

Joint Contracts Tribunal

Standard Building Contract Without Quantities 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 Standard Building Contract [Without Quantities] [with Contractor's Design]¹ 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 contract.

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
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Contractor	[CONTRACTOR] (registered in England and Wales under company) whose registered office is at
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RECITALS

First	The Employer wishes to have the following work carried out: <div style="text-align: right;">(the "Works");</div> and has had drawings and either a specification or work schedules prepared which show and describe the work to be done;
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Second	the drawings and specifications setting out details of the Works (the " Contract Drawings ") are annexed to this Contract and identified in the Contract Particulars;
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¹ Delete as appropriate and amend relevant Recitals and Articles accordingly.

Third	<p>In accordance with whichever of the following options and documents is stated in the Contract Particulars to apply, the Contractor either:</p> <p>(A) has priced the Specification or Work Schedules (the “Priced Document”), the total of such pricing being the Contract Sum stated in Article 2 (“Pricing Option A”); or</p> <p>(B) has stated the sum he will require for carrying out the Works shown on the Contract Drawings and described in the Specification, that sum being the Contract Sum stated in Article 2, and has supplied to the Employer a Contract Sum Analysis or a Schedule of Rates on which that sum is based (the “Priced Document”) (“Pricing Option B”);</p> <p>and has provided the Employer with the priced schedule of activities annexed to this Contract (the “Activity Schedule”);</p> <p>the Priced Document, the priced Activity Schedule, where provided, and (where Pricing Option B applies) the (unpriced) Specification are annexed to this Contract and identified in the Contract Particulars;</p>
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 Employer has provided the Contractor with a Schedule (the “ Information Release Schedule ”) which states the information the Architect/Contract Administrator will release and the time of that release;
Sixth	the division of the Works into Sections (if any) is as identified in the Contract Particulars;
Seventh	where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;
Eighth	whether any of the Supplemental Provisions 1 to 6 and 9 apply is stated in the Contract Particulars;
Ninth²	<p>the Works include the design and construction of:</p> <p>(the “Contractor’s Designed Portion”)</p>
Tenth	the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements for the design and construction of the Contractor’s Designed Portion (the “ Employer’s Requirements ”)
Eleventh	<p>in response to the Employer’s Requirements the Contractor has supplied to the Employer:</p> <ul style="list-style-type: none"> • documents showing and describing the Contractor’s proposals for the design and construction of the Contractor’s Designed Portion (the “Contractor’s Proposals”); and

² The Ninth to Twelfth Recitals apply only where there is a Contractor’s Designed Portion

	<ul style="list-style-type: none"> an analysis of the portion of the Contract Sum relating to the Contractor's Designed Portion (the "CDP Analysis");
Twelfth	the Employer has examined the Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements. The Employer's Requirements, the Contractor's Proposals and the CDP Analysis are identified in the Contract Particulars;

ARTICLES	
Article 1	<p>Contractor's Obligations</p> <p>The Contractor shall carry out and complete the Works in accordance with the Contract Documents.</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>Architect/Contract Administrator</p> <p>For the purposes of this Contract the Architect/Contract Administrator is of or, if he ceases to be the Architect/Contract Administrator, such other firm or person as the Employer nominates in accordance with clause 3.5 of the Conditions.</p>
Article 4	<p>Quantity Surveyor</p> <p>For the purposes of this Contract the Quantity Surveyor is/the functions of the Quantity Surveyor shall be exercised by of or, if he ceases to be (or to exercises the functions of) the Quantity Surveyor, such other firm or person as the Employer nominates in accordance with clause 3.5 of the Conditions.</p>
Article 5	<p>Principal Designer</p> <p>The Principal Designer for the purposes of the CDM Regulations is the Architect/Contract Administrator or of 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</p>

	adjudication in accordance with clause 9.2.
Article 8	Arbitration This Article does not apply.
Article 9	Legal proceedings 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.

