

DATED _____ **2025**

THORPE PARK DEVELOPMENTS LIMITED (1)

and

SCARBOROUGH GROUP INTERNATIONAL LIMITED (2)

and

SECRETARY OF STATE FOR EDUCATION (3)

AGREEMENT FOR THE DEVELOPMENT OF SIXTH FORM

COLLEGE AT PLOT A3 AT THORPE PARK, LEEDS

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THIS AGREEMENT is made on

2025

BETWEEN:

- (1) **THORPE PARK DEVELOPMENTS LIMITED** (company number 04141504) whose registered office is at Europa House, 20 Esplanade, Scarborough, North Yorkshire YO11 2AQ (the **Developer**)
- (2) **SCARBOROUGH GROUP INTERNATIONAL LIMITED** (company number SC319817) whose registered office is at care of Pinsent Masons LLP, 13 Queens Road, Aberdeen, Scotland AB15 4YL (the **Guarantor**)
- (3) **SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the **Owner**)

1 INTERPRETATION

In this Agreement where the context allows it:

1.1 The following words and expressions mean:

Abandonment: a cessation by the Developer for a continuous period of not less than 3 months of all material activity relating to the Development other than by reason of a Delay Event or otherwise without good reason;

Access Date: the date on which the Employer's Agent notifies the Owner that the Development Works have been sufficiently completed so that the Owner may access the Property for the purpose of carrying out the Owner Works provided that no notification will be given until the following conditions are satisfied:

1.1.1 the Owner is able to have reasonable access to and from the Property and the Development;

1.1.2 the Owner is able to proceed with the Owner Works without any material interruption or delay to or by reason of any of the Development Works;

Adequate Procedures: adequate procedures as referred to in section 7(2) of the Bribery Act 2010 and described in guidance issued by the Secretary of State under section 9 of the Bribery Act 2010

Anticipated Floor Area: a Floor Area of 91,299 square feet or such other area as reflects the anticipated Floor Area of the buildings at the Property following the outcome of the design process undertaken pursuant to Schedule 3 to the Purchase Agreement or as otherwise may be agreed between the parties in writing;

Architect: AHR Architects Limited (company number 04347086) of 5th Floor, 55 Princess Street, Manchester M2 4EW and/or any other reputable and competent architect for the time being appointed by the Developer or the Building Contractor in relation to the Building Contract and/or the Development in accordance with the Purchase Agreement and/or Schedule 1;

Building Contract: the building contract or contracts for the carrying out of the Development entered into pursuant to the Purchase Agreement and/or to be entered into in accordance with Schedule 1;

Building Contractor: the contractor with whom the Developer has entered into a Building Contract under the terms of the Purchase Agreement or any other reputable and competent building contractor for the time being employed by the Developer under the Building Contract in accordance with Schedule 1 or the Purchase Agreement, if applicable;

CDM Principal Designer: M A Cost Consulting Limited (company number 6901841) of Bell House, Seebeck Place, Knowhill, Milton Keynes MK5 and/or any other reputable and competent principal designer (for CDM and building regulations purposes) for the time being appointed by the Developer in relation to the Building Contract and/or the Development in accordance with the Purchase Agreement and/or Schedule 1;

CDM 2015: the Construction (Design and Management) Regulations 2015 and any other regulations of a similar nature in force at any relevant time;

Certificate of Making Good Defects: the certificate or statement to be issued under and in accordance with the Building Contract that all defects in the Development have been made good;

Certificate of Practical Completion: the certificate or statement of practical completion to be issued by the Employer's Agent in accordance with the Building Contract on completion of the whole of the Development and **Practical Completion** is construed accordingly;

CIS: the Construction Industry Scheme under the provisions of the Finance Act 2004, Part 3, Chapter 3;

Civil & Structural Engineer and Ground Consultant: Buro Happold Limited (company number 2049511) of Camden Mill, Lower Bristol Road, Bath BA2 3DQ and/or any other reputable and competent civil & structural engineer and ground consultant for the time being appointed by the Developer or the Building Contractor in relation to the Building Contract and/or the Development in accordance with the Purchase Agreement and/or Schedule 1;

Code of Measuring Practice: IPMS 2(Gross Internal Area) 2nd Edition;

Construction Long Stop Date: [REDACTED] after the Unconditional Date but extended by the aggregate period of any delay attributable to a Delay Event;

Cut Off Date: the date on which the Certificate of Making Good Defects is issued;

Date of Practical Completion: the date of practical completion of the Development as stated by the Certificate of Practical Completion;

Defects Liability Period: the defects liability or rectification period in the Building Contract;

Delay Event: any of the following:

- 1.1.1 events for which an extension of time is properly granted under the Building Contract but excluding those events which are due to the default of the Developer or any person within the Developer's control or for whom the Developer is responsible;
- 1.1.2 Force Majeure;
- 1.1.3 any Owner Delay Event;

Developer's Solicitors: CMS Cameron McKenna Nabarro Olswang LLP of 1 The Avenue, Manchester M3 3AP (ref: AUJU/211968.00001);

Development or Development Works: the proposed construction on the Property of a sixth form college for which a Satisfactory Planning Permission has been granted pursuant to the Purchase Agreement;

Development Costs: all costs and expenses incurred by the Developer in connection with the undertaking of the Development and/or in achieving the Development (including any irrecoverable VAT) and/or complying with its obligations in this Agreement and without any deduction from this being made in respect of sums which the Developer is to retain as against the payments due to the Building Contractor under the Building Contract which will be dealt with in accordance with clause 7 including:

[REDACTED]

[REDACTED]

[REDACTED]

Provided that:

- (a) costs and expenses incurred by the Developer pursuant to the Appointments with the Professional Team such shall not (in the aggregate and when also aggregated with payments made by the Owner to the Developer which represented Landlord's Costs as defined in the Agreement for Lease which were also referable to costs and expenses incurred pursuant to the Appointments with the Professional Team) exceed an amount equal [REDACTED]

[REDACTED] ; and

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Employer's Agent: Burley Wilson Fish, Windsor House, 5 St Andrew's Court, Leeds LS3 1JY and/or any other reputable and competent employer's agent for the time being appointed by the Developer in relation to the Building Contract and/or the Development;

Encumbrances: the matters contained, mentioned or referred to in the property and/or charges registers to title number WYK624551 as shown in official copies dated 9 April 2025 and timed at 10:17:55 and those in the Springs Transfer in so far as they relate to the Property;

Event of Insolvency:

Where the entity concerned is a corporation:

- 1.1.1 the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any of its creditors;
- 1.1.2 the making of an administration order in relation to it;
- 1.1.3 the appointment of a receiver or manager or an administrative receiver in relation to any of its property or income;
- 1.1.4 the commencement of a voluntary winding-up in relation to it except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
- 1.1.5 the making of a winding-up order in relation to it;
- 1.1.6 it being struck-off the Register of Companies;
- 1.1.7 it otherwise ceasing to exist; or
- 1.1.8 the occurrence at any time of any event or events in relation to such company or corporation in a territory outside the United Kingdom where at such time such company or corporation has its centre of main interests being an event or events which under the law of that territory at such time have a similar effect as one or more of any of the events previously described in this definition if such event or events so previously described had occurred in the United Kingdom and such company or corporation had had its centre of main interests in the United Kingdom;

and the paragraphs above shall apply to a partnership (as defined in the Partnership Act 1980), a limited partnership (as defined in the Limited Partnership Act 1907) and a limited liability partnership (as defined in the Limited Liability Partnership Act 2000) subject to the modifications referred to in the Insolvent Partnerships Order 1994 and the Limited Liability Partnership Regulations 2001, as appropriate; and

Where the entity concerned is an individual:

- 1.1.9 the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any of his creditors;
- 1.1.10 the making of a bankruptcy order against him or;
- 1.1.11 the making of a receivership order against him or the appointment of a receiver under the Mental Health Act 1983;

Final Payment: [REDACTED]

Final Payment Date: the date that is 5 Working Days after the Date of Practical Completion;

First Measure Date: the first date that it is reasonably practicable to measure the floor slabs of the ground floor;

Floor Area: the GIA of the building at the Property calculated in accordance with the Code of Measuring Practice but disregarding the effect on floor area of any Owner Variations;

Force Majeure: any one or more of the following:-

- 1.1.1 fire, storm or other exceptionally adverse weather conditions, war, hostilities, rebellion, insurrection, military or usurped power or civil war, labour lockouts, strikes or other industrial disputes (other than a strike or industrial dispute solely at the Property from a person engaged by the Developer), riot, terrorist action, commotion, disorder;
- 1.1.2 decree of government;
- 1.1.3 any of the following if and insofar as they are caused by or result from any epidemic or pandemic and/or public health measures implemented in relation to such epidemic or pandemic and they directly or indirectly affect the execution of the Development:
 - (a) shortage of labour or supervision or the inability of labour or supervision to work at the Property or to work effectively or efficiently;
 - (b) inability of the Contractor to obtain or any delay in obtaining materials and/or goods for the Development either at all or in the required

quantities and/or at the time or times necessary in order not to delay the progress of the Development;

- (c) closure of the site or the prevention or restriction of access to the site or any part of the site or restrictions on its use or any restriction on the number of persons who can be present at or the distancing of persons at the site

1.1.4 any other act, omission, regulations, imposition, decree or practice arising as a result which has any impact on the progress of the Development;

1.1.5 an Event of Insolvency in relation to the Building Contractor or any member of the Professional Team;

GIA: the aggregate gross internal area in square feet calculated in accordance with the Code of Measuring Practice;

Group Company: a company within the same group of companies determined by reference to the section 42 of the Landlord and Tenant Act 1954;

Insured Risks: fire, lightning, explosion, storm, and flood, escape of water from any water tank, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion and terrorism to the extent that they are reasonably available in the United Kingdom insurance market on reasonable terms and excluding any risks that the insurer refuses to cover from time to time;

Interest Rate: [REDACTED] above the base rate from time to time of Lloyds Bank PLC or if such rate shall cease to be published the Law Society's interest rate from time to time in force;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];

LADs Date: the date that is [REDACTED]e but extended by the aggregate period of any delay attributable to any Delay Event;

[REDACTED]

Lower Floor Area Tolerance: being [REDACTED] of the Anticipated Floor Area;

Measurement Surveyor: the party jointly appointed as such by the Developer and the Owner for the purposes of measuring the Development in accordance with paragraph 15 of Schedule 2 and who is nominated by the Developer and approved by the Owner, such approval not to be unreasonably withheld or delayed;

Mechanical and Electrical Engineer: Buro Happold Limited (company number 2049511) of Camden Mill, Lower Bristol Road, Bath BA2 3DQ and/or any other reputable and competent mechanical and electrical engineer for the time being appointed by the Developer or the Building Contractor in relation to the Building Contract and/or the Development in accordance with the Purchase Agreement and/or Schedule 1;

Owner Delay Event: any delay to the delivery of the Development by reason of:

- 1.1.1 any act or omission or any default or breach of this Agreement by the Owner or any person under their control or for whom they are responsible;
- 1.1.2 the implementation of an Owner Variation;
- 1.1.3 any tests carried out pursuant to paragraph 5.2 of Schedule 2 unless a default by the Developer is discovered as a result of those tests;
- 1.1.4 any valid suspension of the Development Works by the Developer pursuant to paragraph 2.6 of Schedule 4;
- 1.1.5 any unreasonable delay in the supply of information and/or decisions and/or information by the Owner or any failure of the Owner in complying with any of its obligations in this Agreement and/or in any of the actions of the Owner's Representative or anyone under the Owner's control;
- 1.1.6 the Owner not giving any consent or approval under this Agreement within a period of:
 - (a) 2 Working Days where consent is sought for substitution of materials pursuant to paragraph 6.2 of Schedule 2;
 - (b) 10 Working Days in other circumstances where it is either required to give that consent or approval or not giving it would be unreasonable;

- (c) to any request for a variation pursuant to paragraph 6.1 of Schedule 2 whether or not reasonable;

1.1.7 any determination process pursuant to clause 16 where the determination finds wholly or substantially in favour of the Developer;

and in the event of a dispute as to whether a matter is an Owner Delay Event or the period of any Owner Delay Event either party may at any time refer the matter for determination in accordance with clause 16 in which event clause 16.3.7 will apply

Owner's Representative: [REDACTED] or such other surveyor or individual as the Owner may appoint from time to time and notify in writing to the Developer;

Owner's Solicitors: DAC Beachcroft LLP, Bank House East, Pilgrim Street, Newcastle upon Tyne, NE1 6QF (ref: LOC543-2395372);

Owner Variation: any Variation made in accordance with paragraph 7 of Schedule 2;

Owner Works: the installation of fixtures, fittings and equipment including but not limited to an ICT and CCTV systems;

Plans and Specifications: the agreed plans and specifications (including any addendum) of the Development, initially as annexed to this Agreement as Annex 4 updated, amended and supplemented as agreed between the Developer and the Owner under the Purchase Agreement, with those updates, amendments and supplements made pursuant to the Purchase Agreement to take precedence over those annexed to this Agreement. For the avoidance of doubt, the specification forming part of the Plans and Specifications includes the detailed exchange information requirements relevant to RIBA design stages;

Practical Completion Pre-Conditions: the conditions listed in Schedule 3;

Primary Sub-Contractor: any sub-contractor engaged by the Building Contractor in relation to the following elements of the Development:

1.1.1 piling / sub structure

1.1.2 ground remediation

1.1.3 structural steel frame

1.1.4 concrete works including core and floors

1.1.5 cladding

1.1.6 lifts

1.1.7 M and E including security and fire precautions

1.1.8 windows;

Product Guarantee: each product guarantee or product warranty in respect of the Development listed in and to be provided in accordance with paragraph 6.2 of Schedule 1;

Professional Team: the Architect, the Employer's Agent, the Quantity Surveyor, the Mechanical and Electrical Engineer, the Civil & Structural Engineer and the CDM Principal Designer;

Professional Team Appointment: the deeds of appointment of the Professional Team to be entered into pursuant to and in accordance with the Purchase Agreement and/or Schedule 1;

Prohibited Materials: materials which:

1.1.1 are not in accordance with British Standards and Codes of Practice and/or any other regulations current at the date of specification or use;

1.1.2 are generally known (or which ought to be known) at the time of specification or use to be deleterious to health and safety and/or to the integrity of buildings or other structures or plant or machinery and/or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used or specified for use or which contravene the recommendations of the British Council for Offices' publication Good Practice in the Selection of Construction Materials (2011) and/or are not in accordance with good building practice;

Property: Plot A3 Century Way, Thorpe Park, Leeds which is the subject of the Purchase Agreement;

Purchase Agreement: the contract dated the same date as this Agreement for the grant of a 999 year lease of the Property to the Owner;

Quantity Surveyor: M A Cost Consulting Limited (company number 6901841) of Bell House, Seebeck Place, Knowhill, Milton Keynes MK5 and/or any other reputable and competent quantity surveyor for the time being appointed by the Developer in relation to the Building Contract and/or the Development in accordance with the Purchase Agreement and/or Schedule 1;

Requisite Consents: all planning permissions, listed building consents, building regulation consents or building control approval (including under the Building Act 1984) and all other statutory and non-statutory consents, approvals, licences or permissions required from any body or third party to lawfully carry out, retain and use the Development or (to the extent such damage occurs prior to the Date of Practical Completion) to reinstate them following damage or destruction;

Second Measure Date: the first date that it is reasonably practicable to measure the building on the Property based on the structural frame;

Serious Default: any of the following acts or omissions on the part of the Developer:

- 1.1.1 committing a breach of obligation under this Agreement or the Building Contract which materially and adversely affects the delivery of the Development in accordance with this Agreement;
- 1.1.2 failure to take out or procure and maintain any insurances that the Developer is required to under this Agreement;
- 1.1.3 Abandonment of the Development Works;

Springs Transfer: the transfer of the Springs, Thorpe Park, Leeds dated 4 April 2025 between Thorpe Park Developments Limited (1) The Springs Thorpe Park Limited (2);

Start Date Longstop: the date that is [REDACTED] after the Unconditional Date but extended by the aggregate period of any delay attributable to any Delay Event;

Statutory Agreement(s): any agreement or unilateral undertaking in respect of or affecting the Property under section 106 of the Town and Country Planning Act 1990, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, section 38 and/or section 278 of the Highways Act 1980, section 111 Local Government Act 1972, section 104 of the Water Industry Act 1991 or, in each case, any provision to similar intent, any agreement with any appropriate company, authority or body concerning a water supply to or drainage from the Property, any agreement with any appropriate

company, authority or body relating to any other services to or from the Property, or any access serving the Property, and any other agreement with any appropriate company, authority or body which is required or desirable to carry out, retain and use the Development;

Substantial Commencement: the date on which the Building Contractor takes possession of the Property under the Building Contract and **Substantially Commence** or an equivalent phrase shall be construed accordingly;

Sub-Contracts: the appointments of the Primary Sub-Contractors in the form required pursuant to Schedule 1;

Target Date: the date that is [REDACTED] after the Unconditional Date but extended by the aggregate period of any delay attributable to any Delay Event;

Third Measure Date: a date prior to the Date of Practical Completion which is the earliest reasonably practicable for the purposes of measuring the final as built floor areas of the relevant areas;

Unconditional Date: the date on which the Developer grants to the Owner a lease of the Property pursuant to the Purchase Agreement;

Variation: any change, alteration, modification, omission or addition to the Development and **Varied** shall be construed accordingly;

Variation Cost: is defined in paragraph 7.5 of Schedule 2;

VAT: value added tax chargeable in accordance with the Value Added Tax Act 1994 or any tax of a similar nature which may be substituted for or levied in addition to it;

Warranty Deeds: the collateral warranty deeds to be given in accordance with Schedule 1.

1.2 Any reference to any statute includes:

1.2.1 any amendment, modification, extension or re-enactment of it at any time (except where expressly stated otherwise)

1.2.2 all instruments, orders, plans, regulations, permissions, directions and any other form of subsidiary legislation at any time made, issued or given under or drawing validity from any statute.

- 1.3 Any reference to any form of legal entity includes all other forms of legal entity.
- 1.4 Obligations by more than one person are joint and several and where any party to this Agreement is more than one person references to that party are to each person individually as well as jointly with the others comprising that party.
- 1.5 Any obligation not to do anything constitutes an obligation not to do it, allow it or suffer it to be done.
- 1.6 **includes, including** and similar words are used without limitation or qualification to the subject matter of the relevant provision.
- 1.7 The clause headings in this Agreement are for reference only and are not to be taken into account in its construction or interpretation.
- 1.8 Unless otherwise indicated, references to clauses, Schedules and Appendices are to clauses of and Schedules and Appendices to this Agreement and references (unless otherwise stated) in a Schedule to paragraph are to a paragraph of that Schedule.
- 1.9 The Schedules and the Appendices form part of this Agreement.
- 1.10 References to the Property and the Development in each case include any part of it.
- 1.11 **Indemnify** means to indemnify against all actions, claims, demands and proceedings taken or made against the party receiving the indemnity and all costs, damages, expenses, liabilities and losses incurred by the party receiving the indemnity provided that the party receiving the indemnity shall not allow such actions, claims, demands and proceedings, costs, damages, expenses, liabilities and losses to continue to accrue where it would be unreasonable in all the circumstances, including because reasonable steps could be taken to mitigate the costs, damages, expenses, liabilities and losses.
- 1.12 Where the consent or approval of the Owner is expressed to be required under this Agreement the response given by Owner will be one where:
- 1.12.1 the consent or approval requested is given, with or without conditions;
- 1.12.2 (where reasonable and proper) a request for further information will be made; or
- 1.12.3 a refusal of such consent or approval, accompanied by reasonable and proper written reasons.

- 1.13 Where the consent or approval of the Developer is expressed to be required under this Agreement the response given by the Developer will be one where:
- 1.13.1 the consent or approval requested is given, with or without conditions;
 - 1.13.2 (where reasonable and proper) a request for further information will be made; or
 - 1.13.3 a refusal of such consent or approval, accompanied by reasonable and proper written reasons.
- 1.14 Where there is any conflict between the addendum annexed to the Plans and Specification and any other documents at the Plans and Specification the addendum shall take precedence.
- 1.15 If this Agreement stipulates that the Owner's Representative is to:
- 1.15.1 do something or refrain from doing something; or
 - 1.15.2 to do something or refrain from doing something in a particular manner;
- then the Owner shall procure that the Owner's Representative does so and if the Owner fails to do so then if the Developer has given written notice to the Owner and the Owner's Representative specifying the matter in question and the Developer's proposed course of action and neither the Owner nor the Owner's Representative has responded to such notice with its approval or instruction (as the case may require) within three (3) Working Days of receipt of the notice, the Developer shall be entitled to proceed in accordance with its proposal as set out in the notice as if that had the express approval of the Owner's Representative.

2 CONDITIONALITY

- 2.1 The provisions of clauses 3 (and the associated provisions of Schedule 1), 4 (and the associated provisions of Schedule 2), 5, 6 (and the associated provisions of Schedule 4), 7, and 8 shall not come into effect until the Unconditional Date.
- 2.2 If the Purchase Agreement is terminated under its terms then this Agreement shall automatically terminate on the same date.

3 THE PROFESSIONAL TEAM, THE BUILDING CONTRACTOR AND THE SUB-CONTRACTOR

Schedule 1 shall apply in relation to the appointment and retention of the Professional Team, the Building Contractor and the Primary Sub-Contractors.

4 DEVELOPMENT OBLIGATIONS

The parties shall comply with their respective obligations in Schedule 2 in relation to the Development.

5 LICENCE TO OCCUPY THE PROPERTY

5.1 The Owner grants the Developer the exclusive licence to enter and remain on the Property from the Unconditional Date to carry out the Development and comply with the Developer's obligations under this Agreement.

5.2 The licence granted in clause 5.1 authorises entry by the Developer and all of:

5.2.1 the Building Contractor, its sub-contractors and their respective agents and employees;

5.2.2 the Professional Team; and

5.2.3 any other person properly appointed by the Developer in connection with the Development

and will allow them to bring onto the Property all vehicles, plant, equipment and materials required in connection with the Development.

5.3 The licences granted by this clause:

5.3.1 are granted subject to all rights of any person not a party to this Agreement but the Owner will not grant any third party any rights which would prevent or materially restrict the ability of the Developer to comply with its obligations in this Agreement or interfere with the rights granted in this clause;

5.3.2 do not confer on the Developer or any other person any estate, right, title or interest in the Property and is granted solely for the purposes of carrying out and completing the Development and rectifying any defects in accordance with the terms of this Agreement and otherwise complying with the obligations on the part of the Developer in this Agreement;

5.3.3 are to terminate on the earlier of:

- (a) the date on which the Developer has completed all of its obligations in this Agreement relating to the undertaking of the Development, including any obligation relating to the making good of any defects in the Development; and
- (b) this Agreement terminating in accordance with clause 15.

5.4 On the earlier of:

5.4.1 the Date of Practical Completion; and

5.4.2 the date on which the licence in this clause is validly terminated

the Developer will:

5.4.3 vacate the Property and remove from the Property all vehicles, plant, equipment and materials belonging to the Developer or any other person who is authorised to enter pursuant to this clause;

5.4.4 make good all damage to the Property caused in vacating the Property to the reasonable satisfaction of the Owner as soon as reasonably practicable; and

5.4.5 ensure that the Property is left in a safe and secure condition, clean and tidy and free from rubbish.

5.5 Where the Developer enters onto the Property in accordance with this clause after the Date of Practical Completion it shall (or shall procure that the other parties entering shall):

5.5.1 only enter onto parts of the Property as are required in order for the Developer to comply within its obligations under this Agreement;

5.5.2 only bring onto the Property such equipment, materials, plant and vehicles as are properly required;

5.5.3 so far as consistent with compliance with its obligations under this Agreement, comply with the terms of any occupational lease or licence granted to any third party, the terms of which the Owner has given written notice to the Developer but if the terms of such occupational lease or licence cannot practically be

complied with by the Developer then it will, to that extent, not have to comply with the relevant obligations on its part in this Agreement;

5.5.4 only enter on dates and at times agreed with the Tenant acting reasonably and complying at all times with the Tenant's regulations including but not limited to safeguarding requirements.

6 PAYMENT FOR THE DEVELOPMENT

6.1 The Owner will pay to the Developer:

■ [REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

the Developer subject to the Developer having complied with all defects obligations in this Agreement.

8 PROPERTY IN MATERIALS

Immediately on payment by the Owner, in whole or part, for any plant, equipment, goods or materials (whether or not delivered to the Property or if earlier the incorporation into the Development such that they have become fixtures forming part of the Property) the property in them shall, as between the Owner and the Developer, immediately pass to the Owner and the Developer will on request provide evidence of its title (if any) to them to the Owner and the Developer will not then cause or permit any such plant, equipment, goods or materials to be removed from the premises where they are except for use in the Development but shall nevertheless be responsible for any loss of or damage to them and for their storage, handling and insurance as if they formed part of the Development.

9 INTEREST

If any monies due under this Agreement are not paid by the due date the defaulting party will pay interest on the sum concerned, net of VAT, at the Interest Rate from but excluding the due date until and including the date of actual payment.

10 VAT

- 10.1 All money payable and any consideration for taxable supplies made under or pursuant to this Agreement are exclusive of VAT (if any) and the recipient of any such supply will, if first supplied with a valid VAT invoice by the supplier of that supply, pay all VAT properly chargeable in respect of them at the time when the money is due or the supply is made.
- 10.2 If either party pays an amount to the other in respect of VAT which is not properly chargeable, the recipient is to repay it to the paying party on demand together with any repayment supplement received by the recipient.
- 10.3 Where appropriate the Developer and the Owner are to work together to ensure that any VAT on the Development Costs is fully recoverable by the Developer.
- 10.4 Where the Owner pays an amount as Development Costs in respect of irrecoverable VAT incurred by the Developer and the Developer subsequently receives credit for that VAT as input tax (whether by way of repayment or offset against output tax) the Developer shall promptly repay to the Owner the amount so credited or repaid.

- 10.5 For the purposes of article 8(1A)(b) of the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (the 55A Order) the Owner confirms to the Developer that the requirements of article 8(1)(b) of the 55A Order are satisfied in respect of any supply made to the Owner under this Agreement as a result of the Owner being an "end user" within the meaning of article 2(1) of the 55A Order. As a result the parties agree that the Developer, and not the Owner, shall issue VAT invoices and account for VAT in respect of the Development Costs.

11 LICENCE TO USE PLANS ETC

- 11.1 The copyright in all drawings, reports, models, plans, specifications, CAD materials, bills of quantity, calculations, work, designs or inventions and any other documents of any nature provided by the Developer in connection with the Development (**Design Documents**) shall, as between the Developer and the Owner, remain vested in the Developer.
- 11.2 In so far as the Warranty Deeds do not include an irrevocable, royalty-free licence to use and reproduce the Design Documents then:
- 11.2.1 in relation to all Design Documents where copyright is vested in the Developer, the Developer:
- (a) grants to the Owner an irrevocable, non-exclusive, royalty-free licence to use and reproduce such Design Documents in connection with the Development, such licence to be assignable and to grant sub-licences in the terms of this licence; and
 - (b) waives all moral rights it has to them under the Copyright, Design and Patents Act 1988.
- 11.2.2 to the extent that the beneficial ownership of the copyright, design right and any other intellectual property rights in the Design Documents are not vested in the Developer, the Developer will use reasonable endeavours to procure that the beneficial owner:
- (a) grants to the Owner a royalty-free, irrevocable licence to use and reproduce the Design Documents, such licence to be assignable and with the ability to grant sub-licences in the terms of the licence; and

- (b) waives all moral rights to them under the Copyright, Design and Patents Act 1988.

11.3 The Developer is to be responsible for the payment of all royalties or other sums due to others for the use and supply of patents, articles, inventions and processes in the Design Documents required to complete the Development Works whether those Development Works are undertaken by the Developer or the Owner and is to indemnify the Owner against liability for the infringement of rights of third parties by such use.

12 DEVELOPER'S LIABILITY

12.1 Liability preservation

The Developer shall not be relieved of its obligations or responsibilities under this Agreement in any way at all because of:

12.1.1 the issue of the Certificate of Practical Completion; or

12.1.2 the absence of any objection by the Owner or the Monitoring Surveyor to any defect in the Development.

12.2 End of liability

12.2.1 Subject to clause 12.2.2 the liability of the Developer to the Owner in respect of any actions required under or any breach of the terms of this Agreement is to end on the date of issue of the Certificate of Making Good Defects for the whole of the Development.

12.2.2 The ending of liability in clause 12.2.1 shall not apply to:

(a) any breach by the Developer in respect of which the Owner has either:

(i) issued proceedings in any court of competent jurisdiction;

(ii) intimated an intention to issue proceedings or make any other claim and has given sufficiently detailed information in written form to the Developer to enable the Developer to make an assessment as to the merits of such proceedings or claim.

(b) continued compliance with the clauses 10, 17 or 19.

12.2.3 The liability of the Guarantor will end on the same day and to the same extent as the liability of the Developer under this clause.

12.2.4 If the Owner transfers its interest in the Property or grants any inferior interest in the Property to a third party before the Certificate of Making Good Defects is issued the Developer shall continue to observe and perform its outstanding obligations contained in this Agreement.

13 CAPITAL ALLOWANCES

13.1 As between the Developer and the Owner, all capital allowances on the plant and machinery comprised in the Development will belong to the Owner.

13.2 The Developer will provide the Owner with information in its possession or control which the Owner reasonably requests in writing to enable it to assess, make, substantiate, or defend a claim for capital allowances on expenditure comprised in the Development.

13.3 The Developer warrants and undertakes to the Owner that it has not and will not make any claims for capital allowances on the plant and machinery comprised in the Development or any similar allowances available in respect of the Development and that it is not entitled to make any such claim.

14 DEFAULT OF THE OWNER

14.1 The Owner shall be treated for the purposes of this clause as being in an **Owner's Default** if:

14.1.1 the Owner fails to pay any sum properly due and payable to the Developer under this Agreement within [REDACTED] after the Developer has given written notice to it that the relevant sum is due but unpaid;

14.1.2 the Owner materially fails to comply with any other obligation on its part in this Agreement;

14.1.3 the Owner fails to give any consent or approval in accordance with this Agreement where it is absolutely required to do so.

14.2 If the Owner is in an Owner's Default the Developer may (but shall not be obliged to) at any time afterwards until the default (if capable of remedy) is remedied suspend the carrying out of the Development and, if it does so, each and every target date, longstop date or other time period or date by which the Development or any aspect of it is to be

achieved (including without limitation Start Date Longstop, the Target Date, the LADs Date and the Construction Long Stop Date) shall be extended accordingly.

- 14.3 If the Developer does actually suspend the carrying out of the Development (or is entitled to do so whether or not it actually does so) for a period of 12 months then it may at any time afterwards (but not after it recommences the Development or would be obliged to do so under this Agreement) terminate this Agreement by written notice to that effect to the Owner.
- 14.4 The exercise of the rights of the Developer in this clause does not affect the rights of the parties in respect of any antecedent breach of either party and, in particular, exercise of the right in clause 14.2 does not:
- 14.4.1 lessen in any way the obligations of the Owner in this Agreement;
- 14.4.2 prejudice clause 9 or the rights of the Developer to payment of interest provided for in it.
- 14.5 This Agreement cannot be terminated pursuant to this clause whilst there is a proper dispute remaining to be determined between the parties which is not vexatious or frivolous and is in relation to the material breach being relied upon as a ground for termination provided that such dispute is being dealt with in accordance with clause 16.

15 DEFAULT OF THE DEVELOPER

- 15.1 The Developer shall be treated for the purposes of this clause as being in **Developer's Default** if:
- 15.1.1 it is in Serious Default and does not remedy (or at least substantially and materially commence and actively continue to remedy) that Serious Default within a reasonable period (being not less than 4 months) following receipt of written notice from the Owner specifying the relevant Serious Default; and/or
- 15.1.2 an Event of Insolvency occurs in relation to the Developer; and/or
- 15.1.3 the Developer does not Substantially Commence by the Start Date Longstop; and/or
- 15.1.4 the Date of Practical Completion has not occurred in accordance with this Agreement by the Construction Long Stop Date.

15.2 If the Developer is in Developer's Default then the Owner may at any time afterwards, but not after:

15.2.1 the Developer's Default has been remedied (where capable of remedy);

15.2.2 in the case of a Serious Default relating to Abandonment, progress of the Development has recommenced;

15.2.3 in the case of clause 15.1.3, Substantial Commencement has occurred; or

15.2.4 in the case of clause 15.1.4, the Date of Practical Completion has occurred;

terminate this Agreement on 20 Working Days written notice to the Developer and, if at the end of that 20 Working Day period the relevant event detailed in 15.2.1 to 15.2.4 has not occurred, the Owner may if it chooses, elect by notice in to the Developer to step in to the role of the Developer under the Building Contract and Professional Team Appointments and complete the Development themselves, in which case:

- (a) no further payments are due from the Owner to the Developer in respect of the Development Costs, other than in respect of all items of Development Costs incurred to the date of termination;
- (b) the rights of the parties in respect of any antecedent breach of either party shall not be affected.

15.3 Following termination of this Agreement pursuant to this clause 15, the Developer will, at the request of the Owner and for no consideration or payment of fees, assign or (if the other parties to it agree) novate to the Owner (or as the Owner otherwise directs) the benefit of all or any of the following:

15.3.1 the Building Contract;

15.3.2 the Professional Team Appointments;

15.3.3 any other contracts or agreements entered into by the Developer in relation to the Development;

15.3.4 all the Developer's rights against the Building Contractor, the Professional Team or Primary Sub-Contractors;

15.3.5 all warranties and product guarantees which are to be provided to the Owner pursuant to paragraph 6 of Schedule 1;

15.3.6 all rights of copyright vested in the Developer which would be the subject of the licence in clause 11 but which have not then been licensed pursuant to that provision;

and any money held pursuant to any insurance claim made in relation to the Development Works and/or the Property by the Developer or the Building Contractor shall be released to the Owner and the Developer shall procure that such sum is so paid to the Owner within 10 Working Days.

15.4 This clause will continue to apply after any rescission or determination of this Agreement.

15.5 This Agreement cannot be terminated pursuant to this clause whilst there is a proper dispute remaining to be determined between the parties which is not vexatious or frivolous and is in relation to the material breach being relied upon as a ground for termination provided that such dispute is being dealt with in accordance with clause 16.

16 THIRD PARTY DETERMINATION

16.1 Any dispute which this Agreement provides is to be referred to an independent expert (but not any other dispute) shall be referred to an independent expert appointed in the absence of agreement on the application of either party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors (the **President**).

16.2 For the purposes of this clause 16 an **independent expert** is a person qualified to act as an expert in relation to the dispute, having not less than 10 years' relevant professional experience and having practical experience in relation to developments in the nature of the Development and property in the same locality as the Property.

16.3 If a dispute is referred to an independent expert:

16.3.1 the independent expert shall give the parties an opportunity to make written representations to him within reasonable timescales consistent with the requirement of clause 16.3.5 (and will copy the written representations to the other party) and also an opportunity to have a further reasonable period consistent with the requirements of clause 16.3.5 to make written counter-representations (and will copy the written counter-representations to the other party) on any representations made to him by the other but will not be in any way limited or fettered by any representations or counter-representations but will be entitled to rely on his own judgment and opinion

- 16.3.2 the independent expert is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 16.3.3 the independent expert is not to take oral representations from the Developer or Owner without giving all of the parties the opportunity to be present and to give evidence and to cross examine each other;
 - 16.3.4 the independent expert is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision;
 - 16.3.5 the independent expert is to use all reasonable endeavours to publish his decision within 20 Working Days of his appointment (and at the same time as he gives a decision, the independent expert must give written reasons);
 - 16.3.6 responsibility for his fees and expenses, including the cost of his appointment, shall be decided by the independent expert and, in the absence of a decision, shall be paid by the parties equally (who shall otherwise each bear their own costs);
 - 16.3.7 the independent expert shall determine whether any delay to the delivery of the Development by reason of the matter in dispute shall constitute a Delay Event and, if so, the length of such Delay Event that shall apply under this Agreement and if there is a single delay attributable to more than one separate and independent Delay Event then the aggregate periods under those Delay Events shall not be than the period of delay that would have been determined had there only been one Delay Event; and
 - 16.3.8 in the absence of fraud or manifest error his decision shall be final and binding on the parties.
- 16.4 If any independent expert appointed under this clause dies, delays, is unwilling to act or is incapable of acting, a replacement independent expert shall be appointed in accordance with this clause 16 and the provisions of this clause 16 shall apply to the new independent expert as if he were the first independent expert appointed.

17 CONSTRUCTION INDUSTRY SCHEME

- 17.1 The Developer warrants to the Owner that it is registered under the Construction Industry scheme as a sub-contractor with gross payment status with registration number 475/LB31299.
- 17.2 Save to the extent provided prior to the date of this Agreement, prior to any payment being made under this Agreement in relation to the Development, the Developer shall:
- 17.2.1 give the Owner its unique taxpayer reference number and any other information which the Owner may be required to give to HM Revenue & Customs in order to verify the Developer's tax status; and
- 17.2.2 (where the Developer does not have gross payment status) give the Owner such information as the Owner may reasonably require in order to determine the amount of any deduction or withholding required by the Construction Industry Scheme (including for the avoidance of doubt the direct cost of building materials to it);
- 17.2.3 as soon as reasonably practicable after becoming aware that its gross payment status has ceased or may or will cease, it will notify the Owner in writing of the date upon which its gross payment status ceased or will cease or as the case may be the facts giving rise to the circumstances in which its gross payment status may cease.
- 17.3 The Owner may make all payments under this Agreement net of any deduction or withholding which it is required by law to make under the Construction Industry Scheme and if it does so it will account to HM Revenue and Customs for the tax it withholds in accordance with the requirements of the Construction Industry Scheme and will be deemed to have paid the gross amount to the Developer for the purposes of this Agreement.
- 17.4 Where there has been an under-deduction in the amount withheld from any payment made under this Agreement, the Developer will make such payment to the Owner as will leave it in the position as it would have been had no such under-deduction been made.

18 NOTICES

18.1 Section 196 of the Law of Property Act 1925, as amended by the Recorded Delivery Service Act 1962, applies to the service of all notices in connection with this Agreement except that it shall be deemed to be amended as follows:

18.1.1 In this sub clause **Working Day** means any day from Monday to Friday (inclusive) other than bank or public holidays.

18.1.2 The final words of Section 196(4) "and that service Be delivered" shall be deleted and replaced with "and that service shall be deemed to be made on the second Working Day after the registered letter has been posted".

18.2 To be validly served any notice to be given to the Owner must be sent by registered or recorded delivery post or personal delivery to Development Director, LocatED, 20 Cranbourn Street, London WC2H 7AA and (but not as a condition of valid service) a copy sent to the Owner's Solicitor.

18.3 To be validly served any notice to be given to the Developer must be sent by registered or recorded delivery post or personal delivery to:

18.3.1 its registered office from time to time; and

18.3.2 must be marked for the attention of Adam Varley and Jeremy Tutton; and

a copy sent to the Developer's Solicitors (not as a condition of valid service).

18.4 Notices must not be served by facsimile or by email but it being agreed that copies of the notices may also be sent by email to such address as is notified by one party to the other for those purposes but provided that the provision of such notices by email does not obviate the need to serve notice in accordance with clauses 18.1 to 18.3.

19 CONFIDENTIALITY

19.1 Subject to clause 19.3, neither the Developer nor the Developer's Guarantor shall without the written consent of the Owner and the Owner shall not without the written consent of the Developer knowingly disclose or publish or permit or cause to be disclosed or published any details of this Agreement, its contents or its existence save:

- 19.1.1 so far as necessary to comply with the requirements of the Stock Exchange, the listing rules or any other regulatory requirement of any other recognised stock exchange;
 - 19.1.2 to HM Revenue and Customs or the rating authority;
 - 19.1.3 to the extent necessary to comply with statutory obligations including but not limited to Freedom of Information Requirements and the Procurement Act 2024;
 - 19.1.4 to the extent necessary for audit purposes;
 - 19.1.5 to the extent necessary to obtain professional advice in relation to any of the provisions of this Agreement;
 - 19.1.6 to enable determination of any dispute which has been properly referred for determination under clause 16 or to enable the relevant party to comply with the requirements for determination under that clause which have been set by the relevant third party;
 - 19.1.7 to the extent ordered to do so by any court of competent jurisdiction;
 - 19.1.8 for insurance purposes;
 - 19.1.9 to a company which is a Group Company and in the case of the Owner any other Government Body;
 - 19.1.10 in connection with the marketing, sale, letting or raising of finance in respect of the Property by the Owner or its successors in title;
 - 19.1.11 by the Owner (or its agents) in connection with the requirements to ensure the Development can be operational as a sixth form college from the Date of Practical Completion, including but not limited to communication with potential staff and students; and/or
 - 19.1.12 where both the Owner and the Developer have agreed in writing to the disclosure being made including the manner of the disclosure.
- 19.2 Each of the parties will procure that professional advisors to whom they disclose any information in accordance with clause 19.1 are fully instructed and required to comply with these restrictions on disclosure and (other than in relation to disclosure pursuant to

clause 19.1.12) the relevant party instructing that or those professional advisors will be responsible for any breach of clause 19.1 caused by them.

19.3 Clause 19.1 shall not apply to any information which:

19.3.1 is in the public domain at the date of this Agreement or which comes into the public domain after the date of this Agreement other than as a breach by the relevant person of the terms of this Agreement;

19.3.2 is contained in any press release (or other publicity materials):

- (a) by the Developer and/or the Developer's Guarantor which has been approved in writing by the Owner; or
- (b) by the Owner which has been approved in writing by the Developer;

19.3.3 comprises only of:

- (a) the name by which the buildings at the Property following completion of the Development will be known and its location;
- (b) such details of the Development that are contained within the planning permission for the Development to be undertaken after it has commenced; or
- (c) the identity of the Owner.

20 GUARANTOR'S OBLIGATIONS

20.1 Developer's Guarantor

In consideration of the Owner entering into this Agreement at its request:

20.1.1 the Guarantor guarantees to the Owner that the Developer will comply with its obligations under this Agreement and that if the Developer does not do so within such timescales as may be reasonable in the circumstances that the Guarantor will;

20.1.2 the Guarantor covenants with the Owner as a separate and independent primary obligation to the obligation contained in clause 20.1.1 to indemnify the Owner against all losses, costs, damages and expenses suffered or incurred by it due to

any failure by the Developer to comply with any of its obligations under this Agreement.

20.2 Guarantee protection

The Guarantor shall not be released from liability under clause 20.1 by:

- 20.2.1 any time or indulgence granted to the Developer or any compromise of the liability of the Developer or any person comprised in the Developer;
- 20.2.2 any failure to enforce any of the Developer's obligations;
- 20.2.3 any refusal to accept monies from the Developer following any default by the Developer;
- 20.2.4 the enforcement of any remedy against the Developer for any failure to comply with its obligations under this Agreement;
- 20.2.5 the taking of, or refraining from taking, any action in connection with any other security held by it in respect of the Developer's liability under this Agreement including the release of any such security;
- 20.2.6 any release or compromise of the liability of any person comprised in the Guarantor or the grant of any time or concession to any of them;
- 20.2.7 any legal limitation or disability of the Developer or any invalidity or irregularity of any of the Developer's obligations under this Agreement or any unenforceability of any of them against the Developer, in which case the obligations of the Developer shall be construed by reference to the parts of the Agreement which are not invalid or unenforceable;
- 20.2.8 the Developer being dissolved, struck off the register of companies or otherwise ceasing to exist;
- 20.2.9 any disclaimer of the Developer's liability under this Agreement or this Agreement being brought to an end in any other way except by mutual agreement;
- 20.2.10 any agreement with the Developer or consent given under this Agreement;
- 20.2.11 any variation of this Agreement; or

20.2.12 anything else which without this paragraph would release the Guarantor except an express release in writing by the party with the benefit of the guarantee.

20.3 Confirmation

the Guarantor:

20.3.1 waives any right which it may otherwise have to require any other party with the benefit of the guarantee in this clause to enforce any other remedy available to it, or to proceed against the Developer in respect of which the guarantee is given, before proceeding against the Guarantor;

20.3.2 shall not make any claim or exercise any right against the Developer in respect of which their guarantee is given in this clause in competition with the party with the benefit of the guarantee;

20.3.3 shall not be entitled to participate in, or stand in the place of the person to whom the guarantee is given in respect of, any other security held by them in respect of the Developer 's obligations under this Agreement;

20.3.4 agrees that if the Developer shall go into liquidation and the liquidator shall disclaim this Agreement the liability of the Guarantor hereunder shall remain in full force and effect in respect of any claims demands losses damages costs and expenses sustained by the party with the benefit of the guarantee and the Guarantor shall perform and discharge all of the Developer's obligations under this Agreement.

21 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Agreement 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 that Act.

22 GENERAL

22.1 Dealings

22.1.1 This Agreement is personal to the Developer and the Developer shall not charge, assign or part with the benefit or burden of this Agreement.

22.1.2 This Agreement is personal to the Owner or any statutory successor to the Owner and the Owner shall not charge, assign or part with the benefit or burden of this Agreement save that the Owner can assign the benefit (but not the burden) of this Agreement with the consent of the Developer (such consent not to be unreasonably withheld or delayed and such consent not to be required where an assignment is to be made to another Secretary of State) and, to avoid any doubt on this point, if the benefit of this Agreement is assigned then that has does not affect the continuing liability of the person named as Owner in it for the burden of this Agreement .

22.2 **No partnership**

22.2.1 Nothing in this Agreement shall create or imply a partnership or a joint venture between the parties.

22.2.2 The Developer is not and will not at any time hold itself out as the agent of the Owner for any purposes and under no circumstances will the Developer have the authority to bind the Owner or hold itself out to any person as having such authority.

22.2.3 All contracts and agreements entered into by the Developer pursuant to this Agreement are intended to be contracts or agreements between the Developer as principal and the respective third parties and the Owner is not to have any obligation or liability under them.

22.2.4 The Developer acknowledges that it does not have and will not have any lien over the Property or the Development in respect of payments due to it under this Agreement.

22.3 **Avoidance of part**

If any part of this Agreement is held to be illegal, void, invalid or unenforceable for any reason the legality, validity and enforceability of the remainder of this Agreement shall be unaffected.

22.4 **Non merger, Entire Agreement and Modification**

22.4.1 Following completion of the Development the terms and conditions of this Agreement shall remain in full force and effect in so far as they have not then

been fully implemented or relate to matters which are to operate following that date.

22.4.2 The parties acknowledge that this Agreement forms the entire agreement between them relating to its subject matter.

22.4.3 No modification, variation or waiver of any of the terms of this Agreement will be effective unless made in writing and signed by the parties to this Agreement.

22.5 Co-operation

22.5.1 The Developer and the Owner shall co-operate in every reasonable way to achieve the objectives of this Agreement and neither party shall knowingly do anything which may or may tend to materially prejudice the respective commercial interests of the other party.

22.5.2 The parties shall act in good faith with respect to their dealings with the other under or in connection with this Agreement.

22.6 Enforcement

22.6.1 This Agreement and any dispute or claim arising out of it or in connection with it or its subject matter or formation is to be governed by and interpreted in accordance with English law.

22.6.2 The Courts of England are to have exclusive jurisdiction in relation to any disputes or claims between the parties arising out of or in connection with this Agreement or its subject matter or formation.

22.7 Procurement confirmation

The Landlord confirms that all information included within the Landlord's responses to any documents issued by the Tenant as part of the procurement relating to the award of this Agreement (to include, without limitation, as referred to in the specification, tender response document and commercial schedule), and all accompanying materials, is accurate.

22.8 Bribery

22.8.1 The Owner and Developer undertake to each other that:-

- (a) they have not given nor agreed to give any person any bribe on behalf of themselves or otherwise with the object of obtaining a business advantage for themselves; and
- (b) they have in place policies and procedures including Adequate Procedures to ensure compliance with the Bribery Act 2010.
- (c) during the term of this Agreement:-
 - (i) they shall not give nor agree to give any person any bribe on behalf of themselves or otherwise with the object of obtaining a business advantage for themselves;
 - (ii) they shall not engage in any activity or practice which would constitute an offence under the Bribery Act 2010;
 - (iii) they shall maintain in place their own policies and procedures including Adequate Procedures to ensure compliance with the Bribery Act 2010; and
 - (iv) they shall from time to time upon reasonable request supply to the other details of its policies and procedures as are referred to in clause 22.8.1(c)(iii).

22.8.2 If at any time during the term of this Agreement the Owner or the Developer is in breach of the undertaking referred to in clause 22.8.1(c) and another party gives them notice to that effect the defaulting party shall take all reasonable steps to remedy such breach as soon as reasonably practicable.

IN WITNESS of which the parties have duly executed this Agreement as a deed on the date specified on page one.

SCHEDULE 1 – APPOINTMENTS & RECOURSE PACKAGE

1 BASIS OF APPOINTMENTS

1.1 If it has not already done so, the Developer will:

1.1.1 as soon as reasonably practicable after the satisfaction of the Conditions (and in any event within [REDACTED] of the Unconditional Date):

- (a) enter into the Building Contract with the Building Contractor;
- (b) appoint or procure that the Building Contractor appoints each member of the Professional Team;

1.1.2 procure that each Primary Sub-Contractor is appointed by the Building Contractor prior to that Primary Sub-Contractor carrying out any works;

in each case in accordance with this Schedule and will provide the Owner with certified copies of each Building Contract, Appointment or Sub-Contract.

1.2 Before appointing any Building Contractor or member of the Professional Team who is not named in this Agreement, the Developer is to:

1.2.1 make due enquiry as to their repute, competence and suitability with respect to the Development; and

1.2.2 obtain the consent of the Owner (such consent not to be unreasonably withheld or delayed) to their appointment.

2 TERMS OF APPOINTMENTS

2.1 Each Professional Team Appointment is to be executed as a deed in the relevant form annexed to this Agreement as Annex 1 with such amendments as are approved by the Owner, (subject to paragraph 2.2, such consent not to be unreasonably withheld or delayed).

2.2 The Owner shall not be obliged to approve any amendments to the Professional Team Appointments that seek to include:

2.2.1 a net contribution clause; or

2.2.2 a limit on liability for a sum which is less than the amount of professional indemnity insurance required to be held under the terms of the relevant Professional Team Appointment;

and shall act reasonably when approving any other amendments which do not have a material impact on the Owner's rights in circumstances where the insurer for the relevant member of the Professional Team is, without such amendments, not willing to provide insurance cover at reasonable cost and on reasonable commercial terms generally available in the market at that time.

2.3 Unless and to the extent that different figures are either:

2.3.1 included in the relevant form of Professional Team Appointment at Annex 1; or

2.3.2 the Owner agrees a different figure;

the Professional Team appointments shall include an obligation to maintain throughout the period of the Development and for 12 years after the Date of Practical Completion professional indemnity insurance with reputable insurers or through underwriters at Lloyds in at least the sum of [REDACTED] in respect of each and every claim (save in relation to any fire engineer where the sum will be (subject to paragraph 2.4 below) [REDACTED] and cover shall be in the aggregate) subject to such insurance being generally available in the United Kingdom insurance market at commercial reasonable rates and on commercially reasonable terms. The Developer shall provide evidence of such insurances by the way of broker's letter and shall, upon reasonable written request of the Owner, provide replacement letters in the event of expiry.

2.4 Having used reasonable endeavours to do so, in the event that the Developer is unable to secure the stated level of fire engineer insurance set out in paragraph 2.3 above, the Developer shall provide to the Owner reasonable evidence that such level of insurance is not available and the Developer and the Owner shall work together in good faith to revisit the United Kingdom insurance market to secure that level of insurance provided that if the parties are unable to secure such level of insurance the Owner shall act reasonably in approving a lower level of cover that is available and such lower level of cover shall be substituted for the level of cover set out in paragraph 2.3 above.

3 TERMS OF BUILDING CONTRACT

The Building Contract shall:

- 3.1 be executed as a deed;
- 3.2 be based on JCT Design and Build 2016 edition and shall:
 - 3.2.1 include a fixed price payable by the Developer for the Development;
 - 3.2.2 include a schedule of amendments and such other amendments as are in the form set out at Annex 2 but with such further changes to that form of contract or schedule of amendments as are approved by the Owner (such consent not to be unreasonably withheld or delayed).
 - 3.2.3 contain a requirement for the Building Contractor to maintain professional indemnity insurance in a sum not less than [REDACTED] for any one claim arising out of any one event subject to such insurance being generally available in the United Kingdom insurance market at commercial reasonable rates and on commercially reasonable terms. The Developer shall provide evidence of such insurance by the way of broker's letter and shall, upon reasonable written request, provide a replacement letter in the event of expiry;
 - 3.2.4 incorporate a Defects Liability Period of at least one year; and
 - 3.2.5 shall contain defects liability provisions which conform with the provisions of paragraph 15 of Schedule 3.

4 SUB-CONTRACTS

- 4.1 The Sub-Contracts are to be executed as a deed in a form compatible with the terms of the Building Contract or such other form as is approved by the Owner, such approval not to be unreasonably withheld or delayed which shall for the avoidance of doubt include a requirement for the Primary Sub-Contractors to hold either:
 - 4.1.1 professional indemnity insurance in the sum of not less than (subject to paragraph 4.2 below) [REDACTED] (in the aggregate plus one automatic reinstatement requirement); or
 - 4.1.2 product liability insurance in a sum not less than (subject to paragraph 4.2 below) [REDACTED] in the aggregate;
- as appropriate depending on whether the relevant Primary Subcontractor is to provide a warranty or a product guarantee in accordance with paragraph 4.3.

- 4.2 Having used reasonable endeavours to do so, in the event that the Developer is unable to secure the stated level of Primary Sub-Contractor insurance set out in paragraph 4.1 above, the Developer shall provide to the Owner reasonable evidence that such level of insurance is not available and the Developer and the Owner shall work together in good faith to revisit the United Kingdom insurance market to secure that level of insurance provided that if the parties are unable to secure such level of insurance the Owner shall act reasonably in approving a lower level of cover that is available and such lower level of cover shall be substituted for the level of cover set out in paragraph 4.1 above.
- 4.3 The Developer shall include in the Building Contract an obligation on the part of the Building Contractor to use reasonable endeavours to ensure that, in the appointment of the relevant Primary Subcontractor that they are required to provide the Owner with a Warranty Deed rather than a product guarantee but permitting the Building Contractor to include an obligation on the part of the relevant Primary Subcontractor to provide a product guarantee in lieu of a Warranty Deed if the relevant Primary Subcontractor will not agree to the provision of a Warranty Deed.

5 REPLACEMENTS

- 5.1 If:
- 5.1.1 the Building Contract or a Professional Team Appointment is terminated or rescinded by or against the Developer; or
 - 5.1.2 the Developer receives notice from the Building Contractor that the appointment of a member of the Professional Team by it has been terminated or rescinded
- (a **Relevant Termination**) the Developer will, as soon as becoming aware of it, give written notice to the Owner and, if known, the reasons for it.
- 5.2 Following a Relevant Termination:
- 5.2.1 where the Relevant Termination is of the Building Contract or a Professional Team Appointment in respect of which the Developer was then the employer, the Developer will appoint another person on the terms of this Schedule in substitution for the person whose appointment was terminated; and
 - 5.2.2 where the Building Contractor was responsible for the original appointment, the Developer will procure that the Building Contractor appoints another person on

the terms of this Schedule in substitution for the person whose appointment was terminated.

at all times such replacement entities and the terms of their appointment to be subject to the Owner's approval in accordance with paragraph 2.

