the expiration of this 12 year period.

5 STANDARDS OF PRODUCTS AND MATERIALS

- 5.1 The Consultant warrants that it has exercised, and will continue to exercise, all reasonable skill, care and diligence in accordance with this agreement to see that it has not specified or selected for use, and it will not specify or select for use and (as appropriate) it has not authorised or approved and it will not authorise or approve the specification, selection or use by others of any product or material or building practice or technique which is prohibited by the Appointment or is not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification, selection, approval or authorisation is widely known to members of the Consultants' profession to be deleterious or hazardous to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which it is used.
- 5.2 If, in the performance of its duties under the Appointment, the Consultant becomes aware that it, or any other person, has specified or used, or authorised or approved the specification or use by others, of any such products or materials the Consultant will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

6 INSURANCE

- 6.1 The Consultant covenants:-
 - 6.1.1 to take out and maintain professional indemnity insurance with reputable insurers in the UK insurance market in an amount of not less than that stated on page 1 in respect of any claim or series of claims arising out of the same originating cause

save in respect of claims arising from contamination or pollution in respect of which such insurance shall be in the aggregate for a period of 12 years from the date of completion of the Project in accordance with the Building Contract, provided that such insurance is available in the UK insurance market to members of the Consultant's profession at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts or omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates;

- 6.1.2 to inform the Beneficiary or its assignees in writing immediately of any failure or inability to maintain such professional indemnity insurance cover in accordance with clause 6.1.1 in order that the Consultant and the Beneficiary can discuss means of best protecting their respective positions in the absence of such insurance; and
- 6.1.3 when reasonably requested by the Beneficiary to produce for inspection documentary evidence that its professional indemnity insurance cover is being properly maintained and that payment has been made in respect of the last preceding premium.

7 USE OF DOCUMENTS

- 7.1 In relation to all drawings, details, plans, reports, models, specifications, bills of quantities, calculations, and other documents of any nature which have been or are hereafter provided by the Consultant in the course of performing its obligations under the Appointment ("**Documents**") the Consultant hereby grants or agrees to grant to the Beneficiary a royalty-free non-exclusive licence to use and reproduce all Documents for any purpose connected with the Project and such other purposes as are reasonably foreseeable including, but without limitation, the carrying out, completion, maintenance, letting, advertisement, modification, extension, reinstatement, reconstruction and repair of the Project. Such licence will carry the right to grant sub-licences and will be transferable to third parties but shall not entitle the owner of such licence or any sub-licences to reproduce the designs contained in the Documents. Such licence shall take effect from the date of this agreement or (in relation to Documents not yet in existence) from the date of the creation of the relevant Document and shall continue notwithstanding any termination of this agreement. Neither the Beneficiary nor any recipient of any sub-licence under this clause, shall hold the Consultant liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it.
- 7.2 The Consultant agrees on reasonable request at any time and following reasonable written prior notice to give the Beneficiary or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Beneficiary's expense.
- 7.3 The Consultant warrants to the Beneficiary that it has used the standard of skill, care and diligence as set out in clause 4.1 to see that the Documents (save to the extent duly appointed sub-consultants have been used to prepare the same) are its own original work and that in any event their use in connection with the Project will not infringe the rights of any third party.

8 ASSIGNMENT

- 8.1 The benefit of this agreement may be assigned by the Beneficiary to any beneficiary having a bona fide actual or prospective legal or commercial interest in the Project or any part twice only without the consent of the Consultant provided that the Consultant shall be entitled to receive notice of such an assignment in writing within a reasonable period of the assignment taking place. Such notice will specify the name and address of the assignee and the date of the assignment. The Consultant will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this agreement (whatever the date of such breach) by reason only that the person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediary beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the property or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.
- 8.2 Notwithstanding clause 8.1, the Beneficiary may assign the benefit of this agreement without restriction to any company within the same "group" as the Beneficiary (as defined by Section 42 of the Landlord and Tenant Act 1954).

9 INSPECTION OF DOCUMENTS

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

10 [STEP IN RIGHTS

- 10.1 The Beneficiary has no authority to issue any direction or instruction to the Consultant in relation to the performance of the Consultant's duties under the Appointment unless and until the Beneficiary has given notice under clauses 10.2 or 10.3 below.
- 10.2 The Consultant will not exercise or seek to exercise any right which it may have or which may become available to it, to terminate the Appointment or to treat it as having been terminated or repudiated, or to discontinue or suspend the performance of any duties or obligations to be performed by the Consultant under it, without first giving to the Beneficiary not less than 14 days written notice specifying the Consultant's ground or grounds (the "**Specified Grounds**") for terminating the Appointment or treating it as having been terminated or repudiated or discontinuing or suspending the performance of any duties to be performed by the Consultant and stating the amount (if any) of monies outstanding under the Appointment. The Consultant's right to terminate the Appointment or treat it as having been repudiated or to discontinue or suspend performance shall cease if within such period of notice (and subject to clause 10.6 below) the Beneficiary shall give written notice to the Consultant requiring the Consultant to accept the instructions of the Beneficiary to the exclusion of the Client in respect of the Project upon the terms and conditions of the Appointment.
- 10.3 The Consultant agrees that if requested by the Beneficiary by notice in writing and subject to clause 10.6 below, he will accept the instructions of the Beneficiary or its appointee to the exclusion of the Client in respect of its duties under the Appointment upon the terms and the conditions of the Appointment and will if so requested enter into agreement whereby the Beneficiary is substituted for the Client under the Appointment.
- 10.4 The Client acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant by the Beneficiary under clauses 10.2 or 10.3 as conclusive evidence that the Beneficiary has taken over from the Client the obligations and responsibilities of the Client towards the Consultant such that the Consultant should accept the instructions of the Beneficiary or its appointee to the exclusion of the Client.
- 10.5 Notwithstanding anything contained in this agreement and notwithstanding any payments which may be made by the Beneficiary to the Consultant, the Beneficiary will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Consultant pursuant to clauses 10.2 or clause 10.3 of this agreement.

