

Initialed on behalf of the Employer _____

Initialed on behalf of the Contractor _____

DRAFT

**SCHEDULE OF AMENDMENTS TO
JCT MINOR WORKS BUILDING
CONTRACT WITH CONTRACTOR'S
DESIGN 2024**

in relation to works at **[insert details]** at the Science
Museum, Exhibition Road, London SW7 2DD

The Science Museum Group

and

[Contractor]

**SCHEDULE OF AMENDMENTS TO JCT MINOR WORKS
BUILDING CONTRACT WITH CONTRACTOR'S DESIGN 2024**

Contract Particulars

Article 8

Complete to read:

“Article 8, clause 7.4 (Arbitration), and Schedule 1 (Arbitration) do not apply.”

Clause 7.3

In the entry for clause 7.3 delete existing text and substitute as follows:

“7.3	Adjudication Nominator of Adjudicator	the Chairman for the time being of TECBAR (The Technology and Construction Bar Association)”
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[Schedule 2 (paragraph 13.1)

Insert new entry for Schedule 2 (paragraph 13.1) as follows:

Guarantee from the Contractor's parent company

*is required/is not required

Parent company's name and registration number:

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**“The required form of the guarantee is set out in Appendix 1 to the Schedule of Amendments.” [DN:
Delete if no parent company guarantee is required.]**

Schedule 2 (paragraph 13.2)

Insert new entry for Schedule 2 (paragraph 13.2) as follows:

Performance bond or guarantee from bank or other approved surety.

(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)

[*is required/is not required]¹

The required form of the bond or guarantee is set out in Appendix 2 to the Schedule of Amendments.”

Initial value: _ [] ___ per cent of the Contract Sum

Conditions

Clause 1.1

Add new definition as follows:

“Beneficiary: means any funder, purchaser or tenant or any other existing or future person with an interest in the whole or any part of the Project or the whole or any part of the Works.”

Insert at the end of the definition of “Conditions” as follows:

“, subject to the amendments and additional clauses referred to in Article 9 of the Agreement”.

Add new definitions as follows:

“Consultant: any consultant appointed by the Contractor to design any part of the Works.

“Contract: means the Articles of Agreement, the Conditions and the Schedules all as amended by the Schedule of Amendments.”

“Contract Documents: this Contract and these Conditions (as amended by the Schedule of Amendments), the Employer’s Requirements and any other Contract Documents listed in the Contract Particulars.”

Delete the existing definition of “Interest Rate” and substitute as follows:

“Interest Rate: A rate of 2% per annum above the official dealing rate of the Bank of England current at the date a payment due under this Contract becomes overdue, plus such further amount of interest (if any) as is held in any proceedings to be necessary to satisfy the minimum requirement for a substantial remedy (within the meaning of section 9 of the Late Payment of Commercial Debts (Interest) Act 1998).”

Add new definitions as follows:

“Practical Completion: When the Works are complete and free from apparent defects save for any minor issues with the Works the existence, completion or rectification of which, in the opinion of the Architect/Contract Administrator (acting reasonably), would not prevent or interfere with the use (or the fitting out or equipping for use) of the

¹ [To be reviewed on a case-by-case basis and selected as appropriate]

Works for the intended purpose as indicated in the Contract Documents.”

“Project: means [REDACTED]”

“Purchase Order: means any purchase order(s) generated by the Employer in relation to the Works.”

“Schedule of Amendments: means the document entitled “Schedule of Amendments to the JCT Minor Works Building Contract with contractor’s design 2024” and attached to this Contract.”

“Sub-Contractor: means any sub-contractor employed by the Contractor to carry out all or part of the Contractor’s Designed Portion and/or the installation of any part of the Works.”

“Third Party Agreements: means the documents detailed in Appendix 6 of the Schedule of Amendments.

Clause 1.2

Add at the end after the full stop:

“In the event of an inconsistency, discrepancy or ambiguity in or between the Schedule of Amendments and any other Contract Document, the Schedule of Amendments shall take precedence”.

Clause 1.3.5

Delete “.” and replace with “; and”.

Clause 1.3.6

Add new clauses 1.3.6 as follows:

"1.3.6 the word "including" and the words “shall include” shall be construed as being followed immediately by the words "without limitation."

Clause 1.5

Delete existing text and substitute as follows:

“A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms, but this does not affect any right or remedy of a third party which exists or is available apart from such act.”

Clause 1.6.2

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

“A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery. A notice sent by email shall be deemed to have been received on the day of transmission if transmitted before 4pm on a

Business Day (or, alternatively, on the next Business Day), provided that, in each case, no delivery failure notification is received by the sender.”

Clause 1.6.2.1

At the end of the clause, deleted “or” and insert:

“and”

Clause 1.8

Delete this clause and replace with:

“1.8 .1 This Contract and any non-contractual obligations in connection with this Contract, are subject in all respects to English law.

.2 If any dispute or difference arises between the Contractor and the Employer in connection with this Contract which cannot be resolved by mutual agreement, subject to clause 7.3 (adjudication), either party may refer any dispute or difference under this Contract to adjudication by a person agreed between the parties or, if not agreed, appointed on the application of either party to the President or Vice-President of the Royal Institution of Chartered Surveyors in accordance with the Scheme.

.3 Subject to clause 1.8.2, the parties agree to submit any dispute or difference between them arising out of, or in connection with, this Contract to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.”

Clause 1.9

Insert new clause 1.9 as follows:

“No Waiver

1.9.1 The failure of either of the Parties to exercise any right or remedy does not constitute a waiver of that right or remedy.

1.9.2 No waiver has effect unless it has been agreed, confirmed in writing and signed by the Parties and no such waiver as arises from a breach of contract constitutes a waiver of any other breach of contract.”

Clause 1.10

Insert new clause 1.10 as follows:

“Practical Completion

“1.10 All references in this Contract to “practical completion” are to be read and construed as references to “Practical Completion”.”

Clause 2.1.2

Delete this clause and replace with:

“2.1.2.1 The Contractor shall comply at all times with the Employer's environmental policy which is available on request [currently available:] , as the same is updated from time to time. [DN: SMG to insert the link containing the environmental policy.]

2.1.2.2 In complying with this Contract and carrying out the Works, the Contractor has and shall promote:

- (i) the protection of the environment (including the prevent of atmospheric and other pollution and the protection of wildlife and wildlife habitats);
- (ii) sustainable construction and development; and
- (iii) energy efficiency.”

Clause 2.2.1

Delete this clause and replace with:

“The Contractor shall comply with all applicable environmental laws and regulations in force from time to time in relation to the service and promptly shall provide evidence of compliance when reasonably requested by the Employer or the Architect/Contract Administrator. The Contractor shall comply with all reasonable requests by the Employer or the Architect/Contract Administrator for information regarding the environmental impact of the Works.”

Clause 2.1.3.5

Delete existing text and substitute as follows:

“be responsible for the whole of the design of the Contractor’s Designed Portion (including any designs comprised within the Employer’s Requirements and any further design which the Contractor is to carry out as a result of a change in the Employer’s Requirements);”.

Clause 2.5.2

Insert after “in or between” as follows:

“the Employer’s Requirements and any other”.

Clause 2.8

Delete: “for reasons beyond the control of the Contractor, including compliance with Architect/Contract Administrator’s instructions that are not occasioned by a default of the Contractor,”

and substitute: “by reason of any of the following which is not within the control of the Contractor:

.1 any act of the Employer, the Architect/Contract Administrator or other persons engaged by the Employer which materially impedes or prevents the performance by the Contractor of its obligations under this Contract; or

- .2 loss or damage to the Works; or
- .3 exceptionally adverse weather conditions (being of a kind which might not reasonably be expected to recur more than once every ten years); or
- .4 the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat.”.

Insert after “Reasons within the control of the Contractor include any” as follows:

“negligence or “.

Clause 3.1

Delete existing text and substitute as follows:

“The Contractor shall not without the consent of the Employer assign this Contract or any rights thereunder. The Employer may assign the benefit of this Contract and all rights thereunder without the consent of the Contractor being required.”

Clause 3.4.1

Insert at the end of clause 3.4.1 as follows:

“If not so confirmed within 2 days, the instruction shall only take effect if the Contractor, within a further period of 5 days, confirms the instruction in writing to the Architect/Contract Administrator, and the instruction is not dissented from in writing within 7 days of the Contractor’s confirmation.”

Clause 3.9A

Insert new clause 3.9A as follows:

“3.9A “The Contractor shall be responsible for the preparation of the Construction Phase Plan and:

.1 if as a result of the Construction Phase Plan not being ready construction of the Works or relevant Section does not start on the Works commencement date stated in the Contract Particulars, the Contractor shall not be entitled to any extension of time or addition to the Contract Sum as a result of the Contractor being unable to commence the construction of the Works or relevant Section on the Works commencement date stated in the Contract Particulars; and

.2 if the Construction Phase Plan has to be varied or supplemented during the execution of the Works as a result of the negligence, omission, or default of the Contractor, the Contractor will not be entitled to any extension of time or any addition to the Contract Sum as a result; and the Contractor will reimburse the Employer in respect of any loss or additional expense which the Employer incurs as a result.”

Clause 3.9B

Insert new clause 3.9B as follows:

“3.9B “The Contractor warrants to the Employer the Contractor is competent and shall

allocate sufficient resources to, and it shall comply with, its obligations under the CDM Regulations and the Building Regulations. In addition, the Contractor warrants that it is competent to fulfil the roles of Principal Contractor and Principal Designer if appointed as such, for the purposes of the CDM Regulations and the Building Regulations, and that it will allocate adequate resources for health and safety to enable it to perform its duties as Principal Contractor and Principal Designer if appointed as such.”

Clause 4.1A

Insert a new clause 4.1A as follows:

Domestic VAT reverse charge (DRC)

“4.1A “The Employer is an end user in respect of the services to be supplied to the Employer by the Contractor under this Contract for the purposes of paragraph 8(1)(b) of the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 and accordingly the Parties agree that the reverse charge on such services will not apply to supplies under this Contract.”

Clause 4.1B

Insert a new clause 4.1B as follows:

“4.1B “ For the purpose of this clause 4, “Invoice” means a proper and valid VAT invoice which (to the extent communicated to the Contractor by the Employer) contains a reference to the relevant Purchase Order number.”