5.3 If any replacement appointment is made under paragraph 5.2 the Developer shall procure that Warranty Deeds are delivered to the Owner from that replacement appointee as soon as reasonably practicable after their appointment.

5.4 The Developer will provide the Owner with all of the following in respect of any replacement appointment made in accordance with this paragraph 5.

5.4.1 a certified copy of any Building Contract or Professional Team Appointment entered into the replacement appointee; and

5.4.2 evidence (in the form of a broker's letter or certificate) of the then current professional indemnity insurance held by the replacement appointee.

5.5 Nothing in this Agreement prevents the Developer from novating any appointment of any member of the Professional Team (other than the Employer's Agent) to the Building Contractor but:

5.5.1 doing so does not reduce the obligations of the Developer to the Owner in accordance with this Schedule; and

5.5.2 the Developer will give written notice and a certified copy of the novation to the Owner.

6 WARRANTIES AND PRODUCT GUARANTEES

6.1 Warranties

6.1.1 The Developer is to procure Warranty Deeds in favour of the Owner (and separately the trust nominated by the Owner to operate the college following completion of the Development, such entity to be notified to the Developer as soon as reasonably practicable) each of:

(a) the Professional Team, such Warranty Deeds to be in the forms of Annex 3A;

- (b) the Building Contractor, such Warranty Deed to be in the form of Annex 3B; and
- (c) each Primary Sub-Contractor, such Warranty Deeds to be in the forms of Annex 3C

with such amendments as approved by the Owner, (subject to paragraph 6.1.2, such consent not to be unreasonably withheld or delayed).

6.1.2 The Owner shall not be obliged to approve any amendments to the terms of the Warranty Deeds that seek to include:

- (a) a net contribution clause; or
- (b) a limit of liability for a sum which is less than the amount of the professional indemnity insurance required to be held under the terms of the respective Building Contract, Appointment or Sub-Contract.

and shall act reasonably when approving any other amendment which does not have a material impact on the Owner's rights where the insurer for the warrantor is (without such amendments) not willing to provide insurance cover at reasonable cost and on reasonable commercial terms generally available in the market at that time.

6.1.3 If an Event of Insolvency occurs in relation to the Building Contractor or any member of the Professional Team or any Primary Sub-Contractor, the Developer shall procure that a Warranty Deed is completed in favour of the Owner by the replacement appointee made in accordance with paragraph 5.

6.2 **Product Guarantees**

The Developer shall include in the Building Contract a requirement for the Building Contractor to procure such Product Guarantees as are reasonably available in relation to the Development in favour of the Owner or procure that such Product Guarantees are assigned to the Owner in relation to the following items insofar as the same are to be installed as part of the Development:

- 6.2.1 roof membrane;
- 6.2.2 white goods;

7 DEVELOPER'S OBLIGATIONS

- 7.1 The Developer will use reasonable endeavours to procure that:
 - 7.1.1 each member of the Professional Team which it appoints complies with the terms of its Professional Team Appointment until such point (if it happens) that the Professional Team Appointment is novated to the Building Contractor; and
 - 7.1.2 the Building Contractor complies with the terms of the Building Contract.
 - 7.1.3 the Building Contractor and:
 - (a) each Primary Sub-Contractor comply with the terms of their respective Sub-Contracts; and
 - (b) each member of the Professional Team whom it appoints or whose Professional Team Appointment is novated to it comply with the terms of their respective Professional Team Appointment;
- 7.2 The Developer will not without the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed:
 - 7.2.1 terminate any Professional Team Appointment or terminate the Building Contract;
 - 7.2.2 make or agree any material variations or amendments to the terms of any Professional Team Appointment or the Building Contract;
 - 7.2.3 give permission for any assignment by the other party to it of the Professional Team Appointments or the Building Contract.
- 7.3 The Developer will use reasonable endeavours to procure that the Building Contractor does not, without the written consent of the Owner, such consent not to be unreasonably withheld or delayed:
 - 7.3.1 dismiss any member of the Professional Team;
 - 7.3.2 make or agree any material variations or amendments to the terms of any Professional Team Appointment;
 - 7.3.3 give permission for any assignment of the Professional Team Appointments

in respect of which it is then the employer.

7.4 The Developer will not without the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed, knowingly:

7.4.1 waive, release nor estop itself from enforcing or seeking redress for any breach of the Professional Team Appointments or the Building Contract; or

7.4.2 do or omit to do any act or thing which would entitle any member of the Professional Team to treat its Professional Team Appointment as terminated by breach;

8 PROCEEDINGS

If the Developer recovers sums from the Building Contractor or Professional Team as a result of a breach by their of the Building Contract or their respective Professional Team Appointment then if that relates to a defect in the Development which has not been rectified then it shall immediately pay those sums to the Owner.

SCHEDULE 2 – DEVELOPMENT WORKS

1 SPECIFICATION

The parties acknowledge that the Plans and Specifications will be developed further and finalised in accordance with the Purchase Agreement.

2 CARRYING OUT THE DEVELOPMENT WORKS

2.1 The Developer will proceed diligently with and carry out and complete the Development:

2.1.1 in a proper and workmanlike manner using suitable materials; and

2.1.2 in accordance with:

- (a) the Plans and Specification;
- (b) all Statutory Agreements (entered into either prior to the Unconditional Date or after that date in compliance with the terms of this Agreement);
- (c) all Requisite Consents;
- (d) all statutory requirements, including, without limitation the CDM 2015;
- (e) any applicable British standards;
- (f) the requirements of the insurers effecting insurance required to be maintained pursuant to the Building Contract.

2.1.3 exercising reasonable skill and care to ensure that Prohibited Materials are not used or specified for use;

2.2 The Developer will use reasonable endeavours to procure that the Development is carried out and completed by the Target Date.

2.3 The Developer will use reasonable endeavours:

2.3.1 to procure that the Encumbrances are not infringed by the carrying out of the Development;

2.3.2 not to give permission for any encroachment or easement to be made or acquired against or over the Property and notify the Owner immediately upon becoming aware of any encroachment or easement being made or attempted;

- 2.3.3 to obtain any orders which may be required for the temporary stopping-up or temporary diversion of any highways, footpaths or public rights of way to the extent that these may be required to enable the Development to be carried out and completed;
 - 2.3.4 to negotiate and complete such agreements with statutory undertakers, utility companies and other person(s) as may be required in order to undertake the Development or for the subsequent use and occupation of the Property as intended by the Development (other than any supply agreements), any such documents to be in a form approved by the Owner such approval not to be unreasonably withheld or delayed;
 - 2.3.5 to obtain all Requisite Consents (whether of a temporary or permanent nature) for the carrying out of the Development and ensure that all consents remain valid and unrevoked and promptly renew any that become invalid, expire or are revoked.
- 2.4 Subject to the provisions of the Ancient Monuments and Archaeological Areas Act 1979:
- 2.4.1 any article of value or antiquity or any remains of geological, historical or archaeological interest on the Property will, as between the Developer and the Owner, belong to the Owner;
 - 2.4.2 if any such articles or remains are discovered, the Developer is promptly to inform the Owner and comply with the Owner's reasonable written directions as to the inspection, protection and disposal of them; and
 - 2.4.3 the Developer is to take all reasonable precautions to prevent all fossils, coins, articles of value and structures and other remains or things of geological, historical or archaeological interest discovered on the Property from being removed, damaged or destroyed.

3 CDM REGULATIONS

- 3.1 The Developer agrees, for the purposes of regulation 4(8) of the CDM 2015, to be treated as the only client in respect of the Development.
- 3.2 The Developer will appoint the Building Contractor as the principal contractor for the Development in accordance with regulation 5 of the CDM 2015 and make all other

appointments required under the CDM 2015, providing the Owner with full details of each party's adequacy and competency to fulfil its role.

3.3 The Developer is:

3.3.1 to comply with its obligations as the client under the CDM 2015;

3.3.2 to procure that the persons appointed comply with their obligations under the CDM 2015;

3.3.3 to procure that designers and contractors for the purposes of the CDM 2015 comply with their obligations in the CDM 2015;

3.3.4 to procure that:-

(a) details of the Development is given to the Health and Safety Executive in accordance with regulation 6 of the CDM 2015; and

(b) a Construction Phase Plan is prepared in accordance with regulations 12 or 15 of the CDM 2015;

3.3.5 not to start the Development until the provisions of this paragraph 3 have been complied with; and

3.3.6 following receipt of reasonable written request, to provide full details of compliance with the CDM 2015 and competency of the various parties.

4 COMMUNITY INFRASTRUCTURE LEVY

If and to the extent that any Community Infrastructure Levy pursuant to Part 11 of the Planning Act 2008:

4.1 is payable in relation to the Development then, save as provided for in paragraph 4.2, the Developer shall make such payment prior to the Date of Practical Completion and shall:

4.1.1 provide evidence of that to the Owner; and

4.1.2 Indemnify the Owner in relation to such Community Infrastructure Levy

4.2 becomes payable directly or indirectly as a result of any Owner Variation, the Owner shall be responsible for and shall pay to the local authority all such sums payable as a direct or indirect result of the Owner Variation;

but without prejudice to such sums being treated as Development Costs.

5 INSPECTION OF THE WORKS

5.1 The Owner will have the right at all reasonable times and after giving reasonable notice to the Developer during carrying out of the Development for it and the Owner's Representative to enter upon the Property to view the state of progress of the Development.

5.2 If reasonable the Owner can require the Developer to procure the undertaking of tests to any materials used in the Development Works with a view to ascertaining whether the terms and conditions of this Agreement have been and are being duly observed and performed and:

5.2.1 if those tests show that the relevant works or materials tested are in accordance with this Agreement then the reasonable and proper costs of such tests shall be borne by the Owner;

5.2.2 otherwise the cost of those tests shall be borne by the Developer.

5.3 The Owner may give written notice to the Developer that any works or materials are not in accordance with the Plans and Specification or are not otherwise to the standard or the quality required under this Agreement and if such notice is given the Developer shall either:

5.3.1 as soon as practical procure the remedying of the same to the reasonable satisfaction of the Owner; or

5.3.2 give notice to the Owner that it disagrees with such notice and refer the matter to dispute resolution in accordance with clause 16 of this Agreement.

5.4 The Developer will, without the need for a request by the Owner, give the Owner copies of the results of any inspection of the Development or tests to any of the materials used in the Development whether carried out by or on behalf of the Developer.

6 VARIATIONS

6.1 Variations requiring approval

6.1.1 The Developer can make Variations only with approval of the Owner.

6.1.2 The Developer will submit in writing the full specification and costings details to the Owner of any Variation requesting to be made pursuant to paragraph 6.1 together with the reasons for the changes and copies of any plans, drawings or samples relating it not forming part of the specification.

6.1.3 If the Owner does not give approval to a Variation then the Developer does not, to that extent, have any liability to the Owner for failure to comply with the requirements of this Agreement to the extent that delivering the Development without the relevant Variation causes that failure to comply.

6.2 Substitution of materials

6.2.1 If any materials specified in the Plans and Specification are in short supply or are or become unobtainable at commercially reasonable rates and/or an adequate supply of them cannot be guaranteed or are subject to material delay then the Developer may with the consent of the Owner (not to be unreasonably withheld or delayed) use alternative materials which comply with paragraph 6.2.2.

6.2.2 Alternative materials must be of a substantially similar nature, type, character or design to those specified in the Plans and Specification and must be of not materially lesser quality than and have performance characteristics not materially less than to those of the materials originally specified and the Developer shall provide evidence of that to the Owner.

6.3 Disputes/differences

Any dispute or difference between the parties in connection with Variations pursuant to this paragraph 6 may, without prejudice to the parties' statutory rights, be referred by either party for determination pursuant to clause 16.

7 OWNER'S VARIATIONS

7.1 At any time prior to the date which is 3 months after the date on which the Development commenced the Owner (acting reasonably) may request the Developer to incorporate a Variation in the Development.

7.2 The Developer will (subject to the remainder of this paragraph 7) use reasonable endeavours to incorporate a Variation requested pursuant to paragraph 7.1, but the Developer can refuse to incorporate any Variation requested by the Owner if:

- 7.2.1 it on its own or in conjunction with or when aggregated with any other Variation has the effect of:
- (a) requiring a change to goods or materials already ordered by or supplied to the Developer or the Building Contractor which cannot be easily altered without cost to the Developer (unless the Owner agrees to pay for such additional cost to the Developer);
 - (b) causing any delay in the Date of Practical Completion such that it would occur beyond the Construction Long Stop Date (unless the Owner grants a commensurate extension of time to the Construction Long Stop Date);
 - (c) placing the Developer in breach of its obligations under the Building Contract, any Professional Team Appointment, this Agreement, any Requisite Consent or any statutory duty obligation;
- 7.2.2 the Owner does not provide sufficient details, plans and specifications of it to enable the Developer to properly comply with its obligations in the remainder of this paragraph 7;
- 7.2.3 it is rejected by the Building Contractor in line with its rights under the Building Contract.
- 7.3 The Developer will acknowledge any request for a Variation as soon as reasonably practicable and in any event within 10 Working Days of receipt of written notification of such request.
- 7.4 Subject to paragraph 7.6, the Developer will as soon as reasonably practicable following receipt of request for a Variation use reasonable endeavours to provide a reasonable written estimate to the Owner of the Variation Cost and an estimate of the amount of time by which the Variation will delay the Date of Practical Completion (**Variation Estimate**) and in doing so the Developer will use reasonable endeavours to ensure that the costs are reasonable in the market.
- 7.5 The **Variation Cost** is the aggregate of:
- 7.5.1 the whole of the proper cost to the Developer of effecting the Variation and incorporating it into the Development including any proper costs of cancelling any pre-existing order for any item which is to be substituted or varied;

- 7.5.2 all bona fide proper additional costs attributable to delay, disruption and the acceleration of other items comprised in the Development;
 - 7.5.3 any resulting bona fide proper additional costs and expenses and/or additional fees payable to the Professional Team and/or the Building Contractor which shall include any expenses payable to the Building Contractor under the Building Contract;
 - 7.5.4 the proper and reasonable cost of preparation of any amended plans drawings and specifications and other documents as may be reasonably necessary;
 - 7.5.5 any other proper and reasonable costs properly associated with the implementation of the Variation;
 - 7.5.6 the Developer's reasonable administration fees (including reasonable and proper internal costs).
- 7.6 The Owner will give written notice to the Developer as soon as reasonably practicable (and in any event within [REDACTED]) after receipt of the Variation Estimate confirming whether or not it wishes the Developer to proceed with the relevant Variation and:
- 7.6.1 if the Owner notifies the Developer within that [REDACTED] period that it wishes to proceed with the Variation then:
 - (a) that Variation will form part of the Development;
 - (b) the Variation Cost shall be paid by the Owner along with other Development Costs in accordance with Schedule 4 and the sums calculated by reference to paragraph 7.5.6 shall be paid within [REDACTED] of written demand;
 - 7.6.2 if no such notice is given within that [REDACTED] period or if the Owner notifies the Developer that it does not wish to proceed with that Variation then the Developer will not include that Variation in the Development;
- 7.7 Whether or not the requested Variations are carried out the Owner shall, within [REDACTED] of receipt of a valid VAT invoice properly addressed to the Owner along with reasonable evidence that such costs have been incurred, pay to the Developer the proper and reasonable costs which the Developer has incurred in connection with the

preparation of the Variation Estimate and otherwise complying with this paragraph 7 (and for the avoidance of doubt, such costs shall not form part of the Development Costs).

7.8 Where the Developer carries out the requested Variations pursuant to this paragraph 7, all estimated dates given by the Developer to the Owner and the Start Date Longstop, the Target Date, the LADs Date, the Construction Long Stop Date and any other deadlines or longstop dates in this Agreement shall be extended by any period which in the reasonable opinion of the Employer's Agent is required due to the carrying out of the relevant Variations including any period required to obtain any additional Requisite Consents in respect of them.

7.9 For the purposes of the measurement of the Floor Area in accordance with this Agreement, any reduction in the Floor Area attributable to any Variation required by the Owner shall be ignored and the Floor Area to be agreed or determined in accordance with this Agreement shall assume that the Development has been undertaken without such Variation.

8 INSURANCE

8.1 From and including the Unconditional Date the Developer is to either:

8.1.1 procure that the Building Contractor insures the Development and all unfixed goods and materials in accordance with the Building Contract: or

8.1.2 itself insure the Development and all unfixed goods and materials:

- (a) in their full reinstatement cost including debris removal, demolition, site clearance and reinstatement and all design, legal and other professional fees;
- (b) against the Insured Risks ;
- (c) until the Date of Practical Completion;
- (d) in the joint names of the Developer and the Owner (whether or not with the Building Contractor) with the Developer named as first loss payee;
- (e) with reputable insurance offices in or having a business office in the United Kingdom or through underwriters at Lloyds.

8.2 The Developer will provide the Owner following reasonable written request with:

- 8.2.1 evidence of the insurance in the form of a letter from its brokers (and to include a copy of the policy);
 - 8.2.2 evidence of its renewal when reasonably requested by the Owner in the form of a broker's letter; and
 - 8.2.3 any endorsements or other amendments to the relevant policies of insurance or of any notification or other correspondence received from the insurers.
- 8.3 The Developer will use reasonable endeavours to procure that the Developer's insurers of the Development undertake to the Owner not to cancel the insurance without first giving the Owner at least 15 Working Days' prior written notice of its intention to do so.
- 8.4 If the Development is damaged or destroyed by any of the Insured Risks prior to the Date of Practical Completion:
 - 8.4.1 the Developer will use reasonable endeavours promptly to obtain the maximum payment of insurance monies;
 - 8.4.2 the Developer will expend those insurance monies received in respect of the Development in reinstating;
 - 8.4.3 the Developer will or shall use all reasonable endeavours to procure that the Building Contractor will rebuild, repair or otherwise reinstate the Development in a good and substantial manner in accordance with the terms of this Agreement and the Building Contract;
 - 8.4.4 if the monies received in respect of such insurance are insufficient for the purpose of rebuilding, repairing or reinstating the Development and the Property, the Developer is to make good any deficiency from its own resources;
- 8.5 During the progress of the Development until the Date of Practical Completion, the Developer will maintain or procure that the Building Contractor maintains public liability insurance naming the Owner as an insured party or one of the joint insured parties against liability to the public and to third parties in such sum as may be prudent being however for not less than [REDACTED] for the Development in respect of any one claim, such insurance to be effected with a reputable insurance office in or having a business office in the United Kingdom or through underwriters at Lloyds and on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of cover.

- 8.6 If the Developer does not insure or procure all of the insurances required by this paragraph 8 or fails to produce reasonable evidence that such insurances are in force within 20 Working Days of any written request which refers to the Owner's rights under this paragraph 8.6, the Owner may itself effect such insurance cover and the reasonable commercial cost of doing so (including any reasonable administration cost) may be deducted by the Owner from the payments due under this Agreement.

9 PROGRESS OF THE WORKS AND SITE MEETINGS

- 9.1 The Developer will keep the Owner reasonably informed at regular intervals (being not less than monthly) in relation to the progress of the Development throughout the conduct of the Development which shall include without limitation, details of any actual or anticipated problems or delays and on an open book basis, copies of all material cost communications in relation to the Building Contract including without limitation any reports provided by the Quantity Surveyor.
- 9.2 The Developer will hold site meetings not less than once every month and shall procure that such of the Building Contractor, the members of the Professional Team as appropriate having regard to the subject matter of the relevant meeting attend such meetings to review or plan progress or deal with any other matter relating to the carrying out of the Development including but not limited to costs meetings and the Owner is able to attend.
- 9.3 The Developer will:
- 9.3.1 give the Owner and the Owner's Representative not less than 3 Working Days' written notice of any site meetings called unless it has been agreed that site meetings will be held at regular intervals on dates and at times agreed in advance;
 - 9.3.2 provide to the Owner a detailed contractor's report in advance of each regular or other meeting held;
 - 9.3.3 permit the Owner and the Owner's Representative, if they so desire, to attend and participate in those site meetings;
 - 9.3.4 supply (at least 5 Working Days before the next meeting) the Owner and the Owner's Representative with copies of full minutes of the previous site meeting insofar as they relate to the Development and with monthly updates on the progress of the Development, whether or not they attend;

9.3.5 supply the Owner and the Owner's Representative with any of the following as are relevant:

- (a) all plans, drawings, specifications, structural calculations and other material from time to time comprising the Plans and Specifications;
- (b) applications for and correspondence relating to any Requisite Consents and the outcome of such applications;
- (c) final test certificates and specialist reports and surveys for the Development;
- (d) a copy of every instruction, variation, order, statement or certificate issued by or to the Building Contractor pursuant to the Building Contract no later than 5 Working Days after its issue;
- (e) an update on the status of the Building Contract and all Professional Team Appointments, Sub-Contracts and Warranty Deeds; and
- (f) such other information as is within the possession or control of the Developer and relates to the Development and which is requested by the Owner or the Owner's Representative;

9.3.6 in respect of any representations made by the Owner or the Owner's Representative:

- (a) have due regard to such representations and take proper account of them;
- (b) use all reasonable endeavours to procure that the members of the Professional Team and the Building Contractor have due regard to and take proper account of such representations;
- (c) use reasonable endeavours to procure that the Building Contractor sees that any Primary Sub-Contractors have due regard to and take proper account of such representations;
- (d) notify the Owner and the Owner's Representative of any material relevant written observations made by the members of the Professional Team or the Building Contractor or the Primary Sub-Contractors in respect of the Owner or the Owner's Representative's observations and representations.

10 COMMENCEMENT AND COMPLETION OF THE WORKS

The Developer shall use reasonable endeavours to achieve Practical Completion of the Development by the Target Date.

11 DELAYS/EXTENSIONS OF TIME

11.1 If:

11.1.1 all or any part of the Developer's obligations under this Agreement will be or are delayed for any reason; or

11.1.2 any part or parts of the Developer's obligations under this Agreement is likely to be or has been delayed beyond the Target Date; or

11.1.3 if there is likely to be a delay in achieving the Target Date by reason of any Delay Event;

the Developer shall (acting reasonably) give written notice of the expected delay (if any) and sufficient particulars of its cause to the Owner's Representative and the Employer's Agent within 5 Working Days of the Developer becoming aware of the same.

11.2 If there is any delay in commencing, carrying out or completing the Development arising from one of the matters detailed in paragraph 11.1.3 then the Start Date Longstop, the Target Date, the LADs Date and the Construction Long Stop Date and any other deadline for the Development or any part of it shall be extended by the period or periods of time equivalent to such period as the Employer's Agent certifies as being reasonable and proper in the light of the reasons for the delay.

11.3 An extension of time pursuant to paragraph 11.2 is not permitted to the extent that the Developer has not:

11.3.1 used and continued to use reasonable endeavours at reasonable cost to avoid or mitigate the effect of the delay; and/or

11.3.2 requested that the Employer's Agent takes (or included in their appointment a requirement for the Employer's Agent to take) due and proper regard of any representations made by the Owner or the Owner's Representative in connection with the proposed extension of the relevant Target Date and/or Construction Long Stop Date.

11.4 The length of any extension of time to be given pursuant to paragraph 11.2 shall be such period as the Employer's Agent properly certifies, provided that:

11.4.1 no extension shall be given to the extent that a delay is caused by any error, omission or default on the part of the Developer or any person for whom it is responsible;

11.4.2 any extension given shall be such as is fair and reasonable in the circumstances.

12 PRACTICAL COMPLETION

12.1 Issue of Certificate of Practical Completion

12.1.1 In relation to the Development the Developer will give (or will procure that the Employer's Agent) gives to the Owner and the Owner's Representative not less than:

- (a) four weeks' notice of the date when the Developer anticipates in its reasonable opinion the Development will achieve Practical Completion, such date being indicative only and not binding upon the Developer; and
- (b) 5 Working Days' notice of the date when the Employer's Agent will inspect the Development with a view to issuing the Certificate of Practical Completion.

12.1.2 Following the service of a notice pursuant to paragraph 12.1.1 the Developer shall keep the Owner informed of progress towards and any matters that affect or may affect the issue of the Certificate of Practical Completion.

12.1.3 The Owner and the Owner's Representative shall be entitled to attend the inspection of the Development by the Employer's Agent with a view to issuing the Certificate of Practical Completion and may make representations to the Employer's Agent.

12.1.4 If following initial inspection the Employer's Agent does not issue the Certificate of Practical Completion then the Developer will give further notice of any reinspection or subsequent inspection pursuant to paragraph 12.1.1(b) save that only 3 Working Days' notice need be given.

12.1.5 Any inspection pursuant to this paragraph must only be undertaken on a Working Day in daylight hours.

12.1.6 The Developer shall procure that the Employer's Agent has reasonable regard to any issues raised by the Owner's Representative pursuant to paragraph 12.1.3 and the Developer shall procure that the appointment of the Employer's Agent contains provisions requiring the Employer's Agent to only issue the Certificate of Practical Completion once he is satisfied that the Practical Completion Pre-Conditions have been met.

12.1.7 Prior to Practical Completion of the whole of the Development the Developer shall satisfy or procure satisfaction of the Practical Completion Pre-Conditions.

12.1.8 The Developer shall procure that the Employer's Agent, in relation to the issue of the Certificate of Practical Completion shall:-

- (a) act in accordance with his appointment;
- (b) have due and proper regard to any reasonable representations made in good time and at least 5 Working Days prior to anticipated Practical Completion by the Owner as to whether either a Certificate of Practical Completion should be issued at a particular time or what qualifications should be made to the Certificate of Practical Completion upon its issue but the Employer's Agent will not be bound by them;
- (c) issue the Certificate of Practical Completion in accordance with the Building Contract.

12.1.9 Unless completion of such works is a precondition to lawful occupation of the Property pursuant to any Requisite Consent, the Owner agrees and acknowledges that the Employer's Agent may certify Practical Completion even if planting or landscaping works are outstanding where it was not practical to complete those by the Date of Practical Completion because of the season in which the Date of Practical Completion.

12.1.10 The Developer shall procure that the Employer's Agent provides the Owner with a copy of the Certificate of Practical Completion as soon as reasonably practical and within 3 Working Days of the Date of Practical Completion.

12.2 Following Practical Completion

12.2.1 As soon as reasonably practicable following Practical Completion, the Developer will obtain any outstanding Requisite Consents that are required on

the completion of the Development and provide copies of them to Owner and provide to the Owner (within 20 Working Days of Practical Completion) all O&M manuals, health and safety files and other operational documentation relating to the Development.

12.2.2 The Developer will ensure that "as built" drawings will be provided to the Owner within 3 months of the Date of Practical Completion

13 DEFECTS

13.1 The Developer shall enforce the defects liability provisions in the Building Contract and shall ensure that all notified defects in accordance with the Building Contract and this Agreement are made good at no cost to the Owner in accordance with the terms of the Building Contract before or as soon as reasonably practicable after the end of the Defects Liability Period.

13.2 The Developer shall procure that no later than 3 months before the end of the Defects Liability Period the Employer's Agent inspects the Property and prepares a schedule of defects which shall include and itemise defects, shrinkages and other faults due to materials or workmanship not in accordance with the Building Contract and will:

13.2.1 ensure that the Employer's Agent promptly delivers a copy to the Owner in time for them to consider it and notify additions or revisions to the Employer's Agent;

13.2.2 where the Owner notifies additions or revisions to the schedule of defects, procure that where appropriate the Employer's Agent properly considers such additions or revisions and if agreed shall include them in a revised schedule and shall promptly provide a copy of the revised schedule to the Owner on each occasion that the Owner has requested additions or revisions;

13.2.3 ensure that the Employer's Agent delivers the schedule (with any approved additions) to the Building Contractor within the appropriate time limits for doing so under the Building Contract, and

13.2.4 procure that the Employer's Agent includes in its schedule of defects any defects reasonably and properly notified to it by the Owner at least 10 Working Days before the expiry of the Defects Liability Period.

13.3 The Developer will procure that the Employer's Agent inspects the Development with a view to the issue of the Certificate of Making Good Defects in accordance with the terms

of the Building Contract and will procure that the Employer's Agent gives the Owner not less than 5 Working Days' prior written notice of the date and time (being a Working Day during the hours of daylight), when the Employer's Agent will carry out its inspection with a view to issuing the Certificate of Making Good Defects.

- 13.4 The Owner and the Owner's Representative will be entitled to accompany the Employer's Agent on the inspection of the Development for the purposes of issuing the Certificate of Making Good Defects and to make representations on the proposal to issue the Certificate of Making Good Defects and the Developer will procure that the Employer's Agent takes proper account of any written representations made by them but he will not be bound by them.
- 13.5 If the Employer's Agent decides that the Certificate of Making Good Defects should not be issued following any inspection then the Developer shall request that the Employer's Agent shall provide to the Owner not less than 3 Working Days' notice as to the date upon which it intends to re-inspect the Development with a view to issuing the certificate and so that the notification, inspection and representation procedure shall be repeated in each case as often as shall be necessary.
- 13.6 The Developer will give a copy of the Certificate of Completion of Making Good Defects to the Owner as soon as reasonably practicable after the issue of the Certificate of Making Good Defects and in any event within 3 Working Days of its issue.

14 REMEDYING SNAGGING ITEMS AND DEFECTS

- 14.1 The Developer will procure that the Building Contractor remedies any snagging items identified in any snagging list attached to or issued with the Certificate of Practical Completion and/or any defects and/or omissions to the Development Works as may be notified by the Employer's Agent pursuant to paragraph 13.
- 14.2 In complying with paragraph 14.1 and/or in relation to the enforcement of the defects liability provisions under the Building Contract in accordance with paragraph 13 the Developer shall comply or procure compliance with the provisions of clause 5.5 so far as applicable and in doing so shall:
 - 14.2.1 cause the minimum amount of interference and disruption as is reasonably practicable to the use and/or occupation of the Property;
 - 14.2.2 comply with any reasonable directions and security precautions and (when relating to defects) safeguarding requirements of the Owner insofar as (excluding

those relating to safeguarding) they do not unreasonably prevent or delay the carrying out and completion of such works. The Developer shall not be liable for any delay caused by having to comply with such requirements;

14.2.3 procure that its agent agrees to be accompanied (if the Owner requires) by the Owner or such other person as is nominated from time to time by the Owner but if the Owner is not then available or does not then make such person available then the Developer will, to that extent, no longer have to comply with the relevant obligations on its part in this Agreement which necessitate such entry;

14.2.4 promptly make good any damage caused to the Property and leaves the Property clean and tidy and free from equipment, materials, tools and rubbish.

15 MEASUREMENT & ASSOCIATED CALCULATIONS

15.1 Prior to the First Measure Date the Developer and the Owner are to jointly instruct the Measurement Surveyor to measure the GIA of the ground floor slab of the Property at or as soon as reasonably practicable after the First Measure Date.

15.2 Prior to the Second Measure Date the Developer and the Owner are to jointly instruct the Measurement Surveyor to measure the GIA of the areas within the steel frame to ensure that the Lower Floor Area Tolerance will not be breached.

15.3 Prior to the Third Measure Date the Developer and the Owner are to jointly instruct the Measurement Surveyor to measure the Floor Area of the buildings at the Property.

15.4 The parties shall procure that the Measurement Surveyor shall give notice to the Developer and the Owner of its decision as to the actual sizes and dimensions (as applicable) of each of the areas so measured as soon as possible after each of the First Measure Date, the Second Measure Date and the Third Measure Date.

15.5 In the event that at the First Measure Date and/or the Second Measure Date it becomes apparent that the Floor Area is likely once measured at the Third Measure Date to be smaller than the Lower Floor Area Tolerance then the Developer will take corrective action to ensure that the Floor Area once measured at the Third Measure Date is equal to or greater than the Lower Floor Area Tolerance.

15.6 The cost of the Measurement Surveyor is a Development Cost.

16

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 UNDERTAKING OF OWNER WORKS PRIOR TO PRACTICAL COMPLETION

17.1 The Owner may commence the Owner Works from and including the Access Date provided that in the event that it is agreed between the Developer and the Owner that access prior to the Access Date is possible but may have an adverse impact on the Development Costs the Owner may elect to take such early access subject to be liable to pay to the Developer such actual and proper costs which may arise in addition to the Development Costs.

17.2 Whilst at the Property pursuant to this provision the Owner shall:

17.2.1 not cause any damage to the Property and shall make good any damage caused as soon as reasonably possible;

17.2.2 not interfere with the Development;

17.2.3 comply with the reasonable health and safety requirements of the Developer and the Contractor;

17.2.4 not do anything to invalidate or vitiate any insurance in relation to the Property.

SCHEDULE 3 – PC PRE-CONDITIONS

1. The Works have been carried out and completed in accordance with the Employer's Requirements and Contractor's Proposals and all Consents as evidence by the Certificate of Practical Completion and the parties agree that the Certificate of Practical Completion is sufficient evidence of satisfaction of this requirement.
2. Discharge of all conditions in any planning consent for the Development granted in accordance with the Town and Country Planning Act 1990 which requires to be discharged or satisfied before the commencement of the Development or the commencement of occupation other than any which relate to the use or occupation of the Property following completion of the Development and the Owner will fully co-operate with the Developer to ensure that they are satisfied or discharged.
3. Discharge of all conditions in any Statutory Agreement which requires to be discharged or satisfied before the commencement of the Development or the commencement of occupation other than any which relate to the use or occupation of the Property following completion of the Development and the Owner will fully co-operate with the Developer to ensure that they are satisfied or discharged.
4. All final construction issue drawings for the Property.
5. All testing, commissioning and witnessing are completed and all certification provided, as required in the DEIR schedule (annexed to this Agreement at Annexure 5) where the Accountable Party for Delivery is Contractor or Developer and in so far as the relevant item is to be delivered at the Property as part of the Development Works as shown in the Plans and Specifications.
6. The delivery by the Developer to the Owner of the completed Warranty Deeds pursuant to paragraph 6 of Schedule 2 or, if permitted pursuant to paragraph 4.3 of Schedule 1, product guarantees.
7. All Requisite Consents (other than any which relate solely to the use of the Property following completion required to allow occupation of the Development) have been obtained.
8. Provide all documentation as required in the DEIR schedule (annexed to this Agreement at Annexure 5) for handover.

9. Soft landings and familiarisation training having been given or an offer of it having been made to the Owner but without the Owner having taken up that offer within 14 days of it being made.

SCHEDULE 4 – PAYMENT OBLIGATIONS

1 GENERAL

- 1.1 The Owner shall pay the Development Costs in accordance with paragraph 2.
- 1.2 The Owner's obligations to pay the Development Costs will end only on determination of this Agreement and, so that there is no doubt on this issue, shall continue even after Practical Completion.

2 PAYMENT OF DEVELOPMENT COSTS

2.1 General

- 2.1.1 The Owner's obligation to make any further payment under this paragraph 2 (without prejudice to the Owner's liability to make payments then due but unpaid) shall:

- (a) cease if this Agreement shall have been properly terminated by the Owner in accordance with its terms; or
- (b) be suspended (with no interest for late payment payable during the proper period of any such suspension) if the Owner gives written notice to the Developer confirming that it is exercising its right to suspend payment under this paragraph for so long as a Serious Default is subsisting;

provided that any ability in the remainder of this Agreement to suspend payments by the Owner shall not apply so as to allow the Owner to suspend or refuse payment of sums which are referable to payments due or made under the Building Contract in respect of Development undertaken prior to the date of the suspension.

- 2.1.2 If the Owner suspends payment of Development Costs pursuant to paragraph 2.1.1 then it shall, within 5 Working Days of the cessation of the matter which gave rise to the right to suspend payment, pay to the Developer the full amount of all payments so suspended.

2.2 **Developer's Expenditure**

2.2.1 The Owner will, by way of monthly instalments, pay to the Developer the Development Costs that the Developer has incurred or which it has a liability to pay less any sums that have previously been paid by the Owner as Development Costs pursuant to this Schedule.

2.2.2 Any request for payment of Developer's Costs pursuant to paragraph 2.2.1 must be submitted to the Owner accompanied by:

- (a) written confirmation from the Developer addressed to the Owner that such sums are properly due and payable as Development Costs;
- (b) reasonable evidence that the sums have been incurred by or are a liability of the Developer;
- (c) a copy of any payment application issued under the Building Contract including any supporting documentation provided to the Developer or by the Developer in the case of a pay less notice; and
- (d) if applicable a valid VAT invoice from the Developer in respect of the costs claimed, addressed to the Owner;

2.3 **Payments of Development Costs**

2.3.1 The Developer shall, if the Owner's Representative requires it, liaise with the Owner's Representative to discuss the application and the Owner's Representative shall be permitted to make representations on the application.

2.3.2 The following procedures shall be adopted for the application for and making of payment of Development Costs by the Owner pursuant to this Schedule during the course of the Development in relation to sums under the Building Contract.

2.3.3 Within [REDACTED] after the issue by the Developer (or by the Employer's Agent on behalf of the Developer) of each interim payment advice issued under the Building Contract or (if earlier) the expiry of [REDACTED] from receipt of a payment application from the Building Contractor under the Building Contract (as applicable) the Developer shall produce to the Owner an application for payment which complies with any applicable requirements of paragraph 2.2 (a **Payment Application**).

- 2.3.4 The Owner will be permitted to accompany the Developer and/or the Employer's Agent on any meetings with the Building Contractor and/or any inspection to be made to verify the information provided by the Building Contractor with any application for payment made under the Building Contract. The Developer will have due regard to any representations made by the Owner regarding the substance or quantum of a Payment Application or the application for payment made by the Building Contractor but the issue of a Payment Notice to the Building Contractor will remain in the sole professional discretion of the Employer's Agent.
- 2.3.5 Notwithstanding any other provision of this Agreement the parties acknowledge and agree that for all purposes of this paragraph 2 any application for payment and any other information to be given in accordance with this Schedule can be given by email to the Owner at [REDACTED] or such other email address as may be from time to time notified in writing to the Developer).
- 2.3.6 Within [REDACTED] after receipt of a Payment Application the Owner shall pay to the Developer the amount in that Payment Application.
- 2.3.7 The Owner may, after payment, if it objects to the whole or any part of the amounts paid pursuant to the Payment Application, refer the issue for determination in accordance with clause 16 and the question as to whether:-
- (a) the amount or amounts objected to ought properly to have been paid by the Owner pursuant to this Agreement at the time at which in the ordinary course of events they would have been payable if the Payment Application had not been the subject of such an objection; and/or
 - (b) the objection raised by the Owner is or was a valid objection,
- and in the event that it is determined that the Owner's objection was valid the amounts which should not have been paid by the Owner shall at the discretion of the Owner either (a) be repaid by the Developer to the Owner within [REDACTED] together with interest at the Interest Rate; or (b) be deducted together with interest at the Interest Rate from the payment demanded in the subsequent Payment Application(s).
- 2.3.8 In relation to Payment Applications:

- (a) no Payment Application (other than any relating to any payment due under a Statutory Agreement and/or the final Payment Application submitted by the Developer) shall be for an aggregate amount of less than [REDACTED] exclusive of VAT; and
- (b) Payment Applications (other than the final Payment Application submitted by the Developer) may not be made more frequently than at monthly intervals.

2.3.9 The Developer shall, from time to time and to the extent not otherwise or previously provided in accordance with this Agreement, within 5 Working Days after receipt, provide to the Owner:

- (a) a copy of every certificate issued by the Employer's Agent under the Building Contract as to any amount due and payable, together with a copy of a calculation prepared by the Employer's Agent supporting the amount shown as due for payment under that certificate;
- (b) copies of all accounts and other documentary evidence in respect of any costs constituting Development Costs; and
- (c) an estimated final account (save for any matters which would normally be dealt with in a final account prepared under the Building Contract) and such supporting documents as the Owner may reasonably require.

2.4 **Payment recipient**

All payments in respect of Development Costs pursuant to Payment Applications under this Schedule shall be made direct to the Developer

2.5 **The Final Payment**

2.5.1 On the date which is [REDACTED] following the later of:

- (a) the Final Payment Date; and
- (a) the date on which the Developer has provided the Owner a valid VAT invoice (if VAT is payable) in respect of the Final Payment;

the Owner will make the Final Payment to the Developer.

2.5.2 If at the date provided for in paragraph 2.5.1, this Agreement has been validly determined by the Owner, no Final Payment shall be payable hereunder.

2.6 Suspension of Developer Obligations

2.6.1 If the Owner fails to pay a sum payable to the Developer under this Agreement (together with any VAT properly chargeable in respect of that payment) by the due date for payment and the failure continues for [REDACTED] after the Developer has given written notice to the Owner of its intention to suspend the performance of its obligations under this Agreement and the grounds for such suspension, the Developer, without affecting its other rights and remedies, may suspend performance of any or all of its obligations until payment is made in full.

2.6.2 Where the Developer has exercised its right of suspension under paragraph 2.6.1:

- (a) the Owner shall pay to the Developer a reasonable amount in respect of costs and expenses reasonably and properly incurred as a result of exercising the right;
- (b) it shall be entitled to a commensurate extension to each of Start Date Longstop, the Target Date, the LADs Date, the Construction Long Stop Date equal to the period during which the Developer suspends performance of its obligations

2.6.3 Applications in respect of any such costs and expenses shall be made to the Owner and the Developer shall with its application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

3 ACCOUNTING

3.1 The Developer must, at all times, maintain a full notional account (operated on normal accounting principles for monies paid and monies received) identifying all Development Costs paid.

3.2 On written demand not more frequently than once in any three months, the Developer must provide the Owner with a copy of the notional account referred to in paragraph 3.1.

3.3 The Owner will maintain records of payments made by the Owner pursuant to this Agreement and shall make such records available to the Developer on written demand.

4 VAT

VAT paid by the Owner to the extent it is recoverable.

5 REQUESTS FOR INFORMATION

The Developer shall promptly provide full responses to any reasonable enquiries or requests for information raised by the Owner in relation to the information or documentation provided by or on behalf of the Developer pursuant to this Schedule.

6 LATE PAYMENTS

If any payment due under this Schedule remains unpaid after its due date, the defaulting party shall pay interest at the Interest Rate on so much of the amount due as for the time being remains unpaid from the date the payment became due until the payment is made and received in cleared funds.

ANNEX 1 – PROFESSIONAL TEAM APPOINTMENTS

DATED _____ **2025**

THORPE PARK DEVELOPMENTS LIMITED (1)

and

[REDACTED]

APPOINTMENT

AS

QUANTITY SURVEYOR AND EMPLOYER'S AGENT

IN RESPECT OF

[THORPE PARK SIXTH FORM COLLEGE]

WALKER MORRIS LLP

33 Wellington Street

LEEDS

LS1 4DL

Tel: 0113 2832500

Fax: 0113 2459412

Ref: TPD00004.183

THIS APPOINTMENT IS MADE ON
BETWEEN:

2025

(1) **THORPE PARK DEVELOPMENTS LIMITED** (company number 04141504) whose registered office is at Europa House, 20 Esplanade, Scarborough, North Yorkshire, YO11 2AQ (the **Client**)

(2) [REDACTED]
[REDACTED]

WHEREBY IT IS AGREED as follows:

1 INTERPRETATION

In this Appointment unless the context requires otherwise:

1.1 The following words and expressions mean:

the Building Contract the building contract under which the Building Contractor is for the time being employed for the design and construction of the Development;

the Building Contractor the building contractor for the time being employed by the Client under the Building Contract;

BR Principal Contractor means the contractor or the person appointed by the Client from time to time to act as principal contractor pursuant to the Building Regulations and/or the Building Safety Act and accompanying legislation;

BR Principal Designer [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Building Regulations means the Building Regulations 2010;

Building Safety Act means the Building Safety Act 2022;

CDM Principal Contractor means the contractor or the person appointed by the Client from time to time to act as principal contractor pursuant to Regulation 5(1)(b) of the CDM Regulations;

CDM Principal Designer [REDACTED]

the CDM Regulations means the Construction (Design and Management) Regulations 2015;

the Client includes anyone to whom the benefit of this Appointment is validly assigned;

the Development [the development of the Property as a sixth form college as more particularly described in the Building Contract];

the Fee the fee set out in the Second Schedule;

Group Company means any subsidiary, subsidiary undertaking, holding company or holding undertaking of the Client, or any other company or undertaking which has the same ultimate holding company or parent undertaking as the Client (whether directly or indirectly) as defined in section 1159 and Schedule 6 and section 1162 and Schedule 7 of the Companies Act 2006;

the HGCR Act the Housing Grants, Construction and Regeneration Act 1996, Part II, as amended by the Local Democracy, Economic Development and Construction Act 2009, Part 8;

Organisational Capability means the appropriate management policies, procedures, systems and resources to ensure that individuals under the control of the Professional comply with their relevant competence requirements in accordance with the CDM Regulations and Building Regulations;

Other Professionals the other professionals and consultants involved in the Development at any time;

the Property [the site located at Thorpe Park, Leeds];

Related Entity means any body corporate or partnership entity which is at any time an 'associated person' or 'associate' of or in respect of the Client, or which is associated with the Client, as defined in and for the purposes of sections 121 and 131 of the Building Safety Act;

the Secretary of State for Education means the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT;

the Services the services set out in the First Schedule together with any Additional Services instructed under clause 4.

the Trust means the trust nominated by the Secretary of State for Education to operate the college following completion of the Development, such entity to be notified to the Professional as soon as reasonably practicable.

1.2 Any reference to any statute, including any reference in any definition in this clause, includes:

1.2.1 any amendment, modification, extension or re-enactment of it at any time;

1.2.2 all instruments, orders, plans, regulations, permissions, directions and any other form of subsidiary legislation at any time made, issued or given under or drawing validity from any statute; and

1.2.3 all European Union law, directives and regulations.

1.3 Any reference to any form of legal entity includes all other forms of legal entity.

1.4 Obligations by more than one person are joint and several and where any party under this Appointment at any time is more than one person references to it are to each person individually as well as jointly with the others comprising it.

1.5 The clause headings in this Appointment are for reference only and are not to be taken into account in its construction or interpretation.

2 APPOINTMENT

2.1 The Client appoints the Professional in respect of the Development and the Professional accepts the appointment.

2.2 The Professional shall:

2.2.1 subject to clause 2.2.2, provide the Services;

- 2.2.2 exercise the standard of skill and care reasonably to be expected of a competent consultant (in the discipline or disciplines to which the Services relate and in accordance with the normal standards of such professions) experienced in works of a similar size, scope and complexity to the Development in the provision of the Services and nothing in this Appointment shall be construed as requiring any higher or absolute standard in relation to the provision of the Services;
- 2.2.3 subject to the standard of skill and care referred to in clause 2.2.2 to the extent that the obligations in this sub-clause relate to the design of the Services and all elements of the Development for which the Professional is responsible, perform the Services with the intent to see that insofar as it relates to the Services the Development complies with all relevant planning permissions, listed building consents, building regulations and all other statutory and other consents and with all deeds and documents relating to the Development and the Property which the Client brings to its attention (the "Relevant Documents") and in doing so see the Building Contractor is made aware of each of the Relevant Documents;
- 2.2.4 promptly comply with all proper and reasonable instructions given to it by the Client except where it has a discretion exercisable as between the Client and any other person which it shall exercise fairly;
- 2.2.5 perform the Services in conjunction and harmony with the Client, the Other Professionals and the Building Contractor and their respective representatives, officers, employees and agents;
- 2.2.6 attend at the Property and attend all meetings concerning the Development as often as necessary or appropriate or as reasonably required by the Client in connection with the provision of the Services; and
- 2.2.7 subject to clause 2.2.2, notify the Client as soon as reasonably practicable if the Professional becomes aware of any circumstances which may cause the budgetary requirements of the Client for the Development or the time for completion of the Development to be increased;

2.3 The Professional warrants and undertakes to the Client that:

- 2.3.1 it shall comply with the requirements of the CDM Regulations and applicable Building Regulations in the performance of the Services and the duties and responsibilities placed on the Professional by those regulations and, without affecting the generality of this requirement, co-operate fully with the CDM Principal Designer and/or CDM Principal Contractor and/or the BR Principal Designer and/or BR Principal Contractor and supply all information required by him promptly;
- 2.3.2 it shall and has the skill, knowledge and experience (and, if the Professional is an organisation, the Organisational Capability), necessary to:
- (a) undertake the Services, in a manner that secures the health and safety of any person affected by the Development, as required under the CDM Regulations; and
 - (b) comply with regulations 11F, 11J and 11K of Part 2A of the Building Regulations;
- 2.3.3 it shall:
- (a) as and when requested to do so by the Client, produce adequate documentary evidence to the Client to demonstrate its compliance with clause 2.3.2;
 - (b) immediately notify the Client where the Professional ceases to satisfy the requirements of 2.3.2(b);
- 2.3.4 it shall liaise with and provide all reasonable assistance required by the Client, the accountable person and/or the principal accountable person under the Building Safety Act (where not the Client) and/or the BR Principal Designer and/or the BR Principal Contractor to prepare, collate and deliver in a timely manner all documents and materials relevant to the Services required pursuant to the Building Safety Act;
- 2.3.5 it has registered with its regulatory body and has complied with all conditions placed on it by its regulatory body with regards to competency as required under the Building Safety Act 2022.

- 2.4 Any Services performed by the Professional before the date of this Appointment shall be treated as having been performed under the terms of this Appointment, which supersedes any previous agreement or understanding between the Client and the Professional in respect of the Development.
- 2.5 In performing the Services, the Professional exercising the skill and care referred to in clause 2.2.2, shall at all times have due regard to the agreements and documents which have been entered into in respect of the Development provided that a copy of any such contract or contracts or the relevant part or parts shall have been supplied or made available to the Professional prior to the date of this Appointment or they have been provided after the date of this Appointment and they do not impact upon the nature and extent of the Services ("**Original Third Party Agreements**"). Where such contract or contracts (or relevant part or parts) have been supplied or made available to the Professional after the date of this Appointment and they impact upon the nature and extent of the Services, the Client may elect to deal with this as an Additional Service in line with clause 4 and where they do this shall be deemed a "**Further Third Party Agreement**". The Professional confirms they will perform the Services, exercising the skill and care referred to in clause 2.2.2, having due regard to the Further Third Party Agreements.
- 2.6 The Professional undertakes to the Client that it has exercised and that it will continue to exercise the standard of care set out in clause 2.2.2 in the performance of the Services so that it does not cause a breach of any obligation contained in the Original Third Party Agreements or Further Third Party Agreements by the Client.

3 FEES

- 3.1 The Client shall pay the Fee to the Professional in accordance with the Second Schedule and any sums paid to the Professional in respect of the Services or the Development before the date of this Appointment are deemed to have been paid on account of the Fee.
- 3.2 Unless the Second Schedule provides otherwise the Fee is inclusive of all costs, expenses, disbursements and overheads and the Professional shall not be entitled to reimbursement for any such item unless it was incurred with the Client's prior written authority.

- 3.3 The Professional shall maintain records of all (if any) costs, expenses, disbursements and overheads which it is entitled to claim from the Client and make them available to the Client when reasonably requested to do so.
- 3.4 The Fee is exclusive of VAT and the Client shall not be liable to pay any part of the Fee until the Professional submits a valid VAT invoice to the Client giving a breakdown and explanation of the sums included in the invoice including any costs, expenses, disbursements and overheads claimed.
- 3.5 For the purposes of the HGCR Act:
- 3.5.1 the due date for payment of each instalment of the Fee, whether interim or final, shall be the later of:
- (a) [REDACTED] after the payment date stated in the Second Schedule; and
 - (b) the date of submission of an invoice by the Professional in accordance with clause 3.4;
- 3.5.2 the final date for payment of the Fee, whether interim or final, shall be [REDACTED] from the due date referred to in clause 3.5.1;
- 3.5.3 the Client shall give notice to the Professional specifying:
- (a) the sum that the Client considers to be or to have been due at the payment due date in respect of that payment ("the Notified Amount"); and
 - (b) the basis on which that sum is calculated;
- 3.5.4 the notice under clause 3.5.3 shall be given no later than [REDACTED] after the date on which payment is due from the Client under clause 3.5.1;
- 3.5.5 if the Client fails to serve a notice in accordance with clause 3.5.3 then, provided the invoice submitted by the Professional sets out the sum that the Professional considers to be or to have been due at the payment due date and sets out the basis on which that sum is calculated then the sum specified in such invoice shall be the Notified Amount.

3.5.6 where the Client intends to pay less than the Notified Amount it shall give notice to the Professional no later than two days before the final date for payment of the monies specifying:

(a) the sum that the Client considers to be due on the date such notice is served; and

(b) the basis on which that sum is calculated;

3.6 In the event that the Client fails to pay any amount due to the Professional by the final date for payment of that amount (and a valid pay less notice has not been served) the Client shall pay simple interest on the amount due and unpaid as from the final date for payment to the date of payment at the rate of ■■■ per annum above the base rate from time to time of the Bank of England and the parties agree this is a substantial remedy under section 9 of the Late Payments of Commercial Debts (Interest) Act 1998.

4 ADDITIONAL SERVICES

4.1 If the Professional is instructed by the Client to undertake any services which it considers are additional to the services set out in the First Schedule and which would require an increase in the Fee (**the Additional Services**) then before complying with the instruction (except in the case of emergency instructions which require immediate action) the Professional will notify the Client and within three working days of the instruction the Professional will provide to the Client its proposed increase in the Fee, applying the hourly rates set out in the Second Schedule.

4.2 If the Client and the Professional are unable to agree on the additional fee the Professional shall not carry out the Additional Services, and shall not be entitled to payment for them, until it has received written confirmation from the Client requiring it to carry them out.

4.3 Following receipt of a notice under clause 4.2 the additional fee payable for the Additional Services will be as is fair and reasonable in the circumstances but shall be based on the rates and any payment arrangements set out in the Second Schedule.

4.4 No additional payment will be due in respect of the Additional Services if the Professional:

4.4.1 has not complied with the requirements of clauses 4.1 and 4.2; or

4.4.2 where and to the extent that the Additional Services have been necessitated in whole or part by any negligence, omission or default on the part of the Professional.

4.5 Unless it is otherwise agreed the Professional shall make an application for payment for Additional Services (where the same is payable under this clause) during the month following the performance of the Additional Services in question and the provisions of clause 3.5 shall apply.

5 PROVISION OF COLLATERAL WARRANTIES

5.1 Within [REDACTED] of written request by the Client the Professional shall execute warranty deeds in the form annexed to this Appointment as Annexure 1 in respect of the provision of the Services in favour of:

5.1.1 the Secretary of State for Education;

5.1.2 the Trust;

5.1.3 every organisation providing finance to the Client for the carrying out of the Development;

5.1.4 every purchaser of the Property or any substantial part of it from the Client;

5.1.5 every tenant taking a lease of the Property or any substantial part of it from either:

(a) the Client; or

(b) any purchaser of the Property or any part of it from the Client

subject in each case to any amendments which the Client requests and the Professional agrees (such agreement not to be unreasonably withheld or delayed) and shall comply with their terms once they are completed.

6 DESIGN

6.1 This clause 6 applies where and to the extent that the Professional is responsible for the design of the whole or any part of the Development.

- 6.2 Where the Client employs anyone other than the Professional to design any part of the Development the Professional shall co-ordinate the design of that part with the part of the design for which the Professional is responsible.
- 6.3 The Professional warrants that it has exercised and will continue to exercise the standard of skill and care referred to in clause 2.2.2 to see:
- 6.3.1 that the materials specified by it for use or incorporation in the Development are or will be in accordance with British Standards and Codes of Practice and/or any other regulations current at the date of specification; and
- 6.3.2 that no other material or method of use generally known at the time of specification to be deleterious to health and safety, to the integrity of buildings or other structures or plant or machinery or not in accordance with good building practice will be specified by it for use or incorporation in the Development and that it will not authorise any of them to be used.
- 6.4 Subject to clause 2.2.2, the Professional shall not make any alteration, addition to or omission from the design of the Development without the Client's prior written consent unless the alteration, addition or omission is required in an emergency and the Professional having used reasonable endeavours to secure the Client's consent has not been able to obtain it unless the Client has expressly refused to give it.