10.6 It shall be a condition of any notice given by the Beneficiary pursuant to clauses 10.2 or 10.3 that the Beneficiary or its appointee accepts liability for the performance of the Client's obligations under the Appointment including the payment of fees and all other sums properly payable to the Consultant by the Client under the Appointment (save that the Beneficiary will in paying such sums be entitled to the same rights of set off and deductions as would have applied to the previous Client under the Appointment) and including the rectification of any outstanding breach or breaches by the Client so far as they have been included properly in the Consultant's Specified Grounds and are capable of remedy by the Beneficiary. Upon the issue of any notice by the Beneficiary under clauses 10.2 or 10.3 the Appointment shall continue in full force and effect as if no right of termination on the part of the Consultant had arisen and the Consultant shall be liable to the Beneficiary or its appointee in lieu of its liability to the Client. If any notice given by the Beneficiary under clauses 10.2 or 10.3 requires the Consultant to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Consultant as guarantor for its appointee in respect of the payment of all sums from time to time due to the Consultant from the Beneficiary's appointee and in respect of all the appointee's obligations arising pursuant to this agreement.]

11 SUCCESSORS

References to the Beneficiary shall include the person or persons from time to time entitled to the benefit of this agreement.

12 SUB-CONSULTANTS

Following a written request from the Beneficiary, the Consultant will (unless it has already done so) use all reasonable endeavours to procure that its sub-consultants (if any) execute deeds of warranty in the same or equivalent terms as are set out in this agreement in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such warranties.

13 NOTICES

Any notice, request, demand, consent or approval given under or in connection with this agreement must be given or confirmed in writing. Any such notice, request, demand, consent or approval shall be delivered personally or addressed to the respective address of the parties set out in this agreement or to the registered office or the principal business address of either party for the time being and, if sent by post, shall be sent by first class pre-paid post or recorded delivery and shall be deemed to have been received on the second working day after the same shall have been posted.

14 APPLICABLE LAW AND JURISDICTION

This agreement will be construed in accordance with English law and be in all respects subject to the jurisdiction of the English courts.

15 THIRD PARTY RIGHTS

This agreement is enforceable by the original parties to it and their successors in title and permitted assignees. Any rights of any person to enforce the terms of this agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

16 [NET CONTRIBUTION

The Consultant's liability for losses under this agreement shall be limited to that proportion of such losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibilities for the same and on the basis that [*names of other Consultants*] and the building contractor in relation to the Project shall be deemed to have provided contractual undertakings on terms no less onerous than this Appointment to the Beneficiary in respect of the performance of their services in connection with the Works and shall be deemed to have paid to the Beneficiary such proportion which it would be just and equitable for them to pay having regard to the extent of their responsibility provided always that the Consultant shall not plead or reply when in defence of any claim brought by the Beneficiary that the building contractor is responsible for the design carried out by the Consultant.]

IN WITNESS WHEREOF this agreement has been executed as a deed on the date and year stated above.

EXECUTED AS A DEED by the
CONSULTANT acting by a Director
and the Company Secretary or by two
Directors whose signatures appear below:

Director

Director/Secretary

Part 2 – Form of sub-contractor warranty to the Employer

Date of Agreement:
Project:
Works: (as more particularly described in the Building Contract)
Subcontract Works: (as more particularly described in the Subcontract)
Employer: of
Contractor: Company Registration Number: of/whose registered is at:
Sub-Contractor: Company Registration Number: of/whose registered office is at:
Building Contract dated:
Subcontract dated:
Professional/Contractor's Indemnity Insurance: £[] million in respect of any claim or series of claims arising out of the same originating cause (minimum cover)

1 INFORMATION ON PAGE 1

The information completed on page 1 of this agreement forms part of this agreement.

2 BACKGROUND

- 2.1 The Employer has appointed the Contractor under the Building Contract to carry out the Works.
- 2.2 The Contractor has entered into, or intends to enter into, the Subcontract with the Sub-Contractor for the design (if applicable) and construction of the Subcontract Works.

3 CONSIDERATION

This agreement is made on the date appearing on page 1 between the Contractor, the Sub-Contractor, and the Employer in consideration of the payment of £1 by the Employer to the Sub-Contractor (receipt of which the Sub-Contractor hereby acknowledges).