Clause 4.3.3

Delete “14 days” and substitute with “30 days”.

Clause 4.4

Insert “; and “at the end of clause 4.4.2 and insert new clause 4.4.3 as follows:

“.3 any loss and/or expense ascertained under clause 4.4A”.

and then replace “in both cases” with “in each case”.

Clause 4.4A

Insert new clause 4.4A as follows:

“Loss and Expense

“4.4A If the regular progress of the Works has been or is likely to be materially affected by any act of the Employer, the Architect/Contract Administrator or other persons engaged by the Employer which materially impedes or prevents the performance by the Contractor of its obligations under this Contract, and the Contractor incurs or is likely to incur direct loss or expense as a consequence, the Contractor shall make written application to the Architect/Contract Administrator to that effect. Such application shall be made as soon as it has become or should reasonably have become apparent to the Contractor that the regular progress of the Works has been or is likely to be materially affected and

shall include such information as should reasonably enable the Architect/Contract Administrator to form an opinion. Save where the Contractor would be reimbursed for the loss or expense by a payment under any other provision of this Contract or this Contract provides that there shall be no addition to the Contract Sum, the Architect/Contract Administrator shall ascertain whether the regular progress of the Works has been or is likely to be materially affected as stated in the application and, if so, the amount of the loss and expense which has been or is being incurred, and the amount so ascertained shall be added to the Contract Sum. The provisions of clause 4.4A are without prejudice to any other rights and remedies the Contractor may possess, except that they shall be exhaustive of the Contractor's right to financial compensation in respect of the matters referred to in clause 4.4A."

Clause 4.4B

Insert new clause 4.4B as follows:

"Materials and goods – on site

"4.4B Where the value of any Site Materials has been included in any interim certificate under clause 4.4, they shall upon payment of the amount due in respect of such Site Materials become the Employer's property, but, subject to clause 5.5 (if applicable), the Contractor shall remain responsible for loss or damage to them."

Clause 4.5.1

In line 3, delete "." and replace with:

“ ”

At the end of the clause, after "has been calculated", insert:

provided always that it is a condition precedent to any such proposed application being valid that it is accompanied by an Invoice for the sum applied for (such a valid payment application being the 'Payment Application').

Clause 4.6.4

Delete "5 days" and substitute with "one day".

Clause 4.8.1

In lines five after "suspend performance of" insert "any or all of". In line six after "suspension" add "(subject to the Corporate Insolvency and Governance Act 2020)".

Clause 4.9.3

Delete "14 days" and substitute with "30 days".

Clause 4.9.4

Insert new clause 4.9.4 as follows:

“4 Subject to clause 4.9.6 the final certificate shall have effect in any proceedings arising out of or in connection with this Contract as conclusive evidence that:-

.1 any necessary effect has been given to all the terms of this Contract which require an amount to be added to or deducted from the Contract Sum except where there has been any accidental inclusion or exclusion of any work, materials or goods or figure in any computation or any arithmetical error in computation, in which event the final certificate shall have effect as conclusive evidence as to all other computations; and

.2 all and only such extensions of time, if any, as are due under clause 2.7 have been given; and

.3 the reimbursement of direct loss and expense is in full and final settlement of all and any claims which the Contractor has under clause 4.4A or otherwise in connection with this Contract;

unless any proceedings are commenced by either party within 28 days of the date of the final certificate, in which case the final certificate shall be conclusive evidence as aforesaid except only in respect of all matters to which those proceedings relate.”

Clauses 4.9.5 and 4.9.6

Insert new clauses 4.9.5 and 4.9.6 as follows:

“5 Notwithstanding clauses 4.3.3, 4.5, 4.6.4, 4.9.1, 4.9.2 and 4.9.3, and without prejudice to clause 6 of this Contract, if the Contractor becomes Insolvent five days before the final date for payment, the Employer shall not be required to pay the Contractor the sum, or any part of the sum, due to it under this clause 4.9.

.6 Neither the final certificate nor any payment by the Employer shall of itself be conclusive evidence that any work, materials or goods to which it or any of them relate are in accordance with this Contract.”

Clause 5.2.1

Delete the existing text of clause 5.2.1 and substitute as follows:

“the Contractor’s liability and indemnity under this clause 5.2 in respect of the cost of reinstatement, repair or replacement of loss or damage to those existing structures or to any of their contents arising out the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor’s Person shall be limited to the sum of [£10,000,000 (ten million pounds)]² for any one occurrence or series of occurrences arising out of one event.”

Clause 5.2.2

Delete text and substitute:

² [Internal note: Sum to be reviewed on a case-by-case basis]

“not used.”

Clause 5.2.3

Delete text and substitute:

“not used.”

Clause 5.5³

In the heading replace “Joint Names Insurance of the Works and existing structures by Employer” with “Joint Names Insurance of Works in existing structures by Contractor”. Delete the existing text of clause 5.5 and substitute as follows:

“If the Contract Particulars state that clause 5.5 applies, the Contractor shall effect and maintain a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to cover professional fees) and shall maintain such Joint Names Policies up to and including the date of issue of the practical completion certificate or, if earlier, the date of termination of the Contractor's employment.”

Clause 5.8.5

In clause 5.8.5, after “Where clause 5.4”, insert “or 5.5”.

Clause 5.8.6

In clause 5.8.6, after “Where”, delete “clause 5.5 applies, where”.

Clause 6.1.6

In clause 6.1.6, replace the full stop after “it” with “; or”.

Clause 6.1.7

Add new clause 6.1.7 as follows:

“6.1.7 If it provides or takes any step in relation to a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006 but excluding a Scheme of Arrangement as a solvent company for the purposes of amalgamation or re construction.”

Clause 6.5.1

Renumber this clause as 6.5.1.1. Add a new clause 6.5.1.2:

“6.5.1.2 The fact that the Contractor has become Insolvent shall be conclusive evidence of the Contractor's failure to perform and observe the terms and Conditions of this Contract.”

³ These amendments assume that the entries for 5.4, 5.5 and 5.6 in the Contract Particulars state that Clause 5.5 applies (but amended to refer to Works insurance by Contractor in Joint Names).

Clause 6.6A

Insert new clause 6.6A as follows:

“Employer Termination on Notice

6.6A In addition to the rights of termination set out in clauses 6.4, 6.5 and 6.6 of this Contract, the Employer may terminate this Contract by giving the Contractor one month’s written notice at any time.”

Clause 6.7

In clause 6.7, after “terminated under clause 6.4, 6.5”, delete “or 6.6” and replace with “, 6.6 or 6.6A.”

Clause 6.8.3

Delete “7” and replace with “14” in both instances.

Clause 6.9.1

Insert at the start of this clause:

“Subject to the Corporate Insolvency and Governance Act 2020,”

Before “by notice”, insert:

“not”

After “Contract” insert:

“unless and to the extent that:

- .1 in the case where the Employer has entered administration, an administrative receiver of the company has been appointed (otherwise than in succession to another administrative receiver), has gone into liquidation and/or a provisional liquidator of the Employer is appointed (other than in succession to another provisional liquidator), the administrator, receiver or liquidator (as relevant) consents to the termination;
- .2 in any other case, the Employer consents to the termination;
- .3 the court is satisfied that the continuation of the Contract would cause the Contractor hardship and grants permission for the termination;

Clause 6.12.1

Delete “14 days” and substitute with “30 days”.

Clause 6.12.5.3

Delete “5 days” and substitute with “one day”.

Schedule 2: Supplemental Provisions

Delete paragraph 4 and replace with:

“Transparency

4

.1 The Contractor acknowledges that the United Kingdom Government's transparency agenda requires that certain contracts (which may include this Contract) and tender documents are published on a designated, publicly searchable website. The Contractor acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Employer is responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor gives consent for the Employer to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including changes to the Contract agreed from time to time, to the general public.”

Add a new paragraph 6:

“Freedom of Information

6

.1 The Contractor acknowledges that the Employer is subject to the requirements of the FOIA (meaning Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation) and the EIR (meaning the Environmental Information Regulations 2004) and shall assist and cooperate with the Employer to enable the Employer to comply with its information disclosures obligations under the same.

.2 The Contractor shall:- transfer any Request for Information under the FOIA or the EIR to the Employer as soon as practicable after receipt and in any event within two business days of receiving a Request for Information; provide the Employer with a copy of all Information (as such term is defined in FOIA) in its possession or power in the form that the Employer requires within five business days (or such period as the Employer may specify) of the Employer requesting that Information is required in order to provide all necessary assistance as may be reasonably requested by the Employer for the Employer to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR; and procure that its Subcontractors do likewise.

.3 The Employer shall be responsible for determining whether any Information: is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and/or whether it is to be disclosed in response to a Request for Information.

.4 The Contractor acknowledges that the Employer may be obliged under the FOIA or the EIR to disclose Information, in some cases even where that Information is commercially sensitive, provided that the Employer takes reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention as soon as practicable after any such disclosure.”

Add a new paragraph 7:

“Conflicts of Interest

7

.1 The Contractor shall disclose to the Architect/Contract Administrator any actual or potential conflict of interest arising from the Contractor’s provision of the Works as soon as practicable after becoming aware of such actual or potential conflict.

.2 The Contractor shall notify the Architect/Contract Administrator immediately of any circumstances giving rise to, or potentially giving rise to, conflicts of interest relating to the Contractor and/or the Employer (including, without limitation, its reputation and standing) of which it is aware or of any circumstances which it anticipates may justify the Employer taking action to protect the Employer’s interests.”