7 LICENCE TO USE PLANS ETC.

- 7.1 The copyright in all drawings, documents, reports, models, plans, specifications, CAD materials, bills of quantity, calculations, work, designs or inventions of any type provided by the Professional in connection with the Development at any time (the **Copyright Material**) shall remain vested in the Professional.
- 7.2 The Client and any person authorised by it is granted an irrevocable royalty free licence to use and reproduce the Copyright Material for all purposes relating to the Development and the Property including (without limitation) the completion, construction, reconstruction, modification, repair, use, letting, sale and advertisement of the Development and the Property but the Professional shall not be liable for any use of the Copyright Material for any purpose other than that for which the same was originally prepared by the Professional.

- 7.3 The licence granted by clause 7.2 includes the right to grant sub-licences and that licence and any sub-licences granted shall be transferable to third parties without restriction.
- 7.4 The Professional shall allow the Client and anyone authorised by it access to the Copyright Material at any time and shall supply copies of it to the Client and any authorised person on request including such number of copies of it in respect of the Development as finally built as the Client reasonably requires.
- 7.5 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the performance of the Services shall be paid by the Professional.
- 7.6 The Professional waives any rights it may have under Chapter IV (Moral Rights) and Part 1 of the Copyright Designs and Patents Act 1988 in relation to the Development or the Copyright Material.

8 INSURANCE

- 8.1 The Professional shall maintain professional indemnity insurance with reputable insurers lawfully carrying on insurance business in the UK/EU in an amount of not less than [REDACTED] in respect of each and every claim or series of claims and for a period of 12 years following the date of practical completion of the Development under the Building Contract (provided always that, where the Professional's liabilities under this Appointment include liability under section 38 of the Building Act 1984, the Professional shall maintain such insurance for such longer period as the Professional remains liable under that legislation or under the Civil Liability (Contribution) Act 1978) (the **Insurance**) subject to it being available at commercially reasonable rates.
- 8.2 Any increased or additional premium required by any insurer by reason of the Professional's own claims record or other acts or omissions or any other matters or things particular to the Professional shall be deemed to be within commercially reasonable rates under clause 8.1.
- 8.3 If the Insurance ceases to be available at commercially reasonable rates the Professional shall immediately inform the Client.

- 8.4 As and when reasonably requested to do so by the Client the Professional shall produce for inspection adequate documentary evidence that the Insurance is being maintained and that the current premium has been paid (but not in any way which would breach the terms of the policy which were then in force).
- 8.5 The Professional shall fully comply with all requirements of, or which relate to, the Insurance.

9 STAFF

- 9.1 The Professional shall allocate to perform the Services sufficient and appropriate numbers of appropriately qualified, competent and experienced personnel and shall ensure (where appropriate) such continuity of personnel as is or may be necessary to ensure at all times the proper, effective and efficient performance of the Services in accordance with the requirements of this Appointment.
- 9.2 The Client shall be entitled, at its absolute discretion, to require the replacement of any person employed by the Professional in the performance of the Services who, in the Client's reasonable opinion, has failed to perform satisfactorily or who has misconducted himself in any way or is otherwise deemed by the Client to be of insufficient competency for the requirements of this Appointment. The Professional shall promptly replace such person with an appropriately qualified and experienced substitute at no additional cost to the Client.

10 ASSIGNMENT AND SUB-CONTRACTING

- 10.1 This Appointment is personal to the Professional and it shall not without the prior written consent of the Client:
- 10.1.1 assign, charge or transfer any right or obligation under this Appointment to anyone else;
 - 10.1.2 delegate, sub-contract or transfer any of the Services to anyone else.
- 10.2 This Appointment may be assigned by the Client without the Professional's consent:
- 10.2.1 to any Group Company;
 - 10.2.2 by way of security or by way of re-assignment on redemption; and
 - 10.2.3 on two other occasions.

- 10.3 Notice of any assignment made under this clause shall be given to the Professional.
- 10.4 The Professional shall not contend that any assignee of this Deed under clause 10.1 is precluded from recovering any loss resulting from any breach of this Deed (whenever the breach occurred) because that person is an assignee of this Deed and not the original promisee or because the Client or any intermediate assignee escaped loss due to its having disposed of its interest in the Development.

11 APPROVALS

The obligations of the Professional under this Appointment shall not be lessened or affected by:

- 11.1 any power or duty of the Client or any of the Other Professionals to grant or withhold approval of, or object to, any matter in connection with the Development or to inspect the Development; or
- 11.2 the grant or failure to grant any approval, the making or failure to make any objection or any inspection of the Development or any failure to inspect it.

12 SUSPENSION AND TERMINATION

- 12.1 The Client may exclude any of the Services from this Appointment, suspend all or any of the Services or terminate this Appointment at any time on written notice to the Professional.
- 12.2 The Professional may terminate this Appointment if:
- 12.2.1 anything outside the Professional's control happens which delays or unreasonably impedes the carrying out of the Services for a period of [REDACTED]
- 12.2.2 the Client suspends all of the Services for a period [REDACTED]
- 12.2.3 the Client is in material default of its obligations under this Appointment and fails to remedy the default after being given reasonable written notice to do so
- in each case by reasonable written notice to the Client.
- 12.3 If any of the Services are excluded from this Appointment or this Appointment is terminated the Professional shall be entitled to part of the Fee calculated on a quantum meruit basis but shall not be entitled to any claims in respect of loss of profit.

- 12.4 If any of the Services are excluded from this Appointment, any or all of the Services are suspended under this Appointment or this Appointment is terminated the Professional shall take immediate steps to bring the Services, or the appropriate part of them, to an end in an orderly manner with all reasonable speed and economy.
- 12.5 Any exclusion of any of the Services from this Appointment, any suspension of any or all of the Services or the termination of this Appointment shall not affect the obligations of the parties in respect of the Services actually performed by the Professional which shall continue to apply.

13 PARTNERSHIP PROVISIONS

If the Professional is a partnership:

- 13.1 references in this Appointment to the **Professional** shall include references to each and every present and future partner of the partnership and any successor partnership;
- 13.2 the liability of each and every partner under this Appointment shall be joint and several;
- 13.3 this Appointment shall not terminate on the death, retirement or resignation of any partner;
- 13.4 the signatories on behalf of the Professional warrant to the Client that they are authorised to enter into this Appointment on behalf of the Professional and that this Appointment shall be effective and binding on every partner in the Professional.

14 CONFIDENTIALITY

Except as may be necessary for the proper performance of the Services or as otherwise required by law the Professional shall not at any time disclose to any third party or make use of any information of any kind relating to the Development. Nothing in this clause shall prevent the disclosure or use of any information to obtain insurance, professional or legal advice or during the course of any legal proceedings or where disclosure is required in accordance with any law or regulation.

15 LIMITATION

15.1 Without prejudice to any action or proceedings under this Appointment that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings for any breach of this Appointment whether in contract or in tort or in delict or in negligence or for breach of statutory duty or otherwise shall be commenced against the Professional after the expiry of 12 years from the date of practical completion of the relevant part of the Development under the Building Contract.

15.2 Without affecting any other limitation in this agreement, the Professional's liability under or in connection with this agreement shall be limited to [REDACTED] [REDACTED] for each and every claim or series of claims. This limit shall apply however that liability arises including a liability arising by breach of contract, arising by tort (including the tort of negligence) or arising by breach of statutory duty. Provided that this clause 15.2 shall not exclude or limit the Professional's liability for:

15.2.1 death or personal injury caused by the Professional's negligence; or

15.2.2 fraud or fraudulent misrepresentation.

16 NOTICES

Section 196 of the Law of Property Act 1925, as amended by the Recorded Delivery Service Act 1962, applies to the service of all notices in connection with this Appointment except that it shall be deemed to be amended as follows:

16.1 In this clause **Working Day** means any day from Monday to Friday (inclusive) other than bank or public holidays.

16.2 The final words of section 196(4) "and that service be delivered" shall be deleted and replaced with "and that service shall be deemed to be made on the second Working Day after the registered letter has been posted".

16.3 Any notice may be sufficiently served by facsimile when service shall be deemed to be made on the day of transmission if transmitted before 4.00 pm on a Working Day but otherwise on the next following Working Day.

17 JURISDICTION AND GOVERNING LAW

This Appointment shall be governed by and interpreted in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

18.1 A person who is not a party to this Appointment 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 that Act.

18.2 Notwithstanding clause 18.1, in the event that a building liability order (as such term is defined in the Building Safety Act) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Appointment as if it were named as "joint employer" under this Appointment and to rely on any report, survey or findings prepared by the Professional under the terms of this Appointment as if it had been named addressee of such report, survey or findings.

IN WITNESS of which the parties to this Deed have duly executed it on the date specified on page one.

THE FIRST SCHEDULE - THE SERVICES

SCOPE OF SERVICES AS EMPLOYER'S AGENT AND QUANTITY SURVEYOR

Part A

General Duties

- 1 In conjunction with the Other Professionals, discuss and consider with the Client its requirements and objectives, and review the Client's priorities, relating to the Development. As part of this exercise, the brief will be further developed in consultation with the Client and the Other Professionals incorporating all the Client's requirements and objectives.
- 2 So perform the Services and Additional Services, if any, (i) so as best to meet the Client's requirements and objectives as set out in the brief and in the Building Contract and (ii) to ensure, as far as it is within the Professional's reasonable control, the completion of the Development on time, within budget and to the performance and quality standards as set out in the brief and in the Building Contract or otherwise agreed in writing with the Client.
- 3 Generally, monitor and report to the Client upon the activities and performance of the Building Contractor under the Building Contract.
- 4 Act as a direct interface between the Client and the Building Contractor and so perform the Services and co-ordinate the activities of the Building Contractor to meet the Client's objectives and requirements set out in the brief and in the Building Contract or otherwise agreed in writing with the Client.
- 5 Check the existence and monitor the renewal of the professional indemnity insurance of the Building Contractor and any of its sub-contractors having a design responsibility in relation to the Development and obtain for the Client broker's letters confirming the terms of such insurance.
- 6 Having liaised with the Other Professionals, advise in connection with negotiation of the terms of the third party agreements in respect of the Development ("Third Party Agreements") in so far as they relate to the Development and liaise as appropriate with the Client's legal advisers in connection therewith.
- 7 Assist the Client in establishing financial management procedures (to be approved by the Client) for controlling the cost to the Client of the Development.

- 8 Submit to the Client, on a regular basis, written reports and all other relevant information as to the current status of every aspect of the Development relevant to the Professional's appointment having liaised with the Building Contractor and the Other Professionals as appropriate.
- 9 Attend regular meetings with the Client and, as appropriate, the Other Professionals and the Building Contractor. Take and distribute to the Client minutes of such meetings, if appropriate.
- 10 At all material times inform the Client, the Other Professionals and the Building Contractor of the need to make or give decisions, approvals or recommendations and/or to supply information in relation to all those aspects of the Development relevant to the Services by "critical" dates so as to avoid delay.
- 11 At the Client's request, provide such information and documentation in relation to the Development as may be required from time to time by any persons interested in the Development.
- 12 Co-operate with and assist the architect in his duties in relation to the Development and, in particular, in connection with his role as leader of the design team.
- 13 Generally provide all services which would reasonably be expected of a firm of Employer's Agents and Quantity Surveyors in relation to a project of the same nature, size, scope and complexity as the Development.
- 14 Manage the approval and monitoring process (by the Other Professionals) of any fitting out works in respect of the Development procured by any tenant(s) pursuant to any Third Party Agreement or otherwise, subject to the agreement of the appropriate additional fee.
- 15 Manage the overall cost of the Development and advise the Client of any alterations required and obtain authorisation for changes.
- 16 Use reasonable endeavours to ensure that variation costs are agreed in accordance with the change control procedures before any contract variations are formally issued.

Part B

Specific Duties

- 1 Obtain from the Client all information relevant to the performance of the Services and Additional Services, if any.
- 2 Visit the Property and carry out an initial appraisal.

- 3 In conjunction with the Other Professionals, advise the Client on the need for arrangements to be made for the carrying out of the following surveys and investigations in relation to the site;
 - (a) topographical surveys;
 - (b) dimensional surveys;
 - (c) measured surveys;
 - (d) environmental studies/surveys;
 - (e) other special investigations and/or surveys (including, but without limitation surveys to obtain details of construction in existence on or adjacent to the site).
- 4 Monitor the preparation of the design proposals by the Other Professionals for the construction of the Development to achieve, general compliance with the Client's design brief, budget / cost plan and programme for the Development ("Brief") and the requirements of the Client, including drawings, specifications, schedules, design reports, samples, and to enable competitive tenders to be obtained for the construction of the works.
- 5 Use reasonable endeavours to ensure that the Other Professionals and the Building Contractor obtain all necessary building regulation approvals and all other statutory approvals, consents or waivers in the proper manner and at the proper time and that all applications relating thereto are diligently pursued.
- 6 Assist the architect to obtain the Client's approval as to the type of construction, quality of materials and standard of workmanship required for the Development.
- 7 Use reasonable endeavours to ensure that the designs and specifications for the Development are compatible with the agreed budget for the Development.
- 8 Establish and develop a detailed "Project Cost Plan" and agree the same with the Client. Update the Project Cost Plan from time to time as necessary. Advise the Client on anticipated cash flow to facilitate payments under the Building Contract and the appointments of the Other Professionals where appropriate.
- 9 Monitor the progress of the design work relating to the Development and use reasonable endeavours to ensure that the design programme is adhered to and that all designs are submitted by the architect or Building Contractor (as the case may be) to the Client for comment and/or approval in good time having regard to the project programme.

- 10 Check that the Other Professionals and the Building Contractor, as appropriate, obtain all necessary building regulation approvals and all other statutory approvals, consents or waivers in the proper manner and at the proper time and that all applications relating thereto are diligently pursued.
- 11 In conjunction with the Building Contractor and Other Professionals assist in the preparation by the architect or the Building Contractor of and agree a project programme, including, design and production information for the Development, including (without limitation) principal activities and "critical" decision dates, and submit to the Client for approval.
- 12 Monitor the Building Contractor's and the design team's co-ordination of the production, distribution and approval of all production information, working and construction drawings, catalogues, samples, equipment details and all other pertinent documents relating to the works.
- 13 In conjunction with the Other Professionals assist in the preparation by the architect or the Building Contractor of a detailed programme or set of programmes for the procurement of the Development including (without limitation) dates and time periods for the ordering of long delivery items, negotiation or tender of specialist or major work packages, preparation of contract documents, negotiation or tender of the Building Contract, demolition, pre-construction work or activities, construction, phased completion (if any), commissioning and clearance of defects.
- 14 Prepare schedules of rates and other pricing documents fully describing the Development for the purposes of obtaining competitive, or negotiated, tenders in relation to the Building Contract.
- 15 In consultation with the Client and the Other Professionals, advise on the appropriate contract strategy, method of procurement, the appropriate forms of construction contract(s) and contract conditions in relation to the carrying out of the Development and liaise as appropriate with the Client's legal advisers in connection therewith.
- 16 Following consultation with the Other Professionals and the Client's legal advisers, agree the Building Contract documentation for the execution of the Development and advise as to division of the Development into sections, sectional completion dates, amounts of liquidated damages, insurance, bonds, guarantees and warranties in favour of the Client and third parties.
- 17 Having liaised with the Other Professionals, recommend to the Client a list of main contractors from whom tenders should be invited in respect of the Building Contract.

- 18 Having liaised with the Other Professionals, prepare an invitation for tender in respect of the Building Contract to be sent to selected tenderers, appraise and make recommendations on tenders, attend interviews with tenderers and assist in the negotiation of the form of the finally accepted tender. In particular, check tender submissions for arithmetical accuracy, level of pricing and pricing policy and advise on errors and qualifications in tenders and negotiate thereon; prepare and negotiate any further documentation required for adjustment of the tender total to the agreed contract sum.
- 19 Prepare the Employer's Requirements (as referred in the Building Contract) in liaison with the design team incorporating designs and specifications prepared by the design team, for incorporation in tender or negotiation documentation.
- 20 Where necessary, arrange with the approval of the Client for the advance ordering of plant, materials and equipment for the Development with long delivery periods.
- 21 Having liaised with the Other Professionals, advise as to the need for specialist work packages, agree lists of specialist sub-contractors and suppliers from whom tenders should be invited and having liaised with and with input from the Client's legal advisers agree contract documentation including warranties in favour of the Client and third parties.
- 22 In conjunction with the Other Professionals, report to the Client and make recommendations on specialist sub-contractors and suppliers tenders and obtain the Client's approval for the acceptance of such tenders.
- 23 In conjunction with the Other Professionals, the Building Contractor and the Client's legal advisors compile the Building Contract documentation (including the Employer's Requirements) and arrange for execution liaising with the Client's lawyers as appropriate. Check that all necessary insurances, bonds, guarantees and warranties are in place prior to granting the contractor possession of the site, unless otherwise agreed with the Client.
- 24 Monitor the checking of the quality of work being undertaken by the Building Contractor and his sub-contractors in relation to the works and its conformity with the approved drawings and specifications and the Building Contract.
- 25 Monitor through the Other Professionals and the Building Contractor the work of the gas, water, telephone and electricity utilities concerned with the execution of the Development.
- 26 Provide during the construction stages management services to monitor the progress of the works including visiting the site as and when required.

- 27 Monitor the preparation of monthly valuations and certificates for payment under the Building Contract.
- 28 Check that design information is issued by the Other Professionals, the Building Contractor and his specialist contractors in accordance with the project programme for the Development.
- 29 Establish and update a Project Cost Plan for the Development and advise the Client on anticipated cash flow to facilitate payments under the Building Contract and where appropriate the appointments of the Other Professionals.
- 30 Carry out the following financial services:
- (a) submit monthly financial reports to the Client incorporating data from the Other Professionals and highlighting the impact of any variations to the Project Cost Plan and cash flow(s);
 - (b) review previous financial advice to the Client in respect of the cost of the Development in the light of tenders received;
 - (c) up-date financial reports to the Client in light of design development and changes;
 - (d) With the assistance of the other members of the design team, from time to time provide estimates of the cost of variations to the works; and
 - (e) report to the Client on the financial impact of delays to the project programme, extensions of time claimed by and/or granted to the contractor and possible and actual disruption to the regular progress of the Development.
- 31 Provide to the Client on a regular basis with written reports and detailed information on the progress of the Development, including (without limitation):
- (a) actual expenditure compared to the Project Cost Plan and the estimated cost to completion;
 - (b) actual progress of the Development compared to the project programme and the work uncompleted; and
 - (c) actual and anticipated changes and their impact on the Development.
- 32 Check the draft final account submitted by the Building Contractor under the Building Contract and lead the negotiations for the settlement of the final account under the Building Contract as required and recommend the negotiated account to the Client for agreement.

- 33 In conjunction with the Other Professionals, use reasonable endeavours to ensure that all other final accounts are dealt with in accordance with the relevant contract conditions applicable thereto and that all claims in relation to the Development are settled, subject in respect of claims to the agreement of the appropriate additional fee.
- 34 Act generally as the Client's Quantity Surveyor in connection with the Building Contract, including (without limitation) carrying out the following services:
- (aa) interim, projected and final measurement and valuation of the Development;
 - (bb) valuation of draft instructions or variations proposed to be issued to the Building Contractor;
- Variations required by third parties and authorised by the Client will attract a fee of [REDACTED] of the value of the variation, with a minimum of [REDACTED]
- (cc) investigation, verification and recording of any claims for extension of time or additional monies by the Building Contractor, subject to the agreement of the appropriate additional fee.
- 35 Verify any claims for extensions of time or additional payments made by the Building Contractor under the Building Contract and advise the Client as to their anticipated impact upon the project programme and Project Cost Plan, subject to the agreement of the appropriate additional fee.
- 36 Carry out all the duties, and functions of the Employer's Agent under the Building Contract, including the receiving or issuing of applications, consents, instructions, notices, certificates, requests, statements or otherwise acting for the Client under the Building Contract. Such duties and functions to include, without prejudice to the generality of the foregoing, the following:
- (a) the issue of such instructions to the contractor as may be necessary under the Building Contract;
 - (b) on receipt of any application for Interim Payment (as defined in the Building Contract) from the contractor, investigation and verification of the same and authorisation of payment as necessary;

- (c) advising the Client on notices of payment and on any notices for withholding payment required which the employer is required to or may issue under the Building Contract and the timing of any such notices;
 - (d) making of any necessary extensions of time and/or recommendations for payment of direct loss and/or expense under the Building Contract, subject to the agreement of the appropriate additional fee;
 - (e) the maintenance of a comprehensive record of all matters concerned with the administration of the Building Contract;
 - (f) as appropriate, instruct the carrying out of tests, taking of samples and/or opening up of completed work to check that the works are being carried out in accordance with the standards required by the agreed specifications.
- 37 In conjunction with the design team, administer with due and proper regard the provisions of the Building Contract before and after practical completion of the works, including (without limitation) the issue of practical and sectional completion certificates, statements and/or notices, the preparation of snagging lists, and schedules of defects and other faults that appear in the works after practical completion, and inspect the rectification of any omissions, defects or other faults in the works which are outstanding at practical completion of the Development as detailed in the schedule prepared by the Client that relates to the issue of the statement of practical completion or which appear during the relevant defects liability period(s). Issue the certificates, notices or statements of completion and making good of defects.
- 38 Carry out any duties and functions ascribed to the Professional in any agreements for lease, liaising with the representatives of the tenants mentioned therein accordingly, subject to copies of any such agreements for lease having been provided to the Professional by the Client prior to the date of this Appointment.
- 39 Prior to practical completion of the Development, arrange for the Client to receive the necessary information for the purposes of insuring the Development.
- 40 Deal with settlement of the final account under the Building Contract and, in conjunction with the Other Professionals, recommend the negotiated account to the Client for agreement.
- 41 Use reasonable endeavours to ensure that all final accounts are dealt with in accordance with the relevant contract conditions applicable thereto and that all claims in relation to the Development are settled, subject in respect of claims to the agreement of the appropriate additional fee.

- 42 Not less than [REDACTED] to the anticipated date for practical completion of the Development, monitor the Building Contractor and the Other Professionals with respect to the delivery to the Client as soon as possible following practical completion (and in any event so as to enable the Client to comply with his obligations under the Third Party Agreements) of:
- (a) two reproducible copies of "as-built" architectural drawings, including all plumbing, sanitary, rainwater and drainage installations;
 - (b) two reproducible copies of "as-built" mechanical and electrical drawings, including copies of all test certificates, schedules of plant and machinery sub- contractors and suppliers and all guarantees and warranties pertaining thereto;
 - (c) the originals of all statutory consents, licences and approvals relating to the works;
 - (d) two copies of the appropriate confirmation from the planning authority (if any) relating to the discharge of relevant planning conditions and confirmation from the building control and fire authorities as to final approval of the completed works including (without limitation) confirmation from such authorities that the works can be occupied for their intended purpose(s);
 - (e) the health and safety file for the works prepared in accordance with the CDM Regulations; and
 - (f) any other documents that are necessary to enable the Client to comply with his obligations under the Third Party Agreements in relation to delivery of construction documentation, subject to a copy of such Third Party Agreements having been provided to the Professional by the Client prior to the date of this Appointment.
- 43 In consultation with the Other Professionals, monitor the progress of remedial works to the Development and the release of retention monies in accordance with the Building Contract.
- 44 Assist the Client in resolving any minor dispute and settling all minor claims arising under the Building Contract.
- 45 Monitor the execution and delivery of all collateral warranties from members of the Other Professionals, the Building Contractor and his sub-contractors to be given in favour of the Client and third parties.
- 46 The Professional acknowledges that if completion of the Development is intended to be sectional it shall perform any duties or obligations required accordingly, and in particular those

relating to practical completion or making good of defects certification and the like shall be performed in relation to each section as well as in relation to the works as a whole.

THE SECOND SCHEDULE - THE FEE

The fee payable to the Professional in respect of the Services shall be [REDACTED] payable by the following instalments:

<u>Stage</u>	<u>Description</u>	<u>Total</u>	<u>Cumulative</u>
1	Preparation and Briefing		
1.1	Initial Project Briefing	[REDACTED]	[REDACTED]
1.2	KiT Call meetings	[REDACTED]	[REDACTED]
1.3	Other pre-contract services including development of procurement strategy, programme input, Design Team meetings and documentation review (<i>paid monthly as works proceed</i>)	[REDACTED]	[REDACTED]
1.4	Preparation of expression of interest (EOI) enquiry and pre-qualification	[REDACTED]	[REDACTED]
2	Concept Design		
2.1	Issue of EOI/PQQ documentation to contractors	[REDACTED]	[REDACTED]
2.2	Review of EOI/PQQ responses, preparation of report and recommendations	[REDACTED]	[REDACTED]
2.3	Preparation of Stage 1 Tender Documentation	[REDACTED]	[REDACTED]
2.4	Issue of Stage 1 Tender Documents	[REDACTED]	[REDACTED]
2.5	Assessment of Stage 1 Tenders	[REDACTED]	[REDACTED]
2.6	Stage 1 tender report and recommendations	[REDACTED]	[REDACTED]
2.7	Other pre-contract services including cost input and Design Team Meetings (<i>paid monthly as works proceed</i>)	[REDACTED]	[REDACTED]
3	Spatial Co-ordination		
3.1	Pre-contract services including preparation of cost plan. Design Team meetings (<i>paid monthly as works proceed</i>)	[REDACTED]	[REDACTED]
3.2	Input to assist preparation of a pre-construction services agreement	[REDACTED]	[REDACTED]
4	Technical Design (<i>paid monthly as works proceed</i>)		
4.1	Pre-contract services including cost plan review. Design Team meetings	[REDACTED]	[REDACTED]
4.2	Preparation of Stage 2 Tender Documentation	[REDACTED]	[REDACTED]
4.3	Issue of Stage 2 Tender Documents	[REDACTED]	[REDACTED]
4.4	Assessment of Stage 2 Tenders	[REDACTED]	[REDACTED]

4.5	Stage 2 tender report and recommendations	██████	██████
4.6	Preparation of Contract Documents	██████	██████
4.7	Issue of Contract Documents	██████	██████
5	Construction (<i>paid monthly as works proceed</i>)		
5.1	Post contract services including monthly progress meetings, interim valuations, financial reports, contract administration; maximum construction period: 18 months	██████	██████
5.2	Final Account/ Final Statement	██████	██████
6	Handover		
6.1	Pre-handover notice(s)	██████	██████
6.2	Pre-handover inspection and snagging report	██████	██████
6.3	Issue of Practical Completion Statement	██████	██████
7	Use		
7.1	Pre-end of Rectification Period inspection notice(s)	██████	██████
7.2	End of Rectification Period inspection and report	██████	██████
7.3	Final inspection	██████	██████
7.4	Issue of Notice of Completion of Making Good	██████	██████
	TOTAL	██████	

Evaluation and instruction of variations will be subject to an additional fee of █████ of the value of the variation, subject to a minimum of fee of █████

The following rates shall apply for Additional Services.

Position	Hourly Rate
Partner	██████
Associate	██████
Senior Quantity Surveyor	██████
Quantity Surveyor	██████

Executed as a Deed by the Client

EXECUTED as a Deed by)

THORPE PARK DEVELOPMENTS LIMITED)

acting by two directors)

.....

Director signature

.....

Director name

.....

Director signature

.....

Director name

Executed as a Deed by the Professional

EXECUTED as a Deed by)

)

in the presence of:-)

Witness Signature.....

Witness Name.....

Witness Address

.....

.....

Witness Occupation.....

EXECUTED as a Deed by)

)

in the presence of:-)

Witness Signature.....

Witness Name.....

Witness Address

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Witness Occupation.....

EXECUTED as a Deed by)
[Redacted])
in the presence of:-)

Witness Signature.....
Witness Name.....
Witness Address
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Witness Occupation.....

EXECUTED as a Deed by)
[Redacted])
in the presence of:-)

Witness Signature.....
Witness Name.....
Witness Address
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Witness Occupation.....

EXECUTED as a Deed by)

)

in the presence of:-)

Witness Signature.....

Witness Name.....

Witness Address

.....

.....

Witness Occupation.....

ANNEXURE 1 – DEED OF WARRANTY

DATED_____ **[*****]**

[***] LIMITEDPLC (1)**

and

[***] LIMITEDPLC (2)**

and

[***] LIMITEDPLC (3)**

DEED OF COLLATERAL WARRANTY BY [***]**

RELATING TO [***]**

WALKER MORRIS LLP

33 Wellington Street

LEEDS

LS1 4DL

Tel: 0113 2832500

Fax: 0113 2459412

Draft no: [*****]

Ref: [*****]

THIS DEED IS MADE ON [***]**

BETWEEN:

- (1) [*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Professional**)
- (2) [[*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Developer**)]
- (3) [*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Beneficiary**)

IN CONSIDERATION of the sum of £1.00 paid by the Beneficiary, receipt of which the Professional acknowledges, it is agreed as follows:

1 INTERPRETATION

In this Deed unless the context requires otherwise:

1.1 The following words and expressions mean:

the Agreement an agreement dated [*****] and made between the Developer (1) and the Beneficiary (2) under which [the Developer agreed (inter alia) to [sell][let] the Property to the Beneficiary][the Beneficiary agreed to provide finance to the Developer for the carrying out of the Development];

the Appointment the appointment dated [*****] by which the Developer appointed the Professional as [*****] in connection with the Development;

the Beneficiary includes anyone to whom the benefit of this Deed is validly assigned;

the Building Contract the building contract entered into or to be entered into between the Developer (1) and the Contractor (2) for the design and carrying out of the Development and any replacement of it;

the Contractor [*****];

[**the Developer** [*****]];

the Development the [refurbishment][development] of the Property as described in [the Agreement and] the Building Contract;

Group Company means any subsidiary, subsidiary undertaking, holding company or holding undertaking of the Beneficiary, or any other company or undertaking which has the same ultimate holding company or parent undertaking as the Beneficiary (whether directly or indirectly) as defined in section 1159 and Schedule 6 and section 1162 and Schedule 7 of the Companies Act 2006 (as amended);

the Property [*****];

Related Entity means any body corporate or partnership entity which is at any time an 'associated person' or 'associate' of or in respect of the Beneficiary, or which is associated with the Beneficiary, as defined in and for the purposes of sections 121 and 131 of the Building Safety Act 2022.

- 1.2 Any reference to any form of legal entity includes all other forms of legal entity.
- 1.3 Obligations by more than one person are joint and several and where any party under this Deed at any time is more than one person references to it are to each person individually as well as jointly with the others comprising it.
- 1.4 The clause headings in this Deed are for reference only and shall not be taken into account in its construction or interpretation.

2 ACKNOWLEDGEMENT

The Professional acknowledges that it owes the Beneficiary a professional duty of care arising out of its position as a consultant to the Development and warrants that:

- 2.1 it has performed and will continue to perform its duties under the Appointment as required by, and in accordance with the Appointment; and
- 2.2 it has exercised and will continue to exercise the standard of skill and care reasonably to be expected of a competent consultant (in the discipline or disciplines to which the Services (as defined under the Appointment) relate and in accordance with the normal standards of such professions) experienced in works of a similar size, scope and complexity to the Development in the performance of its duties under the Appointment

but subject at all times to clause 8.2 the Professional shall not have any greater liability to the Beneficiary under this Deed than it would have had if the Beneficiary had been named as a joint client in the Appointment.

3 DELETERIOUS MATERIALS

The Professional further warrants that it has exercised and will continue to exercise the standard of skill and care referred to in clause 2 to see:

- 3.1 that the materials specified by it for use or incorporation in the Development are or will be in accordance with British Standards and Codes of Practice and/or any other regulations current at the date of specification; and
- 3.2 that no other material or method of use generally known at the time of specification to be deleterious to health and safety, to the integrity of buildings or other structures or plant or machinery or not in accordance with good building practice will be specified by it for use or incorporation in the Development and that it will not authorise any of them to be used.

4 LICENCE TO USE PLANS ETC.

- 4.1 The copyright in all drawings, documents, reports, models, plans, specifications, CAD materials, bills of quantity, calculations, work, designs or inventions of any type provided by the Professional in connection with the Development at any time (the **Copyright Material**) shall remain vested in the Professional.
- 4.2 The Beneficiary and any person authorised by it is granted an irrevocable royalty free licence to use and reproduce the Copyright Material for all purposes relating to the Development and the Property including (without limitation) the completion, construction, reconstruction, modification, repair, use, letting, sale and advertisement of the Development and the Property but the Professional shall not be liable for any use of the Copyright Material for any purpose other than that for which the same was originally prepared by the Professional.
- 4.3 The licence granted by clause 4.2 includes the right to grant sub-licences and that licence and any sub-licences granted shall be transferable to third parties without restriction.
- 4.4 The Professional shall allow the Beneficiary and anyone authorised by it access to the Copyright Material at any time and shall supply copies of it, or any part of it, to the Beneficiary and any authorised person on request.

- 4.5 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the performance of its services under the Appointment shall be paid by the Professional.
- 4.6 The Professional waives any rights it may have under Chapter IV (Moral Rights) and Part 1 of the Copyright Designs and Patents Act 1988 in relation to the Development or the Copyright Material.

5 INSURANCE

- 5.1 The Professional shall maintain professional indemnity insurance with reputable insurers lawfully carrying on insurance business in the UK/EU in an amount of not less than [REDACTED] in respect of each and every claim or series of claims and for a period of 12 years following the date of practical completion of the Development under the Building Contract (provided always that, where the Professional's liabilities under this Appointment include liability under section 38 of the Building Act 1984, the Professional shall maintain such insurance for such longer period as the Professional remains liable under that legislation or under the Civil Liability (Contribution) Act 1978) (the **Insurance**) subject to it being available at commercially reasonable rates.
- 5.2 Any increased or additional premium required by any insurer by reason of the Professional's own claims record or other acts or omissions or any other matters or things particular to the Professional shall be deemed to be within commercially reasonable rates under clause 5.1.
- 5.3 If the Insurance ceases to be available at commercially reasonable rates the Professional shall immediately inform the Beneficiary.
- 5.4 As and when reasonably requested to do so by the Beneficiary the Professional shall produce for inspection adequate documentary evidence that the Insurance is being maintained and that the current premium has been paid (but not in any way which would breach the terms of the policy then in force).
- 5.5 The Professional shall fully comply with all requirements of, or which relate to, the Insurance.

6 STEP IN RIGHTS [FUNDER AND DEVELOPER ONLY]

- 6.1 If the Agreement is terminated by the Beneficiary [Contractor the Professional shall on receipt of written notice from the Beneficiary accept the instructions of the Beneficiary, or its appointee, to the exclusion of the Developer in respect of the Appointment.
- 6.2 The Professional will not, without first giving the Beneficiary at least [REDACTED] [REDACTED] exercise any right it may have to terminate the Appointment, treat the Appointment as repudiated by the Developer or discontinue the performance of any of its duties under the Appointment.
- 6.3 The Professional's right to take any of the steps specified in clause 6.2 shall cease if before the expiry of the Professional's notice the Beneficiary serves written notice on the Professional requiring it to accept the instructions of the Beneficiary, or its appointee, to the exclusion of the Developer in respect of the Appointment.
- 6.4 Neither the Beneficiary, nor its appointee, shall have any liability to the Professional under the Appointment unless and until the Beneficiary gives notice to the Professional under clause 6.1 or clause 6.3 when the Beneficiary, or its appointee, as appropriate, shall be liable for the performance of the Developer's obligations under the Appointment, including the payment of all outstanding and future sums properly due to the Professional and the Professional shall be liable to the Beneficiary, or its appointee, as appropriate, for the performance of the Professional's obligations under the Appointment as well as the Professional's obligations under this Deed.
- 6.5 The Professional shall not be concerned or required to enquire whether, and shall be bound to assume that, as between the Developer and the Beneficiary, the Beneficiary is entitled to give any notice served under clause 6.1.
- 6.6 The Professional shall not incur any liability to the Developer in complying with this clause and the Developer confirms that the Beneficiary's rights under this clause override any obligations of the Professional to the Developer under the Appointment.
- 6.7 The Professional confirms to the Beneficiary that the Appointment is in existence at the date of this Deed and that all sums due to it under the Appointment are up to date.
- 6.8 The Developer has joined in this Deed to confirm its agreement to its terms.

- 6.9 Where the Professional has given rights in relation to the Appointment similar to those contained in this clause 6 to a party providing funding to the Developer for the carrying out of the Development (the Funder) then if both the Beneficiary and the Funder serve notice under clause 6.1 or clause 6.3 or its equivalent the notice served by the Funder shall prevail.

7 PARTNERSHIP PROVISIONS

If the Professional is a partnership:

- 7.1 references in this Deed to the **Professional** shall be to each and every present and future partner of the partnership and any successor partnership;
- 7.2 the liability of each and every partner under this Deed shall be joint and several;
- 7.3 this Deed shall not terminate on the death, retirement or resignation of any partner;
- 7.4 the persons executing this Deed on behalf of the Professional warrant to the Beneficiary that they are authorised to enter into this Deed on behalf of the Professional and that this Deed shall be effective and binding on every partner in the Professional.

8 GENERAL

- 8.1 Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this deed shall be commenced against the Professional after the expiry of 12 years from the date of practical completion (as defined by the Building Contract).
- 8.2 The Professional shall not exercise any right of legal or equitable set off or any rights of deduction that may be available under the Appointment against any entitlement of the Beneficiary, or its appointee, under this Deed.
- 8.3 The Beneficiary shall not be bound by any variation to the terms of the Appointment where that variation reduces the liability of the Professional to the Beneficiary under this Deed unless the Beneficiary has given written consent to the same.

- 8.4 The Professional will provide the Beneficiary, or its appointee, with any information relating to the Development that they reasonably request and which is in the Professional's possession or can be reasonably obtained.
- 8.5 The benefit of this Deed is in addition to any other rights or remedies whether in negligence or otherwise which the Beneficiary or its appointee may have against the Professional.

9 NOTICES

Section 196 of the Law of Property Act 1925, as amended by the Recorded Delivery Service Act 1962, applies to the service of all notices in connection with this Deed except that it shall be deemed to be amended as follows:

- 9.1 In this clause **Working Day** means any day from Monday to Friday (inclusive) other than bank or public holidays.
- 9.2 The final words of section 196(4) "and that service be delivered" shall be deleted and replaced with "and that service shall be deemed to be made on the second Working Day after the registered letter has been posted".
- 9.3 Any notice may be sufficiently served by facsimile when service shall be deemed to be made on the day of transmission if transmitted before 4.00 pm on a Working Day but otherwise on the next following Working Day.

10 ASSIGNMENT AND FURTHER DEEDS

- 10.1 The benefit of this Deed may be assigned without the Professional's [or the Developer's] consent:
- 10.1.1 to any Group Company;
 - 10.1.2 by way of security or by way of re-assignment on redemption; and
 - 10.1.3 on two other occasions.
- 10.2 Notice of any assignment made under this clause shall be given to the [Developer and the] Professional provided always that failure to provide such notice shall not in any way invalidate or otherwise affect the assignment.

- 10.3 The Professional shall not contend that any assignee of this Deed under clause 10.1 is precluded from recovering any loss resulting from any breach of this Deed (whenever the breach occurred) because that person is an assignee of this Deed and not the original promisee or because the Beneficiary or any intermediate assignee escaped loss due to its having disposed of its interest in the Development.
- 10.4 Except as allowed by this clause the benefit of this Deed is personal to the Beneficiary.
- 10.5 [The Professional agrees that, if the Beneficiary requires it, it will enter into further warranty deeds in respect of the Property in the same form as this Deed (with the omission of [the Developer as a party and except for clause 6 and] this sub-clause), with only any amendments that are needed to give proper meaning and efficacy to the further warranty deeds, in favour of every purchaser of the Property or any substantial part of it from the Beneficiary and/or every tenant taking a lease of the Property or any substantial part of it from either the Beneficiary or any purchaser of the Property or any part of it from the Beneficiary.]¹

11 JURISDICTION AND GOVERNING LAW

This Deed shall be governed by and interpreted in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 12.1 A person who is not a party to this Deed 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 that Act.
- 12.2 Notwithstanding clause 12.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

IN WITNESS of which the parties to this Deed have duly executed it on the date specified on page one.

¹ Funder and Purchasers only

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

SIGNED as a Deed (but not delivered)

until the date hereof) by the said)

[*****])

in the presence of)

the witness named below)

Name of witness

Address

Occupation

SIGNED as a Deed (but not delivered)

until the date hereof) by the said)

[*****])

in the presence of)

the witness named below)

Name of witness

Address

Occupation

DATED _____ 2025

THORPE PARK DEVELOPMENTS LIMITED (1)

and

[***] LIMITED PLC (2)**

APPOINTMENT

AS

[***]**

IN RESPECT OF

[THORPE PARK SIXTH FORM COLLEGE]

WALKER MORRIS LLP

33 Wellington Street

LEEDS

LS1 4DL

Tel: 0113 2832500

Fax: 0113 2459412

Ref: TPD00004.183

THIS APPOINTMENT IS MADE ON
BETWEEN:

2025

- (1) **THORPE PARK DEVELOPMENTS LIMITED** (company number 04141504) whose registered office is at Europa House, 20 Esplanade, Scarborough, North Yorkshire, YO11 2AQ (the **Client**)
- (2) **[*****] LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Professional**)

WHEREBY IT IS AGREED AS FOLLOWS:

1 INTERPRETATION

In this Appointment unless the context requires otherwise:

1.1 The following words and expressions mean:

the Building Contract the building contract under which the Building Contractor is for the time being employed for the design and construction of the Development;

the Building Contractor the building contractor for the time being employed by the Client under the Building Contract;

BR Principal Contractor means the contractor or the person appointed by the Client from time to time to act as principal contractor pursuant to the Building Regulations and/or the Building Safety Act and accompanying legislation;

BR Principal Designer

[REDACTED]

Building Regulations means the Building Regulations 2010;

Building Safety Act means the Building Safety Act 2022;

CDM Principal Contractor means the contractor or the person appointed by the Client from time to time to act as principal contractor pursuant to Regulation 5(1)(b) of the CDM Regulations;

CDM Principal Designer [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

the CDM Regulations the Construction (Design and Management) Regulations 2015;

the Client includes anyone to whom the benefit of this Appointment is validly assigned, novated or transferred;

the Development [the development of the Property as a sixth form college as more particularly described in the Building Contract];

the Fee the fee set out in the Second Schedule;

Group Company means any subsidiary, subsidiary undertaking, holding company or holding undertaking of the Client, or any other company or undertaking which has the same ultimate holding company or parent undertaking as the Client (whether directly or indirectly) as defined in section 1159 and Schedule 6 and section 1162 and Schedule 7 of the Companies Act 2006;

the HGCR Act the Housing Grants, Construction and Regeneration Act 1996, Part II, as amended by the Local Democracy, Economic Development and Construction Act 2009, Part 8;

Organisational Capability means the appropriate management policies, procedures, systems and resources to ensure that individuals under the control of the Professional comply with their relevant competence requirements in accordance with the CDM Regulations and Building Regulations;

Other Professionals the other professionals and consultants involved in the Development at any time;

the Property [the site located at Thorpe Park, Leeds];

Related Entity means any body corporate or partnership entity which is at any time an 'associated person' or 'associate' of or in respect of the Client, or which is associated with the Client, as defined in and for the purposes of sections 121 and 131 of the Building Safety Act;

the Secretary of State for Education means the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT;

the Services the services set out in the First Schedule together with any Additional Services instructed under clause 4;

the Trust means the trust nominated by the Secretary of State for Education to operate the college following completion of the Development, such entity to be notified to the Professional as soon as reasonably practicable.

1.2 Any reference to any statute, including any reference in any definition in this clause, includes:

1.2.1 any amendment, modification, extension or re-enactment of it at any time; and

1.2.2 all instruments, orders, plans, regulations, permissions, directions and any other form of subsidiary legislation at any time made, issued or given under or drawing validity from any statute.

1.3 Any reference to any form of legal entity includes all other forms of legal entity.

1.4 Obligations by more than one person are joint and several and where any party under this Appointment at any time is more than one person references to it are to each person individually as well as jointly with the others comprising it.

1.5 The clause headings in this Appointment are for reference only and are not to be taken into account in its construction or interpretation.

2 APPOINTMENT

2.1 The Client appoints the Professional in respect of the Development and the Professional accepts the appointment.

2.2 The Professional shall:

2.2.1 provide the Services;

2.2.2 exercise the standard of skill and care reasonably to be expected of a competent consultant experienced in works of a similar size, scope and complexity to the Development in the provision of the Services;

- 2.2.3 perform the Services so that the Development complies with all relevant planning permissions, listed building consents, building regulations and all other statutory and other consents and with all deeds and documents relating to the Development and the Property which the Client brings to its attention;
- 2.2.4 promptly comply with all proper instructions given to it by the Client except where it has a discretion exercisable as between the Client and any other person which it shall exercise fairly;
- 2.2.5 perform the Services in conjunction and harmony with the Client, the Other Professionals and the Building Contractor and their respective representatives, officers, employees and agents;
- 2.2.6 attend at the Property and attend all meetings concerning the Development as often as necessary or appropriate or as reasonably required by the Client in connection with the provision of the Services; and
- 2.2.7 notify the Client as soon as reasonably practicable if the Professional becomes aware of any circumstances which may cause the budgetary requirements of the Client for the Development or the time for completion of the Development to be increased.

2.3 The Professional warrants and undertakes to the Client that:

- 2.3.1 it shall comply with the requirements of the CDM Regulations and applicable Building Regulations in the performance of the Services and the duties and responsibilities placed on the Professional by those regulations and, without affecting the generality of this requirement, co-operate fully with the CDM Principal Designer and/or CDM Principal Contractor and/or the BR Principal Designer and/or BR Principal Contractor and supply all information required by him promptly;
- 2.3.2 it shall and has the skill, knowledge and experience (and, if the Professional is an organisation, the Organisational Capability), necessary to:
 - (a) undertake the Services, in a manner that secures the health and safety of any person affected by the Development, as required under the CDM Regulations; and

(b) comply with regulations 11F, 11J and 11K of Part 2A of the Building Regulations;

2.3.3 it shall:

(a) as and when requested to do so by the Client, produce adequate documentary evidence to the Client to demonstrate its compliance with clause 2.3.2;

(b) immediately notify the Client where the Professional ceases to satisfy the requirements of 2.3.2(b);

2.3.4 it shall liaise with and provide all reasonable assistance required by the Client, the accountable person and/or the principal accountable person under the Building Safety Act (where not the Client) and/or the BR Principal Designer and/or the BR Principal Contractor to prepare, collate and deliver in a timely manner all documents and materials relevant to the Services required pursuant to the Building Safety Act;

2.3.5 it has registered with its regulatory body and has complied with all conditions placed on it by its regulatory body with regards to competency as required under the Building Safety Act 2022.

2.4 Any Services performed by the Professional before the date of this Appointment shall be treated as having been performed under the terms of this Appointment, which supersedes any previous agreement or understanding between the Client and the Professional in respect of the Development.

- 2.5 In performing the Services, the Professional exercising the skill and care referred to in clause 2.2.2, shall at all times have due regard to the agreements and documents which have been entered into in respect of the Development provided that a copy of any such contract or contracts or the relevant part or parts shall have been supplied or made available to the Professional prior to the date of this Appointment or they have been provided after the date of this Appointment and they do not impact upon the nature and extent of the Services ("**Original Third Party Agreements**"). Where such contract or contracts (or relevant part or parts) have been supplied or made available to the Professional after the date of this Appointment and they impact upon the nature and extent of the Services, the Client may elect to deal with this as an Additional Service in line with clause 4 and where they do this shall be deemed a "**Further Third Party Agreement**". The Professional confirms they will perform the Services, exercising the skill and care referred to in clause 2.2.2, having due regard to the Further Third Party Agreements.
- 2.6 The Professional undertakes to the Client that it has exercised and that it will continue to exercise the standard of care set out in clause 2.2.2 in the performance of the Services so that it does not cause a breach of any obligation contained in the Original Third Party Agreements or Further Third Party Agreements by the Client.

3 FEES

- 3.1 The Client shall pay the Fee to the Professional in accordance with the Second Schedule and any sums paid to the Professional in respect of the Services or the Development before the date of this Appointment are deemed to have been paid on account of the Fee.
- 3.2 Unless the Second Schedule provides otherwise the Fee is inclusive of all costs, expenses, disbursements and overheads and the Professional shall not be entitled to reimbursement for any such item unless it was incurred with the Client's prior written authority.
- 3.3 The Professional shall maintain records of all (if any) costs, expenses, disbursements and overheads which it is entitled to claim from the Client and make them available to the Client when reasonably requested to do so.

3.4 The Fee is exclusive of VAT and the Client shall not be liable to pay any part of the Fee until the Professional submits a valid VAT invoice to the Client giving a breakdown and explanation of the sums included in the invoice including any costs, expenses, disbursements and overheads claimed.

3.5 For the purposes of the HGCR Act:

3.5.1 the due date for payment of each instalment of the Fee, whether interim or final, shall be the later of:

(a) [REDACTED] after the payment date stated in the Second Schedule; and

(b) the date of submission of an invoice by the Professional in accordance with clause 3.4;

3.5.2 the final date for payment of the Fee, whether interim or final, shall be [REDACTED] from the due date referred to in clause 3.5.1;

3.5.3 the Client shall give notice to the Professional specifying:

(a) the sum that the Client considers to be or to have been due at the payment due date in respect of that payment ("the Notified Amount"); and

(b) the basis on which that sum is calculated;

3.5.4 the notice under clause 3.5.3 shall be given no later than [REDACTED] after the date on which payment is due from the Client under clause 3.5.1;

3.5.5 if the Client fails to serve a notice in accordance with clause 3.5.3 then, provided the invoice submitted by the Professional sets out the sum that the Professional considers to be or to have been due at the payment due date and sets out the basis on which that sum is calculated then the sum specified in such invoice shall be the Notified Amount.

3.5.6 where the Client intends to pay less than the Notified Amount it shall give notice to the Professional no later than two days before the final date for payment of the monies specifying:

(a) the sum that the Client considers to be due on the date such notice is served; and

(b) the basis on which that sum is calculated.

- 3.6 In the event that the Client fails to pay any amount due to the Professional by the final date for payment of that amount (and a valid pay less notice has not been served) the Client shall pay simple interest on the amount due and unpaid as from the final date for payment to the date of payment at the rate of [REDACTED] per annum above the base rate from time to time of the Bank of England and the parties agree this is a substantial remedy under section 9 of the Late Payments of Commercial Debts (Interest) Act 1998.

4 ADDITIONAL SERVICES

- 4.1 If the Professional is instructed by the Client to undertake any services which it considers are additional to the services set out in the First Schedule and which would require an increase in the Fee (**the Additional Services**) then before complying with the instruction (except in the case of emergency instructions which require immediate action) the Professional will notify the Client and within three working days of the instruction the Professional will provide to the Client its proposed increase in the Fee, applying the hourly rates set out in the Second Schedule.
- 4.2 If the Client and the Professional are unable to agree on the additional fee the Professional shall not carry out the Additional Services, and shall not be entitled to payment for them, until it has received written confirmation from the Client requiring it to carry them out.
- 4.3 Following receipt of a notice under clause 4.2 the additional fee payable for the Additional Services will be as is fair and reasonable in the circumstances but shall be based on the rates and any payment arrangements set out in the Second Schedule.
- 4.4 No additional payment will be due in respect of the Additional Services if the Professional:
- 4.4.1 has not complied with the requirements of clauses 4.1 and 4.2; or
- 4.4.2 where and to the extent that the Additional Services have been necessitated in whole or part by any negligence, omission or default on the part of the Professional.

- 4.5 Unless it is otherwise agreed the Professional shall make an application for payment for Additional Services (where the same is payable under this clause) during the month following the performance of the Additional Services in question and the provisions of clause 3.5 shall apply.

5 PROVISION OF COLLATERAL WARRANTIES

- 5.1 Within 10 working days of written request by the Client the Professional shall execute warranty deeds in the form annexed to this Appointment as Annexure 1 in respect of the provision of the Services in favour of:

- 5.1.1 the Secretary of State for Education;
- 5.1.2 the Trust;
- 5.1.3 the Client (in the event that this Appointment is novated to the Building Contractor in accordance with the terms of this Appointment);
- 5.1.4 every organisation providing finance to the Client for the carrying out of the Development;
- 5.1.5 every purchaser of the Property or any part of it from the Client;
- 5.1.6 every tenant taking a lease of the Property or any part of it from either:
 - (a) the Client; or
 - (b) any purchaser of the Property or any part of it from the Client

subject in each case to any amendments which the Client requests and the Professional agrees (such agreement not to be unreasonably withheld or delayed) and shall comply with their terms once they are completed.

6 DESIGN

- 6.1 This clause applies where and to the extent that the Professional is responsible for the design of the whole or any part of the Development.
- 6.2 Where the Client employs anyone other than the Professional to design any part of the Development the Professional shall co-ordinate the design of that part with the overall design of the Development or with the part of the design for which the Professional is responsible.

- 6.3 The Professional warrants that it has exercised and will continue to exercise the standard of skill and care referred to in clause 2.2.2 to ensure:
- 6.3.1 that the materials specified by it for use or incorporation in the Development are or will be in accordance with British Standards and Codes of Practice and/or any other regulations current at the date of specification;
 - 6.3.2 no materials shall be specified which are not in accordance with the British Council for Offices latest publication "Good Practice in the Selection of Construction Materials" (or such further publication which may supersede or amend this); and
 - 6.3.3 that no other material or method of use generally known at the time of specification to be deleterious to health and safety, to the integrity of buildings or other structures or plant or machinery or not in accordance with good building practice will be specified by it for use or incorporation in the Development and that it will not authorise any of them to be used.
- 6.4 The Professional shall not make any alteration, addition to or omission from the design of the Development without the Client's prior written consent unless the alteration, addition or omission is required in an emergency and the Professional having used reasonable endeavours to secure the Client's consent has not been able to obtain it unless the Client has expressly refused to give it.

7 LICENCE TO USE PLANS ETC.

- 7.1 The copyright in all drawings, documents, reports, models, plans, specifications, CAD materials, bills of quantity, calculations, work, designs or inventions of any type provided by the Professional in connection with the Development at any time (the **Copyright Material**) shall remain vested in the Professional.
- 7.2 The Client and any person authorised by it is granted an irrevocable royalty free licence to use and reproduce the Copyright Material for all purposes relating to the Development and the Property including (without limitation) the completion, construction, reconstruction, modification, extension, repair, use, letting, sale and advertisement of the Development and the Property but the Professional shall not be liable for any use of the Copyright Material for any purpose other than that for which it was originally prepared by the Professional.

- 7.3 The licence granted by clause 7.2 includes the right to grant sub-licences and that licence and any sub-licences granted shall be transferable to third parties without restriction.
- 7.4 The Professional shall allow the Client and anyone authorised by it access to the Copyright Material at any time and shall supply copies of it to the Client and any authorised person on request including such number of copies of it in respect of the Development as finally built as the Client reasonably requires.
- 7.5 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the performance of the Services shall be paid by the Professional who shall indemnify the Client against all claims, proceedings, damages, costs and expenses suffered or incurred by the Client because of the Professional infringing or being held to infringe any intellectual property rights in the performance of the Services.
- 7.6 The Professional waives any rights it may have under Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patents Act 1988 in relation to the Development or the Copyright Material.