4 WARRANTY AND LIABILITY

- 4.1 The Sub-Contractor warrants to the Employer that it has complied, and will at all times comply, with the terms of the Subcontract and any specifications or requirements included or referred to in the Subcontract and that it has exercised and will continue to exercise the degree of skill, care and diligence reasonably to be expected of a competent Sub-Contractor, and (to the extent that the Sub-Contractor is responsible for any design under the Subcontract) the degree of skill, care and diligence reasonably to be expected of a competent professional designer holding himself out as being experienced in carrying out design in relation to works of a similar size, scope and nature to the Subcontract Works.
- 4.2 The Sub-Contractor has no liability under this agreement which is greater or of longer duration than it would have had if the Employer had been a party to the Subcontract as joint employer and the Sub-Contractor shall be entitled in any action or proceedings by the Employer under this agreement to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability (but excluding set offs and counterclaims) as it would have had if the Employer had been named as such under the Subcontract. Upon the expiration of 12 years from the date of completion of the Subcontract Works in accordance with the Subcontract the liability of the Sub-Contractor under this agreement shall cease save in relation to any claims made by the Employer against the Sub-Contractor and previously notified in writing by the Employer to the Sub-Contractor.

5 STANDARDS OF PRODUCTS AND MATERIALS

- 5.1 The Sub-Contractor warrants to the Employer that (unless otherwise authorised or instructed by or on behalf of the Employer):
- 5.1.1 in relation to any part of the Subcontract Works for which the Sub-Contractor is responsible for the design, it has exercised, and will exercise, all reasonable skill, care and diligence in accordance with this agreement to see that it has not specified, selected, approved or authorised for use and will not specify, select, approve or authorise for use; and
- 5.1.2 it has not used, and will not use, in connection with the Subcontract Works:
- any product or material or building practical or technique which is prohibited by the Subcontract or is not in conformity with relevant British or European Union Standards and/or Codes of Practice or which at the time of specification, selection, approval or authorisation is otherwise generally known within the UK construction industry to be deleterious or hazardous to health and safety or to the durability of the Subcontract Works.
- 5.2 If in the performance of its duties under the Subcontract the Sub-Contractor becomes aware that it or any other person has specified, used, authorised or approved the specification or use by others of any such product or materials, building practices or techniques, the Sub-Contractor will notify the Employer forthwith. This clause does not create any additional duty for the Sub-Contractor to inspect or check the work of others which is not required by the Subcontract.

6 INSURANCE

The Sub-Contractor covenants:

- 6.1 in relation to any design of the Subcontract Works for which the Sub-Contractor is responsible, to take out and maintain with reputable insurers in the UK insurance market professional indemnity insurance in an amount of not less than that stated on page 1 for any claim or series of claims arising out of the same originating cause for a period expiring no earlier than 12 years after the date of completion of the Subcontract Works in accordance with the Subcontract, provided always that such insurance continues to be available in the UK insurance market at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts or omissions particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates;
- 6.2 to inform the Employer or its assignees in writing immediately of any failure or inability to maintain insurance in accordance with clause 6.1.1, and of any circumstances likely to render such insurance void or voidable, in order that the Sub-Contractor and the Employer can discuss the means of best protecting their respective positions in the absence of such insurance;
- 6.3 when reasonably requested by the Employer, to produce for inspection documentary evidence that its professional indemnity insurance cover is being maintained properly and that payment has been made in respect of the last preceding premium.

7 DOCUMENTS

- 7.1 In relation to all drawings, details, plans, reports, models, specifications, bills of quantities, calculations and other documents of any nature which have been or are hereafter provided by the Sub-Contractor in the course of performing its obligations under the Subcontract ("**Documents**") the Sub-Contractor hereby grants, or agrees to grant, to the Employer a royalty-free non-exclusive licence to use and reproduce all Documents for any purpose connected with the Project and such other purposes as are reasonably foreseeable including but without limitation, the carrying out, completion, maintenance, letting, advertisement, modification, extension, reinstatement, reconstruction and repair of the Subcontract Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties but shall not entitle the owner of such licence or of any sub-licence to reproduce the designs contained in the Documents. Such licence shall take effect from the date of this agreement or (in relation to documents not yet in existence) from the date of the creation of the relevant Document and shall continue notwithstanding any termination of this agreement. Neither the Employer nor any recipient of any sub-licence under this clause, shall hold the Sub-Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it.
- 7.2 The Sub-Contractor agrees, on reasonable request at any time, and following reasonable written prior notice, to give the Employer or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Employer's expense.
- 7.3 The Sub-Contractor warrants to the Employer that it has used the standard of skill, care and diligence as set out in clause 4.1 to see that the Documents (save to the extent any duly appointed sub-sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Subcontract Works will not infringe the rights of any third party.