Add a new paragraph 8:

“Data Protection

8

- .1 .1 In this paragraph 8:
 - .1 "Data Protection Legislation" shall mean the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679 (as applicable) and any other applicable laws relating to the protection of personal data and the privacy of individuals (all as amended, updated or re-enacted from time to time);
 - .2 "Data Subject", "Controller", "International Organisation", "Processor" and "Processing" have the same meaning as in the Data Protection Legislation;
 - .3 "Personal Data" has the meaning set out in the Data Protection Legislation in relation to data Processed under this Contract which is supplied to the Contractor by the Employer or obtained by the contractor in the course of performing the Works;
 - .4 "Regulator" means any independent public authority responsible for monitoring the application of the Data Protection Legislation in the UK or any other member state of the European Union; and
 - .5 "Third Country" means any country other than the UK, a European Union Member State or a member of the European Economic Area at the time of transfer of Personal Data.
- .2 For the purposes of the Data Protection Legislation, the Contractor is a Processor and, for the purposes of this Contractor the nature/purpose of the Processing is to enable the Contractor to carry out the Works (which form the subject matter of the Processing) and the duration of the Processing shall be the term of this Contract.
- .3 The Contractor shall comply with its obligations under the Data Protection Legislation and shall, in particular:
 - .1 process the Personal Data only to the extent necessary for the purpose of providing the Works and in accordance with the Employer's written instructions (including with respect to transfers of Personal Data to a Third Country or to an International Organisation);
 - .2 implement appropriate technical and organisational measures in

accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that are presented by such Processing, in particular, from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;

- .3 ensure that any employees or other persons authorised to Process the Personal Data are subject to appropriate obligations of confidentiality;
 - .4 on request by the Employer and taking into account the nature of the Processing and the information available to the Contractor, assist the Employer in ensuring compliance with its obligations under Articles 32 to 36 of the General Data Protection Regulation (EU) 2016/679 (where applicable) in respect of the Personal Data;
 - .5 not transfer the Personal Data to a Third Country or to an International Organisation without the prior written consent of the Employer;
 - .6 not engage any third party to carry out its Processing obligations under this Contract without obtaining the prior written consent of the Employer and, where such consent is given, procuring by way of a written contract that such third party will, at all times during the engagement, be subject to data processing obligations equivalent to those set out in this paragraph 8;
 - .7 notify the Employer, as soon as reasonably practicable, about any request or complaint received from a Data Subject (without responding to that request, unless authorised to do so by the Employer) and assist the Employer by technical and organisational measures, insofar as possible, for the fulfilment of the Employer's obligations in respect of such requests and complaints;
 - .8 notify the Employer without undue delay and in any event within 24 hours of discovery where feasible and not later than 72 hours after having become aware of a Personal Data breach;
 - .9 on request by the Employer, make available all information necessary to demonstrate the Employer's compliance with this paragraph 8 and on reasonable advance notice in writing otherwise permit, and contribute to, audits carried out by the Employer (or its authorised representative) with respect to the Personal Data;
 - .10 on termination or expiry of this Contract, destroy, delete or return (as the Employer directs) all Personal Data and delete all existing copies of such data unless required by law to keep or store such Personal Data.
 - .11 The Employer acknowledges that paragraph 8.3 shall not apply to the extent that the Contractor is required by law to Process the Personal Data other than in accordance with the Employer's instructions and the Contractor acknowledges that, in such a case, it must promptly inform the Employer of the relevant legal requirement prior to Processing (unless the law prohibits the provision of such information on important grounds of public interest).
- .4 The Contractor warrants that in carrying out its obligations under this Contractor it will not breach the Data Protection Legislation or do or omit to do anything that might cause the Employer to be in breach of the Data Protection Legislation.
 - .5 The Contractor shall indemnify and keep indemnified the Employer against all costs, claims, damages or expenses incurred by the Employer or for which the

Employer may become liable due to any failure by the Contractor to comply with its obligations under this paragraph 8.

- .6 The Employer may, at any time on not less than 30 days' notice, revise this paragraph 8 by replacing it with any controller to processor standard clauses adopted in accordance with Article 28 of the General Data Protection Regulation.”

Add a new paragraph 9:

“Bribery Act

- 9 .1 The Contractor undertakes and warrants that:
- .1 it has not committed any offence under the Bribery Act or done any of the Prohibited Acts;
 - .2 it has in place adequate procedures to prevent bribery and corruption as contemplated by the Bribery Act; and
 - .3 it shall comply, and the Contractor shall ensure that its Sub-Contractors shall comply, with the Modern Slavery Act and any anti-slavery policy of the Employer.
- .2 If the Contractor, its Sub-Contractors, sub-consultants, suppliers, employees or agents (or anyone acting on its or their behalf or associated with it or them in accordance with section 8 of the Bribery Act) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act, with or without the knowledge of the Contractor, in relation to this Contract or any other agreement with the Employer:
- .1 the Employer shall be entitled to:
 - (i) terminate this Contract and recover from the Contractor the amount of any loss arising from or connected with the termination;
 - (ii) recover from the Contractor the amount or value of any gift, consideration, commission or financial or other advantage concerned; and
 - (iii) recover from the Contractor any other loss or expense suffered as a consequence of committing any offence under the Bribery Act or doing any Prohibited Act; and
 - .2 any termination under paragraph 9.2.1 shall be without prejudice to any right or remedy that has already been accrued or subsequently accrues to the Employer.
- .3 The Contractor shall impose on any sub-consultants, Sub-Contractors, suppliers or agents obligations substantially similar to those imposed on it by this paragraph 9.
- .4 Notwithstanding clause 7, any dispute relating to the:
- .1 interpretation of paragraph 9.1, 9.2 or 9.3; or
 - .2 amount or value of any gift, consideration, commission or financial or other advantage;
- shall be determined by the Employer in its absolute discretion and the decision shall be final and binding.
- .5 Any price-fixing, collusion or any other form of anti-competitive behaviour with other tenderers, Sub-Contractors, agents or suppliers by the Contractor, or any corrupt practices employed by the Contractor in relation to the Works, shall give the Employer the right to terminate this Contract, and it may result in a reference being

made to the Office of Fair Trading.

- .6 If the Contractor (or any of its directors or others exercising powers of representation, decision-making or control over the Contractor) is found to have breached EU or UK competition laws, to the extent that the Employer considers that (i) the breach is serious enough to amount to an act of grave misconduct and/or the breach constitutes a criminal offence, the Employer shall have the right to terminate this Contract. In any of the situations envisaged in paragraphs 9.5 or 9.6, if the Employer terminates this Contract, the Contractor shall indemnify the Employer against any resulting costs of retendering.

Add a new paragraph 10:

“Use of the Employer’s Property

10

If the Contractor is permitted to use equipment, plant and materials or other such property belonging to the Employer (the **“Employer’s Property”**), the following provisions shall apply.

- .1 Notwithstanding the Contractor’s use of the Employer’s Property, all such items of the Employer’s Property shall remain the property of the Employer.
- .2 The Contractor is responsible for its own costs resulting from any failure of the Employer’s Property, unless it can demonstrate that the Employer was notified of, and was responsible for, repair and replacement of the item(s) of Employer’s Property and the Employer unduly delayed its repair or replacement.
- .3 The Contractor shall maintain all items of the Employer’s Property in good and serviceable condition and in accordance with the manufacturer’s recommendations.
- .4 The Contractor is liable for any loss of or damage to any Employer’s Property save to the extent that the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Employer.
- .5 The Contractor shall not in any circumstances have a lien over any of the Employer’s Property. The Contractor shall take all steps necessary to ensure that the rights and title of the Employer, including the exclusion of any lien over the Employer’s Property, are brought to the attention of any third party dealing with any Employer’s Property.”

Add a new paragraph 11:

“Cycling Safety

11

- .1 The Contractor shall assess the risks associated with construction traffic during the Works and shall use all reasonable endeavours to ensure the safety of road users and to prevent accidents involving cyclists.
- .2 The Contractor recognises and accepts that its obligations under paragraph 11 shall include consideration and implementation of:
- investing in safer vehicles and/or retrofitting older vehicles with adequate safety features such as audible and/or proximity warning devices or systems, Class VI mirrors and rear warning signs (or equivalent appropriate

mirror systems for vehicle size), side guards and side sensors, where appropriate;

avoiding peak hour traffic where appropriate;

training road users (and drivers) of the risks associated with construction works and in particular the risk of accidents and collisions with cyclists;

planning for a wider separation between HGVs and cyclists; and

in the event of any collisions with cyclists, reviewing the circumstances, identifying the causes of accidents and implementing any necessary changes to reduce the risk of accidents.

.3 The Contractor shall be responsible for ensuring that its Sub-Contractors or suppliers comply with this paragraph 11.”

Add a new paragraph 12:

“Compliance with Anti-Slavery and human Trafficking Laws and Policies

12

.1 In performing its obligations under the Contract, the Contractor shall:

- 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 (Modern Slavery Legislation);
- have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance with Modern Slavery Legislation; and
- ensure that each of its direct subcontractors and contractors shall comply with the Modern Slavery Legislation.

.2 The Contractor represents and warrants that:

- its responses to the Employer's slavery and human trafficking due diligence questionnaire are complete and accurate; and
- neither the Contractor nor any of its officers, employees or other persons associated with it has been convicted of any offence involving slavery and human trafficking and has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

.3 The Contractor shall implement due diligence procedures for its direct subcontractors, and contractors to ensure that there is no slavery or human trafficking in its supply chains.

.4 The Contractor shall notify the Employer as soon as it becomes aware of:

- any breach, or potential breach, of the Modern Slavery Legislation; or
- any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.

.5 The Contractor shall permit the Employer and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this paragraph 12.5, to have

access to and take copies of the Contractor's records and any other information and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations this clause.

.6 The Contractor shall implement a system of training for its employees, contractors and subcontractors to ensure compliance with the Modern Slavery Legislation.

.7 The Contractor shall keep a record of all training offered and completed by its employees, contractors and subcontractors to ensure compliance with the Anti-slavery Policy and shall make a copy of the record available to the Employer on request.

.8 The Contractor represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Modern Slavery Legislation."

Add a new paragraph 13:

"[Parent Company Guarantees and]⁴ Performance Guarantee Bonds

13

If required by the Employer, the Contractor shall deliver to the Employer on the date of this Contract:

.1 [a parent company guarantee in the form set out in Appendix 1 to this Schedule of Amendments executed as a deed by the Contractor and its ultimate parent company; and]⁵

.2 a performance guarantee bond in the form set out in Appendix 2 to this Schedule of Amendments duly executed as a deed by the Contractor and a surety approved by the Employer; and

it shall be a condition precedent to the obligation of the Employer to pay any sums under this Contract that the Contractor shall have delivered to the Employer any [parent company guarantee or]⁶ performance guarantee bond required by the Employer."