8 **INSURANCE**

- 8.1 The Professional shall maintain professional indemnity insurance in an amount of not less than £[*****] in respect of each and every claim from the date of this Appointment and for a period of 15 years following the date of practical completion of the Development under the Building Contract (the **Insurance**) subject to it being available at commercially reasonable rates.
- 8.2 Any increased or additional premium required by any insurer by reason of the Professional's own claims record or other acts or omissions or any other matters or things particular to the Professional shall be deemed to be within commercially reasonable rates under clause 8.1.
- 8.3 If the Insurance ceases to be available at commercially reasonable rates the Professional shall immediately inform the Client.
- 8.4 As and when reasonably requested to do so by the Client the Professional shall produce for inspection adequate documentary evidence that the Insurance is being maintained and that the current premium has been paid.

- 8.5 The Professional shall fully comply with all requirements of, or which relate to, the Insurance.

9 STAFF

- 9.1 The Professional shall allocate to perform the Services sufficient and appropriate numbers of appropriately qualified, competent and experienced personnel and shall ensure (where appropriate) such continuity of personnel as is or may be necessary to ensure at all times the proper, effective and efficient performance of the Services in accordance with the requirements of this Appointment.
- 9.2 The Client shall be entitled, at its absolute discretion, to require the replacement of any person employed by the Professional in the performance of the Services who, in the Client's reasonable opinion, has failed to perform satisfactorily or who has misconducted himself in any way or is otherwise deemed by the Client to be of insufficient competency for the requirements of this Appointment. The Professional shall promptly replace such person with an appropriately qualified and experienced substitute at no additional cost to the Client.

10 ASSIGNMENT AND SUB-CONTRACTING

- 10.1 This Appointment is personal to the Professional and it shall not without the prior written consent of the Client:
- 10.1.1 assign, charge or transfer any right or obligation under this Appointment to anyone else;
- 10.1.2 delegate, sub-contract or transfer any of the Services to anyone else and for the avoidance of doubt, the Professional shall be responsible for any services that it so delegates, sub-contracts or transfers to a third party as if it had performed those services itself.
- 10.2
- 10.2.1 This Appointment may be assigned by the Client without the Professional's consent:
- (a) to any Group Company;
- (b) by way of security or by way of re-assignment on redemption; and

(c) on two other occasions.

- 10.3 This Appointment may be transferred by the Client to the Building Contractor without the consent of the Professional being required and the Professional shall enter into a deed of novation in the form of the deed annexed to this Appointment as Annexure 2 subject to any amendments which the Client shall reasonably require.
- 10.4 Notice of any assignment made under this clause shall be given to the Professional provided always that failure to provide such notice shall not in any way invalidate or otherwise affect the assignment.

11 APPROVALS

The obligations of the Professional under this Appointment shall not be lessened or affected by:

- 11.1 any power or duty of the Client or any of the Other Professionals to grant or withhold approval of, or object to, any matter in connection with the Development or to inspect the Development; or
- 11.2 the grant or failure to grant any approval, the making or failure to make any objection or any inspection of the Development or any failure to inspect it.

12 SUSPENSION AND TERMINATION

- 12.1 The Client may exclude any of the Services from this Appointment, suspend all or any of the Services or terminate this Appointment at any time on written notice to the Professional.
- 12.2 The Professional may terminate this Appointment if:
- 12.2.1 anything outside the Professional's control happens which delays or unreasonably impedes the carrying out of the Services for a period of [REDACTED]
- 12.2.2 the Client suspends all of the Services for a period of [REDACTED]
- 12.2.3 the Client is in material default of its obligations under this Appointment and fails to remedy the default after being given reasonable written notice to do so
- in each case by reasonable written notice to the Client.

- 12.3 If any of the Services are excluded from this Appointment or this Appointment is terminated the Professional shall be entitled to part of the Fee calculated on a quantum meruit basis but shall not be entitled to any claims in respect of loss of profit.
- 12.4 If any of the Services are excluded from this Appointment, any or all of the Services are suspended under this Appointment or this Appointment is terminated the Professional shall take immediate steps to bring the Services, or the appropriate part of them, to an end in an orderly manner with all reasonable speed and economy.
- 12.5 Any exclusion of any of the Services from this Appointment, any suspension of any or all of the Services or the termination of this Appointment shall not affect the obligations of the parties in respect of the Services actually performed by the Professional which shall continue to apply.

13 PARTNERSHIP PROVISIONS

If the Professional is a partnership:

- 13.1 references in this Appointment to the **Professional** shall include references to each and every present and future partner of the partnership and any successor partnership;
- 13.2 the liability of each and every partner under this Appointment shall be joint and several;
- 13.3 this Appointment shall not terminate on the death, retirement or resignation of any partner;
- 13.4 the signatories on behalf of the Professional warrant to the Client that they are authorised to enter into this Appointment on behalf of the Professional and that this Appointment shall be effective and binding on every partner in the Professional.

14 CONFIDENTIALITY

Except as may be necessary for the proper performance of the Services or as otherwise required by law the Professional shall not at any time disclose to any third party or make use of any information of any kind relating to the Development.

15 LIMITATION

Without prejudice to any action or proceedings under this Appointment that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings for any breach of this Appointment whether in contract or in tort or in delict or in negligence or for breach of statutory duty or otherwise shall be commenced against the Professional after the expiry of 12 years from the date of practical completion of the relevant part of the Development under the Building Contract.

16 NOTICES

Section 196 of the Law of Property Act 1925, as amended by the Recorded Delivery Service Act 1962, applies to the service of all notices in connection with this Appointment except that it shall be deemed to be amended as follows:

- 16.1 In this clause **Working Day** means any day from Monday to Friday (inclusive) other than bank or public holidays.
- 16.2 The final words of section 196(4) “and that service be delivered” shall be deleted and replaced with “and that service shall be deemed to be made on the second Working Day after the registered letter has been posted”.
- 16.3 Any notice may be sufficiently served by facsimile when service shall be deemed to be made on the day of transmission if transmitted before 4.00 pm on a Working Day but otherwise on the next following Working Day.

17 JURISDICTION AND GOVERNING LAW

This Appointment shall be governed by and interpreted in accordance with English law and the parties irrevocably submit to the jurisdiction of the English courts.

18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 18.1 A person who is not a party to this Appointment 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 that Act.

18.2 Notwithstanding clause 18.1, in the event that a building liability order (as such term is defined in the Building Safety Act) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Appointment as if it were named as "joint employer" under this Appointment and to rely on any report, survey or findings prepared by the Professional under the terms of this Appointment as if it had been named addressee of such report, survey or findings.

IN WITNESS of which the parties to this Deed have duly executed it on the date specified on page one.

THE FIRST SCHEDULE - THE SERVICES

[TO BE INSERTED]

THE SECOND SCHEDULE - THE FEE

The fee payable to the Professional in respect of the Services shall be [*****] payable by the following instalments:

[*****]

[The following rates shall apply for Additional Services.]

Position	Hourly Rate

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

THORPE PARK DEVELOPMENTS LIMITED)

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

ANNEXURE 1 – DEED OF WARRANTY

DATED_____ **[*****]**

[***] LIMITEDPLC (1)**

and

[***] LIMITEDPLC (2)**

and

[***] LIMITEDPLC (3)**

DEED OF COLLATERAL WARRANTY BY [***]**

RELATING TO [***]**

WALKER MORRIS LLP

33 Wellington Street

LEEDS

LS1 4DL

Tel: 0113 2832500

Fax: 0113 2459412

Draft no: [*****]

Ref: [*****]

THIS DEED IS MADE ON [***]**

BETWEEN:

- (1) [*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Professional**)
- (2) [[*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Contractor**)] or [[*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Developer**)]
- (3) [*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Beneficiary**)

IN CONSIDERATION of the sum of £1.00 paid by the Beneficiary, receipt of which the Professional acknowledges, it is agreed as follows:

1 INTERPRETATION

In this Deed unless the context requires otherwise:

1.1 The following words and expressions mean:

the Agreement an agreement dated [*****] and made between the Developer (1) and the Beneficiary (2) under which [the Developer agreed (inter alia) to [sell][let] the Property to the Beneficiary][the Beneficiary agreed to provide finance to the Developer for the carrying out of the Development];

the Appointment the appointment dated [*****] by which the [Developer][Contractor] appointed the Professional as [*****] in connection with the Development [which was subsequently novated from the Developer to the Contractor by a Deed of Novation dated [*****]];

the Beneficiary [*****] includes anyone to whom the benefit of this Deed is validly assigned;

the Building Contract the building contract entered into or to be entered into between the Developer (1) and the Contractor (2) for the design and carrying out of the Development and any replacement of it;

[the Contractor [***]]**

[the Developer [***]]**

the Development the [refurbishment][redevelopment] of the Property as described in the Agreement and the Building Contract;

Group Company means any subsidiary, subsidiary undertaking, holding company or holding undertaking of the Beneficiary, or any other company or undertaking which has the same ultimate holding company or parent undertaking as the Beneficiary (whether directly or indirectly) as defined in section 1159 and Schedule 6 and section 1162 and Schedule 7 of the Companies Act 2006 (as amended);

the Property [*****];

Related Entity means any body corporate or partnership entity which is at any time an 'associated person' or 'associate' of or in respect of the Beneficiary, or which is associated with the Beneficiary, as defined in and for the purposes of sections 121 and 131 of the Building Safety Act 2022.

- 1.2 Any reference to any form of legal entity includes all other forms of legal entity.
- 1.3 Obligations by more than one person are joint and several and where any party under this Deed at any time is more than one person references to it are to each person individually as well as jointly with the others comprising it.
- 1.4 The clause headings in this Deed are for reference only and shall not be taken into account in its construction or interpretation.

2 ACKNOWLEDGEMENT

The Professional acknowledges that it owes the Beneficiary a professional duty of care arising out of its position as a consultant to the Development and warrants that:

- 2.1 it has performed and will continue to perform its duties under the Appointment as required by, and in accordance with the Appointment; and
- 2.2 it has exercised and will continue to exercise the standard of skill and care reasonably to be expected of a competent consultant experienced in works of a similar size, scope and complexity to the Building Contract Works in the performance of its duties under the Appointment

but the Professional shall not have any greater liability to the Beneficiary under this clause than it would have had if the Beneficiary had been named as a joint client in the Appointment.

3 DELETERIOUS MATERIALS

The Professional further warrants that it has exercised and will continue to exercise the standard of skill and care referred to in clause 2 to ensure:

- 3.1 that the materials specified by it for use or incorporation in the Development are or will be in accordance with British Standards and Codes of Practice and/or any other regulations current at the date of specification;
- 3.2 no materials shall be specified which are not in accordance with the British Council for Offices latest publication "Good Practice in the Selection of Construction Materials" (or such further publication which may supersede or amend this); and
- 3.3 that no other material or method of use generally known at the time of specification to be deleterious to health and safety, to the integrity of buildings or other structures or plant or machinery or not in accordance with good building practice will be specified by it for use or incorporation in the Development and that it will not authorise any of them to be used.

4 LICENCE TO USE PLANS ETC.

- 4.1 The copyright in all drawings, documents, reports, models, plans, specifications, CAD materials, bills of quantity, calculations, work, designs or inventions of any type provided by the Professional in connection with the Development at any time (the **Copyright Material**) shall remain vested in the Professional.
- 4.2 The Beneficiary and any person authorised by it is granted an irrevocable royalty free licence to use and reproduce the Copyright Material for all purposes relating to the Development and the Property including (without limitation) the completion, construction, reconstruction, modification, extension, repair, use, letting, sale and advertisement of the Development and the Property but the Professional shall not be liable for any use of the Copyright Material for any purpose other than that for which it was originally prepared by the Professional.
- 4.3 The licence granted by clause 4.2 includes the right to grant sub-licences and that licence and any sub-licences granted shall be transferable to third parties without restriction.

- 4.4 The Professional shall allow the Beneficiary and anyone authorised by it access to the Copyright Material at any time and shall supply copies of it, or any part of it, to the Beneficiary and any authorised person on request.
- 4.5 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the performance of its services under the Appointment shall be paid by the Professional who shall indemnify the Beneficiary against all claims, proceedings, damages, costs and expenses suffered or incurred by it because of the Professional infringing or being held to infringe any intellectual property rights in the performance of its duties under the Appointment.
- 4.6 The Professional waives any rights it may have under Chapter IV (Moral Rights) and Part 1 of the Copyright Designs and Patents Act 1988 in relation to the Development or the Copyright Material.

5 INSURANCE

- 5.1 The Professional shall maintain professional indemnity insurance in an amount of not less than £[*****] in respect of each and every claim from the date of this Deed until 15 years following the date of practical completion of the Development under the Building Contract (the **Insurance**) subject to it being available at commercially reasonable rates.
- 5.2 Any increased or additional premium required by any insurer by reason of the Professional's own claims record or other acts or omissions or any other matters or things particular to the Professional shall be deemed to be within commercially reasonable rates under clause 5.1.
- 5.3 If the Insurance ceases to be available at commercially reasonable rates the Professional shall immediately inform the Beneficiary.
- 5.4 As and when reasonably requested to do so by the Beneficiary the Professional shall produce for inspection adequate documentary evidence that the Insurance is being maintained and that the current premium has been paid.
- 5.5 The Professional shall fully comply with all requirements of, or which relate to, the Insurance.

6 STEP IN RIGHTS [FUNDER AND DEVELOPER ONLY]

- 6.1 If the Agreement is terminated by the Beneficiary [Contractor the Professional shall on receipt of written notice from the Beneficiary accept the instructions of the Beneficiary, or its appointee, to the exclusion of the [Developer][Contractor] in respect of the Appointment.
- 6.2
- 6.2.1 The Professional will not, without first giving the Beneficiary at least 30 days' prior written notice, exercise any right it may have to terminate the Appointment, treat the Appointment as repudiated by the [Developer][Contractor] or discontinue the performance of any of its duties under the Appointment.
- 6.2.2 The Professional's right to take any of the steps specified in clause 6.2.1 shall cease if before the expiry of the Professional's notice the Beneficiary serves written notice on the Professional requiring it to accept the instructions of the Beneficiary, or its appointee, to the exclusion of the [Developer][Contractor] in respect of the Appointment.
- 6.3 Neither the Beneficiary, nor its appointee, shall have any liability to the Professional under the Appointment unless and until the Beneficiary gives notice to the Professional under clause 6.1 or clause 6.2.2 when the Beneficiary, or its appointee, as appropriate, shall be liable for the performance of the [Developer's][Contractor's] obligations under the Appointment, including the payment of all outstanding and future sums properly due to the Professional and the Professional shall be liable to the Beneficiary, or its appointee, as appropriate, for the performance of the Professional's obligations under the Appointment as well as the Professional's obligations under this Deed.
- 6.4 The Professional shall not be concerned or required to enquire whether, and shall be bound to assume that, as between the [Developer][Contractor] and the Beneficiary, the Beneficiary is entitled to give any notice served under clause 6.1.
- 6.5 The Professional shall not incur any liability to the [Developer][Contractor] in complying with this clause and the [Developer][Contractor] confirms that the Beneficiary's rights under this clause override any obligations of the Professional to the [Developer][Contractor] under the Appointment.

- 6.6 The Professional confirms to the Beneficiary that the Appointment is in existence at the date of this Deed and that all sums due to it under the Appointment are up to date.
- 6.7 The [Developer][Contractor] has joined in this Deed to confirm its agreement to its terms.
- 6.8 Developer.

7 PARTNERSHIP PROVISIONS

If the Professional is a partnership:

- 7.1 references in this Deed to the **Professional** shall be to each and every present and future partner of the partnership and any successor partnership;
- 7.2 the liability of each and every partner under this Deed shall be joint and several;
- 7.3 this Deed shall not terminate on the death, retirement or resignation of any partner;
- 7.4 the persons executing this Deed on behalf of the Professional warrant to the Beneficiary that they are authorised to enter into this Deed on behalf of the Professional and that this Deed shall be effective and binding on every partner in the Professional.

8 GENERAL

- 8.1 Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this Deed shall be commenced against the Professional after the expiry of 12 years from the date of practical completion (as defined by the Building Contract).
- 8.2 The Professional shall not exercise any right of legal or equitable set off or any rights of deduction that may be available under the Appointment against any entitlement of the Beneficiary, or its appointee, under this Deed.
- 8.3 The Beneficiary shall not be bound by any variation to the terms of the Appointment where that variation reduces the liability of the Professional to the Beneficiary under this Deed unless the Beneficiary has given written consent to the same.

- 8.4 The Professional will provide the Beneficiary, or its appointee, with any information relating to the Development that they reasonably request.
- 8.5 The benefit of this Deed is in addition to any other rights or remedies whether in negligence or otherwise which the Beneficiary or its appointee may have against the Professional.

9 NOTICES

Section 196 of the Law of Property Act 1925, as amended by the Recorded Delivery Service Act 1962, applies to the service of all notices in connection with this Deed except that it shall be deemed to be amended as follows:

- 9.1 In this clause **Working Day** means any day from Monday to Friday (inclusive) other than bank or public holidays.
- 9.2 The final words of section 196(4) “and that service be delivered” shall be deleted and replaced with “and that service shall be deemed to be made on the second Working Day after the registered letter has been posted”.
- 9.3 Any notice may be sufficiently served by facsimile when service shall be deemed to be made on the day of transmission if transmitted before 4.00 pm on a Working Day but otherwise on the next following Working Day.

10 ASSIGNMENT AND FURTHER DEEDS

- 10.1 The benefit of this Deed may be assigned without the Professional’s [Developer][Contractor] consent:
- 10.1.1 to any Group Company;
- 10.1.2 by way of security or by way of re-assignment on redemption; and
- 10.1.3 on two other occasions.
- 10.2 Notice of any assignment made under this clause shall be given to the [Developer][Contractor] Professional provided always that failure to provide such notice shall not in any way invalidate or otherwise affect the assignment.

- 10.3 The Professional shall not contend that any assignee of this Deed under clause 10.1 is precluded from recovering any loss resulting from any breach of this Deed (whenever the breach occurred) because that person is an assignee of this Deed and not the original promisee or because the Beneficiary or any intermediate assignee escaped loss due to its having disposed of its interest in the Development.
- 10.4 Except as allowed by this clause the benefit of this Deed is personal to the Beneficiary.
- 10.5 [The Professional agrees that, if the Beneficiary requires it, it will enter into further warranty deeds in respect of the Property in the same form as this Deed (with the omission of [Developer][Contractor] this sub-clause), with only any amendments that are needed to give proper meaning and efficacy to the further warranty deeds, in favour of the first [sub-lets]sub-lets to which the Beneficiary or its appointee [lets][sub-lets]sub-lets the Property or any part of it.]

11 JURISDICTION AND GOVERNING LAW

This Deed shall be governed by and interpreted in accordance with English law and the parties irrevocably submit to the jurisdiction of the English courts.

12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 12.1 A person who is not a party to this Deed 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 that Act.
- 12.2 Notwithstanding clause 12.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

IN WITNESS of which the parties to this Deed have duly executed it on the date specified on page one.

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

SIGNED as a Deed (but not delivered)

until the date hereof) by the said)

[*****])

in the presence of)

the witness named below)

Name of witness

Address

Occupation

SIGNED as a Deed (but not delivered)

until the date hereof) by the said)

[*****])

in the presence of)

the witness named below)

Name of witness

Address

Occupation

ANNEXURE 2 – DEED OF NOVATION

DATED_____ **[*****]**

[***] LIMITEDPLC (1)**

and

[***] LIMITEDPLC (2)**

and

[***] LIMITEDPLC (3)**

DEED OF NOVATION
RELATING TO APPOINTMENT AS [***]**
IN RESPECT OF [***]**

WALKER MORRIS LLP
33 Wellington Street
LEEDS
LS1 4DL
Tel: 0113 2832500
Fax: 0113 2459412
Draft no: [*****]
Ref: [*****]

THIS DEED is made on [*****]

BETWEEN:

- (1) [*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Professional**)
- (2) [*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Client**)
- (3) [*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Contractor**)

WHEREAS:

- (A) The Client has engaged the Professional under the Appointment.
- (B) The Client has engaged the Contractor to carry out the design and construction of the Development.
- (C) The Contractor wishes to become the Client, and the Client wishes to be discharged from its obligations, under the Appointment.

IT IS NOW AGREED THAT:

1 INTERPRETATION

In this Deed unless the context requires otherwise:

1.1 The following words and expressions mean:

the Appointment the appointment dated [*****] by which the Client appointed the Professional as [*****] in connection with the Development;

[the Building Contract has the meaning given to it in the Appointment;]¹

Development has the meaning given to it in the Appointment;

[Monitoring Surveyor means the role undertaken by the Professional following novation of the Appointment to the Contractor to monitor the Contractor's performance under the Building Contract.]²

¹ Client to confirm if clause 3 is required.

2 NOVATION OF THE APPOINTMENT

- 2.1 The Client is substituted and replaced as Client under the Appointment by the Contractor and the Appointment shall take effect as if it had been entered into originally between the Contractor and the Professional.
- 2.2 The Professional releases and discharges the Client from the liabilities that the Client may have or have had under the Appointment to the Professional.
- 2.3 The Professional warrants to the Contractor that it has performed and will continue to perform its duties and obligations under, and in accordance with, the Appointment.
- 2.4 In any claim for loss suffered by the Contractor that is alleged to have arisen as a result of a breach by the Professional of the warranty in clause 2.3, the Professional shall be entitled to rely on any limitation in the Appointment (including without restriction any limitation or exclusion of liability therein) and to raise the equivalent rights in defence of liability for such loss as if the claim were being brought by the Client rather than the Contractor, save that the Professional shall not be absolved from liability to the Contractor for such loss merely by virtue of the fact that the loss has not been suffered by the Client or the acts or omissions causing the breach occurred before this Deed took effect.
- 2.5 The Client and the Professional warrant that the Client has paid to the Professional the fees set out in the Schedule which are not repayable by the Contractor to the Client.
- 2.6 Without prejudice to the generality of clauses 2.1 and 2.2 of this Deed the Contractor undertakes to discharge all fees due under the Appointment except those referred to in clause 2.5.

3 [MONITORING SURVEYOR AND RETAINED SERVICES APPOINTMENT]

- 3.1 Following the novation of the Appointment to the Contractor, the Professional shall, in its capacity as Monitoring Surveyor:
 - 3.1.1 provide performance monitoring services in respect of the Contractor's obligations under the Building Contract;

² Client to confirm if clause 3 is required.

- 3.1.2 prepare and submit regular monitoring reports to the Contractor, with copies of such reports to be provided to the Client for information purposes only. The frequency, format, and scope of such reports shall be agreed in writing between the Professional, the Contractor, and the Client prior to the commencement of the monitoring services; and
- 3.1.3 shall enter into an appointment for the performance of the monitoring services with the Client which shall be in the same form as the Appointment subject to the replacement of the First Schedule (The Services) and the Second Schedule (The Fee) as agreed between the parties for the Professional's role as Monitoring Surveyor and any other amendments which the Client shall reasonably require and the Professional may approve in writing (such approval not to be unreasonably withheld or delayed) (the **Retained Services Appointment**).
- 3.2 The Professional shall not be required to perform any monitoring services in its capacity as Monitoring Surveyor unless and until such Retained Services Appointment has been entered into between the Professional and the Client.
- 3.3 The Professional shall not owe any duty of care or liability to the Client in respect of the monitoring services and in its capacity as Monitoring Surveyor, except as expressly provided in the Retained Services Appointment.
- 3.4 The Professional shall ensure that the performance of its monitoring services in its capacity as Monitoring Surveyor does not interfere with or compromise its primary obligations to the Contractor under the novated Appointment.
- 3.5 The Professional shall not be liable for any loss or damage arising from the Contractor's failure to perform its obligations under the Building Contract.]³

4 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act and nothing in this Deed shall affect any collateral warranty given, or to be given, by the Professional to the Client (or to any third party) in respect of the Development.

³ Client to confirm if clause 3 required to be included.

5 JURISDICTION AND GOVERNING LAW

This Deed shall be governed by and interpreted in accordance with English law and the parties irrevocably submit to the jurisdiction of the English courts.

IN WITNESS of which the parties to this Deed have duly executed it on the date specified on page one.

THE SCHEDULE - FEES PAID TO DATE

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by:)

Director

Director/Secretary

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by:)

Director

Director/Secretary

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by:)

Director

Director/Secretary

DATED _____ 2025

THORPE PARK DEVELOPMENTS LIMITED (1)

and

[***] LIMITED PLC (2)**

APPOINTMENT

AS

[***]**

IN RESPECT OF

[THORPE PARK SIXTH FORM COLLEGE]

WALKER MORRIS LLP

33 Wellington Street

LEEDS

LS1 4DL

Tel: 0113 2832500

Fax: 0113 2459412

Draft no: [*****]

Ref: [*****]

THIS APPOINTMENT IS MADE ON
BETWEEN:

2025

- (1) **THORPE PARK DEVELOPMENTS LIMITED** (company number 04141504) whose registered office is at Europa House, 20 Esplanade, Scarborough, North Yorkshire, YO11 2AQ (the **Client**)
- (2) **[*****] LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Professional**)

WHEREBY IT IS AGREED as follows:

1 INTERPRETATION

In this Appointment unless the context requires otherwise:

1.1 The following words and expressions mean:

the Building Contract the building contract under which the Building Contractor is for the time being employed for the design and construction of the Development;

the Building Contractor the building contractor for the time being employed by the Client under the Building Contract;

BR Principal Contractor means the Building Contractor or the person appointed by the Client from time to time to act as principal contractor pursuant to the Building Regulations and/or the Building Safety Act and accompanying legislation;

BR Principal Designer means [] being person appointed to act as principal designer pursuant to the Building Regulations and/or the Building Safety Act and accompanying legislation;

Building Regulations means the Building Regulations 2010;

Building Safety Act means the Building Safety Act 2022;

CDM Principal Contractor means the contractor or the person appointed by the Client from time to time to act as principal contractor pursuant to Regulation 5(1)(b) of the CDM Regulations;

CDM Principal Designer means [] being person appointed to act as Principal Designer pursuant to the CDM Regulations;

CDM Regulations means the Construction (Design and Management) Regulations 2015;

the Client includes anyone to whom the benefit of this Appointment is validly assigned;

the Development [the development of the Property as a sixth form college as more particularly described in the Building Contract];

the Fee the fee set out in the Second Schedule;

Group Company means any subsidiary, subsidiary undertaking, holding company or holding undertaking of the Client, or any other company or undertaking which has the same ultimate holding company or parent undertaking as the Client (whether directly or indirectly) as defined in section 1159 and Schedule 6 and section 1162 and Schedule 7 of the Companies Act 2006;

the HGCR Act the Housing Grants, Construction and Regeneration Act 1996, Part II, as amended by the Local Democracy, Economic Development and Construction Act 2009, Part 8;

Organisational Capability means the appropriate management policies, procedures, systems and resources to ensure that individuals under the control of the Professional comply with their relevant competence requirements in accordance with the CDM Regulations and Building Regulations;

Other Professionals the other professionals and consultants involved in the Development at any time;

the Property [the site located at Thorpe Park, Leeds];

Related Entity means any body corporate or partnership entity which is at any time an 'associated person' or 'associate' of or in respect of the Client, or which is associated with the Client, as defined in and for the purposes of sections 121 and 131 of the Building Safety Act;

the Secretary of State for Education means the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT;

the Services the services set out in the First Schedule together with any Additional Services instructed under clause 4;

the Trust means the trust nominated by the Secretary of State for Education to operate the college following completion of the Development, such entity to be notified to the Professional as soon as reasonably practicable.

1.2 Any reference to any statute, including any reference in any definition in this clause, includes:

1.2.1 any amendment, modification, extension or re-enactment of it at any time; and

1.2.2 all instruments, orders, plans, regulations, permissions, directions and any other form of subsidiary legislation at any time made, issued or given under or drawing validity from any statute.

1.3 Any reference to any form of legal entity includes all other forms of legal entity.

1.4 Obligations by more than one person are joint and several and where any party under this Appointment at any time is more than one person references to it are to each person individually as well as jointly with the others comprising it.

1.5 The clause headings in this Appointment are for reference only and are not to be taken into account in its construction or interpretation.

2 APPOINTMENT

2.1 The Client appoints the Professional in respect of the Development and the Professional accepts the appointment.

2.2 The Professional shall:

2.2.1 provide the Services;

2.2.2 exercise the standard of skill and care reasonably to be expected of a competent consultant experienced in works of a similar size, scope and complexity to the Development in the provision of the Services;

2.2.3 perform the Services so that the Development complies with all relevant planning permissions, listed building consents, building regulations and all other statutory and other consents and with all deeds and documents relating to the Development and the Property which the Client brings to its attention;

- 2.2.4 promptly comply with all proper instructions given to it by the Client except where it has a discretion exercisable as between the Client and any other person which it shall exercise fairly;
 - 2.2.5 perform the Services in conjunction and harmony with the Client, the Other Professionals and the Building Contractor and their respective representatives, officers, employees and agents;
 - 2.2.6 attend at the Property and attend all meetings concerning the Development as often as necessary or appropriate or as reasonably required by the Client in connection with the provision of the Services; and
 - 2.2.7 notify the Client as soon as reasonably practicable if the Professional becomes aware of any circumstances which may cause the budgetary requirements of the Client for the Development or the time for completion of the Development to be increased;
- 2.3 The Professional warrants and undertakes to the Client that:
- 2.3.1 it shall comply with the requirements of the CDM Regulations and applicable Building Regulations in the performance of the Services and the duties and responsibilities placed on the Professional by those regulations and, without affecting the generality of this requirement, co-operate fully with the CDM Principal Designer and/or CDM Principal Contractor and/or the BR Principal Designer and/or BR Principal Contractor and supply all information required by him promptly;
 - 2.3.2 it shall, and has the skill, knowledge and experience (and if the Professional is an organisation, the Organisational Capability), necessary to:
 - (a) undertake the Services, in a manner that secures the health and safety of any person affected by the Development, as required under the CDM Regulations; and
 - (b) comply with regulations 11F, [11G]¹, 11J and 11K [and 11M (additional duties of principal designers)]² of Part 2A of the Building Regulations;

¹ To include where the Professional is carrying out BR PD role

2.3.3 it shall:

- (a) as and when requested to do so by the Client, produce adequate documentary evidence to the Client to demonstrate its compliance with clause 2.3.2;
- (b) immediately notify the Client where the Professional ceases to satisfy the requirements of 2.3.2(b);

2.3.4 it shall liaise with and provide all reasonable assistance required by the Client, the accountable person and/or the principal accountable person under the Building Safety Act (where not the Client) and/or the BR Principal Designer and/or the BR Principal Contractor to prepare, collate and deliver in a timely manner all documents and materials relevant to the Services required pursuant to the Building Safety Act;

2.3.5 it has registered with its regulatory body and has complied with all conditions placed on it by its regulatory body with regards to competency as required under the Building Safety Act 2022.

2.4 Any Services performed by the Professional before the date of this Appointment shall be treated as having been performed under the terms of this Appointment, which supersedes any previous agreement or understanding between the Client and the Professional in respect of the Development.

² To include where Professional is carrying out BR Principal Designer role

- 2.5 In performing the Services, the Professional exercising the skill and care referred to in clause 2.2.2, shall at all times have due regard to the agreements and documents which have been entered into in respect of the Development provided that a copy of any such contract or contracts or the relevant part or parts shall have been supplied or made available to the Professional prior to the date of this Appointment or they have been provided after the date of this Appointment and they do not impact upon the nature and extent of the Services ("**Original Third Party Agreements**"). Where such contract or contracts (or relevant part or parts) have been supplied or made available to the Professional after the date of this Appointment and they impact upon the nature and extent of the Services, the Client may elect to deal with this as an Additional Service in line with clause 4 and where they do this shall be deemed a "**Further Third Party Agreement**". The Professional confirms they will perform the Services, exercising the skill and care referred to in clause 2.2.2, having due regard to the Further Third Party Agreements.
- 2.6 The Professional undertakes to the Client that it has exercised and that it will continue to exercise the standard of care set out in clause 2.2.2 in the performance of the Services so that it does not cause a breach of any obligation contained in the Original Third Party Agreements or Further Third Party Agreements by the Client.

3 FEES

- 3.1 The Client shall pay the Fee to the Professional in accordance with the Second Schedule and any sums paid to the Professional in respect of the Services or the Development before the date of this Appointment are deemed to have been paid on account of the Fee.
- 3.2 Unless the Second Schedule provides otherwise the Fee is inclusive of all costs, expenses, disbursements and overheads and the Professional shall not be entitled to reimbursement for any such item unless it was incurred with the Client's prior written authority.
- 3.3 The Professional shall maintain records of all (if any) costs, expenses, disbursements and overheads which it is entitled to claim from the Client and make them available to the Client when reasonably requested to do so.

3.4 The Fee is exclusive of VAT and the Client shall not be liable to pay any part of the Fee until the Professional submits a valid VAT invoice to the Client giving a breakdown and explanation of the sums included in the invoice including any costs, expenses, disbursements and overheads claimed.

3.5 For the purposes of the HGCR Act:

3.5.1 the due date for payment of each instalment of the Fee, whether interim or final, shall be the later of:

- (a) 14 days after the payment date stated in the Second Schedule; and
- (b) the date of submission of an invoice by the Professional in accordance with clause 3.4;

3.5.2 the final date for payment of the Fee, whether interim or final, shall be 16 days from the due date referred to in clause 3.5.1;

3.5.3 the Client shall give notice to the Professional specifying:

- (a) the sum that the Client considers to be or to have been due at the payment due date in respect of that payment ("the Notified Amount"); and
- (b) the basis on which that sum is calculated;

3.5.4 the notice under clause 3.5.3 shall be given no later than five days after the date on which payment is due from the Client under clause 3.5.1;

3.5.5 if the Client fails to serve a notice in accordance with clause 3.5.3 then, provided the invoice submitted by the Professional sets out the sum that the Professional considers to be or to have been due at the payment due date and sets out the basis on which that sum is calculated then the sum specified in such invoice shall be the Notified Amount.

3.5.6 where the Client intends to pay less than the Notified Amount it shall give notice to the Professional no later than two days before the final date for payment of the monies specifying:

- (a) the sum that the Client considers to be due on the date such notice is served; and

(b) the basis on which that sum is calculated;

3.6 In the event that the Client fails to pay any amount due to the Professional by the final date for payment of that amount (and a valid pay less notice has not been served) the Client shall pay simple interest on the amount due and unpaid as from the final date for payment to the date of payment at the rate of 5% per annum above the base rate from time to time of the Bank of England and the parties agree this is a substantial remedy under section 9 of the Late Payments of Commercial Debts (Interest) Act 1998.

4 ADDITIONAL SERVICES

4.1 If the Professional is instructed by the Client to undertake any services which it considers are additional to the services set out in the First Schedule and which would require an increase in the Fee (**the Additional Services**) then before complying with the instruction (except in the case of emergency instructions which require immediate action) the Professional will notify the Client and within three working days of the instruction the Professional will provide to the Client its proposed increase in the Fee, applying the hourly rates set out in the Second Schedule.

4.2 If the Client and the Professional are unable to agree on the additional fee the Professional shall not carry out the Additional Services, and shall not be entitled to payment for them, until it has received written confirmation from the Client requiring it to carry them out.

4.3 Following receipt of a notice under clause 4.2 the additional fee payable for the Additional Services will be as is fair and reasonable in the circumstances but shall be based on the rates and any payment arrangements set out in the Second Schedule.

4.4 No additional payment will be due in respect of the Additional Services if the Professional:

4.4.1 has not complied with the requirements of clauses 4.1 and 4.2; or

4.4.2 where and to the extent that the Additional Services have been necessitated in whole or part by any negligence, omission or default on the part of the Professional.

- 4.5 Unless it is otherwise agreed the Professional shall make an application for payment for Additional Services (where the same is payable under this clause) during the month following the performance of the Additional Services in question and the provisions of clause 3.5 shall apply.

5 PROVISION OF COLLATERAL WARRANTIES

- 5.1 Within 10 working days of written request by the Client the Professional shall execute warranty deeds in the form annexed to this Appointment as Annexure 1 in respect of the provision of the Services in favour of:

5.1.1 the Secretary of State for Education;

5.1.2 the Trust;

5.1.3 every organisation providing finance to the Client for the carrying out of the Development;

5.1.4 every purchaser of the Property or any part of it from the Client;

5.1.5 every tenant taking a lease of the Property or any part of it from either:

(a) the Client; or

(b) any purchaser of the Property or any part of it from the Client

subject in each case to any amendments which the Client requests and the Professional agrees (such agreement not to be unreasonably withheld or delayed) and shall comply with their terms once they are completed.

6 DESIGN

- 6.1 This clause applies where and to the extent that the Professional is responsible for the design of the whole or any part of the Development.

- 6.2 Where the Client employs anyone other than the Professional to design any part of the Development the Professional shall co-ordinate the design of that part with the overall design of the Development or with the part of the design for which the Professional is responsible.

- 6.3 The Professional warrants that it has exercised and will continue to exercise the standard of skill and care referred to in clause 2.2.2 to ensure:

- 6.3.1 that the materials specified by it for use or incorporation in the Development are or will be in accordance with British Standards and Codes of Practice and/or any other regulations current at the date of specification;
 - 6.3.2 no materials shall be specified which are not in accordance with the British Council for Offices latest publication "Good Practice in the Selection of Construction Materials" (or such further publication which may supersede or amend this); and
 - 6.3.3 that no other material or method of use generally known at the time of specification to be deleterious to health and safety, to the integrity of buildings or other structures or plant or machinery or not in accordance with good building practice will be specified by it for use or incorporation in the Development and that it will not authorise any of them to be used.
- 6.4 The Professional shall not make any alteration, addition to or omission from the design of the Development without the Client's prior written consent unless the alteration, addition or omission is required in an emergency and the Professional having used reasonable endeavours to secure the Client's consent has not been able to obtain it unless the Client has expressly refused to give it.

7 LICENCE TO USE PLANS ETC.

- 7.1 The copyright in all drawings, documents, reports, models, plans, specifications, CAD materials, bills of quantity, calculations, work, designs or inventions of any type provided by the Professional in connection with the Development at any time (the **Copyright Material**) shall remain vested in the Professional.
- 7.2 The Client and any person authorised by it is granted an irrevocable royalty free licence to use and reproduce the Copyright Material for all purposes relating to the Development and the Property including (without limitation) the completion, construction, reconstruction, modification, extension, repair, use, letting, sale and advertisement of the Development and the Property but the Professional shall not be liable for any use of the Copyright Material for any purpose other than that for which it was originally prepared by the Professional.
- 7.3 The licence granted by clause 7.2 includes the right to grant sub-licences and that licence and any sub-licences granted shall be transferable to third parties without restriction.

- 7.4 The Professional shall allow the Client and anyone authorised by it access to the Copyright Material at any time and shall supply copies of it to the Client and any authorised person on request including such number of copies of it in respect of the Development as finally built as the Client reasonably requires.
- 7.5 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the performance of the Services shall be paid by the Professional who shall indemnify the Client against all claims, proceedings, damages, costs and expenses suffered or incurred by the Client because of the Professional infringing or being held to infringe any intellectual property rights in the performance of the Services.
- 7.6 The Professional waives any rights it may have under Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patents Act 1988 in relation to the Development or the Copyright Material.

8 INSURANCE

- 8.1 The Professional shall maintain professional indemnity insurance in an amount of not less than £[*****] in respect of each and every claim from the date of this Appointment and for a period of 15 years following the date of practical completion of the Development under the Building Contract (the **Insurance**) subject to it being available at commercially reasonable rates.
- 8.2 Any increased or additional premium required by any insurer by reason of the Professional's own claims record or other acts or omissions or any other matters or things particular to the Professional shall be deemed to be within commercially reasonable rates under clause 8.1.
- 8.3 If the Insurance ceases to be available at commercially reasonable rates the Professional shall immediately inform the Client.
- 8.4 As and when reasonably requested to do so by the Client the Professional shall produce for inspection adequate documentary evidence that the Insurance is being maintained and that the current premium has been paid.
- 8.5 The Professional shall fully comply with all requirements of, or which relate to, the Insurance.

9 STAFF

- 9.1 The Professional shall allocate to perform the Services sufficient and appropriate numbers of appropriately qualified, competent and experienced personnel and shall ensure (where appropriate) such continuity of personnel as is or may be necessary to ensure at all times the proper, effective and efficient performance of the Services in accordance with the requirements of this Appointment.
- 9.2 The Client shall be entitled, at its absolute discretion, to require the replacement of any person employed by the Professional in the performance of the Services who, in the Client's reasonable opinion, has failed to perform satisfactorily or who has misconducted himself in any way or is otherwise deemed by the Client to be of insufficient competency for the requirements of this Appointment. The Professional shall promptly replace such person with an appropriately qualified and experienced substitute at no additional cost to the Client.

10 ASSIGNMENT AND SUB-CONTRACTING

- 10.1 This Appointment is personal to the Professional and it shall not without the prior written consent of the Client:
- 10.1.1 assign, charge or transfer any right or obligation under this Appointment to anyone else;
 - 10.1.2 delegate, sub-contract or transfer any of the Services to anyone else and for the avoidance of doubt, the Professional shall be responsible for any services that it so delegates, sub-contracts or transfers to a third party as if it had performed those services itself.
- 10.2 This Appointment may be assigned by the Client without the Professional's consent:
- 10.2.1 to any Group Company;
 - 10.2.2 by way of security or by way of re-assignment on redemption; and
 - 10.2.3 on two other occasions.
- 10.3 Notice of any assignment made under this clause shall be given to the Professional provided always that failure to provide such notice shall not in any way invalidate or otherwise affect the assignment.

11 APPROVALS

The obligations of the Professional under this Appointment shall not be lessened or affected by:

- 11.1 any power or duty of the Client or any of the Other Professionals to grant or withhold approval of, or object to, any matter in connection with the Development or to inspect the Development; or
- 11.2 the grant or failure to grant any approval, the making or failure to make any objection or any inspection of the Development or any failure to inspect it.

12 SUSPENSION AND TERMINATION

- 12.1 The Client may exclude any of the Services from this Appointment, suspend all or any of the Services or terminate this Appointment at any time on written notice to the Professional.
- 12.2 The Professional may terminate this Appointment if:
 - 12.2.1 anything outside the Professional's control happens which delays or unreasonably impedes the carrying out of the Services for a period of [REDACTED]
 - 12.2.2 the Client suspends all of the Services for a period of [REDACTED]
 - 12.2.3 the Client is in material default of its obligations under this Appointment and fails to remedy the default after being given reasonable written notice to do so
- in each case by reasonable written notice to the Client.
- 12.3 If any of the Services are excluded from this Appointment or this Appointment is terminated the Professional shall be entitled to part of the Fee calculated on a quantum meruit basis but shall not be entitled to any claims in respect of loss of profit.
- 12.4 If any of the Services are excluded from this Appointment, any or all of the Services are suspended under this Appointment or this Appointment is terminated the Professional shall take immediate steps to bring the Services, or the appropriate part of them, to an end in an orderly manner with all reasonable speed and economy.

- 12.5 Any exclusion of any of the Services from this Appointment, any suspension of any or all of the Services or the termination of this Appointment shall not affect the obligations of the parties in respect of the Services actually performed by the Professional which shall continue to apply.

13 PARTNERSHIP PROVISIONS

If the Professional is a partnership:

- 13.1 references in this Appointment to the **Professional** shall include references to each and every present and future partner of the partnership and any successor partnership;
- 13.2 the liability of each and every partner under this Appointment shall be joint and several;
- 13.3 this Appointment shall not terminate on the death, retirement or resignation of any partner;
- 13.4 the signatories on behalf of the Professional warrant to the Client that they are authorised to enter into this Appointment on behalf of the Professional and that this Appointment shall be effective and binding on every partner in the Professional.

14 CONFIDENTIALITY

Except as may be necessary for the proper performance of the Services or as otherwise required by law the Professional shall not at any time disclose to any third party or make use of any information of any kind relating to the Development.

15 LIMITATION

Without prejudice to any action or proceedings under this Appointment that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings for any breach of this Appointment whether in contract or in tort or in delict or in negligence or for breach of statutory duty or otherwise shall be commenced against the Professional after the expiry of 12 years from the date of practical completion of the relevant part of the Development under the Building Contract.

16 NOTICES

Section 196 of the Law of Property Act 1925, as amended by the Recorded Delivery Service Act 1962, applies to the service of all notices in connection with this Appointment except that it shall be deemed to be amended as follows:

- 16.1 In this clause **Working Day** means any day from Monday to Friday (inclusive) other than bank or public holidays.
- 16.2 The final words of section 196(4) "and that service be delivered" shall be deleted and replaced with "and that service shall be deemed to be made on the second Working Day after the registered letter has been posted".
- 16.3 Any notice may be sufficiently served by facsimile when service shall be deemed to be made on the day of transmission if transmitted before 4.00 pm on a Working Day but otherwise on the next following Working Day.

17 JURISDICTION AND GOVERNING LAW

This Appointment shall be governed by and interpreted in accordance with English law and the parties irrevocably submit to the jurisdiction of the English courts.

18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 18.1 A person who is not a party to this Appointment 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 that Act.
- 18.2 Notwithstanding clause 18.1, in the event that a building liability order (as such term is defined in the Building Safety Act) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Appointment as if it were named as "joint employer" under this Appointment and to rely on any report, survey or findings prepared by the Professional under the terms of this Appointment as if it had been named addressee of such report, survey or findings.

IN WITNESS of which the parties to this Deed have duly executed it on the date specified on page one.

THE FIRST SCHEDULE - THE SERVICES

[To be inserted]

THE SECOND SCHEDULE - THE FEE

The fee payable to the Professional in respect of the Services shall be [*****] payable by the following instalments:

[*****]

[The following rates shall apply for Additional Services.

Position	Hourly Rate
[*****]	[*****]
[*****]	[*****]
[*****]	[*****]

EXECUTED as a Deed by)

THORPE PARK DEVELOPMENTS LIMITED)

acting by two directors)

.....

Director signature

.....

Director name

.....

Director signature

.....

Director name

EXECUTED as a Deed by)

[***]**)

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

ANNEXURE 1 – DEED OF WARRANTY

DATED_____ [*****]

[*****] **LIMITEDPLC (1)**

and

[*****] **LIMITEDPLC (2)**

and

[*****] **LIMITEDPLC (3)**

DEED OF COLLATERAL WARRANTY BY [***]**

RELATING TO [***]**

WALKER MORRIS LLP

33 Wellington Street
LEEDS
LS1 4DL

Tel: 0113 2832500

Fax: 0113 2459412

Draft no: [*****]

Ref: [*****]

THIS DEED IS MADE ON [***]**

BETWEEN:

- (1) [*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Professional**)
- (2) [[*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Developer**)]
- (3) [*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Beneficiary**)

IN CONSIDERATION of the sum of £1.00 paid by the Beneficiary, receipt of which the Professional acknowledges, it is agreed as follows:

1 INTERPRETATION

In this Deed unless the context requires otherwise:

1.1 The following words and expressions mean:

the Agreement an agreement dated [*****] and made between the Developer (1) and the Beneficiary (2) under which [the Developer agreed (inter alia) to [sell][let] the Property to the Beneficiary][the Beneficiary agreed to provide finance to the Developer for the carrying out of the Development];

the Appointment the appointment dated [*****] by which the Developer appointed the Professional as [*****] in connection with the Development;

the Beneficiary includes anyone to whom the benefit of this Deed is validly assigned;

the Building Contract the building contract entered into or to be entered into between the Developer (1) and the Contractor (2) for the design and carrying out of the Development and any replacement of it;

the Contractor [*****];

[**the Developer** [*****];]

the Development the [refurbishment][development] of the Property as described in [the Agreement and] the Building Contract;

Group Company means any subsidiary, subsidiary undertaking, holding company or holding undertaking of the Beneficiary, or any other company or undertaking which has the same ultimate holding company or parent undertaking as the Beneficiary (whether directly or indirectly) as defined in section 1159 and Schedule 6 and section 1162 and Schedule 7 of the Companies Act 2006 (as amended);

the Property [*****];

Related Entity means any body corporate or partnership entity which is at any time an 'associated person' or 'associate' of or in respect of the Beneficiary, or which is associated with the Beneficiary, as defined in and for the purposes of sections 121 and 131 of the Building Safety Act 2022.

- 1.2 Any reference to any form of legal entity includes all other forms of legal entity.
- 1.3 Obligations by more than one person are joint and several and where any party under this Deed at any time is more than one person references to it are to each person individually as well as jointly with the others comprising it.
- 1.4 The clause headings in this Deed are for reference only and shall not be taken into account in its construction or interpretation.

2 ACKNOWLEDGEMENT

The Professional acknowledges that it owes the Beneficiary a professional duty of care arising out of its position as a consultant to the Development and warrants that:

- 2.1 it has performed and will continue to perform its duties under the Appointment as required by, and in accordance with the Appointment; and
- 2.2 it has exercised and will continue to exercise the standard of skill and care reasonably to be expected of a competent consultant experienced in works of a similar size, scope and complexity to the Development in the performance of its duties under the Appointment

but the Professional shall not have any greater liability to the Beneficiary under this clause than it would have had if the Beneficiary had been named as a joint client in the Appointment.

3 DELETERIOUS MATERIALS

The Professional further warrants that it has exercised and will continue to exercise the standard of skill and care referred to in clause 2 to ensure:

- 3.1 that the materials specified by it for use or incorporation in the Development are or will be in accordance with British Standards and Codes of Practice and/or any other regulations current at the date of specification and no materials shall be specified which are not in accordance with the British Council for Offices latest publication "Good Practice in the Selection of Construction Materials" or such further publication which may supersede or amend this); and
- 3.2 that no other material or method of use generally known at the time of specification to be deleterious to health and safety, to the integrity of buildings or other structures or plant or machinery or not in accordance with good building practice will be specified by it for use or incorporation in the Development and that it will not authorise any of them to be used.

4 LICENCE TO USE PLANS ETC.

- 4.1 The copyright in all drawings, documents, reports, models, plans, specifications, CAD materials, bills of quantity, calculations, work, designs or inventions of any type provided by the Professional in connection with the Development at any time (the **Copyright Material**) shall remain vested in the Professional.
- 4.2 The Beneficiary and any person authorised by it is granted an irrevocable royalty free licence to use and reproduce the Copyright Material for all purposes relating to the Development and the Property including (without limitation) the completion, construction, reconstruction, modification, extension, repair, use, letting, sale and advertisement of the Development and the Property but the Professional shall not be liable for any use of the Copyright Material for any purpose other than that for which it was originally prepared by the Professional.
- 4.3 The licence granted by clause 4.2 includes the right to grant sub-licences and that licence and any sub-licences granted shall be transferable to third parties without restriction.
- 4.4 The Professional shall allow the Beneficiary and anyone authorised by it access to the Copyright Material at any time and shall supply copies of it, or any part of it, to the Beneficiary and any authorised person on request.

- 4.5 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the performance of its services under the Appointment shall be paid by the Professional who shall indemnify the Beneficiary against all claims, proceedings, damages, costs and expenses suffered or incurred by it because of the Professional infringing or being held to infringe any intellectual property rights in the performance of its duties under the Appointment.
- 4.6 The Professional waives any rights it may have under Chapter IV (Moral Rights) and Part 1 of the Copyright Designs and Patents Act 1988 in relation to the Development or the Copyright Material.

5 INSURANCE

- 5.1 The Professional shall maintain professional indemnity insurance in an amount of not less than £[*****] in respect of each and every claim from the date of this Deed until 15 years following the date of practical completion of the Development under the Building Contract (the **Insurance**) subject to it being available at commercially reasonable rates.
- 5.2 Any increased or additional premium required by any insurer by reason of the Professional's own claims record or other acts or omissions or any other matters or things particular to the Professional shall be deemed to be within commercially reasonable rates under clause 5.1.
- 5.3 If the Insurance ceases to be available at commercially reasonable rates the Professional shall immediately inform the Beneficiary.
- 5.4 As and when reasonably requested to do so by the Beneficiary the Professional shall produce for inspection adequate documentary evidence that the Insurance is being maintained and that the current premium has been paid.
- 5.5 The Professional shall fully comply with all requirements of, or which relate to, the Insurance.

6 STEP IN RIGHTS [FUNDER AND DEVELOPER ONLY]

- 6.1 If the Agreement is terminated by the Beneficiary [or if the Beneficiary otherwise requires it] the Professional shall on receipt of written notice from the Beneficiary accept the instructions of the Beneficiary, or its appointee, to the exclusion of the Developer in respect of the Appointment.

6.2

- 6.2.1 The Professional will not, without first giving the Beneficiary at least [REDACTED] [REDACTED] exercise any right it may have to terminate the Appointment, treat the Appointment as repudiated by the Developer or discontinue the performance of any of its duties under the Appointment.
- 6.2.2 The Professional's right to take any of the steps specified in clause 6.2.1 shall cease if before the expiry of the Professional's notice the Beneficiary serves written notice on the Professional requiring it to accept the instructions of the Beneficiary, or its appointee, to the exclusion of the Developer in respect of the Appointment.
- 6.3 Neither the Beneficiary, nor its appointee, shall have any liability to the Professional under the Appointment unless and until the Beneficiary gives notice to the Professional under clause 6.1 or clause 6.2.2 when the Beneficiary, or its appointee, as appropriate, shall be liable for the performance of the Developer's obligations under the Appointment, including the payment of all outstanding and future sums properly due to the Professional and the Professional shall be liable to the Beneficiary, or its appointee, as appropriate, for the performance of the Professional's obligations under the Appointment as well as the Professional's obligations under this Deed.
- 6.4 The Professional shall not be concerned or required to enquire whether, and shall be bound to assume that, as between the Developer and the Beneficiary, the Beneficiary is entitled to give any notice served under clause 6.1.
- 6.5 The Professional shall not incur any liability to the Developer in complying with this clause and the Developer confirms that the Beneficiary's rights under this clause override any obligations of the Professional to the Developer under the Appointment.
- 6.6 The Professional confirms to the Beneficiary that the Appointment is in existence at the date of this Deed and that all sums due to it under the Appointment are up to date.
- 6.7 The Developer has joined in this Deed to confirm its agreement to its terms.
- 6.8 Where the Professional has given rights in relation to the Appointment similar to those contained in this clause 6 to a party providing funding to the Developer for the carrying out of the Development (the Funder) then if both the Beneficiary and the Funder serve notice under clause 6.1 or 6.2.2 or its equivalent the notice served by the Funder shall prevail.

7 PARTNERSHIP PROVISIONS

If the Professional is a partnership:

- 7.1 references in this Deed to the **Professional** shall be to each and every present and future partner of the partnership and any successor partnership;
- 7.2 the liability of each and every partner under this Deed shall be joint and several;
- 7.3 this Deed shall not terminate on the death, retirement or resignation of any partner;
- 7.4 the persons executing this Deed on behalf of the Professional warrant to the Beneficiary that they are authorised to enter into this Deed on behalf of the Professional and that this Deed shall be effective and binding on every partner in the Professional.

8 GENERAL

- 8.1 Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this deed shall be commenced against the Professional after the expiry of 12 years from the date of practical completion (as defined by the Building Contract).
- 8.2 The Professional shall not exercise any right of legal or equitable set off or any rights of deduction that may be available under the Appointment against any entitlement of the Beneficiary, or its appointee, under this Deed.
- 8.3 The Beneficiary shall not be bound by any variation to the terms of the Appointment where that variation reduces the liability of the Professional to the Beneficiary under this Deed unless the Beneficiary has given written consent to the same.
- 8.4 The Professional will provide the Beneficiary, or its appointee, with any information relating to the Development that they reasonably request.
- 8.5 The benefit of this Deed is in addition to any other rights or remedies whether in negligence or otherwise which the Beneficiary or its appointee may have against the Professional.