8 ASSIGNMENT

- 8.1 The Employer shall be entitled to assign the benefit of this agreement or any rights arising hereunder to a purchaser, mortgagee or tenant of the whole or any part of the Project twice only without the consent of the Sub-Contractor provided that the Sub-Contractor shall be entitled to receive notice of such an assignment in writing within a reasonable period of the assignment taking place. The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this agreement (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate

beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Subcontract Project or the Project or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8.2 Notwithstanding clause 8.1, the Employer may assign the benefit of this agreement without restriction to any company within the same "group" as the Employer (as defined by Section 42 of the Landlord and Tenant Act 1954).

9 INSPECTION OF DOCUMENTS

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

10 SUCCESSORS

References to the Employer shall include the person or persons from time to time entitled to the benefit of this agreement.

11 NOTICES

Any notice, request, demand, consent or approval given under or in connection with this agreement must be given or confirmed in writing. Any such notice, request, demand, consent or approval shall be delivered personally or addressed to the respective address of the parties set out in this agreement or to the registered office or the principal business address of either party for the time being and, if sent by post, shall be sent by first class pre-paid post or recorded delivery and shall be deemed to have been received on the second working day after the same shall have been posted.

12 THIRD PARTY RIGHTS

This agreement is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

13 APPLICABLE LAW AND JURISDICTION

This agreement will be construed in accordance with English law and be in all respects subject to the jurisdiction of the English courts.

IN WITNESS whereof this agreement has been executed as a deed and delivered on the date stated above

EXECUTED AS A DEED by
the **SUB-CONTRACTOR** by
the signatures of:

Director

Director/Company Secretary

SCHEDULE 11 – NOVATION AGREEMENT

Dated

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(1) UNIVERSITY OF SOUTHAMPTON

and

(2) [SUBSTITUTE EMPLOYER]

and

(3) [CONSULTANT]

DEED OF NOVATION

of [insert discipline of Consultant's services] services in relation to [insert details of Project]

BETWEEN

- (1) **UNIVERSITY OF SOUTHAMPTON** (a company incorporated by Royal Charter under number RC000668) of Highfield, Southampton, Hampshire SO17 1BJ (the “**Employer**”); and
- (2) **[SUBSTITUTE EMPLOYER]** (registered in England and Wales under Company Number *[insert number]*) whose address or registered office is at *[insert address]* (the “**Substitute Employer**”); and
- (3) **[CONSULTANT]** (registered in England and Wales under Company Number *[insert number]*) whose address or registered office is at *[insert address]* (the “**Consultant**”).

RECITALS

- (A) By an agreement dated on or about *[insert date]* (the “**Appointment**”) the Employer has appointed the Consultant to provide *[insert details]* services (the “**Services**”).
- (B) Under a Contract dated on or about *[insert date]* (the “**Contract**”) the Employer has appointed the Substitute Employer to carry out the design and construction of *[insert brief details of the works being carried out]* (the “**Works**”).
- (C) The Employer, Consultant and Substitute Employer have agreed that from the date of this agreement the Substitute Employer shall assume the rights, liabilities and obligations of the Employer and that the Consultant shall perform its obligations under the Appointment in favour of the Substitute Employer and that the Employer and the Consultant shall each release the other from any obligations owed by the other to them under the Appointment.

NOW IT IS AGREED as follows:

1 RELEASE BY THE EMPLOYER OF THE CONSULTANT

The Employer releases and discharges the Consultant from any and all obligations and liabilities owed to the Employer under the Appointment.

2 RELEASE BY THE CONSULTANT OF THE EMPLOYER

Subject to all fees properly due and owing under the Appointment at the date of this agreement having been paid to the Consultant, the Consultant releases and discharges the Employer from any and all obligations and liabilities owed to the Consultant under the Appointment, and accepts the liability of the Substitute Employer under the Appointment in lieu of the liability of the Employer.

3 ACCEPTANCE OF LIABILITY BY THE CONSULTANT TO THE SUBSTITUTE EMPLOYER

- 3.1 Subject to the variations, if any, set out in Appendix 1 to this agreement, the Consultant undertakes to perform the Appointment and to be bound by its terms, in every way as if the Substitute Employer were and had been from inception of the Appointment a party to the Appointment in lieu of the Employer.
- 3.2 All rights of action and remedies against the Consultant under or pursuant to the Appointment vested in the Employer shall from the date of this agreement vest in the Substitute Employer.
- 3.3 The Consultant warrants to the Substitute Employer that, in respect of the duties and obligations which it has already performed under the Appointment, it has performed those duties and obligations in accordance with the standards of skill and care set out in the Appointment. Furthermore, the Consultant shall be liable for any loss or damage suffered or incurred by the Substitute Employer, arising out of any negligent act, default or breach of the Consultant’s obligations under the Appointment, notwithstanding that the Employer may not have suffered any or as much loss or damage. No waiver by the Employer, either express or implied, shall affect the Consultant’s liability to the Substitute Employer pursuant to this clause.
- 3.4 The liability of the Consultant to the Substitute Employer pursuant to this agreement, or pursuant to the Appointment, shall not be affected by the Substitute Employer’s assumption of liability for design to the Employer pursuant to the Contract.
- 3.5 The Consultant acknowledges that the Substitute Employer has relied upon, and will continue to rely upon, the Services carried out by the Consultant.