Add a new paragraph 14:

"Collateral Warranties

14

.1 Notices

Each notice to the Contractor referred to in paragraphs 14.2 and 14.3 shall be given in accordance with clause 1.6.2.

.2 Contractor's Warranties –Beneficiaries

⁴ [Internal Note: To be reviewed on a case-by-case basis. Delete if not required.]

⁵ [Internal Note: To be reviewed on a case-by-case basis. Delete if not required]

⁶ [Internal Note: To be reviewed on a case-by-case basis. Delete if not required]

The Employer requires that the Contractor, from time to time whether on, before or after the completion of the Works, executes as deeds and delivers to the Employer within 14 days of such request from the Employer, warranties in favour of any Beneficiary in the form in Appendix 3 to the Schedule of Amendments with such further amendments as the Employer (acting reasonably) may require in favour of those parties. The Employer shall be entitled to withhold an additional retention of 10% of the Interim Payments under this Contract in relation to the Works until the Contractor shall have executed such deed in accordance with this paragraph 14.2.

.3 Sub-Contractors' and Consultants' Collateral Warranties

The Employer may require that any Consultant and/or Sub-Contractor, from time to time whether on, before or after the completion of the Works, executes as deeds and delivers to the Employer warranties in favour of the Employer and/or any Beneficiary the form in Appendix 4 and Appendix 5 (as applicable) to the Schedule of Amendments with such further amendments as the Employer (acting reasonably) may require in favour of those parties. The Employer shall be entitled to withhold an additional retention of 10% of the Interim Payments under this Contract in relation to the Works until each relevant Consultant or Sub-Contractor has executed such deed in accordance with this clause”

Draft

Note on Incorporation (not part of Schedule of Amendments)

1. Insert new article 10 in manuscript as follows:

“Article 10

The amendments to the JCT Minor Works Building Contract with contractor's design 2024, set out in the Schedule of Amendments attached to this Contract, are hereby incorporated into this Contract and the provisions of the Articles of Agreement, the Conditions and the Schedules shall have effect as so amended by the Schedule of Amendments.”

[NOTE: Ensure that Article 10 is endorsed on the printed form.]

2. Attach Schedule of Amendments.

Appendix 1

Parent company guarantee⁷

DATED

[GUARANTOR] (1)

[EMPLOYER] (2)

PARENT COMPANY GUARANTEE

relating to []

⁷ [Internal Note: To review relevancy of the PCG on a case-by-case basis. Delete form of PCG if not required.]

THIS DEED is made on

BETWEEN:

- 1 **[GUARANTOR]** (company number []) whose registered office is at [] (the **"Guarantor"**); and
- 2 **[EMPLOYER]** (company number []) whose registered office is at [] (**"Employer"** which expression shall include its successors in title, assigns, transferees and related organisations, whether by reorganisation or under statute).

WHEREAS:

- (A) This Guarantee is supplemental to a Building Contract dated (the **"Contract"**) between the Employer and [] (company number []) whose registered office is at [] (the **"Contractor"**) for [] (the **"Works"**); and
- (B) The Guarantor has agreed to guarantee the due performance of the Contract by the Contractor in the manner hereinafter appearing.

NOW in consideration of the payment of one pound by the Employer to the Guarantor (receipt of which the Guarantor acknowledges **THIS DEED WITNESSES** as follows:

- 1 In consideration of the Employer at the request of the Guarantor entering into the Contract the Guarantor hereby unconditionally and irrevocably guarantees as primary obligor and not merely as surety to the Employer as a continuing obligation to the Employer and its successors in title the proper and punctual performance and observance by the Contractor of all its obligations, warranties, duties, undertakings and liabilities, whether actual or contingent, under the Contract including the proper and punctual payment by the Contractor of any amounts required to be paid under the Contract or as damages for any breach of any of the provisions thereof and unconditionally and irrevocably undertakes as a continuing obligation to the Employer that if for any reason and at any time the Contractor does not make payment of any such amount the Guarantor shall pay to the Employer the amounts not so paid.
- 2 If the Contractor shall in any respect fail fully and properly to perform and execute the Contract or shall commit any breach of its obligations thereunder or if the employment of the Contractor under the Contract shall terminate by operation of clause 8.5 the Guarantor shall without prejudice to clause 1 hereof indemnify the Employer and keep it indemnified from and against all losses, damages, costs, claims, charges, interest and expenses which may be incurred by the Employer by reason of any such failure or breach on the part of the Contractor or any such termination.
- 3 Provided always that:
 - 3.1 the Guarantor's total liability under this Deed shall be limited to the liability that the Guarantor would have had had it been named jointly with the Contractor under the Contract, and
 - 3.2 the Guarantor's liability under this Deed shall cease 12 years after the date referred to in the written statement of Practical Completion issued under the Contract save for any claims made against the Guarantor before the expiry of the 12-year period.
- 1.1 the Guarantor shall have available to it in any claim, action or proceedings by the Employer under or in connection with this Deed the same defences, set-offs and/or counterclaims as are or would be available to the Contractor in any claim, action or proceedings by the Employer under or in connection with the Contract;

- 3.3 nothing in this Deed shall be construed to give the Employer any greater rights against the Guarantor than the Employer has or would have had against the Contractor under the Contract.
- 4 The Guarantor shall not be discharged nor shall its liability be affected by anything which would not discharge it or affect its liability if it were the sole principal obligor including:
- 4.1 any amendment, modification, waiver, consent or variation, express or implied, to the scope of the Works or to the Contract or any related documentation;
 - 4.2 the granting of any extensions of time or forbearance, forgiveness or indulgences in relation to time to the Contractor;
 - 4.3 the enforcement, absence of enforcement or release of the Contract or of any security, right of action or other guarantee or indemnity;
 - 4.4 the dissolution, amalgamation, reconstruction, reorganisation of the Contractor or any other person;
 - 4.5 the invalidity or unenforceability of or any defect in any provision of the Contract;
 - 4.6 any indulgence or additional or advanced payment, forbearance, payment or concession to the Contractor;
 - 4.7 any compromise of any dispute with the Contractor;
 - 4.8 any failure of supervision to detect or prevent any fault of the Contractor;
 - 4.9 any assignment of the benefit of the Contract.
- 5 The Guarantor hereby authorises the Contractor and the Employer to make any addendum or variation to the Contract, the due and punctual performance of which addendum or variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Deed. The obligations of the Guarantor hereunder shall in no way be affected by any variation or addendum to the Contract.
- 6 The Employer may, without the Guarantor's consent, assign the entire benefit of this Deed at any time to any party to which it has assigned the benefit of Contract.
- 7 The construction, validity and performance of this Deed (including any non-contractual obligations in connection with this Deed) is subject to English law and the English Courts shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith.
- 8 This instrument is executed as a deed and was delivered when it was dated.
- 9 Save in respect of any assignee under clause 6, the parties hereby agree that notwithstanding any other provisions, this Deed shall not confer and shall not purport to confer on any third party any right to enforce any of the terms of this Deed and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed.
- 10 The Guarantor shall be bound to the same extent by any decision of any adjudicator under or in connection with the Contract.

EXECUTED and **DELIVERED** as a deed.

[RELEVANT EXECUTION BLOCKS]

Appendix 2

Note – the following form of guarantee bond is an amended ABI Model Form of Guarantee Bond (2002 edition).

Appendix 2

Performance Guarantee Bond

DATED _____

[CONTRACTOR] (1)

and

[GUARANTOR] (2)

and

[EMPLOYER] (3)

PERFORMANCE GUARANTEE BOND

relating to []

THE PERFORMANCE GUARANTEE BOND is made as a deed **BETWEEN** the following parties whose names and registered offices are set out in the Schedule to this Bond (the "**Schedule**"):

- (1) The "**Contractor**" as principal;
- (2) The "**Guarantor**" as guarantor; and
- (3) The "**Employer**".

WHEREAS

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

NOW THIS DEED WITNESSES AS FOLLOWS:

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor, the Guarantor shall subject to the provisions of this Guarantee 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 Contract and taking into account all sums due or to become due to the Contractor.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the "**Bond Amount**") but subject to such limitation and to clause 5 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract.
- 3 The Guarantor shall not be discharged or released by any alteration of any of the terms, conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release, reduce or affect the liability of the Guarantor under this Guarantee Bond.
- 4 For the avoidance of doubt any determination of the Contractor's employment under clause 8.5 of the Contract shall be conclusive evidence for the purposes of this Guarantee Bond of the Contractor's failure duly to perform and observe the terms of the Contract.
- 5 Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.
- 6 This Guarantee Bond and the benefits thereof shall not be assigned without the prior written consent of the Guarantor and the Contractor.
- 7 Subject to clause 6, the parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.

8 The Guarantor shall be bound by any decision of any adjudicator under or in connection with the Contract until such time as such decision is set aside by any competent tribunal.

9 This Guarantee Bond shall be governed by and construed in accordance with the laws of England and only the courts of England shall have jurisdiction hereunder.

IN WITNESS whereof the Contractor and the Guarantor have executed and delivered this Guarantee Bond as a Deed this day of , 20

[RELEVANT EXECUTION BLOCKS]

Schedule

The Contractor:	[] whose registered office is at []
The Guarantor:	[] whose principal office is at []
The Employer:	[EMPLOYER] (company number []) whose registered office is at [] (which expression shall include its successors in title, assigns, transferees and related organisations, whether by reorganisation or under statute)
The Contract:	A contract dated the [] day of [] 20[]
	between the Employer and the Contractor in the form known as the JCT Minor Works Building Contract with contractor's design 2024 and a Schedule of Amendments
	for the design, construction, completion and commissioning of works comprising []
	for the original contract sum of [] (£[])
The Bond Amount:	The sum of [] (£[])
Expiry:	Upon the date of Practical Completion of the whole of the Works, in accordance with the terms and conditions of the Contract which shall be conclusive for the purposes of this Guarantee Bond

Appendix 3

Deed of Warranty from Contractor to Beneficiary

DATED

[BENEFICIARY] (1)

and

[CONTRACTOR] (2)

[and

[EMPLOYER] (3)]

**DEED OF WARRANTY
for [Project]**

THIS WARRANTY is made on

BETWEEN:

- (1) **[BENEFICIARY]** [(company number [number])] whose [registered] [principal] office is at [address] (“**Beneficiary**” which expression shall include its successors in title and assigns); and
- (4) **[CONTRACTOR]** (company number [number]) whose registered office is at [address] (“**Contractor**”); and [.]
- (2) **[EMPLOYER]** (company number []) whose registered office is at [] (“**Employer**” which expression shall include its successors in title, assigns, transferees and related organisations, whether by reorganisation or under statute).