9 NOTICES

Section 196 of the Law of Property Act 1925, as amended by the Recorded Delivery Service Act 1962, applies to the service of all notices in connection with this Deed except that it shall be deemed to be amended as follows:

- 9.1 In this clause **Working Day** means any day from Monday to Friday (inclusive) other than bank or public holidays.
- 9.2 The final words of section 196(4) “and that service be delivered” shall be deleted and replaced with “and that service shall be deemed to be made on the second Working Day after the registered letter has been posted”.
- 9.3 Any notice may be sufficiently served by facsimile when service shall be deemed to be made on the day of transmission if transmitted before 4.00 pm on a Working Day but otherwise on the next following Working Day.

10 ASSIGNMENT AND FURTHER DEEDS

- 10.1 The benefit of this Deed may be assigned without the Professional’s [or the Developer's] consent:
 - 10.1.1 to any Group Company;
 - 10.1.2 by way of security or by way of re-assignment on redemption; and
 - 10.1.3 on two other occasions.
- 10.2 Notice of any assignment made under this clause shall be given to the [Developer and the] Professional provided always that failure to provide such notice shall not in any way invalidate or otherwise affect the assignment.
- 10.3 The Professional shall not contend that any assignee of this Deed under clause 10.1 is precluded from recovering any loss resulting from any breach of this Deed (whenever the breach occurred) because that person is an assignee of this Deed and not the original promisee or because the Beneficiary or any intermediate assignee escaped loss due to its having disposed of its interest in the Development.
- 10.4 Except as allowed by this clause the benefit of this Deed is personal to the Beneficiary.

10.5 [The Professional agrees that, if the Beneficiary requires it, it will enter into further warranty deeds in respect of the Property in the same form as this Deed (with the omission of [the [Developer] as a party and except for clause 6 and] this sub-clause), with only any amendments that are needed to give proper meaning and efficacy to the further warranty deeds, in favour of the first [tenants]or [purchasers] to which the Beneficiary or its appointee [lets][sub-lets]or [sells] the Property or any part of it.]

11 JURISDICTION AND GOVERNING LAW

This Deed shall be governed by and interpreted in accordance with English law and the parties irrevocably submit to the jurisdiction of the English courts.

12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

12.1 A person who is not a party to this Deed 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 that Act.

12.2 Notwithstanding clause 12.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

IN WITNESS of which the parties to this Deed have duly executed it on the date specified on page one.

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

SIGNED as a Deed (but not delivered)

until the date hereof) by the said)

[*****])

in the presence of)

the witness named below)

Name of witness

Address

Occupation

SIGNED as a Deed (but not delivered)

until the date hereof) by the said)

[*****])

in the presence of)

the witness named below)

Name of witness

Address

Occupation

ANNEX 2 – BUILDING CONTRACT

**SCHEDULE OF AMENDMENTS TO JCT DESIGN AND BUILD CONTRACT
2016 EDITION**

[Amendment to Article 10 to be incorporated within the signed Articles]

RECITALS

Third Recital

Delete the Third Recital and insert:

"the Contractor has examined the Employer's Requirements and is satisfied:

- (a) as to the feasibility and practicability of the Employer's Requirements; and
- (b) that the Contractor's Proposals will meet the Employer's Requirements; and
- (c) that the Works can be carried out by the Date for Completion and for the Contract Sum;"

ARTICLES

Article 1 Line 1, prior to "complete" insert "carry out and"

Article 5A Insert a new Article 5A as follows:

"5A BR PRINCIPAL DESIGNER

The BR Principal Designer for the purposes of the Building Regulations and the Building Safety Act and accompanying legislation is [****] of [****] or such replacement at the Employer at any time appoints to fulfil that role."

Article 6A Insert a new Article 6A as follows:

"6A BR PRINCIPAL CONTRACTOR

The BR Principal Contractor for the purposes of the Building Regulations and the Building Safety Act and accompanying legislation is [the Contractor] or such replacement as the Employer at any time appoints to fulfil that role."

Article 8 Delete and insert:

"Not Used"

Article 10 Insert new Article 10 as follows:

"10 AMENDMENTS - INCORPORATION

The Recitals, Articles, Conditions, Contract Particulars and Schedules shall have effect as modified by the amendments and additional provisions set out in the Schedule of Amendments annexed to this Contract at []."

Article 11 Insert new Article 11 as follows:

"11 COLLATERAL WARRANTIES: CONTRACTOR

11.1 The Contractor shall execute as deeds collateral warranties in the form set out in Annex 1 to this Contract in favour of:

11.1.1 the Secretary of State for Education;

11.1.2 any freeholder or landlord of the Sites (where this is not the Employer);
[the Governing Body of [the School]]¹;

11.1.3 [the Governing Body of [the School]]²; and

11.1.4 [insert details of the Trust];

11.1.5 and[specify any other interested parties here]³

and shall deliver the same duly executed to the Employer:

- a) on or before the date of this Contract, where such beneficiary's identity has been made known to the Contractor on or before the date of this Contract; and
- b) within [REDACTED] of a written request from the Employer, where such beneficiary's identity has been made known to the Contractor after the date of this Contract.

11.2 Should the collateral warranties from the Contractor not be delivered to the Employer by the date of this Contract or within [REDACTED] of a written request from the Employer (as relevant) then the Employer shall be entitled to withhold all future payments to the Contractor until such time as the relevant collateral warranties have been provided to the Employer.

11.3 The Employer's right to withhold payment under Article 11.2 shall not apply once the Contractor satisfies his obligations under Article 11.

Article 12 Insert new Article 12 as follows:

"12. PRINCIPAL SUB-CONTRACTORS

12.1 In this Article 12 '**Principal Sub-Contractor**' means any Sub-Contractor appointed in relation to the following elements of the Works and any Sub-Contractor carrying out Works wholly or substantially replacing any such element of the Works:

[Ground improvement works];

[Piling];

[Structural steel frame/roof structure];

[Pre-cast concrete floors/stairs];

¹ Delete as appropriate.

² Delete as appropriate.

³ Employer to confirm if there are any other third parties with an interest in the land that should be included here.

[Profile metal cladding/roofing];

[Mechanical, electrical and plumbing services] and

[Lifts]⁴.

12.2 Without prejudice to clause 3.4, each of the Principal Sub-Contractors shall be appointed by deed, and within 5 Business Days of the appointment of a Principal Sub-Contractor the Contractor shall supply to the Employer a complete certified copy of the sub-contract, appointment or contract (as relevant).

12.3 The Contractor shall procure as deeds collateral warranties in the form of Annex 2 to this Contract in favour of:

12.3.1 the Employer;

12.3.2 the Secretary of State for Education;

12.3.3 any freeholder or landlord of the Sites (where this is not the Employer);

12.3.4 the Governing Body of [the School]⁵; and

12.3.5 [insert details of the Trust]; and

12.3.6 [specify any other interested parties here]⁶

and deliver the same as deeds duly executed by the relevant Principal Sub-Contractor (and Contractor as relevant) to the Employer within 10 Business Days of a written request from the Employer.

12.4 The Contractor shall procure that each Principal Sub-Contractor takes out and maintains until the expiry of fifteen (15) years after the date of Practical Completion PI Insurance which covers at a minimum all of the Principal Sub-Contractor's design and professional obligations under the relevant sub-contract, appointment, contract (as relevant) (including (to the extent applicable) professional advice and/or services, any defects and/or insufficiency of design) not less than the relevant limits of indemnity of the types and in amounts as set out in the table below:

Principal Sub-Contractor ⁷	Level of PI Insurance ⁸
[Ground improvement works]	a minimum of [REDACTED] [REDACTED] in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate

⁴ Sub-contract disciplines listed for illustration purposes only. Contractor to confirm which elements of the Works he proposes to sub-let for each school and Article 10.1 to be completed to reflect sub-contract works packages prior to completion of the Contract.

⁵ Delete as appropriate.

⁶ Employer to confirm if there are any other third parties with an interest in the land that should be included here.

⁷ Principal Sub-Contractor disciplines to be updated in accordance with Article 10.1.

⁸ PI Insurance levels shall be determined by the Employer taking into account the contract value and relevant circumstances of the project. Five million pounds (£5m) may be acceptable for Principal Sub-Contractor packages with a lower level of risk

	indemnity limit in any one (1) year of insurance
[Piling]	a minimum of [REDACTED] in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance
[Structural steel frame/roof structure]	a minimum of [REDACTED] in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance
[Pre-cast concrete floors/stairs]	a minimum of [REDACTED] in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance
[Profile metal cladding]	a minimum of [REDACTED] in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance
[Mechanical, electrical and plumbing services]	a minimum of [REDACTED] in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance
[Lifts]	a minimum of [REDACTED] in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance
[Any other Principal Sub-Contractor]	a minimum of [REDACTED] in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance

provided that such insurance is generally available in the market to members of the relevant Principal Sub-Contractor's trade at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Principal Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates.

12.5 For the period beginning on the earlier of the Date of Possession or, the date of this Contract and ending fifteen (15) years after the date of Practical Completion, the Contractor shall provide reasonable evidence to the Employer (as and when reasonably required by the Employer) that the PI Insurance of the relevant Principal Sub-Contractor complies with this Article 12.

12.6 Should the collateral warranties from the Principal Sub-Contractor, sub-contract, appointment or contract (as relevant) of the relevant Principal Sub-Contractor not be delivered to the Employer within [REDACTED] of a written request from the Employer (as relevant) then the Employer will be entitled to withhold all future payments to the Contractor in respect of that particular Principal Sub-Contractor's work until such time as the relevant collateral warranty, sub-contract, appointment or contract (as relevant) has been delivered.

12.7 The Employer's right to withhold payment under Article 12.6 shall not apply once the Contractor satisfies his obligations under Article 12.

12.8 The Contractor shall procure that each Principal Sub-Contractor takes out and maintains until the date of Practical Completion public and products liability insurance with a level of cover of not less than [REDACTED] each and every claim but in the aggregate for products liability⁹. The Contractor shall provide reasonable evidence to the Employer (as and when reasonably required by the Employer) that the public and products liability insurance of the relevant Principal Sub-Contractor complies with this Article 12.

13. [NOVATED CONSULTANTS AND]¹⁰ DESIGN CONSULTANTS

13.1 [The Employer has appointed the following consultants for the purposes of the Works:

13.1.1 [list the consultants to be appointed by the Employer and novated to the Contractor];

(together the "**Novated Consultants**").]¹¹

⁹ All Principal Sub-contractors must hold public liability insurance in accordance with this Article. Products liability insurance is required in addition to public liability insurance for any contract where goods and materials are manufactured or supplied in the course of the services delivered under the relevant package. This will usually apply to all Principal Sub-Contractors in the list in the table at Article 10.4 save for ground improvement works.

¹⁰ Delete where there are no Novated Consultants.

¹¹ Use where novation of consultants is required.

- 13.2** [Within 5 Business Days of executing this Contract or receiving a written request from the Employer (whichever is earlier), the Contractor shall enter into a deed of novation with the Novated Consultants in the form set out in Annex 5 to this Contract].¹²
- 13.3** [Within 15 Business Days of executing this Contract, the Contractor shall appoint the following consultants (or such other consultants as the Employer shall approve) for the purposes of the Works:
- [Architect];
- [Mechanical and Electrical];
- [Civil and Structural];
- [list any other consultants appointed by the Contractor]
- (together the “**Design Consultants**”).]¹³
- 13.4** [The Design Consultants shall be appointed by deed in the terms of the respective draft appointments contained in Annex 3 to this Contract with such amendments as the Employer shall approve.]¹⁴
- 13.5** [Within 5 Business Days of the appointment of a Design Consultant the Contractor shall supply to the Employer a complete certified copy of the Design Consultant’s deed of appointment.]¹⁵
- 13.6** The Contractor shall not dismiss any of the [Novated Consultants and/or]¹⁶ Design Consultants or vary the terms of their appointment without the written approval of the Employer.
- 13.7** If the employment of any [Novated Consultants and/or]¹⁷ Design Consultant is terminated or ceases its duties and/or obligations before the completion of the services allocated to him, the Contractor shall provide details of his proposed replacement to the Employer for his approval. Subject to the Employer’s approval (which approval shall not be unreasonably withheld or delayed), the Contractor shall as soon as is reasonably practicable appoint such replacement consultant to complete those services. The foregoing provisions of this Article 13 shall apply to such replacement consultant.

¹² Use where novation of consultants is required.

¹³ Use where the Contractor is appointing the Design Consultants.

¹⁴ Use where the Contractor is appointing the Design Consultants.

¹⁵ Use where the Contractor is appointing the Design Consultants.

¹⁶ Delete where there are no Novated Consultants.

¹⁷ Delete where there are no Novated Consultants.

13.8 The Contractor shall procure as deeds collateral warranties in the form of Annex 4 to this Contract in favour of:

11.8.1 the Employer;

11.8.2 the Secretary of State for Education;

11.8.3 any freeholder or landlord of the Sites (where this is not the Employer);

11.8.4 the Governing Body of [the School]¹⁸;

11.8.5 [insert details of the Trust]; and

11.8.6 [specify any other interested parties here]¹⁹

and deliver the same as deeds duly executed by the relevant [Novated Consultant and]²⁰ Design Consultant (and Contractor as relevant) to the Employer:

- a) on or before the date of this Contract, where such beneficiary's identity has been made known to the Contractor on or before the date of this Contract; and
- b) within 10 Business Days of a written request from the Employer, where such beneficiary's identity has been made known to the Contractor after the date of this Contract.

13.9 Should the collateral warranties from the [Novated Consultant and/or]²¹ Design Consultant, or appointment of the relevant [Novated Consultant and/or]²² Design Consultant not be delivered to the Employer by the date of this Contract or within 10 Business Days of a written request from the Employer (as relevant) then the Employer will be entitled to withhold all future payments to the Contractor in respect of that particular [Novated Consultant and/or]²³ Design Consultant work until such time as the relevant collateral warranty or appointment has been delivered.

13.10 The Employer's right to withhold payment under Article 13.9 shall not apply once the Contractor satisfies his obligations under this Article 13.

¹⁸ Delete as appropriate.

¹⁹ Employer to confirm if there are any other third parties with an interest in the land that should be included here.

²⁰ Delete where there are no Novated Consultants.

²¹ Delete where there are no Novated Consultants.

²² Delete where there are no Novated Consultants.

²³ Delete where there are no Novated Consultants.

13.11 The Contractor shall procure that each [Novated Consultant and/or]²⁴ Design Consultant takes out and maintains until the expiry of fifteen (15) years after the date of Practical Completion PI Insurance which covers at a minimum all of the [Novated Consultant's and/or]²⁵ Design Consultant's design and professional obligations under the relevant appointment (including (to the extent applicable) professional advice and/or services, any defects and/or insufficiency of design) not less than the relevant limits of indemnity of the types and in amounts as set out in the table below:

Novated/Design Consultant	Level of PI Insurance
Architect	a minimum of [REDACTED] each and every claim
Structural and civil engineer	a minimum of [REDACTED] each and every claim
Mechanical and electrical engineer	a minimum of [REDACTED] each and every claim
Any other [Novated Consultant or] ²⁶ Design Consultant	a minimum of [REDACTED] each and every claim

provided that such insurance is generally available in the market to members of the relevant consultant's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the [Novated Consultant's and/or]²⁷ Design Consultant's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates.

13.12 For the period beginning on the earlier of the Date of Possession or, the date of this Contract and ending fifteen (15) years after the date of Practical Completion, the Contractor shall provide reasonable evidence to the Employer (as and when reasonably required by the Employer) that the PI Insurance of the relevant [Novated Consultant and/or]²⁸ Design Consultant complies with this Article 13.

²⁴ Delete where there are no Novated Consultants.

²⁵ Delete where there are no Novated Consultants.

²⁶ Delete where there are no Novated Consultants

²⁷ Delete where there are no Novated Consultants.

²⁸ Delete where there are no Novated Consultants.

14. PARENT COMPANY GUARANTEE

- 14.1** The Contractor shall procure the execution as a deed and delivery to the Employer by his Parent, on or before the date of this Contract, a parent company guarantee in the form set out in Annex 6 to this Contract with such amendments as the Employer may approve. In the event of any change of ownership or control in the Contractor, the Contractor shall immediately provide a replacement parent company guarantee in the form set out in Annex 6 to this Contract with such amendments as the Employer may approve from the replacement parent company. Should the parent company guarantee not be delivered to the Employer in accordance with this Article 14 then the Employer shall be entitled to withhold all future payments to the Contractor until such time as the relevant parent company guarantee has been delivered. The Employer's right to withhold payment shall not apply once the Contractor satisfies his obligations under this Article 14.

15. COMPLETION CERTIFICATE

- 15.1** The Contractor shall be responsible for obtaining a completion certificate under Regulation 17 of the Building Regulations 2010 in respect of the Works or any Section.
- 15.2** The Employer shall not be required to give a statement to the effect that the Works or any Section has reached Practical Completion until the Contractor has complied with Article 15.1 in respect of the Works or such Section.

16. EMPLOYER'S POLICIES

Subject to the provisions of clause 2.17 the Contractor shall ensure the Works fully comply with all applicable Employer's Policies.

17. AUDIT

The Contractor shall cooperate fully and in a timely manner with any request from time to time of any auditor (whether internal or external) of the Employer and to provide documents, or to procure the provision of documents, and to provide, or to procure the provision of, any oral or written explanation relating to the same.

18. ²⁹[THIRD PARTY AGREEMENTS]

- 18.1** The Contractor shall be deemed to have reviewed the Third Party Agreements listed at [Annex 24] to this Contract and to be fully aware of the obligations, risks and liabilities assumed by the Employer under them.
- 18.2** The Contractor shall perform and assume, as part of his obligations under this Contract, the Employer's obligations, liabilities and risks contained within the Third Party Agreements that relate to the carrying out of the Works as if they were expressly referred to in this Contract as obligations, liabilities and risks of the Contractor, all other things being equal.

²⁹ Delete if there are no Third Party Agreements.

18.3 The Contractor shall ensure that no act or default or omission on his part or on the part of any of the Contractor's Persons in relation to the performance by the Contractor of his obligations under this Contract shall cause, contribute or otherwise give rise to any breach by the Employer of any of his obligations under the Third Party Agreements.

18.4 The Employer may issue an instruction requiring the Contractor to comply with additional or amended Third Party Agreements after the date of this Contract. Such instruction shall be treated as a Change.]

19. ENTIRE AGREEMENT

19.1 The terms and conditions of this Contract and the obligations, warranties and undertakings which it contains are deemed to apply to all the Works both before and after the date of this Contract and this Contract supersedes any previous, agreements, promises, assurances, warranties, representations and understandings between the Parties, whether written or oral, relating to its subject matter between the Parties with regard to the same unless the Parties have expressly agreed to the contrary. For the avoidance of doubt the Contractor acknowledges that the terms and conditions of this Contract are deemed to apply to any Works undertaken under the Pre-Construction Services Agreement.

19.2 The Contractor confirms that in entering into this Contract he has not relied upon any warranty, representation, agreement, statement or undertaking other than as are expressly set out in this Contract and that (in the absence of fraud) he will not have any claim, right or remedy whatsoever arising out of such warranty, representation, agreement, statement or undertaking including, without limitation, any claim for rescission or damages in respect of innocent or negligent misrepresentation.

19.3 Notwithstanding any other provision of this Contract, the Contractor's obligations and/or liabilities under this Contract shall not be removed, reduced, qualified or limited by any enquiries, approvals, admissions, comments, consents, confirmations, sanctions, acknowledgement, advice, inspections, attendance at meetings or any failure in relation to the same by the Employer or his agents or representatives or persons authorised by the Employer to access the Sites including for the avoidance of doubt any comments and/or responses issued to the Contractor pursuant to clause 2.8, 2.8A and/or the Design Submission Procedure and/or any interim or final payments and/or any programme. Approval of drawings shall not constitute an acceptance of any changes and/or variations incorporated in any drawings, and only changes and/or variations specifically instructed or sanctioned by the Employer in accordance with clause 5 shall constitute a Change for the purposes of this Contract.

20. PERFORMANCE BOND^{30 31}

On or before the date of this Contract, the Contractor shall provide to the Employer a performance bond equal to 10% of the Contract Sum in substantially the same form as set out in Annex 16 to this Contract executed as a deed by a bank or insurance company previously approved by the Employer. Should the performance bond not be delivered to the Employer in accordance with this Article 20 then the Employer shall be entitled to withhold all future payments to the Contractor until such time as said performance bond has been provided to the Employer. The Employer's right to withhold payment shall not apply once the Contractor satisfies his obligations under this Article 20.

21. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Contract, but all the counterparts shall together constitute the same Contract.

³⁰ The decision whether to require a PCG and/or a Performance Bond will be at the discretion of the Employer.

³¹ Employers may wish to consider the amount of the performance bond and also make a decision as to whether a performance bond is required particularly if there is no parent company guarantee. Employers may consider approving a reducing bond in the event that the Works are carried out using sectional completion. Note the form of any bond is not intended to be on demand. Where the Employer requires a performance bond the Employer must meet this cost themselves and the Employer cannot use any funding received from DfE to meet the cost of a performance bond.

CONDITIONS

1.1 Definitions

Amend existing definitions and **insert** new definitions, as follows:

Academic Year:	the period beginning on 1 September in any year and ending on 31 August in the following year;
[Anti-Slavery Policy:	the Employer's anti-slavery policy set out in Annex 7 to this Contract];
Asbestos:	has the meaning given to it in the Control of Asbestos Regulations 2012 SI 2012/632;
[Asbestos Survey:	the Asbestos survey(s) set out at Annex 8 to this Contract] ³² ;
Barred Lists:	the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 (as may be amended or re-enacted from time to time);
BR Principal Contractor:	shall mean the person(s) named as the BR Principal Contractor in Article 6A or any successor appointed by the Employer;
BR Principal Designer:	shall mean the person(s) named as the BR Principal Designer in Article 5A or any successor appointed by the Employer;
Building/Buildings:	any building or other erection at any of the Sites;
Building Regulations:	the Building Regulations 2010 and any modification or replacement of the same;
Building Safety Act:	means the Building Safety Act 2022;
[Buildings Survey:	the buildings survey(s) set out at Annex 9 to this Contract] ³³ ;
CBO:	a minimal behaviour order as defined in the Anti-Social Behaviour Crime and Policing Act 2014;
CDM Regulations:	the Construction (Design and Management) Regulations 2015 and any modification or replacement of the same;
Commercially Sensitive Information:	the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the Contractor, the charges for the Works, his Intellectual Property Rights or his business or which the Contractor has indicated to the Employer that, if disclosed by the Employer, would cause the Contractor significant

³² Only to apply when an Asbestos Survey will be used as the basis for allocating responsibility for Asbestos in Existing Buildings. Where the parties use this option the relevant Asbestos Survey should be marked up to show the extent of Asbestos that has been identified.

³³ Only to apply when a Buildings Survey will be used as the basis for allocating responsibility for rectifying defects in Refurbished Buildings.

	commercial disadvantage or material financial loss, but excluding always the Contract Sum;
Conditions:	delete the definition and substitute “see the First Recital ”;
Confidential Information:	the Employer’s Confidential Information and/or the Contractor’s Confidential Information;
Consents:	any Employer Necessary Consents, Employer Planning Conditions, planning permissions relating to the Works, the approvals of reserved matters relating to the conditions attaching to any planning permissions referred to in the Employer’s Requirements or any other planning permissions relating to the Works, any obligation under section 106 Town and Country Planning Act 1990, section 38 and/or section 278 Highways Act 1980 or section 104 and/or section 106 Water Industry Act 1991, and all other permissions, consents, approvals, licences, certificates, authorisations, and permits whether of a public or private nature as may be necessary lawfully to commence, carry out and complete the Works and if they are destroyed or damaged the reinstatement of the Works;
Construction Programme:	the programme for the carrying out and completion of the Works in accordance with the terms of the Contract as set out in Annex 10 of this Contract;
Contamination:	all or any pollutants or contaminants including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour and which, for the avoidance, shall include Asbestos);
Contract:	the Contract Documents and any other document forming part of this Contract;
Contract Documents:	delete “these” and substitute “the”;
Contractor’s Confidential Information:	any information (excluding the Contract Sum), however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;

Contractor's Design Documents:

delete and substitute "the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Contractor in relation to the Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by him under the BIM Protocol";

[Contractor's Supply Chain:

- (a) the Principal Sub-Contractors; and
- (b) any other person or organisation who has been engaged by the Contractor to:
 - (i) construct or install part of the Works;
 - (ii) provide a service that forms part of the Works; or
 - (iii) supply plant and materials that form part of the Works;who has signed the Project Bank Account Joining Deed;]³⁴

Convictions:

other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);

[COVID-19:

the disease known as COVID-19 as caused by severe acute respiratory syndrome coronavirus 2 or any subsequent strain of the same;]

[COVID-19 Event:

to the extent that the COVID-19 outbreak and/or resulting measures directly affects the execution of the Works at the relevant Site, the Contractor is not aware of the same as at the date of this Contract and/or the same was not existing at the date of this Contract (for the avoidance of doubt if changes occur to the circumstances, additional restrictions are introduced and/or further measures are introduced after the date of this

³⁴ Delete if no Project Bank Account is required.

Contract then this shall not be deemed as existing as at the date of this Contract) then the implementation by the UK Government and/or any UK public health authority of measures in response to COVID-19 including but not limited to:

- (a) shortages of labour or supervision and/or due to infection, or potential infection, and the resulting quarantine, self-isolation or similar required;
- (b) shortages of plant or materials due to delays in their manufacture, distribution or delivery to Site; or
- (c) any suspension of the Works, closure, or restricted access to the Site or amended working methods (howsoever arising)

as a result of COVID-19 or measures to contain the COVID-19 outbreak but save where the impact upon the execution of the Works, including any shortages in labour, plant or materials, has arisen as a result of the negligence or default of the Contractor (howsoever arising) and provided that other contractors engaged in projects of a similar size scale and complexity to the Works in the same geographic region are generally affected in the same way;]

Crown Body:

any department, office or agency of the Crown;

Decant Protocol:

the protocol set out in Annex 22 identifying the obligations and responsibilities of the parties in relation to the removal of items from the Existing Buildings and their relocation and installation in the New Buildings or Refurbished Buildings (as appropriate);

Disclosure and Barring Scheme:

the disclosure and barring scheme operated by the Disclosure and Barring Service;

Disclosure and Barring Service:

the non-departmental public body established pursuant to the Protection of Freedoms Act 2012;

DOTAS:

the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of

	the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
DPA 2018:	Data Protection Act 2018;
Educational Services:	the provision of teaching and pastoral support for school age children, the provision of careers advice, liaison with parents and guardians of pupils and the carrying on of extra-curricular activities for pupils and the use of educational accommodation by the local community;
Employer:	delete the definition and substitute “see Parties clause in the Agreement”;
Employer’s Confidential Information:	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the Employer, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential;
Employer Necessary Consents:	the Consents listed in Annex 17;
Employer Planning Conditions:	the planning conditions listed in Annex 23;
Employer’s Policies:	the policies as set out in Annex 7 to this Contract;
Enhanced with Lists Check:	the check carried out by the Disclosure and Barring Service that also includes a check of the Barred Lists;
Environmental Information Regulations:	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
Examination Period:	the external examination periods for the School published by the Employer for each Academic Year and notified by the Employer to the Contractor in accordance with clause 2.46.1;
Existing Buildings:	the buildings at the School shown on the plans in Annex 11 to this Contract prior to the relevant Completion Date but excluding any new facilities comprising the Works;
FOIA:	the 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;
Force Majeure:	the occurrence, after the date of this Contract, of:

- (a) acts of God, excluding weather conditions;
- (b) war or insurrection;
- (c) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity;
- (d) evacuation due to chemical spillages and toxic emissions, except as may be attributable to any matter for which the Contractor is responsible under section 10;

which

- (i) is beyond a Party's reasonable control;
- (ii) such Party could not reasonably have provided against before entering into this Contract;
- (iii) having arisen, such Party could not reasonably have avoided or overcome;
- (iv) is not attributable to or caused by the relevant Party; and
- (v) its effects are not confined wholly or principally to the Parties, the Sites or the Works.

Further and, in addition, all references to force majeure shall be read and construed as references to this definition of "Force Majeure";

General Anti-Abuse Rule:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions;

Good Industry Practice:

that degree of skill, care, prudence and foresight which would ordinarily be expected from time to time from a skilled and experienced building contractor under the same or similar circumstances;

Halifax Abuse Principle:

the principle explained in the CJEU Case C-255/02 Halifax and others;

Intellectual Property Rights:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography

rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;

- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction;
- (c) all other rights having equivalent or similar effect in any country or jurisdiction; and
- (d) all or any goodwill relating or attached thereto;

[Judicial Proceedings:

the grant of permission for an application and any subsequent application for judicial review or related process under Part 54 of the Civil Procedure Rules in respect of the planning permission [planning permission to be defined on a project specific basis by reference to the specific detailed/full planning permission only excluding any revised or replacement planning permissions];]

[Judicial Proceedings Action:

any court order or declaration made by a relevant court (including without limitation the granting of an injunction) arising out of or in connection with any Judicial Proceedings which renders unlawful and/or prevents the performance of all or part of the Contractor's obligations under this Contract;]

[Milestone Schedule:

the Schedule of milestone payments set out in Annex 12 of this Contract];³⁵

Named Employee:

has the meaning set out in clause 2.39;

New Buildings:

any Buildings constructed pursuant to this Contract;

Occasion of Tax Non-Compliance:

- (a) where any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - i. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the

³⁵ To apply when Alternative Stage Payments apply.

General Anti-Abuse Rule or the Halifax Abuse Principle;

- ii. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime; and/or

- (b) where any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of this Contract or to a civil penalty for fraud or evasion;

Organisational Capability:

shall mean the appropriate management policies, procedures, systems and resources to ensure that individuals under the control of the Contractor comply with their relevant competence requirements in accordance with the CDM Regulations and Building Regulations;

Parent:

the Contractor's parent company named in the Framework Agreement;

[Payment Submission:

the document authorising the Project Bank to make payment to the Contractor and the Contractor's Supply Chain;]³⁶

Personal Data:

The meaning given to it in the Data Protection Act 2018;

PI Insurance:

professional indemnity insurance;

Post Practical Completion Activities

those activities to be carried out and completed by the Contractor following Practical Completion and as further set out in the Employer's Requirements;

Practical Completion:

the requirements set out in Annex 20 have been complied with and a stage of completeness of the Works has been reached which allows the Sites to be occupied and in which:

- (a) there are no apparent deficiencies or defects and no incomplete items of work which would or could:
 - (i) compromise the health and safety of persons entering

³⁶ Delete if no Project Bank Account is required.

and/or occupying the completed Works; and/or

- (ii) given their cumulative number and/or nature, have more than a negligible impact on the beneficial occupation and use of the completed Works, by reason of their rectification or completion; and

- (b) the Site has been substantially cleared of all temporary buildings, builders' plant and equipment, unused materials and rubbish

provided that where the Contract Documents expressly state that the commissioning, testing and/or adjustment of any mechanical or electrical services installations forming part of the Works is to be completed before practical completion of the Works is to be regarded for the purposes of this Contract as achieved, then the Works shall not be considered to have achieved practical completion for the purposes of this Contract until such commissioning testing and/or adjustment is completed as the Contract Documents require;

Pre-Construction Services Agreement:

the pre-construction services agreement between the [Employer] and the Contractor dated [] relating to the provision of pre-construction services;

Prohibited Act:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Employer or any other public body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

- (ii) under legislation or common law concerning fraudulent acts; or
- (iii) defrauding, attempting to defraud or conspiring to defraud the Employer; or
- (d) any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;

[Project Bank:

the bank at which the Project Bank Account is held;]³⁷

[Project Bank Account:

the bank account used to receive payments from the Employer and the Contractor and to make payments to the Contractor and the Contractor's Supply Chain having account number [*insert number*] and held with [*insert bank*];]³⁸

[Project Bank Account Joining Deed:

an agreement in the form set out in Part 2 of Annex 19 under which a member of the Contractor's Supply Chain joins the Project Bank Account Trust Deed;]³⁹

[Project Bank Account Trust Deed:

an agreement in the form set out in Part 1 of Annex 19 between the Employer, the Contractor and the Contractor's Supply Chain which contains provisions for administering the Project Bank Account;]⁴⁰

Refurbished Buildings:

the Existing Buildings shown in the plans in Annex 11 to be refurbished or remodelled (including any demolition) pursuant to this Contract;

Related Entity:

means any body corporate or partnership entity which is at any time an 'associated person' or 'associate' of or in respect of the Employer, or which is associated with the Employer, as defined in and for the purposes of sections 121 and 131 of the Building Safety Act;

Relevant Requirements:

all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

³⁷ Delete if no Project Bank Account is required.

³⁸ Delete if no Project Bank Account is required.

³⁹ Delete if no Project Bank Account is required.

⁴⁰ Delete if no Project Bank Account is required.

Relevant Tax Authority:	HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;
Request for Information:	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
Schedule of Amendments:	the schedule of additional amendments, modifications and changes to the Conditions as set out in this Appendix 1;
School⁴¹:	[];
Sensitive Works:	the carrying out of any part of the Works (including the making good of any defects) in or on any part or parts of the Sites which may allow direct access to premises occupied or used, or likely to be occupied or used, during the course of the Works by pupils attending the School;
Site Plan(s):	the plan or plans of the Sites set out in Annex 13;
Site Surveys:	the surveys of the Sites set out at Annex 14;
Sites:	the work area or areas edged [red] on the relevant Site Plan(s) together with the Buildings or relevant part(s) of the Buildings within the aforementioned work areas and the service ducts and media for all utilities and services serving the Buildings or relevant part(s) of the Buildings;
Snagging Items:	minor defects, deficiencies or omissions identified pursuant to clause 2.27B which do not materially impair the School's use or enjoyment of the [New Buildings] [Refurbished Buildings] [New Buildings and Refurbished Buildings] or the relevant parts of the [New Buildings] [Refurbished Buildings] [New Buildings and Refurbished Buildings] and all of which are together capable of being rectified within twenty (20) Business Days;
Statutory Requirements	At the end of the definition after "Development Control Requirements" insert: "together with the CDM Regulations, the Building Act 1984 and the Building Regulations";
Sub-Contractor:	any person engaged as an independent contractor, consultant or supplier by the Contractor to carry out and complete all or any part of the Works;

⁴¹ Where and to the extent the framework user is not procuring a school, this definition may be amended on a project specific basis.

[Third Party Agreements:

the extracts included in Annex 24 from agreements between the Employer and third parties, which may affect the Works;]⁴²

UK GDPR:

the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;

Works Insurance Policy:

delete “under whichever of Insurance Options A, B or C applies” and replace with “by the Contractor”;

VAT:

delete the definition and substitute “value added tax chargeable under the Value Added Tax Act 1994 (as amended, extended or re-enacted) and any similar or replacement tax”.

Agreement etc. to be read as a whole

1.3A **Insert** new clause 1.3A:

“1.3A Without prejudice to clause 1.3 the documents comprising this Contract are and shall be construed in the following order of precedence in the event of any inconsistency or ambiguity not dealt with by another clause:

First the Recitals as contained in the Agreement;

Second the Articles as contained in the Agreement;

Third the Contract Particulars as contained in the Agreement;

Fourth the Schedule of Amendments excluding the Annexes;

Fifth Annexes to the Schedule of Amendments;

Sixth the conditions of JCT Design and Build Contract (2016 edition);

Seventh Employer’s Requirements;

Eighth Contractor’s Proposals;

Ninth Contract Sum Analysis.”

Contracts (Rights of Third Parties) Act 1999

1.6 **Insert** the following in lieu of existing clause 1.6:

“1.6.1 This Contract does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is a successor to or an assignee of the rights of the Employer is deemed to be a party to this Contract.

1.6.2 Notwithstanding clause 1.6.1, in the event that a building liability order (as such term is defined

⁴² Delete as appropriate.

in the Building Safety Act) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Contract as if it were named as "joint employer" under this Contract and to rely on any report, survey or findings prepared by the Contractor under the terms of this Contract as if it had been named addressee of such report, survey or findings."

Notice and other communications

1.7.3 In line 3 after the word "post" **insert** "or email".

1.7.4 In line 2 after the word "post" **insert** "or email"; and in line 4 after "posting" **insert** "and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent".

Effect of Final Statement

1.8.1.1 **Insert** "Not Used" in lieu of existing clause 1.8.1.1.

Effect of payments other than payment of Final Statement

1.9 In line 1 **insert** "No comment, notice, certificate, instruction, statement or" in lieu of "Save as stated in clause 1.8, no".

In line 1 **delete** "of itself".

1.12 **Insert** new clause 1.12:

"Rights and Remedies

1.12 Where this Contract provides specifically for any right of a Party on breach of the other Party's obligations under this Contract, the entitlement to exercise (and conferring of) that right will be to the exclusion of all other rights of the first mentioned Party howsoever arising at common law, under statute or in equity (other than specific performance of any obligation under this Contract or injunctive relief) in respect of the circumstances constituting such breach."

1.13 **Insert** new clause 1.13:

"No double recovery

1.13 Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that he has incurred to the extent that he has already been compensated in respect of that loss pursuant to this Contract or otherwise."

1.14 **Insert** new clause 1.14:

"Severability

1.14 If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract."

1.15 **Insert** new clause 1.15:

"Waiver

1.15.1 No term or provision of this Contract shall be considered as waived by any Party unless a waiver is given in writing by that Party.

1.15.2 No waiver under clause 1.15.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and only to the extent) expressly stated in that waiver."

1.17 **Insert** new clause 1.17:

“UK GDPR

1.17 The Employer and the Contractor shall comply with the provisions of Annex 18.”

General obligations

2.1.1 In line 2 after “Plan” **insert** “, Consents,”.

In line 3 after “shall” **insert** “carry out and”.

In lines 5/6 **delete** “so far as not described or stated in the Employer’s Requirements or the Contractor’s Proposals”.

2.1.5 **Insert** new clause 2.1.5:

“2.1.5.1 In performing his obligations under this Contract, the Contractor shall, and shall ensure that each of his Sub-Contractors shall, comply with the Modern Slavery Act 2015 [and comply with the Anti-Slavery Policy] [, have and maintain throughout the term of this Contract his own policies and procedures]⁴³ to ensure compliance.

2.1.5.2 The Contractor shall notify the Employer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

2.1.5.3 In the event that the Contractor fails to comply with this clause 2.1.5 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Employer are acceptable, then the Employer reserves the right to terminate the employment of the Contractor under this Contract in accordance with clause 8.4.1.7.”

2.1.6 **Insert** new clause 2.1.6:

“2.1.6 Subject to clause 2.1.7, the Contractor shall:

2.1.6.1 obtain and maintain all Consents;

2.1.6.2 be responsible for implementing each Consent (which he is required to obtain pursuant to clause 2.1.6.1) within the period of its validity in accordance with its terms;

2.1.6.3 supply to the Employer a copy of any application for a Consent (with a copy of all accompanying drawings and other documents) and a copy of any Consent obtained;

2.1.6.4 comply with the conditions attached to any Consents and procure that no such Consent is breached by him or any person under his control and use all reasonable endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to carry out the Works; and

2.1.6.5 not (and shall use all reasonable endeavours to procure that any other person over whom he has control shall not) without the prior consent of the Employer (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Consent (whether obtained before or after the date of this Contract) or of any condition attached to it but, subject to the compliance by the Contractor with his obligations under this clause,

and references in this Contract to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived.”

2.1.7 **Insert** new clause 2.1.7:

⁴³ Delete as appropriate.

- “2.1.7.1 The Parties agree and acknowledge that the Contractor is not legally entitled to enter into the Employer Necessary Consents and/or discharge the Employer Planning Conditions.
- 2.1.7.2 The Contractor agrees to undertake any negotiations with any third party and any preparation of documentation required to enable the Employer to enter into the Employer Necessary Consents, or where the Employer is not the landowner of the Sites, procure that the landowner of the Sites enters into the Employer Necessary Consents.
- 2.1.7.3 Subject to the Contractor undertaking his obligations under clause 2.1.7.2, the Employer shall enter into, or where the Employer is not the landowner of the Sites, the Employer shall procure that the landowner enters into, the Employer Necessary Consents by the dates set out in Annex 17 to this Contract provided always that:
 - 2.1.7.3.1 the Employer Necessary Consents are in a form previously approved by the Contractor, the Employer and the third party (each acting reasonably);
 - 2.1.7.3.2 the Employer shall pay the legal and surveyor’s costs reasonably and properly incurred in approving the Employer Necessary Consents and the Contractor shall pay and be responsible for all other costs in relation to the Employer Necessary Consents..
- 2.1.7.4 The Contractor agrees to use reasonable endeavours to assist the Employer to discharge, or procure the discharge of, the Employer Planning Conditions.
- 2.1.7.5 Subject to the Contractor undertaking his obligations under clause 2.1.7.4, the Employer shall discharge, or procure the discharge of, the Employer Planning Conditions.”
- 2.1.8 **Insert** new clause 2.1.8:
- 2.1.8 The Contractor shall in relation to the services and utilities required or affected as a result of the carrying out of the Works:
 - 2.1.8.1 be responsible for determining the location of such services and utilities as may be at the Sites and for the maintenance of access to such services and utilities at the Sites;
 - 2.1.8.2 make and rely upon all necessary investigations and surveys as to such services and utilities at the Sites;
 - 2.1.8.3 make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any services and utilities not within the Sites;
 - 2.1.8.4 pay to all relevant authorities or undertakings all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of such services and utilities within the Sites;
 - 2.1.8.5 make connection into services and utilities outside the Sites; and
 - 2.1.8.6 otherwise do all that is required in relation to the utilities required for the purpose of carrying out of the Works.

Materials, goods and workmanship

- 2.2.1 In lines 2/3 **insert** “shall be new and of such kinds and of such quality to enable the Contractor to comply with the Contract Documents” in lieu of “as described in the Contractor’s Proposals or other Contractor’s Design Documents”.
- 2.2.2 In lines 2/3 **insert** “shall be of such quality to enable the Contractor to comply with the Contract Documents” in lieu of “as described in the Contractor’s Proposals or other Contractor’s Design Documents”.
- 2.2.5 In line 1 **insert** “ensure that” in lieu of “encourage”.
In line 1 **insert** “are” in lieu of “to be”.

Prohibited materials

2.2.6 **Insert** new clause 2.2.6:

“2.2.6 The Contractor shall not use, and subject to the standard of skill, care and diligence set out in clause 2.17, nor permit, specify or approve for use in connection with the Works any materials which at the time of use:

2.2.6.1 are known to be deleterious (either to health and safety or to the durability of the Works); or

2.2.6.2 contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or

2.2.6.3 do not accord with the guidelines contained in the edition of the publication *Good Practice in Selection of Construction Materials* (British Council for Offices (BCO)), current at the date of use.”

Date of Possession - progress

2.3 In line 2 **insert** “on licence” after “Contractor”.

Work not forming part of the Contract

2.6A **Insert** new clause 2.6A:

“2.6A.1 The Contractor shall in accordance with the requirements of the Employer afford reasonable facilities for any Employer’s Persons and their workmen and of any other properly authorised authorities or statutory corporations or statutory bodies who may be employed in the execution on or near the Sites of any work not in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works.

2.6A.2 It is agreed and declared for the purposes of clause 2.6A.1 (but without limitation) that the Contractor could reasonably foresee the activities of the contractors and workmen of the Statutory Undertakers referred to in the Employer’s Requirements on or near the Sites or parts thereof throughout the period of the Contract.

2.6A.3 The Contractor shall provide attendance for such Employer’s Persons and workmen as may be directed by the Employer (acting reasonably).

2.6A.4 For the purposes of clause 2.6A.3, attendance shall be deemed to cover all expenses incurred by the Contractor in:

2.6A.4.1 planning, programming and co-ordinating his work with that of such Employer’s Persons and workmen;

2.6A.4.2 accepting delivery, unloading and storing material for the Employer’s Persons as required; and

2.6A.4.3 allowing the Employer’s Persons space for their site offices and all reasonable access and facilities for the proper execution of their work including the free use of craneage, scaffolding, ladders, stores, messrooms, latrines, site services, including background lighting and distributing boards for the Employer’s Persons own localised lighting, and providing the necessary watching and lighting, provided that these facilities are normally available on the site at the time.

2.6A.5 For the avoidance of doubt the execution of any works pursuant to clause 2.6 and/or 2.6A shall not constitute the taking of possession by the Employer for the purposes of clause 2.30 nor that Practical Completion of the Works or part of the same has been achieved for the purposes of clauses 2.27 and 2.35.”

Contract Documents

2.7.1 **Insert** “Not Used” in lieu of existing clause 2.7.1.

2.7.2 **Insert** “Not Used” in lieu of existing clause 2.7.2.

Construction information

2.8A **Insert** new clause 2.8A:

“2.8A.1 The Contractor shall produce the Construction Programme and deliver the same to the Employer prior to the Date of Possession (or, if there are Sections, prior to the first of the Dates of Possession) and shall thereafter revise the Construction Programme as appropriate from time to time (and if and whenever there is any material delay to the execution of the Works) so as to minimise or avoid any anticipated delay or disruption to the carrying out of the Works, and shall provide the Employer with the revised Construction Programme.

2.8A.2 Each month the Contractor shall report to the Employer in writing comparing the progress of the Works with the Construction Programme current at that time, and promptly advise the Employer of any delay or disruption to the Works, setting out the measures he is taking or proposes to take to minimise or make good such delay or disruption.

2.8A.3 Without prejudice to clause 2.1.6, where the Employer’s authorisation or completion of a document in respect of the Consents is required the Contractor shall furnish the relevant documentation to the Employer and take account in his programme that the Employer may require a period of 20 Business Days to authorise or complete it as appropriate.”

Site boundaries

2.9 In line 1 after “boundaries of the site.” **insert** “The Contractor shall be deemed to have carried out a site survey, the accuracy of which is entirely the Contractor’s responsibility. The setting out of the survey and all aspects of the Works dependent thereon shall be the Contractor’s responsibility and no costs will be borne by the Employer in connection with correcting any errors therein.”

Divergence in Employer’s Requirements and definition of Sites’ boundaries

2.10.1 **Insert** the following in lieu of existing clause 2.10.1:

“Where there is a divergence between the Employer’s Requirements and the definition of the Sites’ boundaries given as provided in clause 2.9 it is to be corrected by the Contractor at his own cost and without an extension of time.”

Preparation of Employer’s Requirements

2.11 **Insert** “Not Used” in lieu of existing clause 2.11.

Employer’s Requirements – inadequacy

2.12 **Insert** the following in lieu of existing clause 2.12:

“If either Party finds that any design in the Contract Documents contains any defect or inadequacy (other than a defect or inadequacy in the Employer’s Requirements which is corrected by the Contractor’s Proposals but including any non-compliance with Statutory Requirements) he shall so notify the other Party and the Contractor shall inform the Employer in writing of his proposals for removing such defect or inadequacy, and with the Employer’s consent (which shall not be unreasonably withheld or delayed) the Contractor shall remove such defect or inadequacy in accordance with such proposals, at the Contractor’s cost and without an extension of time.”

Notification of discrepancies etc

2.13 **Insert** “Not Used” in lieu of existing clause 2.13.

Discrepancies in documents

- 2.14 **Insert** the following in lieu of existing clause 2.14:
- “2.14.1 If either Party finds any discrepancy in or between any of:
- 2.14.1.1 the Employer’s Requirements;
- 2.14.1.2 the Contractor’s Proposals;
- 2.14.1.3 the Contract Sum Analysis;
- 2.14.1.4 any instruction for a Change;
- he shall immediately give written notice of the discrepancy to the other Party.
- 2.14.2 Where such discrepancy is in the Employer’s Requirements but is resolved by the Contractor’s Proposals, the Contractor’s Proposals shall prevail. Where such discrepancy is not resolved by the Contractor’s Proposals, the Contractor shall inform the Employer of his proposals for resolving the discrepancy, and with the Employer’s consent (which shall not be unreasonably withheld or delayed) the discrepancy shall be dealt with in accordance with such proposals, at the Contractor’s cost and without an extension of time.
- 2.14.3 Where such discrepancy is between the Employer’s Requirements and the Contractor’s Proposals or within the Contractor’s Proposals, the Contractor shall inform the Employer of his proposals for resolving the discrepancy, and with the Employer’s consent (which shall not be unreasonably withheld or delayed) the discrepancy shall be dealt with in accordance with such proposals, at the Contractor’s cost and without an extension of time.
- 2.14.4 Where the discrepancy results from an instruction for a Change, the Employer shall issue a further instruction for a Change to resolve the discrepancy.
- 2.14.5 Nothing in this clause 2.14 shall relieve the Contractor of the obligation to comply with Statutory Requirements nor of his responsibility for the design of the Works.”

Divergences from Statutory Requirements

- 2.15.1 In line 3 of the second paragraph, **insert** “and with no extension of time pursuant to clause 2.25” in lieu of “, save as provided in clause 2.15.2,”.
- 2.15.2.1 In line 1 after “Statutory Requirements” **insert** “or the requirements of the fire officer”.
- In line 2 after “the Works” **delete** the remainder of the sub-clause and **insert**: “the Contractor shall inform the Employer in writing of his proposed alteration or modification and with the Employer’s consent (which shall not be unreasonably withheld or delayed) the Contractor (entirely at his own cost and without an extension of time unless the amendment is necessitated by a change to the Statutory Requirements after the Base Date which the Contractor could not have reasonably foreseen or had notice of before the Base Date) shall complete the design and construction of the Works in accordance with the alteration or modification unless instructed by the Employer not to do so”.
- 2.15.2.2 In line 1 before “Contractor’s Proposals” **insert** “Employer’s Requirements or the”.
- In line 3 after “Development Control Requirements” **delete** the remainder of the sub-clause and **insert**: “the Contractor shall inform the Employer in writing of his proposed alteration or modification and with the Employer’s consent (which shall not be unreasonably withheld or delayed) the Contractor (entirely at his own cost and without an extension of time unless the amendment is necessitated by a change to the Statutory Requirements after the Base Date which the Contractor could not have reasonably foreseen or had notice of before the Base Date) shall complete the design and construction of the Works in accordance with the alteration or modification unless instructed by the Employer not to do so”.
- 2.15.2.3 In line 2 after “Requirements” **delete** the remainder of the sub-clause and **insert**: “the Contractor (entirely at his own cost and without an extension of time unless the amendment is necessitated by a change to the Statutory Requirements after the Base Date which the

Contractor could not have reasonably foreseen or had notice of before the Base Date) shall complete the design and construction of the Works in accordance with the amendment”.

Design Work – liabilities and limitation

2.17.1 In line 1 after “comprised in the” **insert** “Employer’s Requirements and”.

In line 3 after “the Contractor” **insert** “has exercised and will continue to exercise in the design of the Works the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer of the appropriate discipline(s) for such design acting independently under a separate contract with the Employer and experienced in carrying out design such as that required under this Contract in relation to works of a similar size, scope, nature, complexity, location, timescale and value to the Works” in lieu of the remainder of the clause.”

2.17.2 **Insert** the following in lieu of existing clause 2.17.2:

“Without derogation from any other provision in this Contract the Contractor shall be fully responsible in all respects for the design of the Works including all design work proposed by or on behalf of the Employer prior to the date of this Contract and forming part of the Employer’s Requirements.”

2.17.2A **Insert** new clause 2.17.2A:

“Acceptance by the Employer of any models, information and/or data as per the BIM Protocol shall not amount to confirmation that such models, information and/or data are compliant with the requirements and terms of this Contract. Any such acceptance shall not constitute or imply or be evidence of the Employer’s approval or acceptance of any design, work, materials or equipment forming part of the Works nor shall it in any way lessen or otherwise affect the Contractor’s responsibilities and liabilities under this Contract.”⁴⁴

2.17.3 **Insert** the following in lieu of existing clause 2.17.3:

“The Contractor shall not be excused liability for breach of any of the warranties set out in clause 2.17.1 by reason of the fact that he may have exercised all due skill, care and diligence in the selection of the persons to whom he delegated his responsibilities.”

2.17.4 **Insert** new clause 2.17.4:

“2.17.4 The aggregate liability of the Contractor to the Employer for any matters arising in connection with the performance of his obligations under this Contract shall not except as set out below at clause 2.17.5 exceed the amount, if any, stated in the Contract Particulars.”

2.17.5 **Insert** new clause 2.17.5:

“2.17.5 The Contractor shall not exclude or restrict his liability for any of the following and no liability for the same shall be taken into account in determining whether the limit of liability under clause 2.17.4 has been reached or exceeded:

2.17.5.1 losses which are recovered pursuant to the insurance policies required to be effected and maintained in accordance with section 6 of this Contract (other than PI Insurance) and/or payments made by the Contractor to the extent corresponding payments are either received and/or recovered by the Contractor pursuant to the insurance policies required to be effected and maintained in accordance with section 6 of this Contract (other than PI Insurance) or which would have been received, recovered and/or recoverable but for the failure of the Contractor to maintain or to make a claim under such policies;

⁴⁴ Clause added June 2024 to bring in line with updates to DEIR issued in December 2023.

- 2.17.5.2 the Contractor's liability under clause 2.29;
- 2.17.5.3 the Contractor's liability in the event he abandons the Works;
- 2.17.5.4 the Contractor's liability in the event of any fraud, wilful misconduct, deliberate default of direct employees of the Contractor or of its Design Consultants, Sub-Contractors and sub-consultants, in each case to the extent employed or directed by the Contractor, fraudulent misrepresentation, abandonment, corruption or criminal conduct on the part of the Contractor;
- 2.17.5.5 the Contractor's liability in respect of any employer's liability; and
- 2.17.5.6 the Contractor's liability in respect of personal injury or death."

[Materials and goods – on site

- 2.21 In line 3 **delete** "subject to Insurance Options B or C (if applicable)".⁴⁵

Materials and goods – off site

- 2.22 **Renumber** clause 2.22 as 2.22.1 and then **insert** new clause 2.22.2:

"2.22.2 The Contractor shall ensure that the Listed Items are either set apart or have been clearly and visibly marked individually or inset by letters or figures or by reference to a pre-determined code at the premises where they have been manufactured or assembled or stored. The Contractor shall ensure that the Listed Items are identified as being the property of the Employer."

Related definitions and interpretation

- 2.23.1 After "to delay" **insert** ", notice".
After "further delay" **insert** ", further notice".

[Delay arising out of a COVID-19 Event

- 2.24A Insert new clause 2.24A:

"Delay arising out of a COVID-19 Event

- 2.24A Notwithstanding any other provision of this Contract, the Contractor's sole and exclusive remedy for any delay to the progress of the Works arising directly or indirectly out of a COVID-19 Event or any additional costs or expenses arising directly or indirectly out of a COVID-19 Event shall be the right to apply for an extension of time pursuant to clause 2.24 on the grounds that the delay was caused by the occurrence of a COVID-19 Event. The Contractor waives any rights it may have to make any other claim under this Contract relating indirectly or directly to COVID-19 and, for the avoidance of doubt, the Employer shall have no liability for any additional costs or expenses attributable to a COVID-19 Event."]

Fixing Completion Date

- 2.25.6.3 At the start of the clause **insert** "save in respect of a Change properly instructed pursuant to clause 5.1.1.4".

Relevant Events

- 2.26.2.1 **Insert** "Not Used" in lieu of existing clause 2.26.2.1.
2.26.2.2 **Delete** "or 3.11".
2.26.5 After "under clause 4.11" **insert** "or clause 8.10.3".

⁴⁵ Square brackets to be removed and clause to apply when Option C applies.