- 3.6 The Consultant shall have regard to any obligations on the part of the Substitute Employer in the Contract, and shall perform the Services in the Appointment or as amended in the Schedules hereto in such manner and at such times so as not to constitute, cause or contribute to any breach of the Contract by the Substitute Employer.

4 ACCEPTANCE OF LIABILITY BY THE SUBSTITUTE EMPLOYER

- 4.1 With the exception of any outstanding liability to pay any fees properly owing under the Appointment at the date of this agreement, and subject to the variations if any set out in Appendix 2 to this agreement, the Substitute Employer accepts the liabilities of the Employer, and undertakes to perform the Appointment and to be bound by its terms in every way as if the Substitute Employer were, and had been from inception of the Appointment, a party to the Appointment in lieu of the Employer, and as if all acts and omissions of the Employer under or pursuant to the Appointment prior to the date of this agreement were the acts or omissions of the Substitute Employer.
- 4.2 All rights of action and remedies vested in the Consultant under or pursuant to the Appointment shall from the date of this agreement vest against the Substitute Employer.

5 AFFIRMATION OF APPOINTMENT

Subject only to the terms and conditions of any warranty back from the Consultant to the Employer pursuant to this agreement, the terms and conditions of this agreement represent the entire agreement between the parties relating to the novation of the Appointment, and except as specifically amended by this agreement, all the terms and conditions of the Appointment remain in full force and effect.

6 WARRANTIES AND ACKNOWLEDGEMENTS

- 6.1 The Employer warrants and acknowledges to the Substitute Employer that:
- 6.1.1 it has at all times observed and performed and is not in breach of the Appointment; and
 - 6.1.2 at the date hereof it has paid to the Consultant all sums due to the Consultant in accordance with the terms and conditions of the Appointment; and
 - 6.1.3 at the date hereof there is no sum or sums due to the Consultant under the Appointment or arising therefrom that have not been discharged by the Employer; and
 - 6.1.4 it is not aware of any breach of the Appointment committed by the Consultant; and
 - 6.1.5 it has not assigned the Appointment nor any benefit arising under or from that Appointment to any third party and it is not holding any such benefit on trust for any third party.
- 6.2 The Consultant acknowledges that, prior to entering into this agreement, it has inspected a copy of the Contract (including all documents comprising the Contract). The Consultant further acknowledges that any breach of the Appointment (whether on or before the date of this agreement or at any time thereafter) may result in the Substitute Employer incurring liabilities under or arising out of the Contract and/or other contracts that the Substitute Employer has or may enter into.
- 6.3 The Consultant shall, within 14 days of each request made from time to time by the Employer execute and deliver:
- 6.3.1 where requested, a deed of collateral warranty in the form annexed at Appendix 3 to this agreement; and
 - 6.3.2 where requested, a deed or deeds of collateral warranty in the form set out in the Appointment in favour of the third parties described in the Appointment.

7 LAW AND JURISDICTION

This agreement and the rights and obligations of the parties under it shall be governed and construed according to English law. Any dispute shall be subject to the jurisdiction of the English court.

8 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

No provision of this agreement is intended to create or creates any right or benefit enforceable against the parties to this agreement under the Contract (Rights of Third Parties) Act 1999.

IN WITNESS whereof the parties have executed this agreement as a deed on the date and year stated above

THE COMMON SEAL OF THE UNIVERSITY OF SOUTHAMPTON

was hereunto affixed in the presence of:-

Chief Operating Officer:

Member of the Council:

EXECUTED AS A DEED by the **SUBSTITUTE EMPLOYER**

acting by a Director and the Company Secretary

or by two Directors whose signatures appear below:

Director:

Director/Secretary:

EXECUTED AS A DEED by the **CONSULTANT**

acting by a Director and the Company Secretary

or by two Directors whose signatures appear below:

Director:

Director/Secretary:

APPENDIX 1 - SCHEDULE OF AMENDMENTS TO BE MADE TO THE CONSULTANT'S SERVICES AND/OR OBLIGATIONS

[No amendments are to be made to the Consultant's Services under the Appointment]

APPENDIX 2 - SCHEDULE OF AMENDMENTS TO BE MADE TO THE CLIENT'S OBLIGATIONS AND/OR LIABILITIES

[No amendments are to be made to the Employer's obligations or liabilities under the Appointment]

APPENDIX 3 – DRAFT FORM OF WARRANTY

Dated

20

(1) UNIVERSITY OF SOUTHAMPTON

and

(2) [CONSULTANT]

and

(3) [SUBSTITUTE EMPLOYER]

DEED OF COLLATERAL WARRANTY

**in relation to the novation of [*insert details of services*]services
in relation to [*insert details of project*]**

BETWEEN

- (1) **UNIVERSITY OF SOUTHAMPTON** (a company incorporated by Royal Charter under number RC000668) of Highfield, Southampton, Hampshire SO17 1BJ (the “**Employer**”); and
- (2) **[CONSULTANT]** (registered in England and Wales under Company Number [*insert number*]) whose address or registered office is at [*insert address*] (the “**Consultant**”); and
- (3) **[SUBSTITUTE EMPLOYER]** (registered in England and Wales under Company Number [*insert number*]) whose address or registered office is at [*insert address*] (the “**Substitute Employer**”).