CONTRACT PARTICULARS

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

Second Recital	Contract Drawings The Contract Drawings are set out in Schedule 10.								
Third Recital	The Pricing Option that applies is [Pricing Option A] [Pricing Option B]* The Priced Document is: <i>(where Pricing Option A applies) the Specification/the Work Schedules*</i> <i>(where Pricing Option B applies) the Contract Sum Analysis/the Schedule of Rates*</i> The Pricing Document is set out in Schedule 9.								
Fourth Recital and clause 4.6	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.								
Sixth Recital	Description of Sections (if any) Details of the Sections are set out in the following document(s): <i>(State the reference numbers and dates or other identifiers of documents in which the details of any sections are shown)</i> Brief details of the Sections are as follows: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">No.</th> <th>Section description</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	No.	Section description						
No.	Section description								
Seventh Recital	Framework Agreement (if applicable)								

(State date, title and parties)
 [Not applicable]

Eighth Recital and Schedule 8

Supplemental Provisions 1

Of the Supplement Provisions set out in Part 1 of Schedule 2 of the JCT Contract, the following do or do not apply:
(Where neither entry against one of the Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)

Collaborative working

Supplemental Provision 1 applies/does not apply*

Health and safety

Supplemental Provision 2 applies/does not apply*

Cost savings and value improvements

Supplemental Provision 3 applies/does not apply*

Sustainable development and environmental considerations

Supplemental Provision 4 applies/does not apply*

Performance Indicators and monitoring

Supplemental Provision 5 applies/does not apply*

Notification and negotiation of disputes

Supplemental Provision 6 applies/does not apply*

Where Supplemental Provision 6 applies, the respective nominees of the Parties are:

Employer's nominee:	
Contractor's nominee:	

or such replacement as each Party may notify to the other from time to time

Named Specialists

(Unless one of the first two options is selected by deletion of the other entries, Supplemental Provision 9 does not apply)

Supplemental Provision 9

- applies in respect of both Pre-Named Specialist Work and Post-Named Specialist

Clause 2.4	<p>Date of Possession of the Site: <i>(where possession by Sections does not apply)</i></p> <p>Sections: Dates of Possession of Sections:</p> <table border="1" data-bbox="360 394 1019 651"> <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						
Section No.	Date of Possession of Section								
Clause 2.5	<p>Deferment of possession of the Site <i>(where possession by Sections does not apply)</i></p> <p>Clause 2.5 applies/does not apply*. Maximum period of deferment (if less than 6 weeks) is:</p> <p>Sections: deferment of possession of Sections: Clause 2.5 applies/does not apply*. Maximum period of deferment (if less than 6 weeks):</p> <table border="1" data-bbox="360 1039 1019 1296"> <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 2.9.1.2	<p>Master Programme Critical paths are required to be shown</p>								
Clause 2.19.3	<p>Contractor's Designed Portion: limit of Contractor's liability for loss of use etc. 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 2.32.2	<p>Liquidated damages <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" data-bbox="360 1966 1019 2027"> <thead> <tr> <th>Section No.</th> <th>Rate of liquidated damages per</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> </tbody> </table>	Section No.	Rate of liquidated damages per						
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		<i>week and pro rata for parts of a week</i>	
		£	
		£	
		£	
Clause 2.37	Sections: Section Sums		
	Section No.	Section Sum	
		£	
		£	
		£	
Clause 2.38	Rectification Period		
	12 months from the date of practical completion of the Works.		
Clauses 4.3 and 4.14	Fluctuations Provision		
	The Fluctuations Provision does not apply.		
Clause 4.7	Advance payment		
	Clause 4.7 does not apply		
	Advance Payment Bond		
	An advance payment bond is not required		
Clause 4.8	Interim payments - Interim Valuation Dates		
	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.		
Clause 4.16.4	Listed Items – uniquely identified		
	<i>(Delete the entry if no bond is required)</i>		
	For uniquely identified Listed Items a bond in respect of payment for such items is required for £[]*		
	[Not applicable]		
Clause 4.16.5	Listed Items – not uniquely identified		
	<i>(Delete the entry if clause 4.16.5 does not apply)</i>		
	For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for £[]*		
	[Not applicable]		