- 2.26.6 **Insert** at the end of clause 2.26.6:
 “or, in the case of any impediment or prevention, save to the extent that the same is in consequence of the reasonable exercise of the rights of the Employer under this Contract”.
- 2.26.7 At the end of clause **insert** “provided that the Contractor shall have supplied any information required, placed any necessary orders and otherwise performed his obligations under this Contract in respect of such work as soon as is reasonably practicable after the date of this Contract so as not to delay or disrupt the Statutory Undertaker in relation to such works.”
- 2.26.9 At the end of the clause **insert** “but only to the extent that such events are not in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor, his servants or agents or any Sub-Contractor or supplier or their respective servants or agents.”
- 2.26.11 At the end of the clause **insert** “save where such events arise upon the Sites or concern the Contractor’s employees and do not arise out of or in connection with a national labour dispute.”
- 2.26.12 At the end of the clause **insert** “provided such exercise of statutory power could not have been reasonably foreseen by the Contractor but save for any COVID-19 Event.”
- 2.26.14 **Insert** “Force Majeure;” in lieu of “force majeure.”
- [2.26.15 **Insert** new clause 2.26.15:
 “2.26.15 the discovery of unforeseeable ground conditions and/or Contamination under the Existing Buildings in accordance with clause 10.3.”.]⁴⁶
- [2.26.16 **Insert** new clause 2.26.16:
 “2.26.16 the discovery of Asbestos, subject to the provisions of clause 11.4.”.]⁴⁷
- [2.26.17 **Insert** new clause 2.26.17:
 “2.26.17 the discovery of defects in the Refurbished Buildings, subject to the provisions of clause 12.3.2.”.]⁴⁸
- [2.26.18 **Insert** new clause 2.26.18:
 “2.26.18 a COVID-19 Event”.]

Delay caused by Contractor’s default

- 2.26A **Insert** new clause 2.26A:
 “2.26A Notwithstanding any other provision under these Conditions, the Contractor shall not become entitled to any extension of time for the completion of the Works or any part of the Works on account of any circumstances arising by reason of any error, omission, negligence or default of the Contractor or of any Sub-Contractor or supplier of any tier, or of any of his or their employees or agents.”

Practical completion

- 2.27 In lines 1 and 2 **delete** “When practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clauses 2.37 and 3.16 in respect of the supply of documents and information, then:” and substitute “[Subject to Clause 2.27A], the Contractor shall notify the Employer in writing no later than 4 (four) weeks prior to the date when he considers that the Works or a Section thereof will be practically complete. Provided

46 To be included when the Employer accepts responsibility for Contamination/and/or ground conditions under Existing Buildings.

47 To be included when the Employer accepts responsibility for Asbestos that was not identified in the Asbestos Survey in accordance with clause 11.4.

48 To be included when the Employer accepts responsibility for defects that were not identified in the Building Survey in accordance with clause 12.3.2.

that the Works or a Section thereof have achieved Practical Completion and the Contractor has complied with clauses 2.37, 3.16 and Article 13:”.

[2.27A **Insert** new clause 2.27A:

“2.27A If practical completion of the Works or a Section is achieved after the relevant Completion Date, practical completion of the Works or Section (as relevant) shall be deemed for all purposes of this Contract to have taken place on the date which occurs [] weeks before the first day of the first available term [or half term] provided that:

2.27A.1 the Contractor shall be responsible for any deterioration in the condition of the Works or Section (as relevant) until the deemed date of practical completion of the Works or Section (as relevant); and

2.27A.2 the Contractor and the Employer agree (each party acting reasonably) appropriate arrangements to minimise any disruption to the Educational Services (including the retention of facilities such as examination halls at the Existing Buildings until such time as it is appropriate to commence use of the equivalent facilities of the [New Buildings][Refurbished Buildings][New Buildings and Refurbished Buildings]).”⁴⁹

2.27B Insert new clause 2.27B:

“Snagging items

2.27B.1 The Employer may at his discretion issue a Practical Completion Statement or a Section Completion Statement notwithstanding that there are any Snagging Items. Where there are Snagging Items, the Employer shall, within five (5) Business Days of the issue of the Practical Completion Statement or Section Completion Statement, issue a notice specifying the Snagging Items together with an estimate of the cost of rectifying such Snagging Items.

2.27B.2 The Contractor shall, in consultation with the Employer and in such manner as to cause as little disruption as reasonably practicable to any ongoing commissioning and the Employer’s use of the School, rectify all Snagging Items within a reasonable period not exceeding twenty (20) Business Days from the issue of the Practical Completion Statement or Section Completion Statement.

2.27B.3 If, by the end of the period referred to in clause 2.27B.2, the Contractor has failed to rectify the Snagging Items to the reasonable satisfaction of the Employer, the Employer may, by himself, or by the engagement of others, carry out the works necessary to rectify the Snagging Items, at the risk and cost of the Contractor.”

[Payment or allowance of liquidated damages

2.29 **Delete** and **insert** “Not Used” in lieu of existing clause 2.29.]⁵⁰

Payment or allowance of liquidated damages

2.29.1.2 **Insert** “the Employer has informed the Contractor in writing that he shall or may require the Contractor to pay or allow liquidated damages,” in lieu of existing clause 2.29.1.2.

2.29.2 At the end of the clause delete the full stop and **insert** “, and the Employer’s notice under clause 2.29.2 may also suffice as the Employer’s notification under clause 2.29.1.2.”

[Provision of temporary accommodation in the event of late completion

2.29A **Insert** as clause 2.29A:

“Provision of temporary accommodation in the event of late completion

⁴⁹ These provisions may not be relevant in every case but may be required where the School is not be able to move on the date that practical completion of the Works (where the Contractor has missed the scheduled Completion Date). For example, the period of weeks may equate to the time required by the School’s ICT Contractor to install ICT following completion of the Works.

⁵⁰ To be included when Temporary Accommodation is the sole remedy for delay.

- 2.29A.1 Provided that the Employer has issued a Non-Completion Notice for the Works or a Section and subject to clause 2.29A.2, the Contractor shall upon demand by the Employer provide from the relevant Date for Completion until the relevant date of Practical Completion (or, if earlier, until the date of termination of this Contract or of the Contractor's employment under it), at his own cost temporary accommodation within the curtilage of the School which meets the Employer's Requirements and can be used without interfering with the provision of education to pupils at the School to allow the School to accommodate all pupils at the School for whom appropriate accommodation is not available prior to the date of Practical Completion. Further or alternatively, the Employer may recover the cost of providing such temporary accommodation from the Contractor as a debt, and such debt shall be payable by the Contractor within five (5) Business Days of the Employer's demand.
- 2.29A.2 In the event of a revised Completion Date being fixed in accordance with clause 2.25, and prior to such fixing, the Contractor has provided temporary accommodation in accordance with clause 2.29A.1 in respect of late completion of the Works or relevant part of the Works based on a previously applicable Date for Completion which is earlier than that newly fixed, the Employer shall refund to the Contractor following the date of Practical Completion of the Works or relevant part of the Works the cost of the provision of temporary accommodation for the period from the earlier fixed Date for Completion until the newly fixed Completion Date.
- 2.29A.3 If the provision of temporary accommodation in accordance with clause 2.29A.1 is not possible or practical, at the option of the Employer, the Contractor shall either:
- 2.29A.3.1 reimburse to the Employer the proper costs reasonably incurred by the Employer in the provision of alternative accommodation and any additional or alternative ancillary services as may be required to enable that accommodation to be used for the provision of Educational Services, including, if relevant, the cost of providing temporary facilities or accommodation and/or the costs of transportation to and from any facilities or accommodation so provided; or
- 2.29A.3.2 provide at the Contractor's expense equivalent alternative accommodation in a location within [one (1)] mile of the [School][Sites] and provide such additional or alternative ancillary services as may be required to enable that accommodation to be used for the provision of Educational Services."]⁵¹

Practical completion date

- 2.31 At the end of the clause delete the full stop and **insert** "provided, however, that the Rectification Period for the Relevant Part shall extend until the issue by the Employer of the Notice of Completion of Making Good in respect of the whole of the Works."

Defects etc – Relevant Part

- 2.32 At the end of the clause **insert** "Provided that the Employer shall not be required to issue such notice any earlier than [REDACTED] after the end of the Rectification Period applicable to such Relevant Part."

[Insurance – Relevant Part

- 2.33 In line 1 **insert** "paragraph C.2 of Insurance Option C" in lieu of "under Insurance Option A, B or C.2 whichever applies".⁵²

Schedules of defects and instructions

⁵¹ To be included when Temporary Accommodation is applicable in the event of delay. Option to be used in lieu of LADs.

⁵² Square brackets to be removed and clause to apply when Option C applies.

2.35 In line 3 after “Contract” **insert** “or frost occurring before Practical Completion of the Works or relevant Section:”.

2.35.2 In line 3 **delete** “after delivery of that schedule or”.

2.35 In the final paragraph after “Within a reasonable time” **insert** “(and in any event, subject to clause 2.35A, within a period of [REDACTED] or such longer period as the Parties may, acting reasonably, agree)”.

Defects requiring urgent attention

2.35A **Insert** new clause 2.35A:

“2.35A In cases of urgency the Employer may require any matter notified under clause 2.35 to be made good within such period of time specified by the Employer as the circumstances require.”

Defects etc. at Practical Completion

2.35B **Insert** new clause 2.35B:

“2.35B The foregoing provisions of this clause 2.35 apply to any defects, shrinkages or other faults and to any items of incomplete work and/or omissions remaining at Practical Completion. If the Contractor does not complete any works and/or comply with an instruction issued by the Employer pursuant to clause 2.35 and/or 2.35A in accordance with the period of time required by the Employer, the Employer may, without further notice, employ and pay other persons to execute any work whatsoever which may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment, which for the avoidance of doubt shall include all costs and losses incurred by the Employer in rectifying and making good any such defects, shrinkages, other faults or incomplete works, and an appropriate deduction shall be made from the Contract Sum or the Employer may recover the same from the Contractor as a debt.”

Post Practical Completion Activities

2.35C **Insert** new clause 2.35C:

“2.35C Notwithstanding any other provision of this Contract, the Contractor shall carry out and complete the Post Practical Completion Activities. To the extent that the Contractor is unable to or fails to complete all or any part of the Post Practical Completion Activities as required by the Employer’s Requirements, then such Post Practical Completion Activities, or any incomplete part of the Post Practical Completion Activities, shall be deemed to be defects, shrinkages, other faults or incomplete works as referred to in clauses 2.35 and 2.35B. For the avoidance of doubt matters referred to in this clause 2.35C shall not prevent the release of the applicable Retention at Practical Completion, but shall apply to the remaining Retention to be released upon the issue of the Notice of Completion of Making Good.”

Notice of Completion of Making Good

2.36 At the end of the clause **insert** “Provided that the Employer shall not be required to issue any notice to that effect any earlier than [REDACTED] after the end of the relevant Rectification Period.”

As-built Drawings

2.37 **Insert** the following in lieu of existing clause 2.37:

“2.37.1 On or before and as a condition precedent to Practical Completion of the Works or a Section the Contractor shall without further charge supply to the Employer in relation to the Works or a Section:

- 2.37.1.1 all operating and maintenance documents in accordance with the Employer's Requirements;
- 2.37.1.2 in favour of the Employer, originals of all warranties and guarantees available from the manufacturers and suppliers of all goods and equipment forming part of the Works or a Section whether or not expressly indicated in the Employer's Requirements and other documents and certificates then available or should properly be available in respect of goods, plant, equipment and fittings;
- 2.37.1.3 the original notice of passing of plans under the Building Regulations and confirmation from the relevant authority that all conditions under the Building Regulations have been complied with; and
- 2.37.1.4 the health and safety file pursuant to the CDM Regulations in accordance with the information as set out in the Employer's Requirements.

Notwithstanding any provision to the contrary in this Contract the Contractor shall not be entitled to any payment of Retention that would, but for this provision, become due and payable under this Contract until the provisions of clause 2.37.1 have been complied with.

- 2.37.2 Within 4 weeks of the date of Practical Completion of the Works or a Section the Contractor shall without further charge to the Employer supply to the Employer in relation to the Works or a Section (save where they have already been provided pursuant to clause 2.37.1):

- 2.37.2.1 three complete reproducible sets of the as built drawings together with one electronic copy on disk/CD-Rom (Microsoft Office compliant);
- 2.37.2.2 three copies of the Construction Phase Plan together with one electronic copy on disk/CD-Rom (Microsoft Office compliant);
- 2.37.2.3 the original completion certificate issued by the relevant authority under the Building Regulations;
- 2.37.2.4 all correspondence and documentation relating to obtaining the Consents together with the originals of the Consents and copies of all associated drawings plans and copies of all applications relative thereto;
- 2.37.2.5 evidence that all Consents have been obtained and complied with in full in relation to the Works or a Section;
- 2.37.2.6 the completed health and safety file pursuant to the CDM Regulations in accordance with the information as set out in the Employer's Requirements; and
- 2.37.2.7 written evidence that all appropriate documentation has been submitted to the BREEAM assessor confirming that in the opinion of the assessor the Works achieve the BREEAM rating set out in the Employer's Requirements.

Notwithstanding any provision to the contrary in this Contract the Contractor shall not be entitled to any payment of Retention that would, but for this provision, become due and payable under this Contract until the provisions of clause 2.37.2 have been complied with provided that the provisions of this clause shall not apply to any Retention payable to the Contractor prior to Practical Completion by virtue of clauses 2.31 and 4.18.2.

- 2.37.3 If during the course of the Rectification Period errors are discovered in the drawings and information supplied by the Contractor in accordance with clauses 2.37.1 and 2.37.2 or if as a result of any adjustment or remedial work carried out during the course of the Rectification Period the said drawings and information no longer show or describe the Works as required by clauses 2.37.1 and 2.37.2 then the Contractor as soon as reasonably practicable shall amend the said drawings and information so that they comply with the requirements of clauses 2.37.1 and 2.37.2 at no extra cost to the Employer."

Copyright and use

2.38 **Insert** the following in lieu of existing clause 2.38:

- “2.38.1 The Intellectual Property Rights in the Contractor's Design Documents prepared by or on behalf of the Contractor in relation to this Contract and the work executed by him remains the property of the Contractor. The Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Contractor's Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Sites. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Contractor shall not be liable to any licensee for any use of the Contractor's Design Documents or the use of the Intellectual Property Rights in the Contractor's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Contractor.
- 2.38.2 The Employer may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 2.38.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Employer.
- 2.38.3 In the event that the Contractor does not own the copyright or any Intellectual Property Rights in any of the Contractor's Design Documents the Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Employer to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Contractor is unable to procure the right to grant to the Employer in accordance with the foregoing the Contractor shall procure that the third party grants a direct licence to the Employer on industry acceptable terms.
- 2.38.4 The Contractor waives any moral right to be identified as author of the Contractor's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Contractor's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Employer or any licensee or assignee of the Employer.
- 2.38.5 In the event that any act unauthorised by the Employer infringes a moral right of the Contractor in relation to the Contractor's Design Documents the Contractor undertakes, if the Employer so requests and at the Employer's expense, to institute proceedings for infringement of the moral rights.
- 2.38.6 The Contractor warrants to the Employer that he has not granted and shall not (unless authorised by the Employer) grant any rights to any third party to use or otherwise exploit the Contractor's Design Documents.
- 2.38.7 The Contractor shall supply copies of the Contractor's Design Documents to the Employer's Agent and to the Employer's other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this Contract or related works.
- 2.38.8 After the termination or conclusion of the Contractor's employment hereunder, the Contractor shall supply the Employer with copies and/or computer discs of such of the Contractor's Design Documents as the Employer's Agent may from time to time request and the Employer shall pay the Contractor's reasonable costs for producing such copies or discs.
- 2.38.9 In carrying out the Works the Contractor shall not infringe any Intellectual Property Rights of any third party. The Contractor shall indemnify the Employer against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.”

Insert new clauses 2.39 – 2.57:

Disclosure and Barring

- 2.39.1 The Contractor shall procure that in respect of all potential staff or persons (including sub-contractors of any tier) who will be carrying out any Sensitive Works (each a **“Named Employee”**) before a Named Employee begins to attend the Sites to perform any Sensitive Works:
- 2.39.1.1 each Named Employee is questioned as to whether he or she has any Convictions or CBOs;
 - 2.39.1.2 the results of an Enhanced with Lists Check is obtained from the Disclosure and Barring Service in respect of each Named Employee;
 - 2.39.1.3 to the extent permitted by law a copy of the results of such checks by the Contractor as are referred to in clause 2.39.1.2 are notified to the Employer.
- 2.39.2 The Contractor shall procure that:
- 2.39.2.1 no person who appears on a Barred List following the results of the Enhanced with Lists Check referred to in clause 2.39.1.2 shall be employed or engaged in the performance of the Sensitive Works; and
 - 2.39.2.2 he shall and shall procure that all Sub-Contractors shall comply with all reporting requirements of the Disclosure and Barring Service.
- 2.39.3 The Contractor shall procure that no person who discloses any Convictions or CBOs, or who is found to have any Convictions following the results of the Enhanced with Lists Check referred to in clause 2.39.1.2, is employed or engaged in carrying out any part of any Sensitive Works without the Employer's prior written consent.
- 2.39.4 Insofar as permitted by law, the Contractor shall procure that the Employer is kept advised at all times of any member of staff or employee of any Sub-Contractor engaged in the provision of the Sensitive Works:
- 2.39.4.1 who subsequent to his/her commencement of employment as a member of staff receives a Conviction or CBO which becomes known to the Contractor or a Sub-Contractor or whose previous Convictions or CBO become known to the Contractor or a Sub-Contractor (or any employee of the Contractor or Sub-Contractor involved in the provision of the Sensitive Works); or
 - 2.39.4.2 in respect of whom information is referred to the Disclosure and Barring Service pursuant to the Disclosure and Barring Service (as appropriate); or
 - 2.39.4.3 whom the Disclosure and Barring Service is “minded to bar” or who is placed on a Barred List pursuant to the Disclosure and Barring Scheme which becomes known to the Contractor or a Sub-Contractor.
- 2.39.5 In the event that any member of staff of the Contractor or a Sub-Contractor is added to a Barred List, the Contractor shall procure that such member of staff is removed from the Sites and shall cease to be engaged in the Sensitive Works.
- 2.39.6 Save to the extent prescribed otherwise pursuant to the Disclosure and Barring Service this clause 2.39 shall not apply to those individuals who shall be required by the Contractor to attend on any of the Sites to provide emergency reactive services. In the case of such individuals, the Contractor shall ensure that such individuals are accompanied at all times while on the Sites by a member of the Contractor's staff who has been properly employed or engaged in accordance with this clause 2.39.

Conduct of Staff and Security Arrangements

- 2.40.1 Whilst engaged at the Sites the Contractor shall and shall procure that his staff and the staff of any sub-contractor of any tier shall comply with any Employer's Policies relating to the conduct of staff and security arrangements.
- 2.40.2 The Employer (acting reasonably) may:
 - 2.40.2.1 instruct the Contractor that disciplinary action is taken against any employee of the Contractor or any sub-contractor of any tier involved in the provision of the Works (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Employer shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or
 - 2.40.2.2 where the Employer has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Works is undesirable, require the exclusion of the relevant employee from the relevant location(s).

Admission to the Sites

- 2.41.1 Subject to the remainder of this clause 2.41.1, the Contractor shall at least [REDACTED] before the date on which the Contractor first carries out any Sensitive Works provide the Employer with a written list of the names and addresses of all employees or other persons who it expects may require admission to the Sites in connection with the carrying out of any Sensitive Works, specifying the capacities in which those employees or other persons are concerned with any Sensitive Works and giving such other particulars as the Employer may require. The Contractor shall update this information as and when any such individuals are replaced or complemented by others, not less than [REDACTED] before their inclusion. The decision of the Employer on whether any person is to be refused admission to the Sites shall be final and conclusive and the Employer shall not be obliged to give reasons for its decision.
- 2.41.2 Where the Contractor is unable (acting reasonably) to comply with clause 2.41.1 by the time period specified in it then the Contractor shall comply with his obligations under that clause as soon as reasonably practicable and by no later than the end of the day on which the relevant individual first goes the Sites. Until such time as the Contractor has complied with its obligations in respect of that individual, he or she shall at all times be accompanied on Site by a member of the Contractor or Contractor's Person's staff who has been properly notified to the Employer in accordance with clause 2.41.1.
- 2.41.3 This clause 2.41 shall not apply to those individuals who shall be required by the Contractor or Contractor's Person to attend the Sites to provide emergency reactive services. In the case of such individuals, the Contractor shall, or shall procure that any Contractor's Person shall ensure that such individuals are accompanied at all times while on the Sites by a member of the Contractor or Contractor's Person's staff who has been properly notified to the Employer in accordance with clause 2.41.1.

Refusal of Admission

- 2.42 The Employer reserves the right to refuse to admit to the Sites or to the Existing Buildings any person employed or engaged by the Contractor or any sub-contractor of any tier, whose admission would, in the opinion of the Employer, present a risk to themselves or any pupil, or an Employer's Person or property, and shall not be obliged to give any reasons for such refusal.

Decision to Refuse Admission

- 2.43 The decision of the Employer as to whether any person is to be refused admission to the Sites pursuant to clause 2.42 shall be final and conclusive.

Removal from Sites

- 2.44 The Contractor shall comply with and/or procure compliance with any notice issued by the Employer from time to time requiring the removal from the Sites of any person employed thereon who in the opinion of the Employer acting reasonably is not acceptable on the grounds of risk to themselves or any pupil, or any Employer's Person or property and that such persons shall not be employed again in connection with the Works without the written consent of the Employer.

Minimising Disruption to the Provision of Educational Services

- 2.45 Insofar as the carrying out of the Works affects or may affect the provision of Educational Services at the School, the Contractor shall procure that (subject to the terms of this Contract) the Works are carried out:
- 2.45.1 so as to minimise any disruption to the provision of Educational Services; and
 - 2.45.2 so as to ensure that no disruption is caused during the carrying out of examinations at the School during any Examination Period; and
 - 2.45.3 in compliance, to the extent reasonably practicable, with the Construction Programme.

Examination Periods

- 2.46.1 The Examination Period for the [current and] subsequent⁵³ Academic Year[s] following the date of this Contract has been notified by the Employer to the Contractor.
- 2.46.2 Where such dates have not already been notified pursuant to clause 2.46.1, then no later than [31 August]⁵⁴ in each Academic Year during which the Works are continuing the Employer shall notify the Contractor of the dates of the Examination Period for the next Academic Year.

Stop Notices

- 2.47.1 If, in the opinion of the Employer, the Contractor or a Contractor's Person is not at any time during an Examination Period complying with his obligations under clause 2.45 and the performance of the Works is causing interference with or otherwise disrupting examinations at the School, the Employer may give a written instruction to the Contractor (a **Stop Notice**) to cease such parts of the Works and/or take or refrain from taking such other steps as are necessary to cease interference with the examinations until the end of the Examination Period in question (or such other time as reasonable decided by the Employer).
- 2.47.2 The Contractor shall comply immediately with any Stop Notice issued pursuant to clause 2.47.1.
- 2.47.3 If the Employer issues a Stop Notice, the Employer shall, not later than the next Business Day following the day on which such Stop Notice was given, confirm in writing to the Contractor:
- 2.47.3.1 the fact that the Stop Notice was given and the time at which it was given;

⁵³ Depending on when in the Academic Year the Contract is signed.

⁵⁴ The Employer should notify the Contractor as soon as he can but this should be the latest date.

- 2.47.3.2 the nature and extent of the Stop Notice;
 - 2.47.3.3 what was, in the opinion of the Employer, the disruption to or interference with the examinations; and
 - 2.47.3.4 any other relevant information.
- 2.47.4 If it is subsequently discovered that the Contractor was not in breach of his obligations under clause 2.45.1, the giving of a Stop Notice shall constitute grounds for an extension of time and loss and expense and the provisions of clauses 2.25, 4.19 and 4.20 of the Contract shall apply, provided always that this shall not absolve the Contractor from his obligations immediately to comply with any such Stop Notice.
- 2.47.5 The Contractor shall take all reasonable steps to mitigate the consequences of service of a Stop Notice on its ability to perform his obligations under this Contract.
- 2.47.6 Any dispute in relation to or arising out of this clause 2.47 may be referred by either Party for resolution under section 9 provided always that any such reference shall not absolve the Contractor from its obligation immediately to comply with any Stop Notice in accordance with this clause 2.47.

[Decanting⁵⁵

- 2.48.1 The Contractor and the Employer shall each comply with their respective obligations set out in the Decant Protocol (and shall not be in breach of such obligations to the extent that any failure to do so arises directly from any default of the other Party).
- 2.48.2 In the event that the Construction Programme is amended in accordance with this Contract, the Parties shall agree (acting reasonably) any necessary changes to the Decant Protocol with the aim of minimising delay to the relevant Completion Date of the Works or Completion Date of a Section. In accordance with clause 2.45, any such changes to the Decant Protocol shall not disrupt the provision of Educational Services.]

Induction

- 2.49.1 The Contractor shall provide an induction for the School for all teachers, staff and students at the dates and times identified in the Construction Programme and in the manner set out in the Employer's Requirements. The Contractor shall have no responsibility to repeat such induction to those teachers staff or students who do not attend the planned induction for the School.

Operations on the Sites

- 2.50.1 The Contractor shall provide to the Employer's Agent if and as the Employer's Agent requests in writing, details of the Contractor's proposals for the means of access to the Sites during the construction period, vehicle parking facilities on the Sites, loading and unloading areas for materials, site compounds, temporary warning and direction signs on adjacent highways and any other similar information as to the Contractor's working arrangements. If necessary the Contractor shall amend such details to obtain the approval of the local planning authority or other relevant public authority having jurisdiction with respect to the Works.
- 2.50.2 The Contractor shall be wholly responsible for the design, adequacy, stability and safety of all temporary works required in and about the construction of the Works, save insofar as it is provided in any Contract Document that the design of any temporary works is to be

⁵⁵ This will only be relevant if the Contractor is to carry out any decanting of the contents from one building or part of a building to another building or part of a building as part of the Works.

provided by any member of the Employer's design team, in which case the Contractor shall not be responsible for the production or the adequacy of such design.

2.50.3 In and about the execution of the Works the Contractor shall maintain and not cause any interference to any support enjoyed by any adjoining land or any structures, other than any structures which are to be demolished as part of the Works.

2.50.4 The Contractor shall:

2.50.4.1 keep all enclosures around the Sites clear of graffiti, posters and other unauthorised attachments, so far as is practicable;

2.50.4.2 implement measures for the regulation of traffic to and from the Sites including wheel-washing procedures and street cleaning and comply with any requirements of the police or highway authorities with regard to local traffic arriving at and departing from the Sites;

2.50.4.3 obtain for himself any licences required to oversail any land outside the Sites' boundaries; and

2.50.4.4 make good or meet the cost of making good all damage caused to roads, footpaths and property adjoining the Sites and to any services, arising from the carrying out of the Works.

Energy performance

2.50A.1 At or before Practical Completion of the Works or any Section, the Contractor shall without charge provide to the Employer an energy performance certificate and a recommendation report for the Works or Section, in conformity with regulation 29 of the Building Regulations 2010 and any modification or replacement of the same.

Confidentiality and Information Sharing

2.51.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

2.51.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;

2.51.1.2 not disclose the other Party's Confidential Information to any other person without prior written consent;

2.51.1.3 immediately notify the other Party if he suspects unauthorised access, copying, use or disclosure of the Confidential Information; and

2.51.1.4 notify the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

2.51.2 Clause 2.51.1 shall not apply to the extent that:

2.51.2.1 such disclosure is a requirement of the law of the contract placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 2.53 (Freedom of Information);

2.51.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

2.51.2.3 such information was obtained from a third party without obligation of confidentiality;

- 2.51.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 2.51.2.5 it is independently developed without access to the other Party's Confidential Information.
- 2.51.3 The Contractor may only disclose the Employer's Confidential Information to Contractor's Persons who are directly involved in the carrying out of the Works and who need to know the information, and shall ensure that such Contractor's Persons are aware of and shall comply with these obligations as to confidentiality.
- 2.51.4 The Contractor shall not, and shall procure that the Contractor's Persons do not, use any of the Employer's Confidential Information received otherwise than for the purposes of this Contract.
- 2.51.5 The Contractor may only disclose the Employer's Confidential Information to Contractor's Persons who need to know the information, and shall ensure that such Contractor's Persons are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Contractor's Persons causes or contributes (or could cause or contribute) to the Contractor breaching his obligations as to confidentiality under or in connection with this Contract, the Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by his own obligations of confidentiality to any Contractor personnel, the Contractor shall provide such evidence to the Employer as the Employer may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Contractor is taking appropriate steps to comply with this clause 2.51, including copies of any written communications to and/or from Contractor's Persons, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor's Persons in connection with obligations as to confidentiality.
- 2.51.6 At the written request of the Employer, the Contractor shall procure that those members of the Contractor's Persons identified in the Employer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 2.51.7 Nothing in this Contract shall prevent the Employer from disclosing the Contractor's Confidential Information:
 - 2.51.7.1 to any Crown Body. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
 - 2.51.7.2 to a professional adviser, contractor, consultant, supplier or other person engaged by the Employer or any Crown Body (including any benchmarking organisation) for any purpose connected with this Contract or any person conducting a review in respect of this Contract on behalf of a public body;
 - 2.51.7.3 for the purpose of the examination and certification of the Employer's accounts;
 - 2.51.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Employer has used its resources;
 - 2.51.7.5 for the purpose of the exercise of its rights under this Contract; or
 - 2.51.7.6 to a proposed successor body of the Employer in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, disclosure of the Contractor's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Employer under this clause 2.51.

- 2.51.8 The Employer shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to the above clause is made aware of the Employer's obligations of confidentiality.
- 2.51.9 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of his normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 2.51.10 The Employer may disclose the Confidential Information of the Contractor:
 - 2.51.10.1 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 2.51.10.2 to the extent that the Employer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.
- 2.51.11 The Contractor shall not by himself, his employees or agents, and shall procure that his Sub-Contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Works without the prior written approval of the Employer.
- 2.51.12 No facilities to photograph or film in or upon any property used in relation to the Works shall be given or permitted by the Contractor unless the Employer has given his prior written approval.
- 2.51.13 The Contractor shall not exhibit or attach to any part of the Sites any notice or advertisement without the prior written permission of the Employer, save where otherwise required to comply with legislation.

[Judicial Proceedings⁵⁶

- 2.52.1 Either Party shall notify the other forthwith upon becoming aware of any Judicial Proceedings.
- 2.52.2
 - 2.52.2.1 In the event of Judicial Proceedings the Employer shall be entitled by notice in writing to the Contractor (the "**Suspension Notice**") to suspend the Works and the Contractor will forthwith suspend the Works upon receipt of the Suspension Notice at the Sites which is the subject of Judicial Proceedings and such suspension shall subsist subject to clause 2.52.4.1 until such time as i) such Judicial Proceedings are finally dismissed or withdrawn; or ii) provided that there is no subsisting Judicial Proceedings Action the Employer informs the Contractor that the Works should be resumed (whichever is the earlier).
 - 2.52.2.2 The Contractor must suspend the Works (or the relevant part thereof) at the Sites which is the subject of any Judicial Proceedings Action and forthwith give notice of such suspension in writing to the Employer (the "**Contractor Suspension Notice**") and such suspension shall subsist subject to clause 2.52.4.2 until such time as i) such Judicial Proceedings Action is finally

⁵⁶ This clause will only be relevant to the extent that the Employer intends to accept the risk of judicial review of the planning permission on a project specific basis.

overturned; ii) this Contract is varied by means of a Change in accordance with section 5 in order to permit the Contractor lawfully to resume the Works and/or perform its obligations under this Contract; or iii) the Parties otherwise agree in writing that the Works should be resumed, whichever is the earliest.

2.52.3 Save for where the Contractor or a Contractor's Person (and for the purposes of this clause 2.52.3 only "Contractor" or "Contractor's Person" shall exclude an employee or agent of the Contractor or of a Contractor's Person acting in a personal capacity) has brought, or caused to be brought on his behalf, Judicial Proceedings any suspension of the Works pursuant to clause 2.52.2.1 and/or 2.52.2.2 shall be deemed to be a Relevant Event and a Relevant Matter from the date of the Suspension Notice or Contractor Suspension Notice as appropriate and the provisions of 2.24 and 2.25 shall apply (and for the purposes of the provisions of clause 2.24 the Contractor is deemed to have become aware that there will be or is likely to be a delay in the commencement or completion of the Works on the date of receipt of the Suspension Notice or the date of Contractor Suspension Notice as appropriate);

2.52.4 If by the date falling 12 months after the date of the:

2.52.4.1 Suspension Notice any Judicial Proceedings are not finally dismissed or withdrawn, then, unless agreed otherwise in writing between the Parties, this Contract shall be deemed to be terminated by the Employer as at such date: or;

2.52.4.2 Contractor Suspension Notice i) such Judicial Proceedings Action is not finally overturned or ii) a revised planning permission permitting the lawful completion of the Works has not been granted or iii) if the Parties are unable to agree a Change pursuant to clause 2.52.2.2 by such date, then, unless agreed otherwise between the Parties, this Contract shall be deemed to be terminated by the Employer as at such date;

and where either clause 2.52.4.1 or clause 2.52.4.2 applies, notwithstanding that the Contractor or a Contractor's Person has brought or caused to be brought on his behalf Judicial Proceedings Action, compensation shall be paid by the Employer in accordance with the provisions of clause 8.7 less any amounts already paid to the Contractor in accordance with this Contract. The Parties agree that there shall be no double recovery of compensation under this clause 2.52.]

Freedom of information

2.53.1 The Contractor acknowledges that unless the Employer has notified the Contractor that the Employer is exempt from the provisions of the FOIA, the Employer is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations. The Contractor shall co-operate with and assist the Employer so as to enable the Employer to comply with his information disclosure obligations.

2.53.2 The Contractor shall:

2.53.2.1 transfer to the Employer all Requests for Information that it receives as soon as practicable and in any event within 2 Business Days of receiving a Request for Information;

2.53.2.2 provide the Employer with a copy of all information in its possession, or power in the form that the Employer shall require within 5 Business Days (or such other period as the Employer may specify) of the Employer's request;

2.53.2.3 provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to the Request for Information within the time

for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and

2.53.2.4 procures that his Sub-Contractors do likewise.

2.53.3 The Employer is responsible for determining in his absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

2.53.4 The Contractor shall not respond directly to a Request for Information unless authorised to do so by the Employer.

2.53.5 The Contractor acknowledges that the Employer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose information without consulting or obtaining consent from the Contractor or despite the Contractor having expressed negative views when consulted.

2.53.6 The Contractor shall ensure that all information is retained for disclosure for fifteen (15) years and shall permit the Employer to inspect such records as and when reasonably requested from time to time.

Tax compliance

2.54.1 The Contractor represents and warrants that as at the date of this Contract, he has notified the Employer in writing of any Occasions of Tax Non-Compliance or any litigation that he is involved in that is in connection with any Occasions of Tax Non-Compliance.

2.54.2 If, at any point prior to the end of the Rectification Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

2.54.2.1 notify the Employer in writing of such fact within 5 Business Days of its occurrence; and

2.54.2.2 promptly provide to the Employer:

2.54.2.2.1 details of the steps which the Contractor is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

2.54.2.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Employer may reasonably require.

Contractor's records

2.55.1 The Contractor shall maintain, or procure that detailed records relating to the performance of the Works are maintained, in accordance with Good Industry Practice and any applicable legislation.

2.55.2 Without prejudice to clause 2.55.1, the Contractor shall maintain or procure that the following are maintained:

2.55.2.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and

2.55.2.2 full records of all maintenance procedures carried out during the term of this Contract as part of the Works,

and the Contractor shall have the items referred to in clauses 2.55.2.1 and 2.55.2.2 available for inspection by the Employer upon reasonable notice, and shall present a report of them to the Employer as and when requested.

2.55.3 The records referred to in this clause 2.55 shall be retained for a period of at least fifteen (15) years after the Contractor's obligations under this Contract have come to an end.

Access for Employer's Agent

3.1 In lines 4/5 **delete** "so far as possible".

Site Manager

3.2 At the end of the clause **insert** "Notwithstanding the provisions of clause 2.42 if at any time before the issue of the Notice of Completion of Making Good the Employer shall request the removal of any of the Contractor's Persons from the Works for reasons of negligence, incompetence or misconduct, the Contractor shall promptly remove such personnel and replace him or them with persons acceptable to the Employer."

Project meetings

3.2A **Insert** new clause 3.2A:

"3.2A The Contractor shall attend project meetings convened by the Employer's Agent upon reasonable notice and at reasonable intervals and representatives of the Employer and of the Employer's other consultants (and any other persons authorised by the Employer and notified to the Contractor in writing for the purpose) shall be permitted to attend such meetings."

3.3.3 **Insert** new clause 3.3.3 as follows:

"3.3.3 Notwithstanding clause 3.2, the Contractor warrants that the Contractor's Persons are appropriately qualified, competent and experienced for the undertaking of proper, effective and efficient performance and management of the Works in accordance with the requirements of this Contract."

3.3.4 **Insert** new clause 3.3.4 as follows:

"3.3.4 The Employer shall be entitled, at its absolute discretion, to require the replacement of any Contractor's Persons who, in the Employer's reasonable opinion, have failed to perform satisfactorily or who has misconducted themselves in any way or is otherwise deemed by the Employer to be of insufficient competency for the requirements of this Contract. Where so required, the Contractor shall promptly replace such person with an appropriately qualified and experienced substitute and such replacement shall not be treated as a Change nor give rise to any extra cost to the Employer (including reimbursement of loss and/or expense under clauses 4.20 to 4.21 or any other addition to the Contract Sum) or to any entitlement for an extension of time under clauses 2.24 to 2.26."

Conditions of sub-contracting

3.4.2.5 In line 1 **delete** "the Rights Particulars provide" in lieu **insert** "this Contract provides".

3.4.2.5.1 In lines 1/2 **delete** "if those particulars require" and at the end of the clause **insert** "and have a 12 year limitation period commencing from Practical Completion of the whole of the Works. Save that, without prejudice to any action or proceedings under the sub-contract

that arises from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period as would apply if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings shall be commenced under the sub-contract (except for the final determination of a dispute which has been decided by an adjudicator) more than 12 years after the date of Practical Completion of the whole of the Work”.

3.4.2.6 **Insert** new clause 3.4.2.6:

“3.4.2.6 that in the case of any sub-contracting of the design of the Works the Sub-Contractor shall throughout the duration of the Works and for a period of fifteen (15) years following the date of Practical Completion of the whole of the Works maintain PI Insurance to cover all of the Sub-Contractor’s design and professional obligations under the sub-contract (including (to the extent applicable) professional advice and/or services, any defects and/or insufficiency of design) insurance cover with a licensed insurance company with a limit of indemnity of not less than that amount stated in the relevant sub-contract in respect of any claims which may be made against the Sub-Contractor in relation to the design of the Works;”.

Insert new subclauses 3.4.2.7 to 3.4.2.10 as follows:

“3.4.2.7 a period for payment of the amount due to the Sub-Contractor not greater than 5 days after the final date for payment in this Contract. The amount due shall, but shall not be limited to, payment for work which the Sub-Contractor has completed from the previous application date up to the current application date in this Contract;

3.4.2.8 a provision requiring the Sub-Contractor to include in each subsubcontract the same requirement (including this requirement to flow down), except that the period for payment is to be not greater than 9 days after the final date for payment in this Contract;

3.4.2.9 a provision requiring the Sub-Contractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the Contractor; and

3.4.2.10 terms and conditions that are no less favourable than those of this Contract. The Employer shall be entitled to reject sub-contract conditions proposed by the Contractor that are unduly disadvantageous to the Sub-Contractor.”

3.4.3 At the end of the clause **delete** “.” and in lieu **insert** “;”.

3.4.4. **Insert** new clause 3.4.4:

“3.4.4 the Contractor shall procure that the sub-contracts for the Sub-Contractors shall in all respects be compatible with the terms of this Contract and in a form previously approved by the Employer.”

Non-compliance with instructions

3.6 At the end of the clause delete the full stop and **insert** “or such costs may be recoverable from the Contractor by the Employer as a debt.”

Instructions requiring Changes

3.9.1 In line 1 **delete** from the words “and provided that the” to the end of the clause.

Instructions on Provisional Sums

3.11 At the end of the clause **insert** “The Contractor shall not be entitled to any extension to the Completion Date for any such instructions.”

Insert new clause 3.11A:⁵⁷

“3.11A.1 The Contractor confirms he has:

3.11A.1.1 made an allowance for the Provisional Sum(s) in the Contract Sum; [and]

3.11A.1.2 included the preliminary costs relating to Provisional Sum(s) in the Contract Sum; and

3.11A.1.3 made due allowance in his programming and planning for the execution of the work.

3.11A.2 Following the issue of an instruction pursuant to clause 3.11 the Employer shall determine the costs of the work to be executed by the Contractor in accordance with the Employer's instruction as to the expenditure of Provisional Sum(s) in accordance with the methodology set out in the Employer's Requirements or, where no methodology is included in the Employer's Requirements, the amount valued (a “**Valuation**” in accordance with clauses 5.4 to 5.7 (“the **Valuation Rules**”)). The Contractor shall not be entitled to any payment for increased cost of site administration, site facilities, temporary works or any other preliminary type items of the type referred to in the Standard Method of Measurement arising from the expenditure of any Provisional Sum.

3.11A.3 The Parties agree and acknowledge that the Provisional Sum shall be deducted from the Contract Sum and the cost agreed in accordance with clause 3.11A.2 shall be added to the Contract Sum.”

Work not in accordance with the Contract

3.13.1 After “removal from the site” **insert** “or rectification”.

3.13.2 In lines 1/2 **delete** “(to which the proviso in clause 3.9.1 applies)”.

3.13.3 In lines 5/6 after “be made to the Contract Sum” **insert** “and clauses 2.25 and 2.26.2.3 shall not apply to any instructions issued under this clause” and **delete** the remainder of the clause.

CDM Regulations

3.16.6 **Insert** new clause 3.16.6:

“3.16.6 Where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer's appointment concludes before Practical Completion of the Works, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations without charge.”

Building Regulations and the Building Safety Act

3.17 Insert new clause 3.17 as follows:

3.17 Building Regulations and the Building Safety Act

3.17.1 The Contractor undertakes to the Employer that in relation to the Works and site it will have regard to and comply with applicable Building Regulations, and the Building Safety Act and accompanying legislation including without limitation:

3.17.1.1 regulations 11F, 11J, 11K and 11L of Part 2A of the Building Regulations and:

⁵⁷ The use of Provisional Sums may be used at the Employer's absolute discretion. The presumption is that the Contractor will take programme/preliminary risk but the Employer may in his absolute discretion determine otherwise. Where the Contractor is not required to take programme/preliminary risk this clause will need to be amended and consideration given to whether a consequential amendment to clause 2.26.2.2 is required.

- 3.17.1.2 where the Contractor is and while he remains the BR Principal Designer, it shall also comply with the duties of a BR Principal Designer in Part 2A of the Building Regulations (including without limitation, 11G and 11M);
- 3.17.1.3 where the Contractor is and while it remains the BR Principal Contractor, the Contractor shall also comply with the duties of a BR Principal Contractor in Part 2A of the Building Regulations (including without limitation, 11H and 11N);
- 3.17.2 The Contractor warrants and undertakes to the Employer that it shall and has the skill, knowledge and experience (and if the Contractor is an organisation, the Organisational Capability), necessary to demonstrate compliance with clause 3.17.1 and the Contractor shall immediately notify the Employer where the Contractor ceases to satisfy the requirements of clause 3.17.1.
- 3.17.3 The Contractor shall liaise with and provide all reasonable assistance required by the Employer, the accountable person and/or the principal accountable person under the Building Safety Act (where not the Employer) and/or the BR Principal Designer (where not the Contractor) and/or the BR Principal Contractor (where not the Contractor) to comply with the requirements of the Building Safety Act (insofar as applicable to the Works).
- 3.17.4 For the avoidance of doubt, the Contractor shall comply with its duties under the Building Regulations and the Building Safety Act and accompanying legislation at no cost to the Employer and such compliance shall not be treated as a Change nor give rise to any extra cost to the Employer (including reimbursement of loss and/or expense under clauses 4.20 to 4.21 or any other addition to the Contract Sum) or to any entitlement for an extension of time under clauses 2.24 to 2.26."

Items included in adjustments

- 4.2.5 At the end of the clause **insert** "Provided always that the Contractor shall not be entitled to any payment for increased costs of preliminaries arising from the expenditure of any Provisional Sum."

Taxes

- [4.4 **Insert** the following in lieu of existing clause 4.4:

- 4.4.1 In this clause 4.4, the following definitions shall apply:

- 4.4.1.1 HMRC means HM Revenue & Customs;
- 4.4.1.2 Order means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892);
- 4.4.1.3 Reverse Charge means, in relation to a supply, that under section 55A(6) of the Value Added Tax Act 1994 it is for the recipient, on the supplier's behalf, to account for and pay VAT on the supply and not for the supplier; and
- 4.4.1.4 Supply means a supply made for VAT purposes under or in connection with this Contract by the Contractor and Supplies shall be construed accordingly.
- 4.4.1.5 Tax Point means the time of supply for VAT purposes as defined in Regulation 93 of Part XI of the VAT Regulations 1995.

- 4.4.2 In respect of the Supplies made with a Tax Point, for VAT purposes, before 1 March 2021, the provisions of clauses 4.4.1 to 4.4.4 (inclusive) only of this clause 4.4 shall apply. In respect of Supplies made with a Tax Point on or after 1 March 2021, the provisions of clauses 4.4.1 to 4.4.6 (inclusive) of this clause 4.4 shall apply.

- 4.4.3 The Parties agree and confirm that the procedure for the payment of VAT (if any) by either Party to the other shall be governed entirely and exclusively by the provisions of this clause 4.4 notwithstanding any other provision of this Contract.
- 4.4.4 Any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this Contract is to be treated as exclusive of any VAT. If the person making the supply (or the representative member of the VAT group of which it is a member) is required to account for VAT on any supply, the recipient of the supply shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of that VAT upon the later of:
- 4.4.4.1 the time for payment or provision of the consideration; and
 - 4.4.4.2 the receipt by the recipient of the supply of a VAT invoice in respect of that VAT.
- 4.4.5 The Employer confirms that the requirements specified in article (8)(1)(b) of the Order will be satisfied in respect of any Supply and the Parties consider that the Reverse Charge will not apply to the Supplies so that it is for the Contractor to account for and pay VAT to HMRC.
- 4.4.6 Where the Contractor has accounted for VAT on Supplies (on the understanding that the Reverse Charge did not apply) but HMRC notifies the Employer in writing that:
- 4.4.6.1 the Reverse Charge did apply in respect of those Supplies, and
 - 4.4.6.2 notwithstanding that the Contractor has accounted for VAT to HMRC in respect of those Supplies, the Employer has to account for VAT under the Reverse Charge on those Supplies,

the Employer shall provide written notification to the Contractor of HMRC's decision that the supply should have been treated as subject to the reverse charge. Any amount of overcharged VAT shall be refunded by the Contractor to the Employer within [28] days following repayment to the Contractor of the overcharged VAT by HMRC (either via a correction in the VAT return or via a voluntary disclosure).]⁵⁸

Interim Payments – Contractor's Interim Payment Applications, due dates and Payment Notices

- 4.7.6 **Insert** new clause 4.7.6:
- "4.7.6 An Interim Payment Application may be an electronic invoice provided it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870."

Interim and final payments – final date and amount

- 4.9.1 In line 1 **insert** "████████████████████"

Pay Less Notices and other general provisions

- 4.10.4 **Insert** the following in lieu of existing clause 4.10.4:
- "Any right of the Employer to deduct or set-off any amount (whether arising under any term of this Contract or under any rule of law or of equity) shall be exercisable against any monies

⁵⁸ Where SOS is not the Employer the framework user must satisfy itself that it qualifies for the 'end user' exemption under the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892). Drafting to be deleted where the framework user does not qualify for the 'end user' exemption.

due or to become due to the Contractor, whether or not such monies include or consist of any Retention.”

Ascertainment – Alternative B

- 4.13.1.2 Before the semi-colon at the end of the clause **insert** “and provided further that the Contractor has supplied to the Employer reasonable evidence that property in such materials or goods is vested in the Contractor and that no third party has validly retained title to the same and that the property in the same will pass to the Employer”.

Conclusivity of valuations

- 4.14A **Insert** new clause 4.14A:

“4.14A Neither the issue by the Employer of any valuation nor the payment of any amount by the Employer to the Contractor under any valuation shall:

- 4.14A.1 prejudice or adversely affect the right of either the Contractor or the Employer to contend that the Works have not been properly valued and that any amount has been improperly paid or withheld. In making any evaluation the Employer shall be entitled to reconsider and if necessary adjust the assessments made by him in arriving at any previous valuation; and/or

- 4.14A.2 constitute or imply or be evidence of the Employer’s approval or acceptance of any design, work, materials or equipment forming part of the Works nor shall in any way lessen or otherwise affect the Contractor’s responsibilities and liabilities under this Contract.”

Listed Items

- 4.15.2.1 **Insert** the following at the end of the sub clause:

“and has provided evidence of such in the form of a vesting certificate as provided or approved by the Employer;”

Rules on treatment of Retention

- 4.16 **Insert** the following in lieu of existing clause 4.16:

“The Employer shall be under no fiduciary obligation with regard to any Retention and shall be under no obligation to set aside in a separate account any amount representing Retention and the Employer’s interest in the Retention shall be as beneficial owner and shall not be fiduciary as trustee.”

Matters materially affecting regular progress

- 4.19.1 In line 4 after “subject to clause 4.19.2” **insert** “and 4.19.3”.

- 4.19.3 **Insert** new clause 4.19.3:

“4.19.3 The Contractor shall not be entitled to reimbursement for any loss and/or expense that he has not made reasonable and proper efforts to avoid or reduce such loss and expense.”

- 4.19A **Insert** new clause 4.19A:

“4.19A Any delay in the regular progress of the Works caused by a matter or matters referred to in clause 4.21 which is concurrent with another delay for which the Contractor is responsible shall not be taken into account.”

Relevant Matters

- 4.21 In line 1 following “Relevant Matters” **insert** “(but only to the extent that such matters are not in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor, his servants or agents or any Sub-Contractor or supplier or their respective servants or agents)”
- 4.21.5 At the end of the clause **insert** “or, in the case of any impediment or prevention, save to the extent that the same is in consequence of the reasonable exercise of the rights of the Employer under this Contract.”
- [4.21.6 **Insert** new clause:
- “4.21.6 the discovery of unforeseeable ground conditions and/or Contamination under the Existing Buildings in accordance with clause 10.3.”]⁵⁹
- [4.21.6/7 **Insert** new clause:⁶⁰
- “4.21.6/7 the discovery of Asbestos in accordance with clause 11.4.”]
- [4.21.6/7/8 **Insert** new clause:⁶¹
- “4.21.6/7/8 the discovery of defects in the Refurbished Buildings in accordance with clause 12.3.2.”]

Reservation of Contractor’s rights and remedies

- 4.23 **Insert** the following in lieu of existing clause 4.23: “Reimbursement of the Contractor for loss and/or expense under clauses 4.20, 4.21 and 4.22 shall be deemed to be full compensation for the Contractor in respect of the matters for which the compensation is paid and the Employer shall have no further liability to the Contractor in respect of such matters arising under the Contract or generally at law.”

Final Statement and Final Payment

- 4.24.5 In line 1 **insert** “three months” in lieu of “one month”.

[“Project Bank Account”⁶²

- 4.25.1 The Contractor shall:
- 4.25.1.1 set up and at all times maintain the Project Bank Account;
 - 4.25.1.2 submit to the Employer for acceptance details of the banking arrangements for the Project Bank Account and confirm to the Employer that the banking arrangements allow for payments to be made in accordance with this Contract;
 - 4.25.1.3 provide to the Employer copies of communications relating to the Project Bank Account;
 - 4.25.1.4 pay any charges associated with the Project Bank Account (howsoever arising);
 - 4.25.1.5 account to the Employer for any interest which may accrue or fall due in relation to any sums within the Project Bank Account save that the Contractor shall be permitted to use such sums to contribute to any charges reasonably and

⁵⁹ To be included when the Employer accepts responsibility for Contamination and/or ground conditions under Existing Buildings.

⁶⁰ To be included when the Employer accepts responsibility for Asbestos that was not identified in the Asbestos Survey in accordance with clause 11.4.

⁶¹ To be included when the Employer accepts responsibility for defects that were not identified in the Building Survey in accordance with clause 12.3.2.

⁶² To be included when a Project Bank Account is being used.

properly incurred by the Contractor in association with the maintenance of the Project Bank Account; and

- 4.25.1.6 include in his contracts with the Contractor's Supply Chain the arrangements in this Contract for the operation of the Project Bank Account and the Project Bank Account Trust Deed and ensure that the Contractor's Supply Chain is provided with details of the Project Bank Account and the arrangements for payment of amounts due under their sub-contracts.
- 4.25.2 The Employer, the Contractor and the Contractor's Supply Chain shall enter into the Project Bank Account Trust Deed at the date of this Contract. Where members of the Contractor's Supply Chain have not yet been appointed by the date of this Contract the Contractor shall submit proposals for adding a member of the Contractor's Supply Chain to the Employer for approval and the Employer, the Contractor and the member of the Contractor's Supply Chain shall sign the Project Bank Account Joining Deed following such approval.
- 4.25.3 The Contractor shall, as part of the application for payment made pursuant to clause 4.7, include a breakdown of any sums due to the Contractor's Supply Chain in accordance with their contracts.
- 4.25.4 The Contractor shall prepare the Payment Submission, setting out the sums that the Contractor has properly assessed as being due to the Contractor's Supply Chain and the balance of the payment due to the Contractor under this Contract. The Contractor shall sign the Payment Submission and submit it to the Employer no later than [REDACTED] days before the final date for payment as set out in clause 4.9. The Employer shall sign the Payment Submission and submit it to the Project Bank no later than [one (1)] day before the final date for payment as set out in clause 4.9.
- 4.25.5 Within the time set out in the banking arrangements to allow the Project Bank to make payment to the Contractor and the Contractor's Supply Chain in accordance with this Contract:
 - 4.25.5.1 the Employer shall make payment to the Project Bank Account of the amount which is due to be paid to the Contractor in accordance with the provisions of section 4; and
 - 4.25.5.2 the Contractor shall make payment to the Project Bank Account of any amount which the Employer has notified the Contractor it intends to withhold pursuant to clause 4.7.5 and/or clause 4.10 and which is required to make payment to the Contractor's Supply Chain⁶³.
- 4.25.6 The Contractor and the Contractor's Supply Chain shall be paid from the Project Bank Account the sums set out in the Payment Submission as soon as practicable after the Project Bank Account received payment.
- 4.25.7 A payment which may fall due from the Contractor to the Employer cannot be made from the Project Bank Account.
- 4.25.8 Payments made from the Project Bank Account shall be treated as payments from the Employer to the Contractor in accordance with this Contract or from the Contractor to the Contractor's Supply Chain in accordance with their sub-contract(s) as applicable.
- 4.25.9 A delay in payment due to a failure of the Contractor to comply with the requirements of this clause 4.25 will not be treated as a late payment under this Contract.

⁶³ This provision is only intended to apply in the event that a Pay Less Notice is to be issued on the grounds of the Contractor's own failure to comply with the terms of this Contract and not because of any default of its sub-contractors/suppliers.