RECITALS

- (A) By an agreement dated on or about [*insert date*] (the “**Appointment**”) the Employer appointed the Consultant to provide [*insert details*] services (the “**Services**”) in relation to [*insert details*] at [*insert details*] (the “**Project**”).
- (B) By a further agreement dated on about [*insert date*] (the “**Novation**”) the Employer agreed to novate to the Substitute Employer the Appointment on the terms set out in the Novation and subject to any amendments to the Services set out in the Novation (the “**Novated Services**”).

NOW IT IS AGREED as follows:

In consideration of the payment of £1 (one pound) by the Employer to the Consultant, receipt of which the Consultant acknowledges:

1 WARRANTY

- 1.1 The Consultant warrants to the Employer:
 - 1.1.1 that it has complied with and will continue to comply with the terms of the Novation; and
 - 1.1.2 that in the performance of the Novated Services it has exercised, and will continue to exercise, the degree of skill, care and diligence reasonably to be expected of a skilled and qualified professional person holding himself out as competent to perform those Novated Services; and
 - 1.1.3 that no enquiry, inspection, approval, sanction, comment, consent, decision or instruction shall operate to exclude or limit the Consultant's obligation to exercise all the skill, care and diligence required under the Novation.
- 1.2 Any release, discharge or absolving of the Consultant's liability and obligations to the Employer contained in the Novation is subject to the terms of this agreement.
- 1.3 Without prejudice to the generality of clause 1.1 above, the Consultant warrants to the Employer that it will:
 - 1.3.1 provide warranties, undertakings, covenants and acknowledgements in the terms of those set out in and in favour of those specified in the Appointment and/or in the Novation;
 - 1.3.2 provide to the Employer copies of all instructions, notices, reports, decisions, approvals, suspensions, terminations or referrals issued under or in connection with the Novation;
 - 1.3.3 grant to the Employer an irrevocable, royalty-free and non-exclusive licence to use and reproduce the Documents and the designs contained in them on the terms set out in the copyright licence granted under the Appointment, and the Consultant shall (if so requested) at any time execute such documents and perform such acts as may be required fully and effectively to assure to the Employer the rights referred to in this clause;
 - 1.3.4 maintain professional indemnity insurance in accordance with the terms of the Appointment and that it shall, upon request made from time to time, provide to the Employer documentary evidence of such insurance.

- 1.4 In any action or proceedings by the Employer under this agreement the Consultant shall be entitled to rely upon any limitation in the Novation, or in the Appointment referred to in the Novation, and to raise the equivalent rights in defence of liability for such loss (but excluding set-offs or counterclaims) as if the claim were being brought by the Substitute Employer rather than the Employer, save that the Consultant shall not be absolved from liability to the Employer for such loss merely by virtue of the fact that the loss has not been suffered by the Substitute Employer. Upon the expiration of 12 years from the date of completion of the project, the liability of the Consultant under this agreement shall cease, save in relation to any claims made by the Employer against the Consultant and previously notified by the Employer to the Consultant.

2 TERMINATION AND STEP IN RIGHTS

- 2.1 The Employer has no authority to issue any direction or instruction to the Consultant in relation to the performance of the Consultant's duties under the Appointment unless and until the Employer has given notice under clauses 2.2 and 2.3 below.
- 2.2 The Consultant will not terminate the Appointment or treat it as terminated or discontinue the performance of its services under the Appointment without first giving to the Employer not less than 14 days written notice specifying the Consultant's ground or grounds ("the specified grounds") for terminating or treating as terminated the Appointment or discontinuing or suspending the performance of any duties to be performed under it, and stating the amount (if any) of monies outstanding under the Appointment. The Consultant's right to terminate the Appointment or treat it as having been repudiated, or to discontinue or suspend performance, shall cease if within such period of notice (and subject to clause 2.6 below) the Employer shall give written notice to the Consultant requiring the Consultant to accept the instructions of the Employer to the exclusion of the Substitute Employer in respect of the Project upon the terms and conditions of the Appointment.
- 2.3 The Consultant agrees that if requested by the Employer by notice in writing, and subject to clause 2.6, he will accept the instructions of the Employer or its appointee to the exclusion of the Substitute Employer in respect of its duties under the Appointment upon the terms and conditions of the Appointment, and will if so requested enter into agreement whereby the Employer is substituted for the Substitute Employer under the Appointment.
- 2.4 The Substitute Employer acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant by the Employer under clause 2.2 or 2.3 as conclusive evidence that the Employer has taken over from the Substitute Employer the obligations and responsibilities of the Substitute Employer towards the Consultant, such that the Consultant should accept the instructions of the Employer or its appointee to the exclusion of the Substitute Employer.
- 2.5 Notwithstanding anything contained in this agreement and notwithstanding any payments which may be made by the Employer to the Consultant, the Employer will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Consultant pursuant to clause 2.2 or 2.3 of this agreement.
- 2.6 It shall be a condition of any notice given by the Employer pursuant to clauses 2.2 or 2.3 that the Employer or its appointee accepts liability for the performance of the Substitute Employer's obligations under the Appointment, including the payment of fees and all other sums properly payable to the Consultant by the Substitute Employer under the Appointment (save that the Employer will in paying such sums be entitled to the same rights of set off and deductions as would have applied to the Substitute Employer under the Appointment) and the performance of the Substitute Employer's obligations under the Appointment including the rectification of any outstanding breach or breaches by the Substitute Employer so far as they have been included properly in the Substitute Employer's specified grounds and are capable of remedy by the Employer. Upon the issue of any notice by the Employer under clauses 2.2 or 2.3 the Appointment shall continue in full force and effect as if no right of termination on the part of the Consultant had arisen and the Consultant shall be liable to the Employer or its appointee in lieu of its liability to the Substitute Employer. If any notice given by the Employer under clauses 2.2 or 2.3 requires the Consultant to accept the instructions of the Employer's appointee, the Employer shall be liable to the Consultant as guarantor for its appointee in respect of the payment of all sums from time to time due to the Consultant from the