BACKGROUND:

- (C) [The Beneficiary has entered or shall enter into a contract with the Employer (“**Agreement**”) for the provision of funding for [description] (“**Project**”).]
- (D) [The Beneficiary has entered or shall enter into a contract with [person] (“**Employer**”) for the [purchase] [lease] of the whole or part of [description] (“**Project**”).]
- (E) The Employer has entered or shall enter into a contract or contracts with a consultant or consultants for the performance of the services described in the contract or contracts for the Project.
- (F) The Employer has entered into a contract with the Contractor dated (“**Contract**”) for the carrying out of the work described in the Contract (“**Works**”) for the Project.
- (A) It is a condition of the Contract that the Contractor gives this Warranty to the Beneficiary.

In consideration of the payment of £1 (a pound) by the Beneficiary to the Contractor (receipt of which the Contractor acknowledges) **IT IS AGREED:**

1 Works

- 1.1 The Contractor undertakes and warrants to the Beneficiary that:
 - 1.1.1 the Contractor has complied and shall comply with the Contractor’s obligations under and in connection with the Contract in accordance with it; and
 - 1.1.1 the Contractor has used and shall use, in the [design and] construction of the Works, all the reasonable skill, care and diligence and the best up-to-date practice to be expected of a fully qualified and competent [designer and] contractor experienced in [designing and] constructing works for projects of a similar size, scope, nature, complexity and timescale to the Project.

2 Materials and building practices

- 2.1 The Contractor undertakes and warrants to the Beneficiary that (unless otherwise instructed or authorised by or on behalf of the Beneficiary):
 - 2.1.1 the Contractor has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 not to specify, select and/or approve for use; and

2.1.2 the Contractor has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 to ensure that there shall not be used in the Project: any material, substance, building practice or technique which is:

- (a) prohibited by the Contract;
- (b) not in accordance with any relevant British Standard, Eurocode, code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément;
- (c) not in accordance with the guidance and comment contained in the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011"; or
- (d) generally known within the construction industry at the time of specification, selection, approval or use (as the case may be) to:
 - (i) be deleterious;
 - (ii) be harmful to the health or safety of any person;
 - (iii) threaten the structural stability, physical integrity or performance of the Project or any part or component of the Project; or
 - (iv) reduce the normal life-expectancy of the Project or any part or component of the Project.

3 Documents

3.1 For the purposes of this Warranty, "**Documents**" means any and all activity schedules, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the Contractor (whether in existence or to be created) in connection with the Works and/or the Project.

3.2 The Contractor grants to the Beneficiary an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Works or the termination of the Contractor's engagement under the Contract, to copy and use the Documents and to reproduce the designs and contents of them for:

3.2.1 any purpose relating to the Project and/or the Beneficiary's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use of the Project and/or the Beneficiary's interest in the Project; and

3.2.2 the extension of the Works or the Project, so that the Beneficiary can interface any extension of the Works or the Project with the existing Works or Project, but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project.

- 3.3 The Beneficiary shall be entitled to grant sub-licences under the Beneficiary's licence and both the Beneficiary's licence and any sub-licences shall be transferable to others.
- 3.4 The Contractor undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Beneficiary and it shall include any sub-licensees and assignees under clause 3.3, any assignees under clause 9, any successors in title to the copyright in the design under the Contract and any successors in title to the Beneficiary's business.
- 3.5 Notwithstanding practical completion of the Works or the termination of the Contractor's engagement under the Contract, the Contractor shall give to the Beneficiary any paper copies and electronic copies of the Documents that the Beneficiary reasonably requests. The Contractor shall give these copies to the Beneficiary within seven days of any request, and the Beneficiary shall pay the Contractor's reasonable copying costs. The Contractor shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Contractor gives to the Beneficiary.
- 3.6 The Contractor shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared for.

4 Insurance

- 4.1 Subject to clause 4.2, and provided that it is available at reasonable premium rates and on reasonable commercial terms, the Contractor shall take out and maintain professional indemnity insurance from the date of the Contractor's engagement under the Contract until the date that is 12 years after the date of practical completion of the Project:
- 4.1.1 with a well-established insurance company or underwriter of good repute based in the United Kingdom;
- 4.1.2 with a limit of indemnity of not less than £[5],000,000 ([five] million pounds) for each claim or series of claims arising from the same originating or underlying cause; and
- 4.1.3 on terms that:
- (i) do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and
- (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.
- 4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the Contractor's claims record or other act, failure to act or circumstance particular to it, this shall be deemed to be within reasonable rates and terms.
- 4.3 Without the Beneficiary's prior written consent, the Contractor shall not:
- 4.3.1 settle or compromise any claim against the insurers that relates to a claim by the Beneficiary against the Contractor; or

- 4.3.2 by any act or omission lose or affect the Contractor's right to make, or to proceed with, any claim against the insurers that relates to a claim by the Beneficiary against the Contractor.
- 4.4 As and when it is reasonably required to do so by the Beneficiary, the Contractor shall make available for inspection by the Beneficiary documentary evidence that the insurance is being maintained in accordance with this Warranty.
- 4.5 Subject to clause 4.2, the Contractor shall inform the Beneficiary immediately if this insurance ceases to be available to the Contractor at reasonable premium rates or on reasonable commercial terms. If this happens:
- 4.5.1 the Beneficiary and the Contractor shall discuss and agree on the best means of protecting themselves; and
- 4.5.2 the Beneficiary may require the Contractor to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Contractor. If the Beneficiary exercises this right, subject to clause 4.2, it shall reimburse to the Contractor the difference between the premium paid and the premium that would have been reasonable.
- 4.6 If required by the terms of its insurance policy, the Contractor undertakes and warrants that:
- 4.6.1 prior to the execution of this Warranty, it has:
- (i) disclosed the contents of this Warranty to its insurers and brokers; and
- (ii) received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy; and
- 4.6.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance.]

5 Termination and suspension by Contractor

- 5.1 For the purposes of this Warranty, "**Another Person**" means the Beneficiary's nominee or an administrator, an administrative receiver or a receiver appointed by the Beneficiary.
- 5.2 The Contractor shall not exercise any right which the Contractor has to rescind or terminate the Contract or its engagement under the Contract, or to suspend or discontinue the Works, unless the Contractor has given at least 31 days' prior written notice to the Employer and the Beneficiary specifying:
- 5.2.1 the breach of the Contract which the Contractor considers entitles it to rescind or terminate the Contract or its engagement under the Contract, or to suspend or discontinue the Works; and
- 5.2.2 full details of any amounts owed by and due from the Employer to the Contractor under the Contract for the last three outstanding payments covering the three payment periods before that in which the notice is given.
- 5.3 Within 31 days of receipt of a notice under clause 5.2, if the Beneficiary notifies the Contractor that it or Another Person wishes to enter into a new agreement with the Contractor on the same terms and conditions as the Contract to complete the Contractor's obligations under the Contract in accordance with it:

- 5.3.1 the Contractor shall enter into a new agreement with the Beneficiary or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Contract and, if this happens, the Contract shall terminate but, subject to clause 5.3.2, without prejudice to the accrued rights of the parties;
 - 5.3.2 if the Contract is terminated in accordance with clause 5.3.1, the Contractor shall not have a claim against the Employer arising solely out of the termination; and
 - 5.3.3 subject to clause 5.2, if the Contract has been terminated in accordance with clause 5.3.1, pending entry into the new agreement, the Contractor shall comply with the instructions of the Beneficiary (or Another Person) under the Contract as if it had not been terminated, and the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Contractor all sums owed and due to it for the Works it has [designed and] constructed pursuant to those instructions.
- 5.4 The Beneficiary shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Contractor for the Works it [designs and] constructs from the date of the new agreement, but it shall have no other liability in respect of the Contract except that the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Contractor:
- 5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and
 - 5.4.2 any amounts accrued and unpaid that are owed by and due from the Employer to the Contractor for the period from the date of the last payment referred to in clause 5.2.2 until the date of the new agreement.
- 5.5 If the breach of the Contract referred to in clause 5.2.1 has been remedied and the Contractor has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Employer, the rights of the Contractor and the Beneficiary to enter into (and the right of the Beneficiary to appoint Another Person to enter into) a new agreement shall cease.
- 5.6 If the Contractor has given rights relating to the Contract similar to those in clause 5 to more than one person, and more than one person notifies the Contractor that it wishes to enter into a new agreement with the Contractor in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):
- 5.6.1 a notice served by the Beneficiary;
 - 5.6.2 a notice served by the Employer;
 - 5.6.3 a notice served by any other beneficiary; and
- all notices that the Contractor receives shall take effect in accordance with this order of priority.]

6 Termination of the Agreement

- 6.1 If the Beneficiary gives written notice to the Employer and the Contractor that the Agreement has been rescinded or terminated, at any time within 31 days of giving the notice, the Beneficiary may either:

- 6.1.1 comply with the obligations of the Employer under the Contract and, if this happens, the Contractor shall comply with its obligations and [design and] construct the Works under the Contract, and the Beneficiary shall comply with the obligations of the Employer under the Contract, as though the Beneficiary was and always had been the employer under the Contract in the place of the Employer; or
- 6.1.2 enter into (or appoint Another Person to enter into), and require the Contractor to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.
- 6.2 After it has received the notice given under clause 6.1 the Contractor shall comply with the instructions of the Beneficiary (or Another Person), and the Contractor shall enter into a new agreement at the Beneficiary's written request as described in clause 6.1.2.
- 6.3 The Contractor may treat the Beneficiary's notice under clause 6.1 that the Agreement has been rescinded or terminated as sufficient evidence that this has happened.
- 6.4 The Employer shall not have a claim against the Contractor arising solely out of the Contractor's compliance with the instructions of the Beneficiary (or Another Person) in accordance with clause 6.]