	<p>Where Insurance Option C applies, paragraph C1 applies/is replaced by the provisions of the following document(s):</p> <p>(the “C1 Replacement Schedule”)</p> <p><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></p> <p>[Not applicable]</p>
Clause 6.10 and Schedule 3	<p>Terrorism Cover – details of the required cover</p> <p>are set out in the following document(s):</p> <p><i>(Unless otherwise stated, Pool Re Cover is required.)</i></p>
Clause 6.15	<p>Contractor’s Designed Portion (CDP) - 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 £[] million</p> <p><i>(If no amount is stated, insurance under clause 6.15 shall not be required.)</i></p> <p>Cover for pollution/contamination claims is required, with a sub-limit of indemnity of £[] million in an annual aggregate amount</p> <p><i>(unless otherwise stated, the required limit of indemnity is an annual aggregate amount)</i></p> <p>Expiry of required period of CDP Professional Indemnity insurance is 12 years from the date of practical completion of the Works</p>
Clause 6.17	<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>
Clause 6.20	<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 Contractor.</p>
Clause 7.2	<p>Assignment/grant by Employer of rights under clause 7.2</p> <p>Clause 7.2 applies</p>
Clauses 7.3.1 and 7.3.2	<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 a Parent Company Guarantee duly executed by its ultimate parent company in the form set out in Schedule 13 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 14 in favour of the Employer for an amount equal to 10% of the Contract Sum (rounded down to the nearest whole number).</p>
Clause 7.4	<p>Third Party Rights and Collateral Warranties</p>

	Third Party Rights will not be required.								
	The following Collateral Warranties shall be provided in accordance with the amendments to the Conditions which follow in this document:								
	Provider of warranty	Beneficiaries							
	Any consultants engaged by the Contractor	The Employer							
	Sub-contractors having responsibility for the packages of works set out below	The Employer							
<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>Relevant sub-contract package</th> <th>Minimum level of professional indemnity insurance to be maintained by relevant sub-contractor</th> </tr> </thead> <tbody> <tr> <td>[Set out details of relevant sub-contract packages]</td> <td>£[] million or such lower sum as may be agreed with the Employer</td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>		Relevant sub-contract package	Minimum level of professional indemnity insurance to be maintained by relevant sub-contractor	[Set out details of relevant sub-contract packages]	£[] million or such lower sum as may be agreed with the Employer				
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[Set out details of relevant sub-contract packages]	£[] million or such lower sum as may be agreed with the Employer								
Clause 8.9.2	Period of suspension 2 months <i>(If none is stated, the period is 2 months)</i>								
Clauses 8.11.1.1 to 8.11.1.6	Period of suspension 2 months <i>(If none is stated, the period is 2 months)</i>								
Clause 9.2.1	Adjudication The Adjudicator is to be the person nominated by the Chairman for the time being of the Technology and Construction Solicitors' Association.								
Clause 9.4.1	Arbitration Clauses 9.3 to 9.8 do not apply.								

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 12;
- "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;
- "Site"
means the site comprising the Works as shown edged red on the attached plans numbered [] 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 1.13 Confidentiality and Data Protection"

- Clause 1.13.1 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 1.13.2 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 1.13.2 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 1.13.3 Notwithstanding the general obligation in clause 1.13.2, 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 1.14 Freedom of Information

- Clause 1.14.1 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 1.14.2 The Contractor shall ensure that his sub-contractors shall:
- Clause 1.14.2.1 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 1.14.2.2 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 1.14.2.3 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 1.14.3 The Employer shall be responsible for determining at his absolute discretion whether:
- Clause 1.14.3.1 the information is exempt from disclosure under the Freedom of Information Act 2000 and the Environmental Information Regulations;
- Clause 1.14.3.2 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 1.14.4 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 1.14.5 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 1.14.6 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 1.14.7 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 1.13."

Clause 2.3 Materials, goods and workmanship

Insert the following new clauses:

"Clause 2.3.1A The Contractor warrants and undertakes to the Employer, as far as consistent with the Contractor's responsibility for any design of the Works in accordance 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 2.3.1B 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 2.9A 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 2.29 Relevant Events

Clause 2.29.2.2 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 2.29.7 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 2.29.11 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 2.30 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 clause 2.30C, then:"

Insert the following new clauses:

"Clause 2.30A 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 2.30B For the avoidance of doubt, the Practical Completion Certificate 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 Architect/Contract Administrator may instruct, the Employer shall be entitled to complete or make good those items and make an appropriate deduction from the Contract Sum.