Employer's appointee and in respect of all the appointee's obligations arising pursuant to this agreement.

3 SUCCESSORS

References to the Employer shall include the person or persons from time to time entitled to the benefit of this agreement.

4 NOTICES

Any notice, request, demand, consent or approval given under or in connection with this agreement must be given or confirmed in writing. Any such notice, request, demand, consent or approval shall be delivered personally or addressed to the respective address of each party set out in this agreement or the registered office or the principal business address of either party for the time being and, if sent by post, shall be sent by first class prepaid post or recorded delivery and shall be deemed to have been received on the second working day after posting.

5 APPLICABLE LAW AND JURISDICTION

This agreement will be construed in accordance with English law and be in all respects subject to the jurisdiction of the English courts.

6 THIRD PARTY RIGHTS

This agreement is enforceable by the original parties to it and their successors in title and permitted assignees. Any rights of any person to enforce the terms of this agreement pursuant to the contract (Right of Third Parties) Act 1999 are excluded.

IN WITNESS whereof this agreement has been executed as a deed on the date and year stated above

EXECUTED AS A DEED by the **CONSULTANT**

acting by a Director and the Company Secretary
or by two Directors whose signatures appear below:

Director:

Director/Secretary:

EXECUTED AS A DEED by the **SUBSTITUTE EMPLOYER**

acting by a Director and the Company Secretary
or by two Directors whose signatures appear below:

Director:

Director/Secretary:

SCHEDULE 11 – FORM OF PARENT COMPANY GUARANTEE

Dated

20

(1) [EMPLOYER]

and

(2) [PARENT COMPANY GUARANTOR]

PARENT COMPANY GUARANTEE

relating to [*details of contract*]

BETWEEN:

- (1) **[EMPLOYER]** (registered in England and Wales under company number [*insert details*]) whose registered office is at [*insert details*] (the “**Employer**”); and
- (2) **[GUARANTOR]** (registered in England and Wales under company number [*insert details*]) whose registered office is at [*insert details*] (the “**Guarantor**”)

NOW IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATIONS

In this Guarantee where the context so admits:

- 1.1 The following expression shall have the following meanings:

“Building Contract”

means a building contract [dated _____] [to be entered into] between the Employer and the Contractor for the development of the design for, and construction of, of the Works by the Contractor at the Property in the form of the Joint Contracts Tribunal Design and Build Contract 2016 Edition incorporating amendments and any other amendments agreed by the Contractor and the Employer during the period of this Guarantee;

“Contractor”

means [*insert name of building contractor*];

“Expiry”

the payment by the Employer of the final payment to the Contractor (or the payment by the Contractor to the Employer of any sums owed to the Employer) in accordance with clause 4.24 of the Building Contract;

“Property”

means [*describe the location or address of works*].

“Works”

means [*describe the works of construction to be undertaken*];

- 1.2 **Successors in Title**

The Employer and the Guarantor shall include both parties’ successors in title and assigns.

- 1.3 **Headings**

The headings in this Guarantee are inserted for convenience only and shall be ignored in construing the terms and provisions hereof.

2 GUARANTEE

The Guarantor guarantees to the Employer that in the event of a breach of the Building Contract (which for the purposes of this Guarantee shall include any default, occurrence or omission by the Contractor which results in the determination of the Contractor’s employment under the Building Contract) the Guarantor shall, subject to the provisions of this Guarantee, indemnify the Employer against all damages, losses, costs and expenses which may be incurred by the Employer by reason of any such breach, as are established and ascertained pursuant to and in accordance with the provisions or by reference to the Building Contract and taking into account all sums due or to become due to the Contractor. For the avoidance of doubt the decision of a court or tribunal of competent jurisdiction or agreement reached between the Contractor and the Employer shall be binding on the Guarantor.