7 Conflict

- 7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Contract, the terms and conditions of this Warranty shall have priority.

8 Limitation

- 8.1 In any action, claim or proceedings brought against the Contractor by the Beneficiary, the Contractor may rely on the same limitations as are in the Contract and raise the equivalent rights in defence of liability as it would have if the Beneficiary were named as joint employer in the Contract, provided that the Contractor shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Beneficiary is of a different kind or type from that which would have been suffered by the Employer.

9 Assignment

- 9.1 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty without the consent of the Contractor to:
- 9.1.1 a mortgagee of the Beneficiary; or
- 9.1.2 any holding, subsidiary or associated company of the Beneficiary within the meaning of section 1159 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated company which becomes a legal entity and/or is incorporated after the date of this Warranty.
- 9.2 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Contractor on two occasions only. The consent of the Contractor, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers.

10 Contracts (Rights of Third Parties) Act 1999

- 10.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Non-waiver

- 11.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Beneficiary, the Employer, any of the Employer's consultants or any of their agents, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Contractor's obligations or liability under the Contract or this Warranty.
- 11.2 Any delay, forbearance, indulgence or relaxation ("**Indulgence**") of a party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right, whether against that party or any other person.

12 Severability

- 12.1 If any provision of this Warranty is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Warranty and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Warranty.

13 Counterparts

- 13.1 This Warranty may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

- 14.1 Any written notice or communication given under this Warranty shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address at the beginning of this Warranty or another address which a party may specify by written notice to the other parties from time to time.
- 14.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery.

15 Governing law, dispute resolution and jurisdiction

- 15.1 This Warranty and any non-contractual obligations in connection with this Warranty, are subject in all respects to English law.
- 15.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Warranty to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

16 Execution as a deed

16.1 This Warranty is executed as a deed and it was delivered when it was dated.

[RELEVANT EXECUTION BLOCKS]

Appendix 4

Deed of Warranty from Sub-Consultant to Employer/Beneficiary

DATED

[NAME OF EMPLOYER/BENEFICIARY] (1)

and

[CONSULTANT] (2)

and

[NAME OF CONTRACTOR] (3)

**DEED OF WARRANTY
for TBC**

THIS WARRANTY is made on

BETWEEN:

- (1) **[NAME OF EMPLOYER/BENEFICIARY]** (company number [number]) whose registered office is at [address] ("**Beneficiary**" which expression shall include its successors in title and assigns);
- (2) **[CONSULTANT]** [(company number [number])] whose [registered][principal] office is at [address] ("**Consultant**"); and
- (3) **[NAME OF CONTRACTOR]** (company number [number]) whose registered office is at [address] ("**Contractor**").

BACKGROUND:

- (A) [The Beneficiary has entered into a contract with the Contractor dated ("**Contract**") for the carrying out of the work described in the Contract ("**Works**") for TBC ("**Project**").]
- (B) [The Beneficiary has entered into a contract with the [NAME OF EMPLOYER] ("**Employer**") for the [provision of funding][purchase][lease] of the whole or part of the Project.]
- (C) The Contractor has entered into a contract with the Consultant dated ("**Appointment**") for the performance of the services described in the Appointment ("**Services**") for the Project.
- (D) It is a condition of the Appointment and of the Contract that the Consultant gives, and the Contractor is a party to, this Warranty to the Beneficiary.

In consideration of the payment of £1 (a pound) by the Beneficiary to the Consultant (receipt of which the Consultant acknowledges) **IT IS AGREED:**

1 Services

- 1.1 The Consultant undertakes and warrants to the Beneficiary that:
 - 1.1.1 the Consultant has complied and shall comply with the Consultant's obligations under and in connection with the Appointment in accordance with it; and
 - 1.1.2 the Consultant has used and shall use, in the performance of the Services, all the reasonable skill, care and diligence and the best up-to-date practice to be expected of a fully qualified and competent [CONSULTANT'S DISCIPLINE] experienced in performing services for projects of a similar size, scope, nature, complexity and timescale to the Project.

2 Materials and building practices

- 2.1 The Consultant undertakes and warrants to the Beneficiary that (unless otherwise instructed or authorised by or on behalf of the Beneficiary):
 - 2.1.1 the Consultant has not and shall not specify, select and/or approve for use; and
 - 2.1.2 consistent with the Services, the Consultant has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 to ensure that there shall not be used in the Project:

any material, substance, building practice or technique which is:

- (a) prohibited by the Appointment;
- (b) not in accordance with any relevant British Standard, Eurocode, code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément;
- (c) not in accordance with the guidance and comment contained in the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011"; or
- (d) generally known within the Consultant's profession at the time of specification, selection, approval or use (as the case may be) to:
 - (i) be deleterious;
 - (ii) be harmful to the health or safety of any person;
 - (iii) threaten the structural stability, physical integrity or performance of the Project or any part or component of the Project; or
 - (iv) reduce the normal life-expectancy of the Project or any part or component of the Project.

3 Documents

- 3.1 For the purposes of this Warranty, "**Documents**" means any and all activity schedules, algorithms, bills of quantities,[BIM Documents (as defined in the Appointment),] brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the Consultant (whether in existence or to be created) in connection with the Works and/or the Project.
- 3.2 The Consultant grants to the Beneficiary an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding the completion of the Services or the termination of the Consultant's engagement under the Appointment, to copy and use the Documents and to reproduce the designs and contents of them for:
- 3.2.1 any purpose relating to the Project and/or the Beneficiary's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use of the Project and/or the Beneficiary's interest in the Project; and
 - 3.2.2 the extension of the Works or the Project, so that the Beneficiary can interface any extension of the Works or the Project with the existing Works or Project, but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project.
- 3.3 The Beneficiary shall be entitled to grant sub-licences under the Beneficiary's licence and both the Beneficiary's licence and any sub-licences shall be transferable to others.

- 3.4 The Consultant undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Beneficiary and it shall include any sub-licensees and assignees under clause 3.3, any assignees under clause 9, any successors in title to the copyright in the design under the Appointment and any successors in title to the Beneficiary's business.
- 3.5 Notwithstanding the completion of the Services or the termination of the Consultant's engagement under the Appointment, the Consultant shall give to the Beneficiary any paper copies and electronic copies of the Documents that the Beneficiary reasonably requests. The Consultant shall give these copies to the Beneficiary within seven days of any request, and the Beneficiary shall pay the Consultant's reasonable copying costs. The Consultant shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Consultant gives to the Beneficiary.
- 3.6 The Consultant shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared for.

4 Insurance

- 4.1 Provided that it is available at reasonable premium rates and on reasonable commercial terms, the Consultant shall take out and maintain professional indemnity insurance that will cover all of the Services from the date of the Consultant's engagement under the Appointment until the date that is 12 years after the date of practical completion of the Project:
- 4.1.1 with a well-established insurance company or underwriter of good repute based in the United Kingdom;
- 4.1.2 with a limit of indemnity of not less than £[10,000,000] ([ten million pounds]) [for each claim or series of claims arising from the same originating or underlying cause][in the aggregate with [unlimited]][[three]] automatic reinstatements in any one period of insurance][, and £[5,000,000] ([five million pounds]) in the aggregate for all claims in the period of insurance relating to pollution or contamination][, and £[5,000,000] ([five million pounds]) in the aggregate for all claims in the period of insurance relating to asbestos]; and
- 4.1.3 on terms that:
- (i) do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and
- (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.
- 4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the Consultant's claims record or other act, failure to act or circumstance particular to it, this shall be deemed to be within reasonable rates and terms for the purposes of this Warranty.

- 4.3 Without the Beneficiary's prior written consent, the Consultant shall not:
- 4.3.1 settle or compromise any claim against the insurers that relates to a claim by the Beneficiary against the Consultant; or
 - 4.3.2 by any act or omission lose or affect the Consultant's right to make, or to proceed with, any claim against the insurers that relates to a claim by the Beneficiary against the Consultant.
- 4.4 As and when it is reasonably required to do so by the Beneficiary, the Consultant shall make available for inspection by the Beneficiary documentary evidence that the insurance is being maintained in accordance with this Warranty.
- 4.5 Subject to clause 4.2, the Consultant shall inform the Beneficiary immediately if this insurance ceases to be available to the Consultant at reasonable premium rates or on reasonable commercial terms. If this happens:
- 4.5.1 the Beneficiary and the Consultant shall discuss and agree on the best means of protecting themselves; and
 - 4.5.2 the Beneficiary may require the Consultant to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Consultant. If the Beneficiary exercises this right, subject to clause 4.2, it shall reimburse to the Consultant the difference between the premium paid and the premium that would have been reasonable.
- 4.6 If required by the terms of its insurance policy, the Consultant undertakes and warrants that:
- 4.6.1 prior to the execution of this Warranty, it has:
 - (i) disclosed the contents of this Warranty to its insurers and brokers; and
 - (ii) received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy; and
 - 4.6.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance.

5 Termination and suspension by Consultant

- 5.1 For the purposes of this Warranty, "**Another Person**" means the Beneficiary's nominee or an administrator, an administrative receiver or a receiver appointed by the Beneficiary.
- 5.2 The Consultant shall not exercise any right which the Consultant has to rescind or terminate the Appointment or its engagement under the Appointment, or to suspend or discontinue the Services, unless the Consultant has given at least 31 days' prior written notice to the Contractor and the Beneficiary specifying:
- 5.2.1 the breach of the Appointment which the Consultant considers entitles it to rescind or terminate the Appointment or its engagement under the Appointment, or to suspend or discontinue the Services; and
 - 5.2.2 full details of any amounts owed by and due from the Contractor to the Consultant under the Appointment for the last three outstanding invoices covering the three invoicing periods before that in which the notice is given.