Clause 2.30C The Architect/Contract Administrator shall not be obliged to issue the Practical Completion Certificate unless all documents required by the Architect/Contract Administrator have been provided to the Employer including but not limited to:

- (a) a complete set of draft as built drawings in respect of the Contractor's Designed Portion 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 relevant Local/Public Authority;
- (f) two copies of the fire, gas safety and electrical certificates;
- (g) keys for all locks at the site individually labelled indicating their location are delivered to the Architect/Contract Administrator;
- (h) duly executed collateral warranties from all sub-contractors and/or consultants as required in accordance with this Contract; and
- (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 2.38 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. Save where access is required to rectify an emergency defect, the Contractor shall give not less than 48 hours written notice of the Contractor's intention to go on to 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 2.41 Copyright and use

Clause 2.41.2 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 the following new clauses:

"**Clause 2.41.5** 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 2.41.6 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.

Insert the following new clauses:

Clause 2.42 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 Architect/Contract Administrator at, or before, each progress meeting on the nature, likelihood and possible effect of such areas of potential risk.

Clause 2.43 Management of risks

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

Clause 2.43.1 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 2.43.2 the probability of these risks occurring;

Clause 2.43.3 a financial estimate of the most likely consequences of each risk occurring; and

Clause 2.43.4 those risks that are within the control, or are best managed by, the Employer, the Architect/Contract Administrator or the Contractor or any other organisation engaged in relation to the Works; and

Clause 2.43.5 the results of this initial risk assessment will be set out in a risk register.

Clause 2.44 The Contractor (with assistance from the Employer, the Architect/Contract Administrator and any other organisations engaged in relation to the Works as considered appropriate), shall regularly review and update the risk register to consider:

Clause 2.44.1 any new risks that have arisen since the date of the last review;

Clause 2.44.2 the steps taken to prevent/mitigate previously identified risks;

Clause 2.44.3 risks which have been successfully prevented/mitigated (which can be removed from the risk register); and

Clause 2.44.4 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 2.45 In addition to, or as part of, any progress meetings, the Contractor or the Architect/Contract Administrator may arrange regular meetings to review the risk register in accordance with clause 2.44.

Clause 2.46 Compliance with anti-slavery and human trafficking laws

Clause 2.46.1 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 clause as follows:

Clause 3.1A Attendance at meetings

"The Contractor shall attend project meetings convened by the Architect/Contract Administrator 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 clauses as follows:

"Clause 3.9A 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 3.9B 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 3.9C 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."

Insert new clause:

Clause 4.11 Interim and final payments – final date and amount

Clause 4.11.1 Delete and substitute:

"Subject to clause 4.11.4, 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 4.17 Rules on treatment of Retention

Clause 4.17.1 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 4.17.2 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 4.17.3 Delete this clause.

Clause 4.22 Relevant matters

Clause 4.22.2.2 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 clauses:

"Clause 4.22A 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 4.21 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 4.26.4 The final date for payment of the Final Certificate 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

⁵ The due date for payment is 7 days after the relevant Interim Valuation Date (clause 4.8) so the final date is 30 days (7+23 days) after the relevant Interim Valuation Date.

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 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 thereto and comply with every respect 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 Contractor's Designed Portion will, within 14 days of their appointment, enter into the relevant form of collateral warranty set out in Schedule 12 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 4.12)."

"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 12 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 4.12).

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 9 – THE PRICED DOCUMENT AND ACTIVITY SCHEDULE

The Priced Document comprises the document entitled “[]” dated [].

The Activity Schedule comprises the document entitled “[]” dated [].

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

[Attach CD containing the Priced Document and any Activity Schedule here]

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

4. **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 together with the pre-construction information provided in accordance with the CDM Regulations]

Date	Document	Author

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

[Attach CD containing the Contract Drawings (and other information referred to above) here]

[Attach CD containing the above Employer's Requirements, Contractor's Proposals and the CDP Analysis here]

SCHEDULE 12 – 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

6.1 The Sub-Contractor covenants:

- 6.1.1 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 in respect of 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;
- 6.1.2 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;
- 6.1.3 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 13 – 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 Standard Building Contract 2016 Edition [without Quantities] [with Contractor’s Design]⁶ 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 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.

⁶ Delete as appropriate.

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 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 14 – FORM OF PERFORMANCE BOND

Dated

20

(1) [CONTRACTOR]

and

(2) [GUARANTOR]

and

(3) [EMPLOYER]

PERFORMANCE BOND

relating to

[insert brief description of the Project]

THIS PERFORMANCE BOND is dated

20[]

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 construction by the Contractor of the Works at the Property based on the Joint Contracts Tribunal Standard Building Contract [without Quantities] [with Contractor's Design]⁷ 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

⁷ Delete as appropriate.

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