- 4.25.10 In the event of termination of the Contractor's employment under this Contract no further payments will be made into the Project Bank Account."]

Definition of Changes

- 5.1.1.4 **Insert** new clause:

"5.1.1.4 the acceleration of the Completion Date for the Works or Section."

- 5.1.2.3 **Insert:** "(except where the Employer requires the Contractor during the Rectification Period to remedy any defect, shrinkage or other fault outside the normal working hours of the Contractor)" after "limitations of working hours".

Valuation of Changes and provisional sum work

- 5.2 At the end of the hanging paragraph **insert** "save where such Change has been necessitated by any negligence, omission or default of the Contractor, in which event no addition shall be made to the Contract Sum."

- 5.2.3 **Insert** "Not Used" in lieu of existing clause 5.2.3.

Change of conditions for other work

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

Contractor's liability – personal injury or death

- 6.1 In line 3 after "Works" **insert** "or of any other obligations pursuant to section 2 or section 3 of the Conditions."

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

Renumber clause 6.2 as 6.2.1:

- 6.2 [In line 1 **insert** "The" in lieu of "Subject to clause 6.3, the".]⁶⁴

In line 3 after "personal" **insert** "(including any expense, liability, loss or claim arising from but not limited to obstruction, trespass, nuisance or interference with any right of way, light, air or water)".

In line 4, after "Works", **insert** "or of any other obligations pursuant to section 2 or section 3 of the Conditions".

- 6.2.2 **Insert** new clause 6.2.2:

"6.2.2 Without prejudice to the generality of clause 6.2.1 the Contractor shall:

- 6.2.2.1 at all times prevent any trespass, public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on a public highway) or other interference with the rights of any adjoining or neighbouring land owner, tenant or occupier or any Statutory Undertaker arising out of the carrying out of the Works or out of any other obligations pursuant to section 2 or section 3 of the Conditions;

⁶⁴ Square brackets to be removed and clause to apply when Option C applies.

- 6.2.2.2 defend or at the Employer's option assist the Employer in defending any action or proceedings which may be instituted in relation thereto howsoever such action may arise; and
- 6.2.2.3 be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings whatsoever and howsoever arising resulting from any such nuisance or interference, save only where such nuisance or interference is a consequence of a Change or other instruction of the Employer (which is not itself the result of any negligence, default or breach of contract by or on behalf of the Contractor or any Sub-Contractor or supplier) and which could not have been avoided by the Contractor using all reasonable and practicable means. For the avoidance of doubt the Employer may issue to the Contractor such instructions as he considers necessary if any injunction is granted or court order is made in consequence of any such nuisance or interference, but (save as aforesaid) no such instruction shall be construed as a Change."

6.2.3 **Insert** new clause 6.2.3:

"6.2.3 Without prejudice to the Contractor's obligations under clause 6.2.2, if the carrying out of the Works or out of any other obligations pursuant to section 2 or section 3 of the Conditions is likely to necessitate any interference (including the oversail of any tower crane jib) with the right of adjoining or neighbouring land owners, tenants or occupiers, then the Contractor shall without cost to the Employer obtain the prior written agreement of such land owners, tenants or occupiers and such agreement shall be subject to the approval of the Employer before execution. The Contractor shall comply in every respect with any conditions contained in any such agreement without cost to the Employer."

Loss or damage to Existing Structures or their contents

[6.3.1 **Insert** the following in lieu of existing clause 6.3.1:

"The Contractor's liability and indemnity under clause 6.2 in respect of any property real or personal shall include any loss or damage to Existing Structures and to any of their contents."]⁶⁵

[6.3.2 **Insert** "Not Used" in lieu of existing clause 6.3.2.]"⁶⁶

[6.3.3 **Insert** "Not Used" in lieu of existing clause 6.3.3.]"⁶⁷

Contractor's insurance of liability of Employer

6.5.1 **Insert** "If the Contract Particulars" in lieu of "If the Employer's Requirements".

[6.5.1.4 **Delete** "insure" and **replace** with "procure cover is effected for the Specified Perils".]"⁶⁸

Related definitions

6.8 In the definition of Joint Names Policy after "Contractor" **insert** "and any one or more third persons specified in writing by the Employer to the Contractor, being persons having or acquiring an interest in or an organisation providing finance in connection with the Sites or the Works".

Sub-contractors – Specified Perils cover under Works Insurance Policies

⁶⁵ Square brackets to be removed and clause to apply when Option C applies.

⁶⁶ Square brackets to be removed and clause to apply when Option C applies.

⁶⁷ Square brackets to be removed and clause to apply when Option C applies.

⁶⁸ Square brackets to be removed and clause to apply when Option C applies.

- 6.9.1 In line 1 **delete** “, where Insurance Option A applies, and the Employer, where Insurance Option B or C applies,”.

In line 2 after the word “Policy” **insert** “, pursuant to paragraph C.2 of Schedule 3”.

Terrorism Cover – policy extensions and premiums

- 6.10.1 In lines 2/3 **insert** “pursuant to paragraph C.2 of Schedule 3” in lieu of “where Insurance Option A applies, or the Employer, where Insurance Option B or C applies”.

- 6.10.2 In line 1 **delete** “Insurance Option A applies and” and **insert** “The” in lieu of “the”.

In line 1 after the word “required” **insert** “pursuant to paragraph C.2 of Schedule 3”.

- 6.10.3 In line 1 **insert** “In the event that” in lieu of “Where Insurance Option A applies and”.

Terrorism Cover – non-availability – Employer’s options

- 6.11.3 In line 1 **insert** “If” in lieu of “Where Insurance Option A applies and”.

Loss or damage – insurance claims and reinstatement

- 6.13.3 In lines 3/4 **delete** “, and from any policies covering Existing Structures or their contents that are effected by the Employer”.

- 6.13.5 **Insert** “In respect of the Works Insurance Policy:” in lieu of “Where Insurance Option A applies:”

- 6.13.6 In line 1 **delete** “Insurance Option B or paragraph C.2 of Insurance Option C applies or where”

Loss or damage to Existing Structures – right of termination

- 6.14 In line 2 **insert** “the Employer may” in lieu of “either Party may, if it is just and equitable”.

In line 3 **insert** “Contractor” in lieu of “other”.

In line 4 **insert** “and the provisions of clause 8.12 shall apply.” in lieu of “. If such notice is given, then:”

- 6.14.1 **Delete** clause 6.14.1.

- 6.14.2 **Delete** clause 6.14.2.

Obligation to insure

- 6.15 **Insert** the following in lieu of existing clause 6.15:

- “6.15.1 The Contractor warrants that he has taken out PI Insurance covering all of his design and professional obligations under this Contract (including in connection with any errors or omissions in the performance of his professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity of the type and amount not less than that stated in the Contract Particulars and shall maintain the same until the expiry of fifteen (15) years after the date of Practical Completion of the Works pursuant to clause 2.27, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the

insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof.

- 6.15.2 Any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things peculiar to the Contractor shall be deemed to be within commercially reasonable rates.
- 6.15.3 The Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Contractor is unable to maintain and/or is not maintaining such insurance in which case the Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Contractor upon, subject to clause 6.15.2, commercially reasonable rates and give notice of the same to the Employer and shall further discuss means of best protecting the respective positions of the Employer and the Contractor in respect of the Works.
- 6.15.4 The Contractor shall fully co-operate with any measures reasonably required by the Employer, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Contractor in respect of the net cost of such insurance to the Contractor above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.
- 6.15.5 As and when reasonably required to do so by the Employer, the Contractor shall:
 - 6.15.5.1 produce for inspection documentary evidence that his PI Insurance is being maintained in accordance with this clause 6.15; and
 - 6.15.5.2 provide confirmation that any occurrence or claim, or of circumstances likely to give rise to a claim, have been properly notified to his insurer in accordance with the requirements of his policy."
- 6.16 **Delete** clause 6.16.

Breach of Joint Fire Code – Remedial Measures

- 6.19.2 At the end of the clause **insert** "or may be recoverable from the Contractor by the Employer as a debt."

[6.21 **Insert** new clause 6.21

Basis of insurance⁶⁹

- 6.21 In respect of the insurances to be maintained by the Contractor under this section 6, the Contractor shall ensure that:
 - 6.21.1 all insurances comply with the requirements of Annex 21;
 - 6.21.2 in respect of those insurances required under clauses 6.1 – 6.5:
 - 6.21.2.1 provide for non-vitiation protection in respect of any claim made by the Insureds as co-insured parties;
 - 6.21.2.2 contain a clause waiving the insurers' subrogation rights against the Insureds (as defined in Annex 21) and their respective employees and agents, acting properly in the course of their employment or agency; and

⁶⁹The addition of clause 6.21 and Annex 21 is only to be included in high band contracts. Mark not used for mid and low band contracts.

6.21.3 in respect of the PI Insurance to be maintained under clause 6.15, it includes an indemnity to principals clause.]

6.22 **Insert** new clause 6.22:

“Evidence of Policies

6.22 To the extent that the Contractor has procured any project insurance policies he shall provide to the Employer:

6.22.1 copies on request of such insurance policies (including all documents evidencing any amendments, extensions or variations to all such policies) and the Employer shall be entitled to inspect them during ordinary business hours;

6.22.2 evidence that the premiums payable under such policies insurances have been paid and that the insurances are in full force and effect in accordance with this section 6 and Annex 21; and

6.22.2 on or before the date of expiry of any such policy satisfactory evidence that the relevant insurance has been or is being renewed or extended.”

[6.23 **Insert** new clause 6.23

Claims⁷⁰

6.23 The Contractor shall, where he is obliged to effect insurance under this section 6, not bring any claim or action against the Employer (or any Employer’s Persons other than any contractor or sub-contractor (of any tier) of the Employer or of any Employer’s Persons) in respect of any loss or damage in circumstances where the Contractor is able to recover such loss or damage under such insurance (or where he would have been able to recover such loss had he been complying with his obligations under this Contract) provided that this clause shall not by itself prevent the Contractor from claiming against the Employer (or any Employer’s Persons) for any loss or damage not covered because of the level of deductibles under such insurance permitted by this Contract or to the extent such loss or damage exceeds the maximum level of such insurance required by this Contract.”]

General

7. **Insert** the following in lieu of the whole of existing Section 7:

“7.1 The Contractor may not assign or charge the benefit of this Contract or any right arising under it without the written consent of the Employer.

7.2 The Employer’s rights under this Contract may be assigned without the consent of the Contractor by absolute assignment on two occasions.

7.3 The Contractor shall not be entitled to contend that any person to whom this Contract is assigned in accordance with clause 7.2 is precluded from recovering under this Contract any loss incurred by such assignee resulting from any breach of this Contract, (whenever happening) by reason that such person is an assignee and not a named promisee under this Contract.”

Meaning of insolvency

8.1.4.1 **Delete** “he enters into an arrangement, compromise or composition in satisfaction of his debts” and replace with:

⁷⁰ To be included in high band contracts only. Mark not used for mid and low band contracts.

“he commences negotiations with all or any class of his creditors with a view to rescheduling any of his debts, or makes a proposal for or enters into any compromise or arrangement with any of his creditors”.

8.1.4.2 At the end of sub-clause 8.1.4.2, **delete** the full stop and **replace** with “; or”.

8.1.4.3 **Insert** a new clause 8.1.4.3:

“8.1.4.3 he applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986.”

Notices under Section 8

8.2.1 At the end of the clause **insert** “provided always that this clause 8.2.1 shall not apply to any notice or notices given pursuant to clause 8.5.”

Default by Contractor

8.4.1.3 In line 2, after “remove”, **insert** “or rectify”.

8.4.1.5 After “3.16” **insert** “;” in lieu of ‘,’.

8.4.1.6 **Insert** new clause:

“8.4.1.6. fails to comply with clause 6.15.”

8.4.1.7 **Insert** new clause:

“8.4.1.7 fails to comply with Articles 9, 10, 11, 12, 13, 14, 15 and/or 16 or clause 2.1.5.”

Corruption and regulation 73(1)(b) of the PC Regulations

8.6 **Insert** the following in lieu of existing clause 8.6:

Prevention of Fraud and Bribery

8.6.1 The Contractor represents and warrants that neither he, nor to the best of his knowledge any of his employees, have at any time on or before the date of this Contract:

8.6.1.1 committed a Prohibited Act or been formally notified that he is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

8.6.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

8.6.2 During the carrying out of the Works the Contractor shall not:

8.6.2.1 commit a Prohibited Act; and/or

8.6.2.2 do or suffer anything to be done which would cause the Employer or any of the Employer’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

8.6.3 During the carrying out of the Works the Contractor shall:

8.6.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

8.6.3.2 keep appropriate records of his compliance with this Contract and make such records available to the Employer on request; and

- 8.6.3.3 provide and maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Employer on request) to prevent him and any Contractor's Persons or any person acting on the Contractor's behalf from committing a Prohibited Act.
- 8.6.4 The Contractor shall notify the Employer immediately in writing if he becomes aware of any breach of clause 8.6.1, or has reason to believe that he has or any of his employees or Sub-Contractors have:
- 8.6.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 8.6.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 8.6.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 8.6.5 If the Contractor shall make a notification to the Employer pursuant to clause 8.6.4, the Contractor shall respond promptly to the Employer's enquiries, co-operate with any investigation, and allow the Employer to audit any books, records and/or any other relevant documentation in accordance with this Contract.
- 8.6.6 If the Contractor breaches Clause 8.6.3, the Employer may by notice require the Contractor to remove from carrying out the Works any Contractor's Person whose acts or omissions have caused the Contractor's breach.

Termination for corrupt gifts and fraud

- 8.6.7.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of his or their agents or shareholders commits any Prohibited Act, the Employer shall be entitled to act in accordance with the provisions of this clause 8.6.7.
- 8.6.7.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, the Employer may terminate the Contractor's employment under this Contract by giving notice to the Contractor.
- 8.6.7.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate unless, within [REDACTED] of receipt of such notice, the Contractor terminates the employee's employment and (if necessary) procures the carrying out of such part of the Works by another person.
- 8.6.7.4 If the Prohibited Act is committed by a Sub-Contractor of the Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate, unless within [REDACTED] of receipt of such notice the Contractor terminates the relevant subcontract and procures the carrying out of such part of the Works by another person.
- 8.6.7.5 If the Prohibited Act is committed by an employee of a Sub-Contractor of the Contractor acting independently of that Sub-Contractor, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate, unless within [REDACTED] of receipt of such notice the Sub-Contractor

terminates the employee's employment and (if necessary) procures the carrying out of such part of the Works by another person.

- 8.6.7.6 If the Prohibited Act is committed by any other persons not specified in clauses 8.6.7.2 to 8.6.7.5, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate, unless within [REDACTED] of receipt of such notice the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the carrying out of such part of the Works by another person.
- 8.6.7.7 Any notice of termination under this clause 8.6.2 shall specify:
- 8.6.7.7.1 the nature of the Prohibited Act;
 - 8.6.7.7.2 the identity of the party whom the Employer believes has committed the Prohibited Act; and
 - 8.6.7.7.3 the date on which the Contractor's employment under this Contract will terminate, in accordance with the applicable provision of this clause.
- 8.6.7.8 In this clause 8.6.2 the expression "not acting independently of" (when used in relation to the Contractor or any Sub-Contractor) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the Contractor or any of its Sub-Contractors.
- 8.6.8 The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the circumstances set out in Regulation 73(1)(b) of the PC Regulations apply."

Termination – Contractor to vacate the Sites

8.6A **Insert** new clause 8.6A:

- "8.6A Upon the termination of the Contractor's employment under this Contract (and any purported termination by notice given by the Employer) the Contractor shall forthwith vacate the Sites."

Consequences of termination under clauses 8.4 to 8.6

- 8.7.2.1 At the end of the clause **insert** "If within a reasonable time after such requirement has been made the Contractor has not complied therewith in respect of temporary buildings, plant, tools, equipment, goods and materials belonging to him, then the Employer may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor."
- 8.7.4 **Insert** the following in lieu of existing clauses 8.7.4.1, 8.7.4.2 and 8.7.4.3:
- "8.7.4.1 the amount of any direct loss and/or damage and/or additional expense caused to the Employer as a result of the determination;
 - 8.7.4.2 the amount of any payment made or otherwise discharged in favour of the Contractor;
 - 8.7.4.3 the total value of work properly executed at the date of determination of the employment of the Contractor, ascertained in accordance with the Conditions, together with any amounts due to the Contractor under the Conditions at the date of termination not included in such total value;"

Insolvency of Employer

- 8.10.3 At the end of the clause **insert** "and an extension of time for completion shall be given under clause 2.25 equal to the period of suspension."

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

8.11.1 **Insert** “Force Majeure” in lieu of “force majeure”.

Termination at will

8.11A **Insert** new clause 8.11A as follows:

“8.11A.1 The Employer may terminate the Contractor’s employment under this Contract at any time by complying with his obligations under clause 8.11A.2.

8.11A.2 If the Employer wishes to terminate the Contractor’s employment under this Contract under this clause 8.11A he must provide written notice (hereinafter called a “**Termination Notice**”) to the Contractor stating:

8.11A.2.1 that the Employer is terminating the Contractor’s employment under this Contract under this clause 8.11A.1; and

8.11A.2.2 that the Contractor’s employment under this Contract will terminate on the date specified in the Termination Notice which must be a minimum of twenty (20) Business Days after the date of the Termination Notice.

8.11A.2 The Contractor’s employment under this Contract will terminate on the date specified in the Termination Notice referred to in clause 8.11A.2.”

Consequences of Termination under Clauses 8.9 to 8.11A, etc.

8.12.1 In the first line **insert** “8.11A” in lieu of “8.11”.

8.12.3.3 At the end of the clause **insert** “and”.

8.12.3.4 **Insert** “.” in lieu of “;”.

8.12.3.5 **Delete** clause 8.12.3.5.

8.12.4 **Delete** clause 8.12.4.

Adjudication⁷¹

9.2.2.2 At the end of the clause **insert** “Copies of the Adjudicator’s instructions to any such expert and any written advice or report received from such an expert shall be supplied to the Parties as soon as practicable;”.

9.2.3 **Insert** new clause 9.2.3:

“9.2.3 the Adjudicator shall have power to determine more than one dispute at the same time, and if requested to do so by either Party shall determine any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him; and”.

9.2.4 **Insert** new clause 9.2.4:

“9.2.4 the Adjudicator shall give reasons for his decision in writing and shall deliver his decision to the Parties as soon as practicable and within [REDACTED] of making his decision; and”.

9.2.5 **Insert** new clause 9.2.5:

“9.2.5 the Adjudicator shall notify the Contractor and the Employer as soon as practicable, if he becomes aware that he has any interest in the Works, the subject matter of the adjudication or the Parties.”.

⁷¹ The Parties may consider pre-selecting 4 or 5 adjudicators with specific areas of expertise and listing in the Contract Particulars.

Arbitration

- 9.3 **Delete** clause 9.3.
- 9.4 **Delete** clause 9.4.
- 9.5 **Delete** clause 9.5.
- 9.6 **Delete** clause 9.6.
- 9.7 **Delete** clause 9.7.
- 9.8 **Delete** clause 9.8.

SECTION 10 – SITES CONDITIONS

- 10 **Insert** new clause 10:

“Sites conditions

- 10.1 Subject to clauses 3.15, 10.2, 11 and 12, the conditions of the Sites shall be the sole responsibility of the Contractor and the Contractor shall not be entitled to additional payment and/or extensions of time arising out of or in connection with the same and accordingly (but without prejudice to any other obligation of the Contractor under this Contract) the Contractor:
 - 10.1.1 shall be deemed to have carried out a ground physical and geophysical investigation and to have inspected and examined the Sites and their surroundings and (where applicable) any existing structures or works on, over or under the Sites;
 - 10.1.2 shall be deemed to have satisfied himself as to the nature of the site conditions, the ground and the subsoil, the form and nature of the Sites, the load bearing and other relevant properties of the Sites, the risk of injury or damage to property affecting the Sites, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, works and materials necessary for the execution of the Works;
 - 10.1.3 shall be deemed to have satisfied himself as to the adequacy of the means and rights of access to and through the Sites and any accommodation he may require for the purposes of fulfilling his obligations under this Contract (such as additional land or buildings outside the Sites);
 - 10.1.4 shall be deemed to have satisfied himself as to the possibility of interference by persons of any description whatsoever (other than the Employer) with access to or use of the Sites and shall ensure that the Sites are properly secured at all times;
 - 10.1.5 shall be deemed to have satisfied himself as to the precautions, times and methods of working necessary to prevent any trespass, nuisance or interference, whether public or private, being caused to third parties;
 - 10.1.6 shall not be entitled to rely on any survey, report, document or other information (including, without limitation, ground surveys, soil investigation reports), prepared by or on behalf of the Employer regarding any matter referred to in this clause 10.1 that is not expressly warranted. The Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or document; and
 - 10.1.7 shall be responsible for, and hold the Employer harmless from, cleaning up or otherwise dealing with any Contamination on the Sites in accordance with and so that he shall at all times comply with his obligations under this Contract.

- 10.2 To the extent that unforeseeable ground conditions and/or Contamination exist in any parts of the Sites which are under Existing Buildings⁷² as at the Base Date, the Contractor shall not be responsible for them, unless they were discovered by the Site Survey or would have been discovered had the Contractor carried out such additional surveys as it would have been reasonable to expect an experienced contractor to have carried out in the circumstances. If the Contractor is not responsible for such ground conditions and/or Contamination under this clause 10.2 then the Employer shall be so responsible.
- 10.3 The discovery of any unforeseeable ground conditions and/or Contamination for which the Employer is responsible pursuant to clause 10.2 shall be deemed to be a Relevant Event and Relevant Matter subject to and in accordance with clauses 2.25 and 4.20, and any work which is required or instructed to be carried out in consequence of it shall be deemed, without double counting, to be a Change.”

SECTION 11 - ASBESTOS⁷³

11 **Insert** new clause 11:

“Asbestos

- 11.1 The Contractor accepts, in relation to any New Buildings, entire responsibility (including any financial and other consequences which result whether directly or indirectly) for any Asbestos.
- 11.2 Unless the exposure arises directly or indirectly as a result of any act or omission of the Contractor or any Contractor's Person, the Employer accepts, in relation to Buildings other than the New Buildings, full responsibility (including any financial or other consequences which arise directly or indirectly) for death and personal injury in respect of exposure to Asbestos in such Buildings, where exposure takes place prior to the date on which the Contractor takes control of the Sites.
- [11.3 The Contractor accepts, in relation to the Refurbished Buildings entire responsibility (including any financial and other consequences which result whether directly or indirectly) for:
- 11.3.1 any Asbestos identified in the Asbestos Survey; and
 - 11.3.2 unless access to carry out additional surveys was denied and then only to the extent access was denied, any Asbestos that would have been identified had the Contractor carried out such additional surveys as it would have been reasonable to expect an experienced contractor to have carried out in the circumstances.

⁷² It may be appropriate to identify the Existing Buildings and or any other dark ground by way of a plan. In certain circumstances it may be necessary to include areas of hard standing on the plan.

⁷³ The Employer has three options for dealing with Asbestos and should consider with the Technical Advisors the option that provides best value for money:

(a) Applicable when there is a management survey only. The Contractor is required to accept responsibility for the Asbestos identified in the Asbestos Survey. The Employer should procure an Asbestos management survey in relation to any relevant Existing Buildings at an early stage in the procurement process to enable the Contractor to assess the risk profile of the Works. Where the Employer is able to procure an Asbestos demolition survey in relation to any Existing Buildings this will supersede any Asbestos management survey. These surveys should form part of the information issued with the ITT for the local competition under the Framework Agreement or issued in accordance with a Future School Agreement (if relevant) and, where appropriate, should be incorporated at Annex 9. The Contractor does not carry out Asbestos surveys prior to contract execution unless an existing school is vacant at that time. If this is the case, the Contractor and the Employer shall agree the scope of the survey in advance, the Employer must interrogate and then approve the survey and then this survey will become the listed Asbestos Survey;

(b) The Contractor may include a Provisional Sum for dealing with Asbestos; and

(c) Applicable when there is a full R&D survey. The Contractor may accept the full risk associated with Asbestos for a fixed sum/price.

- 11.4 The discovery of any Asbestos in the Refurbished Buildings which has not been identified in the Asbestos Surveys (other than liabilities and matters referred to in clause 11.3.2) shall be deemed to be a Relevant Event and Relevant Matter subject to and in accordance with clauses 2.25 and 4.20. Any work which is instructed by the Employer to be carried out in consequence of the discovery of such Asbestos shall be deemed, without double counting, to be a Change.]"

or

- [11.3 The Employer accepts a Provisional Sum for the treatment and/or removal of Asbestos in Refurbished Buildings.]”⁷⁴

or

- [11.3 The Contractor accepts in relation to the Refurbished Buildings entire responsibility (including any financial and other consequences which result whether directly or indirectly) for the management and risk of any Asbestos and shall be liable for dealing with the same.]”

SECTION 12 – DEFECTS IN EXISTING BUILDINGS

- 12 Insert new clause 12:

“Defects in Existing Buildings

- 12.1 The Contractor accepts, entire responsibility (including any financial and other consequences which result either directly or indirectly) for any defect caused by the Contractor carrying out the Works.

- ⁷⁵[12.2 Notwithstanding clause 12.1, the Contractor accepts, in relation to the Refurbished Buildings, [save for those defects identified as being the responsibility of the Employer in Annex 15⁷⁶], entire responsibility (including any financial and other consequences which result whether directly or indirectly) for:

12.2.1 any defects identified in the Buildings Survey; and

12.2.2 unless access to carry out additional surveys was denied and then only to the extent that access was denied, any defects that would have been identified had the Contractor carried out such additional surveys as it would have been reasonable to expect an experienced contractor to have carried out in the circumstances.

- 12.3 The Employer accepts in relation to any Refurbished Buildings entire responsibility for:

[12.3.1 any defect identified as being the responsibility of the Employer in Annex 15; and]⁷⁷

⁷⁴ Where this option is used, the Technical Advisor is to ensure that an appropriate Provisional Sum is clearly identified within the costs information and an appropriate methodology included in the ERs.

⁷⁵ Clauses 12.2 and 12.3 will only be appropriate where a Buildings Survey will be used as the basis for allocating responsibility for rectifying defects in Refurbished Buildings. When a detailed scope of works is included in the ERs, any works required to remedy a defect should be set out in the refurbishment scope of works and clause 12.2, clause 12.3, Annex 9 and Annex 15 should not be used. If there are defects that are not dealt with by the scope of works, additional works would need to be instructed as a Change.

⁷⁶ This option allows the Employer to retain defects that have been identified in the Buildings Survey but which he does not offer value for money for the Contractor to remedy. The Employer will need to demonstrate clearly why he has accepted to retain such risk as the default position is that the Contractor should accept responsibility for all defects identified in the Buildings Survey.

⁷⁷ Delete where the Employer does not retain responsibility for any defects in accordance with clause 12.2.

- 12.3.2 any defect which has not been identified in the Buildings Survey (other than those referred to in clause 12.2.2) and the discovery of any such defect shall constitute a Relevant Event and Relevant Matter, subject to, and in accordance with, clauses 2.25 and 4.20. Any work which is instructed by the Employer to be carried out in consequence of the discovery of such defect shall be deemed, without double counting, to be a Change.]"

SECTION 13 – SET OFF AND OTHER REMEDIES

13 **Insert** new clause:

"Set off and other remedies

- 13.1 Nothing contained in this Contract (other than as to the giving of notices) shall oust or limit any right of the Employer under any statute or rule of law or of equity in the nature of set-off or abatement of price.
- 13.2 If the Contractor fails to comply with any requirement of clause 6.15 or if the Contractor becomes Insolvent so that his covenant is impaired, then without prejudice to any other remedies the Employer may have, the Employer shall be entitled to recover from the Contractor any premiums reasonably incurred to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection."

SECTION 14 – LIMITATION

14 **Insert** new clause 14 as follows:

"14 Limitation

- 14.1 Neither Party shall rely on any limitation defence that might otherwise be available to it in defence of proceedings commenced less than 12 years after the date of Practical Completion of the whole of the Works.
- 14.2 Without prejudice to any action or proceedings under this Contract that arises from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period as would apply if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings shall be commenced under this Contract (except for the final determination of a dispute which has been decided by an adjudicator) more than 12 years after the date of Practical Completion of the whole of the Works."

SCHEDULE 1 – DESIGN SUBMISSION PROCEDURE

- 7 At the end of paragraph 7 **insert** "Where the Contractor acknowledges the Contractor's Design Document was not in accordance with the Employers Requirements, the re-submission shall be treated as a first submission of the Contractor's Design Documents as described in paragraph 5.1."
- 9 **Insert** new paragraph:
- "9 For the avoidance of doubt, no commentary made in the processes described in paragraph 5 shall be treated as a Change unless instructed by the Employer as such."
- 10 **Insert** new paragraph
- "10 List of Contractor's Design Documents to be reviewed pursuant to this Schedule 1:

Ref	Description	Sample	Drawing	Other	Commentary
[Group CDD by discipline or type and create reference for each item, e.g. Architectural, Services, Finishes, Fixtures and Fittings etc]	[describe the item subject to CDD, e.g. Floor finishes colour, wall finishes colour, lock suiting]	[use this column to indicate if a sample is required and if necessary details of the sample such as size and/or location if to be example panel in building]	[use this column to indicate if a drawing is required and if necessary details of the drawing such as scale etc]	[use this column to indicate if there are any requirements other than drawings or samples and provide details, e.g. specifications, manufacturers details, specific ranges where other details are known etc]	[provide any additional commentary which may be required to provide clarity]

[SCHEDULE 3 – INSURANCE OPTIONS

Insurance Option C

Delete the heading “(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)”.

Paragraph C.1

C.1 **Insert** the following in lieu of existing paragraph C.1:

“Existing Structures and contents – cover for Specific Perils

C.1 In respect of the Existing Structures together with the contents of them owned by the Employer or for which he is responsible, the Employer shall procure that cover is effected (but without the obligation to insure) for the full cost of reinstatement or repair of loss or damage due to any of the Specified Perils up to and including the date of issue of the Practical Completion Statement or (where applicable) last Section Completion Statement or (if earlier) the date of termination of the Contractor’s employment (whether or not the validity of that termination is contested).”

Paragraph C.2

In line 1 **insert** “Contractor” in lieu of “Employer”.

In line 2 after the word “Insurance” **insert** “with insurers approved by the Employer”.

Paragraph C.4

C.4 **Insert** new paragraph:

“C.4 The Contractor shall send to the Employer’s Agent for deposit with the Employer the Joint Names Policy referred to in paragraph C.2, each premium receipt for it and any relevant

endorsements of it. If the Contractor defaults in taking out or maintaining the Joint Names Policy as required by paragraph C.2, the Employer may himself take out and maintain a Joint Names Policy against any risk in respect of which the default has occurred and the amount paid or payable by him in respect of premiums may be deducted by him from any sums due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.”

Paragraph C.5

C.5 **Insert** new paragraph:

“Use of Contractor’s annual policy – as alternative

C.5 If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the Works or Sections:

1. provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in paragraph C.2; and
2. is a Joint Names Policy,

that policy shall satisfy the Contractor’s obligations under paragraph C.2. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars.”]⁷⁸

⁷⁸ Square brackets to be removed and clause to apply when Option C applies.

ANNEX 1

CONTRACTOR WARRANTY

DATED _____ 20[]]

[CONTRACTOR]

and

[]

DUTY OF CARE DEED

relating to []

THIS DEED is dated

20[] BETWEEN:

- (1) [CONTRACTOR] (Company Number []) whose registered office is at [] (the “**Contractor**”); and
- (2) [] of [] (the “**Beneficiary**”, which expression includes its successors in title and permitted assigns).

BACKGROUND

- (A) By a building contract dated [] (the “**Building Contract**”) the Employer has appointed the Contractor to carry out and complete the Works in relation to the Sites.
- (B) The Contractor is obliged under the Building Contract to enter into this Deed in favour of the Beneficiary.
- (C) The Contractor has agreed to duly execute and deliver this Deed in favour of the Beneficiary.

1. DEFINITIONS AND INTERPRETATIONS

In this Deed unless the context otherwise requires, any defined term in this Deed shall have the same meaning given to such term in the Building Contract.

2. OPERATIVE PROVISIONS

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Contractor, receipt of which the Contractor acknowledges.

3. CONTRACTOR’S WARRANTIES AND LIABILITIES

3.1 The Contractor warrants to the Beneficiary that:

- 3.1.1 it has carried out and completed and will continue to carry out and complete the Works and its duties and obligations under the Building Contract in accordance with the Building Contract;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in the design of the Works the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer of the appropriate discipline(s) acting independently under a separate contract with the Employer and experienced in carrying out design such as that required under the Building Contract in relation to works of a similar size, scope, nature, complexity, location, timescale and value to the Works in relation to:
- (a) any design of the Works;
- (b) the selection and standards of all goods, materials, equipment or plant for the Works;
- 3.1.3 it has not and shall not use, and subject to the standard of skill, care and diligence set out in clause 3.1.2, nor permit, specify or approve for use in connection with the Works any materials which at the time of use:

- (a) are known to be deleterious (either to health and safety or to the durability of the Works); or
- (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
- (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.

3.2 The Contractor shall have no liability under this clause 3 that is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Building Contract as joint employer.

3.3 For the avoidance of doubt the Contractor warrants to the Beneficiary that the Contractor shall not raise any defence to a claim by the Beneficiary under this Deed on the grounds that the losses in respect of which the Beneficiary seeks damages, compensation or other relief are not losses suffered or to be suffered by the Employer or that the Employer has suffered no loss. The Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Employer of any monies due under the Contract.

4. **COPYRIGHT**

4.1 The Intellectual Property Rights in the Contractor's Design Documents prepared by or on behalf of the Contractor in relation to the Building Contract and the work executed by him remains the property of the Contractor. The Contractor hereby grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to use and reproduce the Contractor's Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Beneficiary to grant sub-licences to third parties in the same terms as this licence provided always that the Contractor shall not be liable to any licensee for any use of the Contractor's Design Documents or the use of the Intellectual Property Rights in the Contractor's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Contractor.

4.2 The Beneficiary may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to clause 4.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Beneficiary.

4.3 In the event that the Contractor does not own the copyright or any Intellectual Property Rights in any of the Contractor's Design Documents the Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Beneficiary to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Contractor is unable to procure the right to grant to the Beneficiary in accordance with the foregoing the Contractor shall procure that the third party grants a direct licence to the Beneficiary on industry acceptable terms.

4.4 The Contractor waives any moral right to be identified as author of the Contractor's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Contractor's Design Documents subjected to derogatory treatment

in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.

- 4.5 In the event that any act unauthorised by the Beneficiary infringes a moral right of the Contractor in relation to the Contractor's Design Documents the Contractor undertakes, if the Beneficiary so requests and at the Beneficiary's expense, to institute proceedings for infringement of the moral rights.
- 4.6 The Contractor warrants to the Beneficiary that he has not granted and shall not (unless authorised by the Beneficiary) grant any rights to any third party to use or otherwise exploit the Contractor's Design Documents.
- 4.7 The Contractor shall supply copies of the Contractor's Design Documents to the Beneficiary upon paying a reasonable copying charge.
- 4.8 In carrying out the Works the Contractor shall not infringe any Intellectual Property Rights of any third party. The Contractor shall indemnify the Beneficiary against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Contractor hereby covenants with the Beneficiary that it:
 - 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Contract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than [REDACTED]]⁷⁹ in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance and shall maintain the same until the expiry of fifteen (15) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and
 - 5.1.2 will provide evidence (as and when reasonably required to do so by the Beneficiary) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.
- 5.2 Any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things peculiar to the Contractor shall be deemed to be within commercially reasonable rates.

⁷⁹ Limit shall reflect the main contract level of cover

- 5.3 The Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Contractor is unable to maintain and/or is not maintaining such insurance in which case the Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Contractor upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Beneficiary and shall further discuss means of best protecting the respective positions of the Beneficiary and the Contractor in respect of the Works.

6. **ASSIGNMENT**

- 6.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Contractor on two (2) occasions only and the Beneficiary will notify the Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.
- 6.2 The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

7. **NOTICES**

- 7.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

7.1.1 Contractor: [e-mail address]⁸⁰

7.1.2 Beneficiary: [e-mail address]⁸¹

or as otherwise specified by the relevant party by notice in writing to the other party.

- 7.2 Any notice sent by hand or by post in accordance with clause 7.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

8. **BENEFICIARY'S REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

⁸⁰ Insert e-mail address

⁸¹ Insert e-mail address

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

10. **SUB-CONTRACTORS**

Following a written request from the Beneficiary the Contractor will (unless it has already done so) procure that its sub-contractors shall execute a deed of collateral warranty in the relevant form specified in the Building Contract in favour of any person in whose favour the Building Contract obliges the Contractor to give or procure the giving of such a warranty.

11. **SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Deed.

12. **WAIVER**

12.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

12.2 No waiver under clause 12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

13. **THIRD PARTY RIGHTS**

13.1 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 13 shall not affect any right or remedy which exists or is available to any person apart from such Act.

13.2 Notwithstanding clause 13.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

14. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

15. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

16. **ELECTRONIC EXECUTION**

Each party agrees that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this agreement as if signed by manuscript signature.

17. **LIMITATION**

Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this deed shall be commenced against the Contractor after the expiry of 12 years from the date of Practical Completion of the Works.

The parties agree that this Deed needs to be executed by the Contractor only and that this Deed is irrevocably and unconditionally released to the Beneficiary for completion.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.⁸²

[EXECUTED AS A DEED] by [CONTRACTOR] acting
by a Director and its Secretary/two Directors:

.....
Director

.....
Director/Secretary]

[OR]

[EXECUTED AS A DEED] by [CONTRACTOR] acting
by a Director in the presence of a Witness:

.....
Director

Signature (Witness)

Print Name

Address

.....

⁸² Note: this warranty needs to be signed by the Contractor only.

.....

Occupation]

ANNEX 2

Principal Sub-Contractor Warranty in favour of the Employer

DATED _____ 20[]]

[PRINCIPAL SUB-CONTRACTOR]

and

[EMPLOYER]

and

[CONTRACTOR]

DUTY OF CARE DEED

relating to []

THIS DEED is made on

20[] BETWEEN:

- (1) [PRINCIPAL SUB-CONTRACTOR] (Company Number []) whose registered office is at [] (the “**Principal Sub-Contractor**”);
- (2) [EMPLOYER] of [] (the “**Employer**”, which expression includes its successors in title and permitted assigns); and
- (3) [CONTRACTOR] (registered in England and Wales under Company Number []) whose registered office is at [] (the “**Contractor**”).

BACKGROUND

- (A) The Employer has appointed the Contractor under a building contract (the “**Building Contract**”) to carry out and complete the Works in relation to the Sites.
- (B) The Principal Sub-Contractor has been appointed by the Contractor under a subcontract (the “**Subcontract**”) in relation to the [] element of the Works (the “**Subcontract Works**”).⁸³
- (C) The Principal Sub-Contractor is obliged under the Subcontract to enter into this Deed in favour of the Employer.
- (D) The Principal Sub-Contractor and the Contractor have agreed to duly execute and deliver this Deed in favour of the Employer.

1. DEFINITIONS AND INTERPRETATIONS

Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Building Contract.

2. OPERATIVE PROVISIONS

This Deed is made in consideration of the payment of one pound (£1.00) by the Employer to the Principal Sub-Contractor, receipt of which the Principal Sub-Contractor acknowledges:

3. PRINCIPAL SUB-CONTRACTOR’S WARRANTIES AND LIABILITIES

3.1 The Principal Sub-Contractor warrants to the Employer that:

- 3.1.1 it has carried out and completed and will continue to carry out and complete the Subcontract Works and its duties and obligations under the Subcontract in accordance with the Subcontract;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in any design of the Subcontract Works the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer of the appropriate discipline(s) for such design experienced in carrying out works of a similar size, scope, nature, complexity, location, timescale and value to the Subcontract Works in relation to:

⁸³ Insert details of relevant sub-contract package.

- (a) any design of the Subcontract Works;
 - (b) the selection and standards of all goods, materials, equipment or plant for the Subcontract Works;
- 3.1.3 it has not and shall not use, and subject to the standard of skill, care and diligence set out in clause 3.1.2, nor permit, specify or approve for use in connection with the Subcontract Works any materials which at the time of use:
 - (a) are known to be deleterious (either to health and safety or to the durability of the Subcontract Works); or
 - (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
 - (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.
- 3.2 The Principal Sub-Contractor shall have no liability under this clause 3 than is greater or of longer duration that it would have had and shall be entitled in any action or proceedings by the Employer to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Employer had been a party to the Subcontract as joint employer.
- 3.3 For the avoidance of doubt the Principal Sub-Contractor warrants to the Employer that the Principal Sub-Contractor shall not raise any defence to a claim by the Employer under this Deed on the grounds that the losses in respect of which the Employer seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Principal Sub-Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Subcontract.
- 4. **COPYRIGHT**
- 4.1 In this clause 4 “**Principal Sub-Contractor’s Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Principal Sub-Contractor in relation to the Subcontract Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.
- 4.2 The Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents prepared by or on behalf of the Principal Sub-Contractor in relation to the Subcontract and the work executed by it remains the property of the Principal Sub-Contractor. The Principal Sub-Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Principal Sub-Contractor’s Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Principal Sub-Contractor shall not be liable to any licensee for any use of the Principal Sub-Contractor’s Design Documents or the use of the

Intellectual Property Rights in the Principal Sub-Contractor's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Principal Sub-Contractor.

- 4.3 The Employer may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Employer.
- 4.4 In the event that the Principal Sub-Contractor does not own the copyright or any Intellectual Property Rights in any of the Principal Sub-Contractor's Design Documents the Principal Sub-Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Employer to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Principal Sub-Contractor is unable to procure the right to grant to the Employer in accordance with the foregoing the Principal Sub-Contractor shall procure that the third party grants a direct licence to the Employer on industry acceptable terms.
- 4.5 The Principal Sub-Contractor waives any moral right to be identified as author of the Principal Sub-Contractor's Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Principal Sub-Contractor's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Employer or any licensee or assignee of the Employer.
- 4.6 In the event that any act unauthorised by the Employer infringes a moral right of the Principal Sub-Contractor in relation to the Principal Sub-Contractor's Design Documents the Principal Sub-Contractor undertakes, if the Employer so requests and at the Employer's expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Principal Sub-Contractor warrants to the Employer that he has not granted and shall not (unless authorised by the Employer) grant any rights to any third party to use or otherwise exploit the Principal Sub-Contractor's Design Documents.
- 4.8 The Principal Sub-Contractor shall supply copies of the Principal Sub-Contractor's Design Documents to the Employer upon paying a reasonable copying charge.
- 4.9 In carrying out the Subcontract Works the Principal Sub-Contractor shall not infringe any Intellectual Property Rights of any third party. The Principal Sub-Contractor shall indemnify the Employer against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Principal Sub-Contractor hereby covenants with the Employer that it:

- 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Subcontract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than [REDACTED]

██████████⁸⁴ in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance and shall maintain the same until the expiry of fifteen (15) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Principal Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

5.1.2 will provide evidence (as and when reasonably required to do so by the Employer) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.

5.2 Any increased or additional premium required by insurers by reason of the Principal Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Principal Sub-Contractor shall be deemed to be within commercially reasonable rates.

5.3 The Principal Sub-Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Principal Sub-Contractor is unable to maintain and/or is not maintaining such insurance in which case the Principal Sub-Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Principal Sub-Contractor upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Employer and shall further discuss means of best protecting the respective positions of the Employer and the Principal Sub-Contractor in respect of the Subcontract Works.

6. **NOTICES**

6.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

6.1.1 Principal Sub-Contractor: [e-mail address]⁸⁵

6.1.2 Employer: [e-mail address]⁸⁶

6.1.3 Contractor: [e-mail address]⁸⁷

or as otherwise specified by the relevant party by notice in writing to the other parties.

6.2 Any notice sent by hand or by post in accordance with clause 6.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

⁸⁴ Limit shall reflect the level of cover required for the Principal Sub-Contractor in the main contract which may be lower

⁸⁵ Insert e-mail address

⁸⁶ Insert e-mail address

⁸⁷ Insert e-mail address

7. **ASSIGNMENT**

- 7.1 The benefit of and the rights of the Employer under this Deed may be assigned without the consent of the Principal Sub-Contractor on two (2) occasions only and the Employer will notify the Principal Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.
- 7.2 The Principal Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8. **EMPLOYER'S REMEDIES**

The rights and benefits conferred upon the Employer by this Deed are in addition to any other rights and remedies it may have against the Principal Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

10. **STEP-IN RIGHTS IN FAVOUR OF THE EMPLOYER**

- 10.1 Without prejudice to the Principal Sub-Contractor's statutory rights the Principal Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to:
- 10.1.1 terminate or treat as terminated or repudiated the Subcontract or its engagement under it without first giving to the Employer not less than [REDACTED] prior written notice; or
- 10.1.2 discontinue or suspend the performance of any duties or obligations under the Subcontract without first giving to the Employer not less than [REDACTED] prior written notice.
- 10.2 Any notice given by the Principal Sub-Contractor pursuant to clause 10.1 above shall:
- 10.2.1 specify the Principal Sub-Contractor's ground for terminating or treating as terminated or repudiated the Subcontract or its engagement under it or for discontinuing or suspending its performance under it (as applicable);
- 10.2.2 specify any other breaches by the Contractor; and

- 10.2.3 state the amount (if any) of monies outstanding under the Subcontract (whether or not such amounts result from a breach entitling the Principal Sub-Contractor to terminate or treat as terminated or repudiated the Subcontract or to discontinue or suspend the performance of any duties or obligations under the Subcontract (as applicable)).
- 10.3 Within the period of any notice given by the Principal Sub-Contractor pursuant to clause 10.1:
- 10.3.1 the Employer may give written notice to the Principal Sub-Contractor that the Employer will henceforth become the client under the Subcontract to the exclusion of the Contractor and thereupon the Principal Sub-Contractor will admit that the Employer is its client under the Subcontract and the Subcontract will be and remain in full force and effect notwithstanding any of the said grounds but subject always to clause 10.3.2 below;
- 10.3.2 if the Employer has given such notice as aforesaid or under clause 10.5 below, the Employer shall accept liability for the Contractor's obligations under the Subcontract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor which is properly specified and which is capable of remedy by the Employer; and
- 10.3.3 if the Employer has given such notice as aforesaid or under clause 10.5, the Employer will from the service of such notice become responsible for all sums properly payable to the Principal Sub-Contractor under the Subcontract accruing due after the service of such notice but the Employer will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Subcontract.
- 10.4 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Employer to the Principal Sub-Contractor, the Employer will not be under any obligation to the Principal Sub-Contractor nor will the Principal Sub-Contractor have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Principal Sub-Contractor pursuant to clause 10.3.1 or clause 10.5 of this Deed.
- 10.5 The Principal Sub-Contractor further covenants with the Employer that if employment of the Contractor under the Building Contract is determined or the Building Contract is terminated, the Principal Sub-Contractor, if requested by the Employer by notice in writing and subject to clause 10.3.2 and clause 10.3.3, will accept the instructions of the Employer to the exclusion of the Contractor in respect of its duties under the Subcontract upon the terms and conditions of the Subcontract and will if so requested in writing to enter into a novation agreement whereby the Employer is substituted for the Contractor under the Subcontract.
- 10.6 If the Principal Sub-Contractor is requested to enter into a novation agreement pursuant to clause 10.5 above, the Contractor agrees to enter into the same at the request of the Employer.
- 10.7 The Contractor acknowledges that the Principal Sub-Contractor will be entitled to rely on a notice given to the Principal Sub-Contractor and the Contractor by the Employer under clause 10.5 as conclusive evidence that the employment of the Contractor under the Building Contract has been determined or the Building Contract is terminated.

- 10.8 The Employer may by notice in writing to the Principal Sub-Contractor and the Contractor appoint another person to exercise its right under this clause 10 subject to the Employer remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 10.9 Upon request by the Employer the Principal Sub-Contractor agrees to co-operate with the Employer in determining the duties performed or to be performed by the Principal Sub-Contractor and to provide a copy of the Subcontract and any variations thereto and details of all monies paid and due under the Subcontract and the Building Contract.
- 10.10 As from the date of service of notice under clause 10.3.1 or 10.5 to the extent that the Subcontract operates by reference to the existence and application of the Building Contract, the Subcontract shall be administered and construed as though the Building Contract was continuing and the Subcontract shall therefore continue, subject to amendment only as necessary to reflect the fact that the Building Contract have in fact terminated and the Employer has undertaken the obligations set in clause 10.3.2.

11. **SUB-CONTRACTORS**

Following a written request from the Employer the Principal Sub-Contractor will (unless it has already done so) procure that its sub-contractors execute a deed of collateral warranty in the relevant form specified in the Subcontract in favour of any person in whose favour the Subcontract obliged the Principal Sub-Contractor to give or procure the giving of such a warranty.

12. **SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Deed.

13. **WAIVER**

- 13.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.
- 13.2 No waiver under clause 13.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

14. **THIRD PARTY RIGHTS**

- 14.1 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 14 shall not affect any right or remedy which exists or is available to any person apart from such Act.
- 14.2 Notwithstanding clause 14.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

15. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

16. **CONTRACTOR ACKNOWLEDGEMENT**

The Contractor has entered into this Deed in order to acknowledge the arrangements effected hereby and undertakes to each of the Employer and the Principal Sub-Contractor to observe the provisions of this Deed at all times and not in any way to prejudice or affect the enforcement hereof or to do or permit to be done anything which would be a breach hereof.

17. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

18. **LIMITATION**

Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this deed shall be commenced against the Principal Sub-Contractor after the expiry of 12 years from the date of Practical Completion of the Works.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.

EXECUTED AS A DEED by

[PRINCIPAL SUB-CONTRACTOR] acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

THE CORPORATE SEAL of the)
SECRETARY OF STATE FOR)
EDUCATION herewith affixed is)
authenticated by:)

.....
Authorised by the Secretary of State

.....
Full name (BLOCK CAPITALS)

OR

EXECUTED AS A DEED (but not delivered until the date hereof) by affixing the Common Seal of [EMPLOYER] in the presence of:

Authorised Signatory

OR

EXECUTED AS A DEED by [EMPLOYER] acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by [CONTRACTOR] acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

Principal Sub-Contractor Warranty in favour of a third party

DATED _____ 20[]]

[PRINCIPAL SUB-CONTRACTOR]

and

[BENEFICIARY]

DUTY OF CARE DEED

relating to []

THIS DEED is made on

20[] BETWEEN:

- (1) [PRINCIPAL SUB-CONTRACTOR] (Company Number []) whose registered office is at [] (the “**Principal Sub-Contractor**”); and
- (2) [BENEFICIARY] of [] (the “**Beneficiary**”, which expression includes its successors in title and permitted assigns).

BACKGROUND

- (A) The Employer has appointed the Contractor under a building contract (the “**Building Contract**”) to carry out and complete the Works in relation to the Sites.
- (B) The Principal Sub-Contractor has been appointed by the Contractor under a subcontract (the “**Subcontract**”) in relation to the [] element of the Works (the “**Subcontract Works**”).⁸⁸
- (C) The Principal Sub-Contractor is obliged under the Subcontract to enter into this Deed in favour of the Beneficiary.
- (D) The Principal Sub-Contractor and the Contractor have agreed to duly execute and deliver this Deed in favour of the Beneficiary.

1. DEFINITIONS AND INTERPRETATIONS

Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Building Contract.

2. OPERATIVE PROVISIONS

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Principal Sub-Contractor, receipt of which the Principal Sub-Contractor acknowledges:

3. PRINCIPAL SUB-CONTRACTOR’S WARRANTIES AND LIABILITIES

3.1 The Principal Sub-Contractor warrants to the Beneficiary that:

- 3.1.1 it has carried out and completed and will continue to carry out and complete the Subcontract Works and its duties and obligations under the Subcontract in accordance with the Subcontract;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in any design of the Subcontract Works the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer of the appropriate discipline(s) for such design experienced in carrying out works of a similar size, scope, nature, complexity, location, timescale and value to the Subcontract Works in relation to:
- (a) any design of the Subcontract Works;

⁸⁸ Insert details of relevant sub-contract package.

- (b) the selection and standards of all goods, materials, equipment or plant for the Subcontract Works;
- 3.1.3 it has not and shall not use, and subject to the standard of skill, care and diligence set out in clause 3.1.2, nor permit, specify or approve for use in connection with the Subcontract Works any materials which at the time of use:
 - (a) are known to be deleterious (either to health and safety or to the durability of the Subcontract Works); or
 - (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
 - (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.
- 3.2 The Principal Sub-Contractor shall have no liability under this clause 3 than is greater or of longer duration that it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Subcontract as joint employer.
- 3.3 For the avoidance of doubt the Principal Sub-Contractor warrants to the Beneficiary that the Principal Sub-Contractor shall not raise any defence to a claim by the Beneficiary under this Deed on the grounds that the losses in respect of which the Beneficiary seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Principal Sub-Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Subcontract.
- 4. **COPYRIGHT**
- 4.1 In this clause 4 “**Principal Sub-Contractor’s Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Principal Sub-Contractor in relation to the Subcontract Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.
- 4.2 The Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents prepared by or on behalf of the Principal Sub-Contractor in relation to the Subcontract and the work executed by him remains the property of the Principal Sub-Contractor. The Principal Sub-Contractor hereby grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to use and reproduce the Principal Sub-Contractor’s Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Beneficiary to grant sub-licences to third parties in the same terms as this licence provided always that the Principal Sub-Contractor shall not be liable to any licensee for any use of the Principal Sub-Contractor’s Design Documents or the use of the Intellectual Property Rights in the Principal Sub-Contractor’s Design

Documents for purposes other than those for which the same were originally prepared by or on behalf of the Principal Sub-Contractor.

- 4.3 The Beneficiary may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Beneficiary.
- 4.4 In the event that the Principal Sub-Contractor does not own the copyright or any Intellectual Property Rights in any of the Principal Sub-Contractor's Design Documents the Principal Sub-Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Beneficiary to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Principal Sub-Contractor is unable to procure the right to grant to the Beneficiary in accordance with the foregoing the Principal Sub-Contractor shall procure that the third party grants a direct licence to the Beneficiary on industry acceptable terms.
- 4.5 The Principal Sub-Contractor waives any moral right to be identified as author of the Principal Sub-Contractor's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Principal Sub-Contractor's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.
- 4.6 In the event that any act unauthorised by the Beneficiary infringes a moral right of the Principal Sub-Contractor in relation to the Principal Sub-Contractor's Design Documents the Principal Sub-Contractor undertakes, if the Beneficiary so requests and at the Beneficiary's expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Principal Sub-Contractor warrants to the Beneficiary that he has not granted and shall not (unless authorised by the Beneficiary) grant any rights to any third party to use or otherwise exploit the Principal Sub-Contractor's Design Documents.
- 4.8 The Principal Sub-Contractor shall supply copies of the Principal Sub-Contractor's Design Documents to the Beneficiary upon paying a reasonable copying charge.
- 4.9 In carrying out the Subcontract Works the Principal Sub-Contractor shall not infringe any Intellectual Property Rights of any third party. The Principal Sub-Contractor shall indemnify the Beneficiary against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Principal Sub-Contractor hereby covenants with the Beneficiary that it:

- 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Subcontract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than [REDACTED]

██████████⁸⁹ in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance and shall maintain the same until the expiry of fifteen (15) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Principal Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

5.1.2 will provide evidence (as and when reasonably required to do so by the Beneficiary) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.

5.2 Any increased or additional premium required by insurers by reason of the Principal Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Principal Sub-Contractor shall be deemed to be within commercially reasonable rates.