- 5.3 Within 31 days of receipt of a notice under clause 5.2, if the Beneficiary notifies the Consultant that it or Another Person wishes to enter into a new agreement with the Consultant on the same terms and conditions as the Appointment to complete the Consultant's obligations under the Appointment in accordance with it:
- 5.3.1 the Consultant shall enter into a new agreement with the Beneficiary or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Appointment and, if this happens, the Appointment shall terminate but, subject to clause 5.3.2, without prejudice to the accrued rights of the parties;
 - 5.3.2 if the Appointment is terminated in accordance with clause 5.3.1, the Consultant shall not have a claim against the Contractor arising solely out of the termination; and
 - 5.3.3 subject to clause 5.2, if the Appointment has been terminated in accordance with clause 5.3.1, pending entry into the new agreement, the Consultant shall comply with the instructions of the Beneficiary (or Another Person) under the Appointment as if it had not been terminated, and the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Consultant all sums owed and due to it for the Services it has performed pursuant to those instructions.
- 5.4 The Beneficiary shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Consultant for the Services it performs from the date of the new agreement, but it shall have no other liability in respect of the Appointment except that the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Consultant:
- 5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and
 - 5.4.2 any amounts accrued and unpaid that are owed by and due from the Contractor to the Consultant for the period from the date of the last invoice referred to in clause 5.2.2 until the date of the new agreement.
- 5.5 If the breach of the Appointment referred to in clause 5.2.1 has been remedied and the Consultant has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Contractor, the rights of the Consultant and the Beneficiary to enter into (and the right of the Beneficiary to appoint Another Person to enter into) a new agreement shall cease.
- 5.6 If the Consultant has given rights relating to the Appointment similar to those in clause 5 to more than one person, and more than one person notifies the Consultant that it wishes to enter into a new agreement with the Consultant in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):
- 5.6.1 a notice served by the Beneficiary;
 - 5.6.2 a notice served by a funder;
 - 5.6.3 a notice served by any other beneficiary; and
- all notices that the Consultant receives shall take effect in accordance with this order of priority.

6 Termination of the Contract

- 6.1 If the Beneficiary gives written notice to the Contractor and the Consultant that the Contract has been rescinded or terminated, at any time within 31 days of giving the notice, the Beneficiary may either:
- 6.1.1 comply with the obligations of the Contractor under the Appointment and, if this happens, the Consultant shall comply with its obligations and perform the Services under the Appointment, and the Beneficiary shall comply with the obligations of the Contractor under the Appointment, as though the Beneficiary was and always had been the employer under the Appointment in the place of the Contractor; or
 - 6.1.2 enter into (or appoint Another Person to enter into), and require the Consultant to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.
- 6.2 After it has received the notice given under clause 6.1, the Consultant shall comply with the instructions of the Beneficiary (or Another Person), and the Consultant shall enter into a new agreement at the Beneficiary's written request as described in clause 6.1.2.
- 6.3 The Consultant may treat the Beneficiary's notice under clause 6.1 that the Contract has been rescinded or terminated as sufficient evidence that this has happened.
- 6.4 The Contractor shall not have a claim against the Consultant arising solely out of the Consultant's compliance with the instructions of the Beneficiary (or Another Person) in accordance with clause 6.

7 Conflict

- 7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Appointment, the terms and conditions of this Warranty shall have priority.

8 Limitation

- 8.1 In any action, claim or proceedings brought against the Consultant by the Beneficiary, the Consultant may rely on the same limitations as are in the Appointment and raise the equivalent rights in defence of liability as it would have if the Beneficiary were named as joint employer in the Appointment, provided that the Consultant shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Beneficiary is of a different kind or type from that which would have been suffered by the Contractor.

9 Assignment

- 9.1 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty without the consent of the Consultant to:
- 9.1.1 a mortgagee of the Beneficiary; or
 - 9.1.2 any holding, subsidiary or associated company of the Beneficiary within the meaning of sections 1159 or 1162 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated

company which becomes a legal entity and/or is incorporated after the date of this Warranty.

- 9.2 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Consultant on two occasions only. The consent of the Consultant, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers.

10 Contracts (Rights of Third Parties) Act 1999

- 10.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Non-waiver

- 11.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Beneficiary, any of the Other Consultants (as defined in the Appointment), the Contractor or any of their agents, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Consultant's obligations or liability under the Appointment or this Warranty.
- 11.2 The failure or delay of [the Party/a party] to exercise or enforce any right under this Warranty shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter, or constitute an election to affirm this Warranty. No election to affirm this Warranty by the [Party] shall be effective unless it is in writing.

12 Severability

- 12.1 If any provision of this Warranty is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Warranty and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Warranty.

13 Counterparts

- 13.1 This Warranty may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

- 14.1 Any written notice or communication given under this Warranty shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address at the beginning of this Warranty or another address which a party may specify by written notice to the other parties from time to time.
- 14.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery.

15 Governing law, dispute resolution and jurisdiction

- 15.1 This Warranty and any non-contractual obligations in connection with this Warranty, are subject in all respects to English law.
- 15.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Warranty to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

16 Execution as a deed

- 16.1 This Warranty is executed as a deed and it was delivered when it was dated.

Executed as a deed by **[NAME OF EMPLOYER]** acting by either two directors or one director and the company secretary:

.....
Director's name (CAPITAL LETTERS) Director's signature

.....
Director's name (CAPITAL LETTERS) Director's signature

Executed as a deed by **[CONSULTANT]** acting by either two directors or one director and the company secretary:

.....
Director's name (CAPITAL LETTERS) Director's signature

.....
Director's/Company secretary's name Director's/Company secretary's signature
(CAPITAL LETTERS)

Executed as a deed by **[NAME OF CONTRACTOR]** acting by either two directors or one director and the company secretary:

.....
Director's name (CAPITAL LETTERS) Director's signature

.....
Director's name (CAPITAL LETTERS) Director's signature

Appendix 5

Deed of Warranty from Sub-Contractor to Employer/Beneficiary

DATED

[NAME OF EMPLOYER/BENEFICIARY] (1)

and

[SUB-CONTRACTOR] (2)

**DEED OF WARRANTY
for TBC**

THIS WARRANTY is made on

BETWEEN:

- (1) **[NAME OF EMPLOYER/BENEFICIARY]** (company number [number]) whose registered office is at [address] ("**Beneficiary**" which expression shall include its successors in title and assigns); and
- (2) **[SUB-CONTRACTOR]** [(company number [number])] whose [registered][principal] office is at [address] ("**Sub-Contractor**").

BACKGROUND:

- (A) The Beneficiary has entered into a contract with **[NAME OF CONTRACTOR]** ("**Contractor**") dated ("**Contract**") for the carrying out of the work described in the Contract ("**Works**") for TBC ("**Project**").
- (B) [The Beneficiary has entered into a contract with the **[NAME OF EMPLOYER]** ("**Employer**") for the [provision of funding][purchase][lease] of the whole or part of the Project.]
- (C) The Contractor has entered into a sub-contract with the Sub-Contractor dated ("**Sub-Contract**") for the carrying out of the **[DESCRIPTION]** sub-contract work described in the Sub-Contract ("**Sub-Contract Works**") being part of the Works.
- (D) It is a condition of the Sub-Contract and of the Contract that the Sub-Contractor gives this Warranty to the Beneficiary.

In consideration of the payment of £1 (a pound) by the Beneficiary to the Sub-Contractor (receipt of which the Sub-Contractor acknowledges) **IT IS AGREED:**

1 Sub-Contract Works

- 1.1 The Sub-Contractor undertakes and warrants to the Beneficiary that:
 - 1.1.1 the Sub-Contractor has complied and shall comply with the Sub-Contractor's obligations under and in connection with the Sub-Contract in accordance with it; and
 - 1.1.2 the Sub-Contractor has used and shall use, in the [design and]construction of the Sub-Contract Works, all the reasonable skill, care and diligence and the best up-to-date practice to be expected of a fully qualified and competent [designer and]sub-contractor experienced in[designing and] constructing sub-contract works for projects of a similar size, scope, nature, complexity and timescale to the Project.

2 Materials and building practices

- 2.1 The Sub-Contractor undertakes and warrants to the Beneficiary that (unless otherwise instructed or authorised by or on behalf of the Beneficiary):
 - 2.1.1 the Sub-Contractor has not and shall not specify, select and/or approve for use; and
 - 2.1.2 the Sub-Contractor has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 to ensure that there shall not be used in the Project:

any material, substance, building practice or technique which is:

- (a) prohibited by the Sub-Contract;
- (b) not in accordance with any relevant British Standard, Eurocode, code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément;
- (c) not in accordance with the guidance and comment contained in the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011"; or
- (d) generally known within the construction industry at the time of specification, selection, approval or use (as the case may be) to:
 - (i) be deleterious;
 - (ii) be harmful to the health or safety of any person;
 - (iii) threaten the structural stability, physical integrity or performance of the Project or any part or component of the Project; or
 - (iv) reduce the normal life-expectancy of the Project or any part or component of the Project.

3 Documents

- 3.1 For the purposes of this Warranty, "**Documents**" means any and all activity schedules, algorithms, bills of quantities, [BIM Documents (as defined in the Sub-Contract),] brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the Sub-Contractor (whether in existence or to be created) in connection with the Sub-Contract Works and/or the Project.
- 3.2 The Sub-Contractor grants to the Beneficiary an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Sub-Contract Works or the termination of the Sub-Contractor's engagement under the Sub-Contract, to copy and use the Documents and to reproduce the designs and contents of them for:
 - 3.2.1 any purpose relating to the Project and/or the Beneficiary's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use of the Project and/or the Beneficiary's interest in the Project; and
 - 3.2.2 the extension of the Works or the Project, so that the Beneficiary can interface any extension of the Works or the Project with the existing Works or Project, but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project.
- 3.3 The Beneficiary shall be entitled to grant sub-licences under the Beneficiary's licence and both the Beneficiary's licence and any sub-licences shall be transferable to others.

- 3.4 The Sub-Contractor undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Sub-Contract Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Beneficiary and it shall include any sub-licensees and assignees under clause 3.3, any assignees under clause 9, any successors in title to the copyright in the design under the Sub-Contract and any successors in title to the Beneficiary's business.
- 3.5 Notwithstanding practical completion of the Sub-Contract Works or the termination of the Sub-Contractor's engagement under the Sub-Contract, the Sub-Contractor shall give to the Beneficiary any paper copies and electronic copies of the Documents that the Beneficiary reasonably requests. The Sub-Contractor shall give these copies to the Beneficiary within seven days of any request, and the Beneficiary shall pay the Sub-Contractor's reasonable copying costs. The Sub-Contractor shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Sub-Contractor gives to the Beneficiary.
- 3.6 The Sub-Contractor shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared for.