3 RELEASE

The Guarantor shall be, and continue to be, liable under this Guarantee even if the Building Contract is or becomes not binding on or unenforceable against the Contractor for any reason. No alterations in the Building Contract or in the works and no extensions of time, forbearance or forgiveness, nor

any act, matter, or thing, except an express release by the Employer, shall in any way release or reduce any liability of the Guarantor hereunder. References to the Building Contract in this Guarantee shall include all amendments, variations or additions to it whether made before or after the date hereof.

4 LIMITATION ON GUARANTOR'S LIABILITY

The Employer hereby agrees that the Guarantor's liability under this Guarantee shall be limited to and shall not exceed the obligations assumed by the Contractor under the Building Contract.

5 ASSIGNMENT

The Employer shall be entitled to assign the benefit of this Guarantee once only to any entity to whom it assigns the benefit of the Building Contract provided the Guarantor and Contractor shall be entitled to receive notice of such assignment in writing within a reasonable period of the assignment taking place.

6 DURATION

The obligations of the Guarantor under this Guarantee shall be released and discharged absolutely upon Expiry save in respect of a demand made in writing by the Employer prior to such date. For the avoidance of doubt the establishment and ascertainment pursuant to clause 2 above of the damages, losses, costs and expenses sustained by the Employer may occur subsequent to such demand which may be validly given notwithstanding any lack of particulars of breach of the Building Contract or of the damages, losses, costs and expenses sustained by the Employer.

7 JURISDICTION

This Guarantee shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales have non-exclusive jurisdiction with regard to all matters arising in connection with or under this Guarantee.

IN WITNESS whereof this Guarantee has been duly executed and delivered on the date and year stated above.

EXECUTED AS A DEED by

THE GUARANTOR by the signatures of:

Director

Director/Company Secretary

SCHEDULE 12 – FORM OF PERFORMANCE BOND

Dated

20

(1) [CONTRACTOR]

and

(2) [GUARANTOR]

and

(3) [EMPLOYER]

PERFORMANCE BOND

relating to

[insert brief description of the Project]

BETWEEN:-

- (1) **[CONTRACTOR]** (registered in England and Wales under company number [insert details] whose registered office is at [insert details] (the "**Contractor**");
- (2) **[GUARANTOR]** (registered in England and Wales under company number [insert details] whose registered office is at [insert details] (the "**Guarantor**"); and
- (3) **[EMPLOYER]** (registered in England and Wales under company number [insert details] whose registered office is at [insert details] (the "**Employer**").

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Performance Bond, unless the context otherwise requires; the following expressions shall have the following meanings:-

"Bond Amount"

means the sum of £ [insert details] [10% of the Contract Sum].

"Building Contract"

means a building contract [dated] [to be entered into] between the Employer (1) and the Contractor (2) for the design and construction by the Contractor of the Works at the Property based on the Joint Contracts Tribunal Design and Build Contract 2016 Edition incorporating various amendments and any other amendments agreed by the Contractor and the Employer during the period of this Performance Bond.

"Expiry"

the payment by the Employer of the final payment to the Contractor (or the payment by the Contractor to the Employer of any sums owed to the Employer) in accordance with clause 4.24 of the Building Contract.

"Works"

means the works, services, goods, materials and equipment to be supplied and/or incorporated by the Contractor as provided for by, or to be inferred from, the Building Contract document brief particulars of which involve the construction of [insert details].

1.2 Successors

Reference to the 'Guarantor' and the 'Contractor' shall include both parties' successors in title and assigns.

1.3 Joint liability

Where two or more persons are included in the expressions "Guarantor", "Employer" or "Contractor", the terms "Guarantor", "Employer" or "Contractor" shall include the plural number and any obligations expressed to be made by or with such party shall be deemed to be made and undertaken by such persons jointly and severally.

1.4 Headings

The headings in this Performance Bond are inserted for convenience only and shall be ignored in construing the terms and provisions hereof.

2 GUARANTEE BOND

2.1 The Guarantor guarantees to the Employer that in the event of a breach of the Building Contract by the Contractor the Guarantor shall subject to the provisions of this Performance Bond satisfy and discharge the damages sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Building Contract and taking into account all sums due or to become due to the Contractor.

2.2 The maximum aggregate liability of the Guarantor and the Contractor under this Performance Bond shall not exceed the Bond Amount but subject to such limitation and to

clause 4, the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Building Contract.

3 ALTERATION OF THE BUILDING CONTRACT

The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Building Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Building Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Performance Bond.

4 DURATION OF BOND

The obligations of the Guarantor under this Performance Bond shall be released and discharged absolutely upon Expiry save in respect of a demand made in writing by the Employer prior to such date.

5 CONTRACTOR'S UNDERTAKING

The Contractor having requested the execution of this Performance Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Building Contract.

6 ASSIGNMENT

This Performance Bond and the benefits hereof may be assigned by the Employer to any person taking an assignment or transfer of the Employer's interest in the Works.

7 JURISDICTION

This Performance Bond shall be governed by, and construed in accordance with, the laws of England and Wales.

IN WITNESS whereof the Contractor and the Guarantor have executed and delivered this Performance Bond as a deed on the date first above written.

EXECUTED AS A DEED by the
GUARANTOR by the signatures of:

Director _____

Director/Company Secretary _____