4 Insurance

- 4.1 Provided that it is available at reasonable premium rates and on reasonable commercial terms, the Sub-Contractor shall take out and maintain [professional indemnity][product liability] insurance [that will cover all of the Services]from the date of the Sub-Contractor's engagement under the Sub-Contract until the date that is 12 years after the date of practical completion of the Project:
- 4.1.1 with a well-established insurance company or underwriter of good repute based in the United Kingdom;
- 4.1.2 with a limit of indemnity of not less than £[10,000,000] ([ten million pounds]) [for each claim or series of claims arising from the same originating or underlying cause][in the aggregate with [unlimited][[three]] automatic reinstatements in any one period of insurance][, and £[5,000,000] ([five million pounds]) in the aggregate for all claims in the period of insurance relating to pollution or contamination][, and £[5,000,000] ([five million pounds]) in the aggregate for all claims in the period of insurance relating to asbestos]; and
- 4.1.3 on terms that:
- (i) do not require the Sub-Contractor to discharge any liability before being entitled to recover from the insurers; and
- (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.
- 4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the Sub-Contractor's claims record or other act, failure to act or circumstance particular to it, this shall be deemed to be within reasonable rates and terms for the purposes of this Warranty.

- 4.3 Without the Beneficiary's prior written consent, the Sub-Contractor shall not:
- 4.3.1 settle or compromise any claim against the insurers that relates to a claim by the Beneficiary against the Sub-Contractor; or
 - 4.3.2 by any act or omission lose or affect the Sub-Contractor's right to make, or to proceed with, any claim against the insurers that relates to a claim by the Beneficiary against the Sub-Contractor.
- 4.4 As and when it is reasonably required to do so by the Beneficiary, the Sub-Contractor shall make available for inspection by the Beneficiary documentary evidence that the insurance is being maintained in accordance with this Warranty.
- 4.5 Subject to clause 4.2, the Sub-Contractor shall inform the Beneficiary immediately if this insurance ceases to be available to the Sub-Contractor at reasonable premium rates or on reasonable commercial terms. If this happens:
- 4.5.1 the Beneficiary and the Sub-Contractor shall discuss and agree on the best means of protecting themselves; and
 - 4.5.2 the Beneficiary may require the Sub-Contractor to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Sub-Contractor. If the Beneficiary exercises this right, subject to clause 4.2, it shall reimburse to the Sub-Contractor the difference between the premium paid and the premium that would have been reasonable.
- 4.6 If required by the terms of its insurance policy, the Sub-Contractor undertakes and warrants that:
- 4.6.1 prior to the execution of this Warranty, it has:
 - (i) disclosed the contents of this Warranty to its insurers and brokers; and
 - (ii) received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy; and
 - 4.6.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance.]

5 Termination and suspension by Sub-Contractor

- 5.1 For the purposes of this Warranty, "**Another Person**" means the Beneficiary's nominee or an administrator, an administrative receiver or a receiver appointed by the Beneficiary.
- 5.2 The Sub-Contractor shall not exercise any right which the Sub-Contractor has to rescind or terminate the Sub-Contract or its engagement under the Sub-Contract, or to suspend or discontinue the Sub-Contract Works, unless the Sub-Contractor has given at least 31 days' prior written notice to the Beneficiary specifying:
- 5.2.1 the breach of the Sub-Contract which the Sub-Contractor considers entitles it to rescind or terminate the Sub-Contract or its engagement under the Sub-Contract, or to suspend or discontinue the Sub-Contract Works; and
 - 5.2.2 full details of any amounts owed by and due from the Contractor to the Sub-Contractor under the Sub-Contract for the last three outstanding payments covering the three payment periods before that in which the notice is given.

- 5.3 Within 31 days of receipt of a notice under clause 5.2, if the Beneficiary notifies the Sub-Contractor that it or Another Person wishes to enter into a new agreement with the Sub-Contractor on the same terms and conditions as the Sub-Contract to complete the Sub-Contractor's obligations under the Sub-Contract in accordance with it:
- 5.3.1 the Sub-Contractor shall enter into a new agreement with the Beneficiary or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Sub-Contract and, if this happens, the Sub-Contract shall terminate but, subject to clause 5.3.2, without prejudice to the accrued rights of the parties;
 - 5.3.2 if the Sub-Contract is terminated in accordance with clause 5.3.1, the Sub-Contractor shall not have a claim against the Contractor arising solely out of the termination; and
 - 5.3.3 subject to clause 5.2, if the Sub-Contract has been terminated in accordance with clause 5.3.1, pending entry into the new agreement, the Sub-Contractor shall comply with the instructions of the Beneficiary (or Another Person) under the Sub-Contract as if it had not been terminated, and the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Sub-Contractor all sums owed and due to it for the Sub-Contract Works it has [designed and]constructed pursuant to those instructions.
- 5.4 The Beneficiary shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Sub-Contractor for the Sub-Contract Works it [designs and]constructs from the date of the new agreement, but it shall have no other liability in respect of the Sub-Contract except that the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Sub-Contractor:
- 5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and
 - 5.4.2 any amounts accrued and unpaid that are owed by and due from the Contractor to the Sub-Contractor for the period from the date of the last payment referred to in clause 5.2.2 until the date of the new agreement.
- 5.5 If the breach of the Sub-Contract referred to in clause 5.2.1 has been remedied and the Sub-Contractor has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Contractor, the rights of the Sub-Contractor and the Beneficiary to enter into (and the right of the Beneficiary to appoint Another Person to enter into) a new agreement shall cease.
- 5.6 If the Sub-Contractor has given rights relating to the Sub-Contract similar to those in clause 5 to more than one person, and more than one person notifies the Sub-Contractor that it wishes to enter into a new agreement with the Sub-Contractor in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):
- 5.6.1 a notice served by the Beneficiary;
 - 5.6.2 a notice served by a funder;
 - 5.6.3 a notice served by any other beneficiary; and
- all notices that the Sub-Contractor receives shall take effect in accordance with this order of priority.

6 Termination of the Contract

- 6.1 If the Beneficiary gives written notice to the Contractor and the Sub-Contractor that the Contract has been rescinded or terminated, at any time within 31 days of giving the notice, the Beneficiary may either:
- 6.1.1 comply with the obligations of the Contractor under the Sub-Contract and, if this happens, the Sub-Contractor shall comply with its obligations and [design and]construct the Sub-Contract Works under the Sub-Contract, and the Beneficiary shall comply with the obligations of the Contractor under the Sub-Contract, as though the Beneficiary was and always had been the employer under the Sub-Contract in the place of the Contractor; or
 - 6.1.2 enter into (or appoint Another Person to enter into), and require the Sub-Contractor to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.
- 6.2 After it has received the notice given under clause 6.1, the Sub-Contractor shall comply with the instructions of the Beneficiary (or Another Person), and the Sub-Contractor shall enter into a new agreement at the Beneficiary's written request as described in clause 6.1.2.
- 6.3 The Sub-Contractor may treat the Beneficiary's notice under clause 6.1 that the Contract has been rescinded or terminated as sufficient evidence that this has happened.
- 6.4 The Contractor shall not have a claim against the Sub-Contractor arising solely out of the Sub-Contractor's compliance with the instructions of the Beneficiary (or Another Person) in accordance with clause 6.

7 Conflict

- 7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Sub-Contract, the terms and conditions of this Warranty shall have priority.

8 Limitation

- 8.1 In any action, claim or proceedings brought against the Sub-Contractor by the Beneficiary, the Sub-Contractor may rely on the same limitations as are in the Sub-Contract and raise the equivalent rights in defence of liability as it would have if the Beneficiary were named as joint employer in the Sub-Contract, provided that the Sub-Contractor shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Beneficiary is of a different kind or type from that which would have been suffered by the Contractor.

9 Assignment

- 9.1 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty without the consent of the Sub-Contractor to:
- 9.1.1 a mortgagee of the Beneficiary; or
 - 9.1.2 any holding, subsidiary or associated company of the Beneficiary within the meaning of sections 1159 or 1162 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated

company which becomes a legal entity and/or is incorporated after the date of this Warranty.

- 9.2 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Sub-Contractor on two occasions only. The consent of the Sub-Contractor, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers.

10 Contracts (Rights of Third Parties) Act 1999

- 10.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Non-waiver

- 11.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Beneficiary, any of the Beneficiary's or the Contractor's consultants, the Contractor or any of their agents, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Sub-Contractor's obligations or liability under the Sub-Contract or this Warranty.
- 11.2 The failure or delay of [the Party/a party] to exercise or enforce any right under this Warranty shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter, or constitute an election to affirm this Warranty. No election to affirm this Warranty by the [Party] shall be effective unless it is in writing.

12 Severability

- 12.1 If any provision of this Warranty is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Warranty and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Warranty.

13 Counterparts

- 13.1 This Warranty may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

- 14.1 Any written notice or communication given under this Warranty shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address at the beginning of this Warranty or another address which a party may specify by written notice to the other parties from time to time.
- 14.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery.

15 Governing law, dispute resolution and jurisdiction

- 15.1 This Warranty and any non-contractual obligations in connection with this Warranty, are subject in all respects to English law.
- 15.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Warranty to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

16 Execution as a deed

- 16.1 This Warranty is executed as a deed and it was delivered when it was dated.

Executed as a deed by **[NAME OF EMPLOYER]** acting by either two directors or one director and the company secretary:

.....
Director's name (CAPITAL LETTERS) Director's signature

.....
Director's name (CAPITAL LETTERS) Director's signature

Executed as a deed by **[SUB-CONTRACTOR]** acting by either two directors or one director and the company secretary:

.....
Director's name (CAPITAL LETTERS) Director's signature

.....
Director's/Company secretary's name Director's/Company secretary's signature
(CAPITAL LETTERS)

Appendix 6
Third Party Agreements

[Details of any relevant agreements to be included]