5.3 The Principal Sub-Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Principal Sub-Contractor is unable to maintain and/or is not maintaining such insurance in which case the Principal Sub-Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Principal Sub-Contractor upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Beneficiary and shall further discuss means of best protecting the respective positions of the Beneficiary and the Principal Sub-Contractor in respect of the Subcontract Works.

6. **NOTICES**

6.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

6.1.1 Principal Sub-Contractor: [e-mail address]⁹⁰

6.1.2 Beneficiary: [e-mail address]⁹¹

or as otherwise specified by the relevant party by notice in writing to the other party.

6.2 Any notice sent by hand or by post in accordance with clause 6.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

7. **ASSIGNMENT**

⁸⁹ Limit shall reflect the level of cover required for the Principal Sub-Contractor in the main contract which may be lower

⁹⁰ Insert e-mail address

⁹¹ Insert e-mail address

7.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Principal Sub-Contractor on two (2) occasions only and the Beneficiary will notify the Principal Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.

7.2 The Principal Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8. **BENEFICIARY'S REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Principal Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

10. **SUB-CONTRACTORS**

Following a written request from the Beneficiary the Principal Sub-Contractor will (unless it has already done so) procure that its sub-contractors execute a deed of collateral warranty in the relevant form specified in the Subcontract in favour of any person in whose favour the Subcontract obliged the Principal Sub-Contractor to give or procure the giving of such a warranty.

11. **SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Deed.

12. **WAIVER**

12.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

12.2 No waiver under clause 12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

13. **THIRD PARTY RIGHTS**

13.1 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 13 shall not affect any right or remedy which exists or is available to any person apart from such Act.

13.2 Notwithstanding clause 13.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

14. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

15. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

16. **ELECTRONIC EXECUTION**

Each party agrees that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this agreement as if signed by manuscript signature.

17. **LIMITATION**

Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this deed shall be commenced against the Principal Sub-Contractor after the expiry of 12 years from the date of Practical Completion of the Works.

The parties agree that this Deed needs to be executed by the Principal Sub-Contractor only and that this Deed is irrevocably and unconditionally released to the Beneficiary for completion.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.⁹²

[EXECUTED AS A DEED by [PRINCIPAL SUB-CONTRACTOR] acting by a Director and its Secretary/two Directors:

.....

⁹² Note: this warranty needs to be signed by the Principal Sub-Contractor only.

Director

.....
Director/Secretary]

[OR]

[EXECUTED AS A DEED by [PRINCIPAL SUB-
CONTRACTOR] acting by a Director in the presence
of a Witness:

.....
Director

Signature (Witness)

Print Name

Address

.....

.....

Occupation]

ANNEX 3

Design Consultant Appointment

[*CONTRACTOR TO PROVIDE DRAFT FOR APPROVAL*]

ANNEX 4

Consultant Warranty in favour of Employer

DATED _____ 20[]]

[CONSULTANT]

and

[EMPLOYER]

and

[CONTRACTOR]

DUTY OF CARE DEED

relating to []

THIS DEED is dated

20[] BETWEEN:

- (1) THE PARTNERS IN [*insert name of partnership*] (being the persons listed in the schedule hereto) whose principal place of business is at [] OR [] LIMITED/PLC (Company Number []) whose registered office is at [] (the “**Consultant**”);
- (2) [EMPLOYER] of [] (the “**Employer**”, which expression includes its successors in title and permitted assigns); and
- (3) [CONTRACTOR] (registered in England and Wales under company number []) whose registered office is at [] (the “**Contractor**”).

BACKGROUND

- (A) The Employer has appointed the Contractor under a building contract (the “**Building Contract**”) to carry out and complete the Works in relation to the Sites.
- (B) The Consultant has been appointed by the Contractor under an appointment (the “**Appointment**”) to provide [] services (“**Services**”) in relation to the Works.
- (C) The Consultant is obliged under the Appointment to enter into this Deed in favour of the Employer.
- (D) The Consultant and the Contractor have agreed to duly execute and deliver this Deed in favour of the Employer.

1. DEFINITIONS AND INTERPRETATIONS

Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Building Contract.

2. OPERATIVE PROVISIONS

This Deed is made in consideration of the payment of one pound (£1.00) by the Employer to the Consultant, receipt of which the Consultant acknowledges:

3. CONSULTANT’S WARRANTIES AND LIABILITIES

3.1 The Consultant warrants to the Employer that:

- 3.1.1 it has carried out and completed and will continue to carry out and complete its duties and obligations under the Appointment in accordance with the Appointment;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in the performance of the Services the professional skill, care and diligence to be expected of a properly qualified and competent member of the Consultant’s profession experienced in carrying out duties the like of those undertaken by the Consultant under the Appointment for works of a similar size, scope, nature, complexity, location, timescale and value to the Works;
- 3.1.3 subject to the standard of skill, care and diligence set out in clause 3.1.2, it has not and shall not permit, specify or approve for use in connection with the Works any materials which at the time of use:

- (a) are known to be deleterious (either to health and safety or to the durability of the Works); or
- (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
- (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use; and

3.1.4 if in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Consultant will notify the Employer in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

3.2 The Consultant shall have no liability under this clause 3 that is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Employer to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Employer had been a party to the Appointment as joint employer.

3.3 For the avoidance of doubt the Consultant warrants to the Employer that the Consultant shall not raise any defence to a claim by the Employer under this Deed on the grounds that the losses in respect of which the Employer seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Consultant shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Appointment.

4. **COPYRIGHT**

4.1 In this clause 4 “**Consultant Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Consultant in relation to the Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.

4.2 The Intellectual Property Rights in the Consultant Design Documents prepared by or on behalf of the Consultant in relation to the Appointment and the work executed by it remains the property of the Consultant. The Consultant hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Consultant's Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Consultant shall not be liable to any licensee for any use of the Consultant's Design Documents or the use of the Intellectual Property Rights in the Consultant's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Consultant.

- 4.3 The Employer may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Employer.
- 4.4 In the event that the Consultant does not own the copyright or any Intellectual Property Rights in any of the Consultant's Design Documents the Consultant shall use all reasonable endeavours to procure the right to grant such rights to the Employer to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Consultant is unable to procure the right to grant to the Employer in accordance with the foregoing the Consultant shall procure that the third party grants a direct licence to the Employer on industry acceptable terms.
- 4.5 The Consultant waives any moral right to be identified as author of the Consultant's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Consultant's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Employer.
- 4.6 In the event that any act unauthorised by the Employer infringes a moral right of the Consultant in relation to the Consultant's Design Documents the Consultant undertakes, if the Employer so requests and at the Employer's expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Consultant warrants to the Employer that he has not granted and shall not (unless authorised by the Employer) grant any rights to any third party to use or otherwise exploit the Consultant Design Documents.
- 4.8 The Consultant shall supply copies of the Consultant's Design Documents to the Beneficiary upon paying a reasonable copying charge.
- 4.9 In carrying out the Services the Consultant shall not infringe any Intellectual Property Rights of any third party. The Consultant shall indemnify the Employer against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. PROFESSIONAL INDEMNITY INSURANCE

- 5.1 The Consultant hereby covenants with the Employer that it:
- 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Appointment (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than [REDACTED] [REDACTED] each and every claim] and shall maintain the same until the expiry of fifteen (15) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties

(Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof;
and

5.1.2 will provide evidence (as and when reasonably required to do so by the Employer) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.

5.2 Any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant shall be deemed to be within commercially reasonable rates.

5.3 The Consultant shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Consultant is unable to maintain and/or is not maintaining such insurance in which case the Consultant shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Consultant upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Employer and shall further discuss means of best protecting the respective positions of the Employer and the Consultant in respect of the Works.

6. **NOTICES**

6.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

6.1.1 Consultant: [e-mail address]⁹³

6.1.2 Employer: [e-mail address]⁹⁴

6.1.3 Contractor: [e-mail address]⁹⁵

or as otherwise specified by the relevant party by notice in writing to the other parties.

6.2 Any notice sent by hand or by post in accordance with clause 6.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

7. **ASSIGNMENT**

7.1 The benefit of and the rights of the Employer under this Deed may be assigned without the consent of the Consultant on two (2) occasions only and the Employer will notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.

7.2 The Consultant will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason

⁹³ Insert e-mail address

⁹⁴ Insert e-mail address

⁹⁵ Insert e-mail address

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

8. **EMPLOYER'S REMEDIES**

The rights and benefits conferred upon the Employer by this Deed are in addition to any other rights and remedies it may have against the Consultant including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

10. **STEP-IN RIGHTS IN FAVOUR OF THE EMPLOYER**

10.1 Without prejudice to the Consultant's statutory rights the Consultant will not exercise or seek to exercise any right which may be or become available to it to:

10.1.1 terminate or treat as terminated or repudiated the Appointment or its engagement under it without first giving to the Employer not less than [REDACTED], prior written notice; or

10.1.2 discontinue or suspend the performance of any duties or obligations under the Appointment without first giving to the Employer not less than [REDACTED], prior written notice.

10.2 Any notice given by the Consultant pursuant to clause 10.1 above shall:

10.2.1 specify the Consultant's ground for terminating or treating as terminated or repudiated the Appointment or its engagement under it or for discontinuing or suspending its performance under it (as applicable);

10.2.2 specify any other breaches by the Contractor; and

10.2.3 state the amount (if any) of monies outstanding under the Appointment (whether or not such amounts result from a breach entitling the Consultant to terminate or treat as terminated or repudiated the Appointment or to discontinue or suspend the performance of any duties or obligations under the Appointment (as applicable)).

10.3 Within the period of any notice given by the Consultant pursuant to clause 10.1:

10.3.1 the Employer may give written notice to the Consultant that the Employer will henceforth become the client under the Appointment to the exclusion of the Contractor and thereupon the Consultant will admit that the Employer is its client under the Appointment and the Appointment will be and remain in full force and effect notwithstanding any of the said grounds but subject always to clause 10.3.2 below;

- 10.3.2 if the Employer has given such notice as aforesaid or under clause 10.5 below, the Employer shall accept liability for the Contractor's obligations under the Appointment and will as soon as practicable thereafter remedy any outstanding breach by the Contractor which is properly specified and which is capable of remedy by the Employer; and
- 10.3.3 if the Employer has given such notice as aforesaid or under clause 10.5, the Employer will from the service of such notice become responsible for all sums properly payable to the Consultant under the Appointment accruing due after the service of such notice but the Employer will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Appointment.
- 10.4 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Employer to the Consultant, the Employer will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Consultant pursuant to clause 10.3.1 or clause 10.5 of this Deed.
- 10.5 The Consultant further covenants with the Employer that if employment of the Contractor under the Building Contract is determined or the Building Contract is terminated, the Consultant, if requested by the Employer by notice in writing and subject to clause 10.3.2 and clause 10.3.3, will accept the instructions of the Employer to the exclusion of the Contractor in respect of its duties under the Appointment upon the terms and conditions of the Appointment and will if so requested in writing to enter into a novation agreement whereby the Employer is substituted for the Contractor under the Appointment.
- 10.6 If the Consultant is requested to enter into a novation agreement pursuant to clause 10.5 above, the Contractor agrees to enter into the same at the request of the Employer.
- 10.7 The Contractor acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant and the Contractor by the Employer under clause 10.5 as conclusive evidence that the employment of the Contractor under the Building Contract has been determined or the Building Contract is terminated.
- 10.8 The Employer may by notice in writing to the Consultant and the Contractor appoint another person to exercise its right under this clause 10 subject to the Employer remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 10.9 Upon request by the Employer the Consultant agrees to co-operate with the Employer in determining the duties performed or to be performed by the Consultant and to provide a copy of the Appointment and any variations thereto and details of all monies paid and due under the Appointment and the Building Contract.
- 10.10 As from the date of service of notice under clause 10.3.1 or 10.5 to the extent that the Appointment operates by reference to the existence and application of the Building Contract, the Appointment shall be administered and construed as though the Building Contract was continuing and the Appointment shall therefore continue, subject to amendment only as necessary to reflect the fact that the Building Contract have in fact terminated and the Employer has undertaken the obligations set in clause 10.3.2.

11. **SUB-CONSULTANTS**

Following a written request from the Employer the Consultant will (unless it has already done so) procure that its sub-consultants execute a deed of collateral warranty in the relevant form specified in the Appointment in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such a warranty.

12. **SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Deed.

13. **WAIVER**

13.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

13.2 No waiver under clause 13.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

14. **LIABILITY OF PARTNERS**

Where the Consultant is a partnership, references in this Deed to the "Consultant" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

15. **THIRD PARTY RIGHTS**

15.1 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 15 shall not affect any right or remedy which exists or is available to any person apart from such Act.

15.2 Notwithstanding clause 15.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

16. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

17. **CONTRACTOR ACKNOWLEDGEMENT**

The Contractor has entered into this Deed in order to acknowledge the arrangements effected hereby and undertakes to each of the Employer and the Consultant to observe the provisions of this Deed at all times and not in any way to prejudice or affect the enforcement hereof or to do or permit to be done anything which would be a breach hereof.

18. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

19. **ELECTRONIC EXECUTION**

Each party agrees that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this agreement as if signed by manuscript signature.

20. **LIMITATION**

Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this deed shall be commenced against the Consultant after the expiry of 12 years from the date of Practical Completion of the Works.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.

EXECUTED AS A DEED by

[CONSULTANT] acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

[THE CORPORATE SEAL of the)
SECRETARY OF STATE FOR)
EDUCATION] herewith affixed is)
authenticated by:)

.....
Authorised by the Secretary of State

.....
Full name (BLOCK CAPITALS)
OR

EXECUTED AS A DEED by [EMPLOYER]
acting by a Director and its Secretary/two
Directors:

Director

Director/Secretary

OR

EXECUTED AS A DEED by affixing the
Common Seal of [EMPLOYER] in the
presence of:

Authorised Signatory

EXECUTED AS A DEED by
[CONTRACTOR] acting by a Director and
its Secretary/two Directors:

Director

Director/Secretary

Consultant Warranty in favour of a third party

DATED _____ 20[]

[CONSULTANT]

and

[BENEFICIARY]

DUTY OF CARE DEED

relating to []

THIS DEED is dated

20[] BETWEEN:

- (1) THE PARTNERS IN [insert name of partnership] (being the persons listed in the schedule hereto) whose principal place of business is at [] OR [] LIMITED/PLC (Company Number []) whose registered office is at [] (the “**Consultant**”); and
- (2) [BENEFICIARY] of [] (the “**Beneficiary**”, which expression includes its successors in title and permitted assigns).

BACKGROUND

- (A) The Employer has appointed the Contractor under a building contract (the “**Building Contract**”) to carry out and complete the Works in relation to the Sites.
- (B) The Consultant has been appointed by the Contractor under an appointment (the “**Appointment**”) to provide [] services (“**Services**”) in relation to the Works.
- (C) The Consultant is obliged under the Appointment to enter into this Deed in favour of the Beneficiary.
- (D) The Consultant and the Contractor have agreed to duly execute and deliver this Deed in favour of the Beneficiary.

1. DEFINITIONS AND INTERPRETATIONS

Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Building Contract.

2. OPERATIVE PROVISIONS

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Consultant, receipt of which the Consultant acknowledges:

3. CONSULTANT’S WARRANTIES AND LIABILITIES

3.1 The Consultant warrants to the Beneficiary that:

- 3.1.1 it has carried out and completed and will continue to carry out and complete its duties and obligations under the Appointment in accordance with the Appointment;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in the performance of the Services the professional skill, care and diligence to be expected of a properly qualified and competent member of the Consultant’s profession experienced in carrying out duties the like of those undertaken by the Consultant under the Appointment for works of a similar size, scope, nature, complexity, location, timescale and value to the Works;
- 3.1.3 subject to the standard of skill, care and diligence set out in clause 3.1.2, it has not and shall not permit, specify or approve for use in connection with the Works any materials which at the time of use:
- (a) are known to be deleterious (either to health and safety or to the durability of the Works); or

- (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
- (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use; and

3.1.4 if in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Consultant will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

3.2 The Consultant shall have no liability under this clause 3 that is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Appointment as joint employer.

3.3 For the avoidance of doubt the Consultant warrants to the Beneficiary that the Consultant shall not raise any defence to a claim by the Beneficiary under this Deed on the grounds that the losses in respect of which the Beneficiary seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Consultant shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Appointment.

4. **COPYRIGHT**

4.1 In this clause 4 “**Consultant Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Consultant in relation to the Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.

4.2 The Intellectual Property Rights in the Consultant Design Documents prepared by or on behalf of the Consultant in relation to the Appointment and the work executed by it remains the property of the Consultant. The Consultant hereby grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to use and reproduce the Consultant's Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Beneficiary to grant sub-licences to third parties in the same terms as this licence provided always that the Consultant shall not be liable to any licensee for any use of the Consultant's Design Documents or the use of the Intellectual Property Rights in the Consultant's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Consultant.

4.3 The Beneficiary may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Beneficiary.

- 4.4 In the event that the Consultant does not own the copyright or any Intellectual Property Rights in any of the Consultant's Design Documents the Consultant shall use all reasonable endeavours to procure the right to grant such rights to the Beneficiary to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Consultant is unable to procure the right to grant to the Beneficiary in accordance with the foregoing the Consultant shall procure that the third party grants a direct licence to the Beneficiary on industry acceptable terms.
- 4.5 The Consultant waives any moral right to be identified as author of the Consultant's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Consultant's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.
- 4.6 In the event that any act unauthorised by the Beneficiary infringes a moral right of the Consultant in relation to the Consultant's Design Documents the Consultant undertakes, if the Beneficiary so requests and at the Beneficiary's expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Consultant warrants to the Beneficiary that he has not granted and shall not (unless authorised by the Beneficiary) grant any rights to any third party to use or otherwise exploit the Consultant Design Documents.
- 4.8 The Consultant shall supply copies of the Consultant's Design Documents to the Beneficiary upon paying a reasonable copying charge.
- 4.9 In carrying out the Services the Consultant shall not infringe any Intellectual Property Rights of any third party. The Consultant shall indemnify the Beneficiary against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Consultant hereby covenants with the Beneficiary that it:

5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Appointment (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than [REDACTED] [REDACTED] each and every claim] and shall maintain the same until the expiry of fifteen (15) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

5.1.2 will provide evidence (as and when reasonably required to do so by the Beneficiary) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.

5.2 Any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant shall be deemed to be within commercially reasonable rates.

5.3 The Consultant shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Consultant is unable to maintain and/or is not maintaining such insurance in which case the Consultant shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Consultant upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Beneficiary and shall further discuss means of best protecting the respective positions of the Beneficiary and the Consultant in respect of the Works.

6. **NOTICES**

6.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

6.1.1 Consultant: [e-mail address]⁹⁶

6.1.2 Beneficiary: [e-mail address]⁹⁷

or as otherwise specified by the relevant party by notice in writing to the other party.

6.2 Any notice sent by hand or by post in accordance with clause 6.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

7. **ASSIGNMENT**

7.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Consultant on two (2) occasions only and the Beneficiary will notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.

7.2 The Consultant will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8. **BENEFICIARY'S REMEDIES**

⁹⁶ Insert e-mail address

⁹⁷ Insert e-mail address

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Consultant including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

10. **SUB-CONSULTANTS**

Following a written request from the Beneficiary the Consultant will (unless it has already done so) procure that its sub-consultants execute a deed of collateral warranty in the relevant form specified in the Appointment in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such a warranty.

11. **SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Deed.

12. **WAIVER**

12.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

12.2 No waiver under clause 12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

13. **LIABILITY OF PARTNERS**

Where the Consultant is a partnership, references in this Deed to the "Consultant" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

14. **THIRD PARTY RIGHTS**

14.1 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 14 shall not affect any right or remedy which exists or is available to any person apart from such Act.

14.2 Notwithstanding clause 14.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

15. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

16. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

17. **ELECTRONIC EXECUTION**

Each party agrees that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this agreement as if signed by manuscript signature.

18. **LIMITATION**

Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this deed shall be commenced against the Consultant after the expiry of 12 years from the date of Practical Completion of the Works.

The parties agree that this Deed needs to be executed by the Consultant only and that this Deed is irrevocably and unconditionally released to the Beneficiary for completion.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.⁹⁸

[EXECUTED AS A DEED] by [CONSULTANT] acting
by a Director and its Secretary/two Directors:

.....
Director

.....
Director/Secretary]

⁹⁸ Note: this warranty needs to be signed by the Consultant only.

[OR]

[EXECUTED AS A DEED] by [CONSULTANT] acting
by a Director in the presence of a Witness:

.....
Director

Signature (Witness)

Print Name

Address

.....

.....

Occupation]

ANNEX 5

Consultant Deed of Novation

DATED _____ 20[]

[EMPLOYER]

and

[CONTRACTOR]

and

[CONSULTANT]

DEED OF NOVATION

[description]

THIS AGREEMENT dated

20[]

BETWEEN:

- (1) [] (CRN []) whose registered office is at [] (the “**Employer**”);
- (2) [] (CRN []) whose registered office is at [] (the “**Contractor**”); and
- (3) [] (CRN []) whose registered office is at [] (the “**Consultant**”).

WHEREAS:

- (A) The Employer has appointed the Consultant to provide [] services by an agreement dated [] (the “**Appointment**”) in connection with the development of [] at [] (the “**Development**”).
- (B) The Employer has appointed the Contractor under a contract (the “**Building Contract**”) to design and construct certain works as therein described (the “**Works**”).
- (C) The Employer, Consultant and Contractor have agreed that from the date of this Agreement the Contractor shall assume the obligations of the Employer and that the Consultant shall perform its obligations under the Appointment in favour of the Contractor and that the Employer and the Consultant shall each release the other from any obligations owed by the other to them under the Appointment.

NOW IT IS HEREBY AGREED as follows:

1. **NOVATION**

- 1.1 The Employer hereby releases and discharges the Consultant from any and all obligations and liabilities owed to the Employer under the Appointment.
- 1.2 The Consultant undertakes to perform the Appointment and to be bound by its terms in every way as if the Contractor were, and had been from the inception, a party to the Appointment in lieu of the Employer.
- 1.3 The Consultant hereby releases and discharges the Employer from any and all obligations and liabilities owed to the Consultant under the Appointment and accepts the liability of the Contractor under the Appointment in lieu of the liability of the Employer.
- 1.4 For the avoidance of doubt the Consultant undertakes with and warrants to the Contractor that it has carried out and will carry out the duties and obligations on its part to be performed under the Appointment, and that in performing the same the Consultant has exercised and will continue to exercise the professional skill, care and attention to be expected of a properly qualified and competent member of the Consultant’s profession experienced in carrying out services the like of those undertaken by the Consultant under the Appointment for services of a similar size, scope, nature, complexity, location, timescale and value to the Development.

- 1.5 Without prejudice to clause 1.2, the Consultant warrants to the Contractor that it shall be liable for any loss or damage suffered or incurred by the Contractor arising out of any negligent act, default or breach by the Consultant in the performance of its obligations under the Appointment prior to the date of this Agreement. Subject to any limitation of liability in the Appointment, the Consultant shall be liable for such loss or damage notwithstanding that such loss or damage would not have been suffered or incurred by the Employer (or suffered or incurred to the same extent by the Employer).
- 1.6 The Consultant acknowledges that all fees and expenses properly due to the Consultant under the Appointment up to the date of this Agreement have been paid in full by the Employer.
- 1.7 All rights of action and remedies vested in the Employer against the Consultant under the Appointment shall from the date of this Deed vest in the Contractor.
- 1.8 All rights of action and remedies vested in the Consultant against the Employer under and in respect of the Appointment shall from the date of this Deed lie against the Contractor.
- 1.9 The Contractor undertakes to perform the Appointment and to be bound by its terms in every way as if the Contractor were, and had been from the inception, a party to the Appointment in lieu of the Employer.
- 1.10 Nothing in this Deed shall affect or derogate from any collateral warranty given or to be given by the Consultant to the Employer respecting the Development.
- 1.11 At the date of this Deed, the Consultant has provided to the Employer, duly executed, all Collateral Warranties it was obliged to provide under the terms of the Appointment.

2. **PROPER LAW AND JURISDICTION**

This Agreement and the parties' non contractual duties and/or obligations shall be governed and construed according to English law. Any dispute shall be subject to the jurisdiction of the English courts.

3. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided always that this clause 3 shall not affect any right or remedy which exists or is available to any person apart from such Act.

4. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

5. **ELECTRONIC EXECUTION**

Each party agrees that this Agreement may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this Agreement as if signed by manuscript signature.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written.

[THE CORPORATE SEAL of the)
SECRETARY OF STATE FOR)
EDUCATION] herewith affixed is)
authenticated by:)

.....
Authorised by the Secretary of State

.....
Full name (BLOCK CAPITALS)

OR

EXECUTED AS A DEED (but not delivered
until the date hereof) by affixing the
Common Seal of [EMPLOYER] in the
presence of:

.....
Authorised Signatory

OR

EXECUTED AS A DEED by [EMPLOYER]
acting by a Director and its Secretary/two
Directors:

Director

Director/Secretary

EXECUTED (but not delivered
until the date hereof)
AS A DEED by
[CONTRACTOR]
acting by:

Director

Director/Secretary

EXECUTED (but not delivered
until the date hereof)
AS A DEED by
[CONSULTANT]
acting by:

Director

Director/Secretary

ANNEX 6

PARENT COMPANY GUARANTEE

DATED _____ 20[]

[GUARANTOR]

and

[EMPLOYER]

PARENT COMPANY GUARANTEE

THIS AGREEMENT dated

20[] is made **BETWEEN:**

(1) [] whose registered office is at [] (the “**Guarantor**”); and

(2) [] of []

[] (the “**Employer**” which expression shall include its successors in title and permitted assignees).

BACKGROUND

- (A) The Employer has entered into a contract [] (the “**Contract**”) (which expression shall include all plans, specifications, bills of quantities and other documents incorporated therein) with [] whose registered office is at [] (the “**Contractor**”) in relation to the carrying out, construction and completion of certain works by the Contractor as more particularly described as the “**Works**” (and which expression has the same meaning in this Deed).
- (B) The Contractor is a wholly owned subsidiary company of the Guarantor under the Companies Act 2006.
- (C) The Guarantor has agreed to guarantee the performance of all of the Contractor’s obligations under the Contract in the manner appearing below.

IT IS AGREED as follows:

1. GUARANTEE

In consideration of the Employer entering into the Contract, the Guarantor HEREBY irrevocably COVENANTS AND GUARANTEES to the Employer and its successors and assigns, the full, faithful and punctual performance, observance and compliance respectively by the Contractor of each and every of the terms, provisions, conditions, obligations, undertakings and agreements on the part of the Contractor to be performed, observed or carried out by the Contractor as contained or referred to in the Contract as such Contract may, from time to time, be amended (hereinafter called the “**Obligations**”).

2. PERFORMANCE OBLIGATIONS AND INSOLVENCY

2.1 If, at any time:

2.1.1 any default is made by the Contractor in the performance of any of the Obligations; or

2.1.2 the Contractor is Insolvent (as defined under the Contract),

the Guarantor will well and truly perform or cause to be so performed each and every one of the Obligations and/or will pay any sum or sums that may be payable in consequence of the Contractor’s insolvency or any default made by the Contractor in the performance of any of the Obligations.

3. LIABILITY

3.1 As between the Guarantor and the Employer (but without affecting the Obligations), the Guarantor shall remain liable under this Guarantee as if he were the sole principal obligor and not merely a guarantor.

- 3.2 Subject to the provisions of clause 5, 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 was the sole principal obligor including, but not limited to:
- 3.2.1 any amendment, modification, waiver, consent or variation, express or implied, to the scope of the Works or to the Contract or any related documentation;
 - 3.2.2 the granting of any extensions of time or forbearance, forgiveness or indulgences in relation to time to the Contractor;
 - 3.2.3 the enforcement, absence of enforcement or release of the Contract or of any security, right of action or other guarantee or indemnity;
 - 3.2.4 the dissolution, amalgamation, reconstruction, reorganisation of the Contractor;
 - 3.2.5 any defect in any provision of the Contract or any of the Obligations;
 - 3.2.6 any indulgence or additional or advanced payment, forbearance, payment or concession to the Contractor;
 - 3.2.7 any compromise of any dispute with the Contractor;
 - 3.2.8 any failure of supervision to detect or prevent any fault of the Contractor; or
 - 3.2.9 any assignment of the benefit of the Contract.

4. ASSIGNMENT

- 4.1 This Guarantee and the benefit conferred by it may be assigned by the Employer to any party to whom he assigns or novates its interest under the Contract, at any time and references to the Employer shall include its assigns.
- 4.2 Save for the provision of clause 4.1 above, this Guarantee and the benefit conferred by it may not be assigned by either party.
- 4.3 The Guarantor shall not contend that any assignee or person who receives the benefit of and the rights on the part of the Employer pursuant to clause 4.1 is precluded or prevented from recovering any loss resulting from any breach of this Guarantee (whatever the date of such breach) by reason that that person is an assignee or received the benefit of and the rights on the part of the Employer pursuant to clause 4.1 or is otherwise not the original beneficiary under this Guarantee or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Works or Contract or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

5. LIMIT OF LIABILITY

The Guarantor shall have no greater liability to the Employer under this Guarantee than he would have had had he been named as Contractor under the Contract and shall be entitled in any action or proceedings by the Employer to raise equivalent rights in defence of liability as if the Guarantor had been a party to the Contract as joint contractor.

6. THIRD PARTY RIGHTS

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

7. NOTICES

- 7.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

7.1.1 Guarantor: [e-mail address]⁹⁹

7.1.2 Employer: [e-mail address]¹⁰⁰

or as otherwise specified by the relevant party by notice in writing to the other party.

- 7.2 Any notice sent by hand or by post in accordance with clause 7.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

8. GOVERNING LAW

The construction, validity and performance of this Guarantee and the parties' non contractual duties and/or obligation is subject to English law and the courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection herewith.

9. COUNTERPARTS

This Guarantee may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Guarantee, but all the counterparts shall together constitute the same Guarantee.

10. ELECTRONIC EXECUTION

Each party agrees that this Guarantee may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this Guarantee as if signed by manuscript signature.

EXECUTED AS A DEED by

[GUARANTOR] acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

⁹⁹ Insert e-mail address

¹⁰⁰ Insert e-mail address

[THE CORPORATE SEAL of the)
SECRETARY OF STATE FOR)
EDUCATION] herewith affixed is)
authenticated by:)

.....
Authorised by the Secretary of State

.....
Full name (BLOCK CAPITALS)

OR

[EXECUTED AS A DEED] (but not
delivered until the date hereof) by affixing
the Common Seal of [EMPLOYER] in the
presence of:

.....
Authorised Signatory]

OR

EXECUTED AS A DEED by [EMPLOYER]
acting by a Director and its Secretary/two
Directors:

.....
Director

.....
Director/Secretary

ANNEX 7

EMPLOYER POLICIES

[EMPLOYER TO PROVIDE ANY EXISTING POLICIES]

ANNEX 8

[ASBESTOS SURVEY]

Survey Type	Location	Survey Company	Survey date	Reference

Without prejudice to the paragraph below, Asbestos that is noted in the Asbestos Survey as ["presumed" (but excluding "strongly presumed" which shall be considered identified Asbestos) or "suspected" or is referred to as "assumed" (but excluding "strongly assumed" which shall be considered identified Asbestos) or "may be present"]¹⁰¹ is not identified Asbestos for the purposes of this Contract. All other references to Asbestos in the Asbestos Survey are identified Asbestos for the purposes of this Contract.

Notwithstanding the paragraph above, [insert list/pages/section] of the [insert reference to survey] has been annotated and is attached to show where the Contractor has not made an allowance for Asbestos. If not marked otherwise, the Contractor has made an allowance for the Asbestos noted in the Asbestos register.¹⁰²

¹⁰¹ TA to review to ensure terminology matches that used in the relevant survey(s).

¹⁰² Optional paragraph to be used if there is specific list / risk register etc. in a survey which contains items which the Parties have agreed not to include in the Contract Sum.

ANNEX 9

[BUILDING SURVEY]

Survey type	Location ¹⁰³	Survey Company	Survey date	Reference

¹⁰³ This should refer to details of the Site, area, etc which was subject to the survey.

ANNEX 10

CONSTRUCTION PROGRAMME

ANNEX 11

[EXISTING AND REFURBISHED BUILDINGS]

ANNEX 12

[MILESTONE SCHEDULE]

ANNEX 13

SITE PLAN

ANNEX 14

SITE SURVEY

Survey type	Location ¹⁰⁴	Survey Company	Survey date	Reference

¹⁰⁴ This should refer to details of the Site, area, etc which was subject to the survey.

ANNEX 15

[EXCLUDED DEFECTS]

ANNEX 16

[PERFORMANCE BOND]

DATED _____ 20[]

[_____]

and

[_____]

and

[_____]

PERFORMANCE BOND

THIS GUARANTEE BOND is made as a deed **BETWEEN** the following parties whose names and registered office addresses are set out in the Schedule to this Bond (the **Schedule**):

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

WHEREAS

- (1) By a design and build contract (the “**Contract**”) entered into between the Employer and the Contractor particulars of which are set out in the Schedule to this Guarantee Bond the Contractor has agreed with the Employer to carry out and complete the works defined in the Contract as “the **Works**” (and which expression has the same meaning in this Guarantee Bond) upon and subject to the terms and conditions therein set out.
- (2) 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:
 - 1.1 of a breach of the Contract by the Contractor;
 - 1.2 that the Contractor is Insolvent (as defined under the Contract); or
 - 1.3 that the Contract, or the employment of the Contractor, is determined by reason of any one or more of the events set out in Clauses [8.4, 8.5 and 8.6] of the Contractthe Guarantor shall satisfy and discharge the damages sustained by the Employer, subject to the provisions of this Guarantee Bond. The damages sustained by the Employer shall be such sums as established and ascertained pursuant to and in accordance with the provisions of, or by reference to, the Contract.
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**”). Subject to such limitation, and to clause 4 below, 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:
 - 3.1 of any of the terms, conditions and provisions of the Contract; or
 - 3.2 in the extent or nature of the Worksand no waivers or concession or allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release, reduce or affect the liability of the Guarantor under this Guarantee Bond.
4. Whether or not this Guarantee Bond shall be returned to the Guarantor, the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule). This applies except in respect of any breach of the Contract which has occurred and in respect of which a notice of claim (in writing, containing particulars of such breach) has been sent to the Guarantor before Expiry.

5. The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on his part set out in the Contract.
6.
 - 6.1 The Employer may assign this Guarantee Bond, and the benefits of it, to any party to whom he assigns his interest under the Contract, at any time. References to the Employer shall include his assigns.
 - 6.2 The Guarantor shall not contend that any assignee or person who receives the benefit of and the rights on the part of the Employer pursuant to clause 6.1 is precluded or prevented from recovering any loss resulting from any breach of this Guarantee Bond (whatever the date of such breach) by reason that that person is an assignee or received the benefit of and the rights on the part of the Employer pursuant to clause 6.1 or is otherwise not the original beneficiary under this Guarantee Bond or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Works or site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.
7. This Guarantee Bond and the parties' non contractual duties and/or obligations shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.
8. A person who is not a party to this Guarantee Bond shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee Bond. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
9. This Guarantee Bond may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Guarantee Bond, but all the counterparts shall together constitute the same Guarantee Bond.

THE SCHEDULE

The Contractor: [] whose registered office address is at []

The Guarantor: [] whose registered office address is at []

The Employer: [] of [] including his successors in title and permitted assignees

The Contract: A contract [dated the day of] between the Employer and the Contractor for the design and construction of the Works for the original Contract Sum of [] pounds (£)

The Bond Amount: The sum of £[] pounds sterling (£)

Expiry: Subject to any Employer's prior claims under clause 4 of this Guarantee Bond, Expiry occurs when, pursuant to clause 2.27 of the Contract, the Employer issues a Practical Completion Statement in respect of the Works or, if the Works are divided into Sections, the Employer has issued Section Completion Statements in respect of all Sections of the Works

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

This day of Two Thousand and

EXECUTED AND DELIVERED as a Deed by
CONTRACTOR

Director

Director/Secretary

EXECUTED AND DELIVERED as a Deed by
GUARANTOR

Director

Director/Secretary

[THE CORPORATE SEAL of the)
SECRETARY OF STATE FOR)
EDUCATION] herewith affixed is)
authenticated by:)

.....
Authorised by the Secretary of State

.....
Full name (BLOCK CAPITALS)

OR

[EXECUTED AS A DEED (but not
delivered until the date hereof) by affixing
the Common Seal of [EMPLOYER] in the
presence of:

.....
Authorised Signatory]

OR

EXECUTED AS A DEED by [EMPLOYER]
acting by a Director and its Secretary/two
Directors:

.....
Director

.....
Director/Secretary

ANNEX 17

[EMPLOYER NECESSARY CONSENTS]¹⁰⁵

Employer Necessary Consent	Date by which the Employer will execute (or shall procure that the landowner shall execute) and deliver the Employer Necessary Consent agreement to the Contractor
	Within ■ Business Days of receipt of the Employer Necessary Consent agreement from the Contractor
	Within ■ Business Days of receipt of the Employer Necessary Consent agreement from the Contractor
	Within ■ Business Days of receipt of the Employer Necessary Consent agreement from the Contractor

¹⁰⁵ This should list the Consents that the Contractor cannot legally obtain. Each Employer Necessary Consent should be clearly identified in Annex 17.

ANNEX 18

UK GDPR

In this Annex unless the context otherwise requires, defined terms shall, save where they are defined below, have the meanings ascribed to them in this Contract:

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer:	take the meaning given in the UK GDPR;
Data Protection Impact Assessment:	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
Data Protection Legislation:	(i) the UK GDPR and any applicable national implementing laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable law about the processing of personal data and privacy;
Data Loss Event:	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
Data Subject Request:	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
Joint Controllers:	where two or more Controllers jointly determine the purposes and means of processing;
Law:	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply;
Processor Personnel:	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of his obligations under this Contract;
Protective Measures:	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
Sub-Processor:	any third party appointed to process Personal Data on behalf of that Processor related to this Contract.

1. DATA PROTECTION

- a. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor unless otherwise specified in

the Schedule to this Annex. The only processing that the Processor is authorised to do is listed in the Schedule to this Annex by the Controller and may not be determined by the Processor.

- b. The Processor shall notify the Controller immediately if he considers that any of the Controller's instructions infringe the Data Protection Legislation.
- c. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the services and Works;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- d. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - (a) process that Personal Data only in accordance with the Schedule to this Annex, unless the Processor is required to do otherwise by Law. If he is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that he has in place Protective Measures, are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular the Schedule to this Annex);
 - (ii) he takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this paragraph;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-Processor;

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with his obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting his obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to him in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contractor's employment under this Contract unless the Processor is required by Law to retain the Personal Data.
- e. Subject to paragraph 1f, the Processor shall notify the Controller immediately if it:
 - (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- f. The Processor's obligation to notify under paragraph 1e shall include the provision of further information to the Controller in phases, as details become available.
- g. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 1e (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - (a) the Controller with full details and copies of the complaint, communication or request;

- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at his request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- h. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- i. The Processor shall allow for audits of his data processing activity by the Controller or the Controller's designated auditor.
- j. Each Party shall designate his own Data Protection Officer if required by the Data Protection Legislation.
- k. Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-Processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this paragraph 1k such that they apply to the Sub-Processor; and
 - (d) provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- l. The Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.
- m. The Controller may, at any time on not less than [REDACTED], revise this paragraph by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- n. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than [REDACTED] to the Processor amend

this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

- o. Where the Parties include two or more Joint Controllers as identified in the Schedule in accordance with UK GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in the Schedule in replacement of paragraphs 1a – 1n for the Personal Data under joint control.

Schedule: Schedule of Processing, Personal Data and Data Subjects¹⁰⁶

The Parties do not anticipate that this Contract will involve any processing of Personal Data by the Contractor on behalf of the Employer, and the Contractor is not authorised by the Employer to process Personal Data under the terms of this Contract. The remainder of this Schedule will only be completed and have effect if the Employer instructs the Contractor to process Personal Data under the terms of this Contract.

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [Insert contact details]
2. The contact details of the Processor's Data Protection Officer are: [Insert contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor in accordance with paragraph 1.
Subject matter of the processing	[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract. Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]
Duration of the processing	[Clearly set out the duration of the processing including dates]

¹⁰⁶ This schedule will only need to be completed if the Employer authorises the Contractor to process personal data.

Description	Details
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>
Type of Personal Data being processed	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	[Describe how long the data will be retained for, how it be returned or destroyed]

ANNEX 19

[PROJECT BANK ACCOUNT]

Part 1 - Project Bank Account Trust Deed

THIS AGREEMENT is dated 20[] and made BETWEEN:

[(1) [FRAMEWORK USER] a company registered in England (registration number []) whose registered office is at [] (the “Employer”);]

[(1) THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the “Employer”);]

(2) [CONTRACTOR] a company registered in England (registration number []) whose registered office is at [] (the “Contractor”); and

(3) [CONTRACTOR’S SUPPLY CHAIN MEMBER] a company registered in England (registration number []) whose registered office is at []

[CONTRACTOR’S SUPPLY CHAIN MEMBER] a company registered in England (registration number []) whose registered office is at []

[CONTRACTOR’S SUPPLY CHAIN MEMBER] a company registered in England (registration number []) whose registered office is at []

(together the “**Contractor’s Supply Chain Members**”);

each one a Party and together the Parties.

RECITALS

- (A) The Employer and the Contractor have entered into a contract for the Works (the “**Building Contract**”).
- (B) The Contractor’s Supply Chain Members have entered into contracts with the Contractor in connection with the Works.
- (C) The Employer and the Contractor have established a bank account (the “**Project Bank Account**”) to make provision for payment from the Employer to the Contractor and the Suppliers.

1 Definitions and Interpretation

Unless the context otherwise requires all defined terms shall have the same meanings given to them in the Building Contract

2 Operation of the Project Bank Account

2.1 The parties to this Deed agree that:

- 2.1.1 any sums due and properly owing to the Contractor and Contractor’s Supply Chain Members (as the case may be) are held in trust in the Project Bank

Account for distribution in accordance with the banking arrangements applicable to the Project Bank Account,

2.1.2 further Contractor's Supply Chain Members may be added as parties to this deed with the agreement of the Employer and the Contractor by way of a joining Deed. The agreement of the Employer and the Contractor shall be treated as agreement by the Contractor's Supply Chain Members who are parties to this Deed;

2.1.3 this Deed is subject to the law of the Building Contract, and

2.1.4 the benefits under this Deed may not be assigned.

3 Counterparts

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

Executed as a deed and delivered on the date stated at the beginning of this Deed.

Part 2 – Project Bank Account Joining Deed

THIS AGREEMENT is dated 20[] and made BETWEEN:

- [(1) [FRAMEWORK USER] a company registered in England (registration number []) whose registered office is at [] (the “Employer”);]
- [(1) THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the “Employer”);]
- (2) [CONTRACTOR] a company registered in England (registration number []) whose registered office is at [] (the “Contractor”); and
- (3) [CONTRACTOR’S SUPPLY CHAIN MEMBER] a company registered in England (registration number []) whose registered office is at [] (the “Additional Contractor’s Supply Chain Member”)

each one a Party and together the Parties.

RECITALS

- (A) The Employer and the Contractor have entered into a contract for the Works (the “**Building Contract**”).
- (B) The Contractor’s Supply Chain Members have entered into contracts with the Contractor in connection with the Works.
- (C) The Employer and the Contractor have established the Project Bank Account to make provision for payment from the Employer to the Contractor and the Contractor’s Supply Chain and, along with the Contractor’s Supply Chain Members, have entered into a Deed (the “**Project Bank Account Trust Deed**”) for the operation of the Project Bank Account.

1 Definitions and Interpretation

Unless the context otherwise requires all defined terms shall have the same meanings given to them in the Building Contract and the Project Bank Account Trust Deed (as appropriate).

2 Agreement

2.1 The parties to this Deed agree that:

- 2.1.1 the Additional Contractor’s Supply Chain Member may join the Project Bank Account Trust Deed,
- 2.1.2 the Additional Contractor’s Supply Chain Member becomes a party to the Project Bank Account Trust Deed from the date of this Deed,
- 2.1.3 this Deed is subject to the law of the Building Contract, and
- 2.1.4 the benefits under this deed may not be assigned.

3 Counterparts

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

Executed as a Deed and delivered on the date stated at the beginning of this Deed

REQUIREMENTS FOR PRACTICAL COMPLETION

Practical Completion shall mean a stage of completeness of the Works (or Section) such that:

5. the Works have been carried out and completed in accordance with the Employer's Requirements and Contractor's Proposals, and all Consents;
6. the Works have been designed, constructed, remodelled or refurbished in the forms and materials described and as approved in any Consents and the Employer's Requirements and Contractor's Proposals;
7. any New Buildings have been located on each of the Sites, together with external hard and soft play [and landscaped areas]¹⁰⁸, and with the sports and recreational facilities as shown in the Employer's Requirements and the Contractor's Proposals and as approved in any Consents;
8. external fencing, gates, security equipment, vehicular and pedestrian access are complete as described in the Employer's Requirements and the Contractor's Proposals;
9. any Buildings that are to be made weatherproof and watertight as part of the Works are weatherproof and watertight;
10. the building services and drains comply with the Employer's Requirements and the Contractor's Proposals in all material respects;
11. the Buildings, and where relevant the Sites, are clean and tidy and all debris, hoarding, surplus material and rubbish has been removed;
12. the Contractor has provided to the Employer all information required by the Contract relating to the Works including (but not limited to) operation and maintenance manuals to enable the occupation and unfettered beneficial use of the Works in accordance with clause 2.37 and, where required, the models defined in the BIM Protocol or deliverables at the completion of construction at the level of detail defined in the BIM Protocol;
13. the Contractor has provided a planned maintenance programme in relation to the Works or the parts of the Works in accordance with the Employer's Requirements;
14. all statutory certificates have been issued including but not limited to the fire certificate;
15. all testing, commissioning and witnessing are complete and all certification has been issued as detailed on the handover check list;
16. all mechanical and electrical installation work is complete and the plant and equipment are safe for use;
17. all collateral warranties required to be provided in accordance with Articles 9, 10 and 11 have been provided;
18. any tests for active ICT infrastructure have been met in accordance with the Employer's Requirements;

¹⁰⁷ Where Sectional Completion applies, Annex 20 should be tabulated to indicate which completion requirements apply to each Section, such Sections to be clearly defined.

¹⁰⁸ Landscape works may be excluded if this work is required to be carried out during the next available planting season.

19. [The decanting into the [New Buildings][Refurbished Buildings] shall have been completed in accordance with the provisions of the Decant Protocol as set out in Annex 22;]¹⁰⁹
20. The Practical Completion Statement relating to the Works or Section¹¹⁰ (as the case may be) can be issued notwithstanding that any or all of the Post Practical Completion Activities have not been completed; and
21. Notwithstanding any other provision of this Contract, the Contractor shall carry out and complete the Post Practical Completion Activities. To the extent that the Contractor is unable to or fails to complete all or any part of the Post Practical Completion Activities as required by the Employer's Requirements, then such Post Practical Completion Activities, or any incomplete part of the Post Practical Completion Activities, shall be deemed to be defects, shrinkages, other faults or incomplete works as referred to in clauses 2.35 and 2.35B.

¹⁰⁹ To be included if decant is included in the Works.

¹¹⁰ Where Sectional Completion applies, TA to ensure that the Employer's Requirements clearly set out to which sections the Post Practical Completion Activities apply.

ANNEX 21

[INSURANCE]¹¹¹

Part 1 - Policies to be taken out by the Contractor and maintained during the carrying out of the Works¹¹²

Common to each policy in Part 1 (unless stated otherwise):

Insureds:

1. the Employer/any other freeholder or leasehold owner of the Site;
2. the Contractor;
3. Sub-Contractors;
4. the Design Consultants (for their site activities only);

each for their respective rights and interests in the Works.

1. CONTRACTOR'S "ALL RISKS" INSURANCE

1.1 Insured Property

The permanent and temporary works, materials (including but not limited to equipment supplied by the Employer), goods, plant and equipment for incorporation in the Works (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the Contractor) including goods and materials ordered by the Contractor or the Contractor's Persons but not yet incorporated into the Works and all other property used or for use in connection with the Works.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property unless otherwise excluded.

1.3 Sum Insured

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, but not less than the Contract Sum plus provision to include Principal Extensions as appropriate.

1.4 Territorial Limits

United Kingdom including offsite storage and whilst in transit.

1.5 Period of Insurance

From the date of this Contract until the Completion Date in respect of the Works as a whole and thereafter in respect of defects liability until the issue of the Notice of Completion of Making Good.

1.6 Cover Features and Extensions

1.6.1 Terrorism.

1.6.2 Munitions of war clause.

¹¹¹ Only applicable on high value band.

¹¹² Part 1 should be amended on a project specific basis and, in particular, where a Contractor is using an existing group policy. It is accepted that changes required by the use of a group policy will not provide the same protection as a project specific policy but the risk to the Employer, depending on the specific details, should not increase from the position where a project specific policy is being used. All amendments should be approved by the Employer's insurance adviser.

- 1.6.3 Professional fees clause (including Employer's advisers' fees incurred during any period of reinstatement).
- 1.6.4 Debris removal clause.
- 1.6.5 Seventy two (72) hour clause.
- 1.6.6 European Union local authorities clause.
- 1.6.7 Free issue materials clause.
- 1.6.8 One hundred and fifteen per cent (115%) increase clause ('day one reinstatement').
- 1.6.9 Additional costs of completion clause.
- 1.6.10 Automatic reinstatement of sum insured clause.
- 1.6.11 Plans and documents clause.
- 1.6.12 Loss minimisation.
- 1.6.13 Testing/commissioning period clause.
- 1.6.14 Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.

1.7 **Principal Exclusions**

- 1.7.1 War and related perils (UK market agreed wording).
- 1.7.2 Nuclear/radioactive risks (UK market agreed wording).
- 1.7.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.7.4 Wear, tear and gradual deterioration.
- 1.7.5 Consequential financial losses.
- 1.7.6 Cyber risks.
- 1.7.7 DE5 or its equivalent – design improvement.
- 1.7.8 Communicable disease.

2. **CONSTRUCTION THIRD PARTY LIABILITY INSURANCE**

2.1 **Interest**

To indemnify the Contractor in respect of all sums it may become legally liable¹¹³ to pay (including claimant's costs and expenses) as damages in respect of accidental:

- 2.1.1 death, or bodily injury, illness, disease contracted by any person;
- 2.1.2 loss or damage to property; and
- 2.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause,

happening during the period of insurance and arising out of or in connection with the Works.

2.2 **Limit of Indemnity**

¹¹³ Cover should be for contractual liability, statutory liability and liability in tort.

As per contract particulars 6.4.1.

2.3 **Territorial Limits**

United Kingdom but worldwide in respect of non-manual visits.

2.4 **Jurisdiction**

Worldwide (excluding USA, Canada and Australia).

2.5 **Period of Insurance**

From the date of this Contract until the expiry of the issue of the Notice of Completion of Making Good.

2.6 **Cover Features and Extensions**¹¹⁴

2.6.1 Munitions of war.

2.6.2 Cross liability clause.

2.6.3 Contingent motor liability.

2.6.4 No exclusion of liability in connection with terrorism.

2.6.5 No exclusion of liability in connection with legionella.

2.6.6 No exclusion from the Insurance Act 2015.

2.7 **Principal Exclusions**

2.7.1 Liability for death, illness, disease or bodily injury sustained by employees of the Insured.

2.7.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

2.7.3 Liability arising purely out of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

2.7.4 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Employer that is in the care, custody and control of another Insured.

2.7.5 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.

2.7.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

2.7.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

2.7.8 Losses indemnified under the CAR policy.

2.7.9 Asbestos liability.

2.7.10 Cyber risks.

2.7.11 Communicable disease

¹¹⁴ For certain projects a legionella extension may be required. Similarly, depending on the scope and location of the project, terrorism cover may be required.

Part 2 - Endorsements¹¹⁵

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in this Contract.

1. ENDORSEMENT 1 - CANCELLATION

- 1.1 This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.
- 1.2 The insurer shall by written notice advise the Employer:
 - 1.2.1 at least [REDACTED] Business Days before any such cancellation or termination is to take effect;
 - 1.2.2 at least [REDACTED] Business Days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
 - 1.2.3 of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

2. ENDORSEMENT 2 - MULTIPLE INSURED/SUBROGATION/NON-VITIATION CLAUSE

- 2.1 Each of the parties comprising the Insureds shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.
- 2.2 It is understood and agreed that any payment or payments by insurers to any one or more of the insured shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- 2.3 Subject to the provisions of the Insurance Act 2015 Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a "Vitiating Act") committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.
- 2.4 For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.
- 2.5 Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

¹¹⁵The endorsement drafting in this Part 2 is recommended drafting. Whilst the Parties should endeavour to obtain cover in accordance with these wordings, it is recognised that in practice the actual wording may differ. Whilst this is in principle acceptable, it will be important for the Employer's insurance adviser to verify that the principal provisions as set out in this Part 2 are achieved and the best terms reasonably available in the market at the time obtained.

2.6 Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

2.6.1 no party other than the Employer has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Employer;

2.6.2 where any warranty, disclosure or representation is required from the Employer in connection with this policy insurers will contact the Employer in writing (in accordance with Endorsement 3 below) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Employer (regarding itself); and

2.6.3 save as set out in a request from insurers to the Employer in accordance with sub-paragraph (2.6.2) above, the Employer shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Employer not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

3. **ENDORSEMENT 3 - COMMUNICATIONS**

3.1 All notices or other communications under or in connection with this policy shall be given to each insured (and the Employer) in writing. Any such notice will be deemed to be given when delivered.

3.2 The address of the Employer for all notices under or in connection with this policy are those notified from time to time by the Employer for this purpose to the Contractor's insurance broker at the relevant time. The initial address of the Employer is as stated in the Contract Particulars.

3.3 It is further agreed that a notice of claim given by the Employer or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all Insureds.

4. **ENDORSEMENT 4 - PRIMARY INSURANCE**

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

5. **ENDORSEMENT 5 - CLAIMS NEGOTIATION RIGHTS**

Notwithstanding any claim conditions contained herein insurers agree that the Employer has the right to settle and negotiate any claims received from third parties subject to prior consent of insurers. If an Employer takes or fails to take any action as a direct result of which insurers' liability is increased then the liability of insurers to provide an indemnity is reduced to such an extent.

6. **ENDORSEMENT 6 - RING-FENCING**

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Works shall not be affected and/or reduced by any claim(s) unrelated to the Works.

ANNEX 22

DECANT PROTOCOL¹¹⁶

[This Decant Protocol is a template document only and should be amended as appropriate on a project specific basis.]

1. INTRODUCTION AND INTERPRETATION

- 1.1 A recommended decant sequence is provided in this method statement. This method statement will be governed by any health and safety management plan applicable to the School. Any actions set out in this method statement, unless stated otherwise, are to be performed by the Contractor.
- 1.2 In this Annex 22, any reference to the School, shall, where the context requires, be construed as including the School or entity or entities located in the School.
- 1.3 Prior to commencement of the Works on Site the parties shall use their best endeavours to compile an inventory of materials and equipment to be subject of the decant, or alternatively redundant and no longer required by the School.

2. BUILDINGS

- 2.1 All existing buildings to be decanted will be identified to the Contractor. It is anticipated, where more than one building is to be decanted that a priority listing will be given. It is anticipated that all buildings will be decanted from the top floor down unless otherwise specified.
- 2.2 Where lifts are present within Existing Buildings such lifts may be utilised to remove boxed items to the ground floor; the use of any new lifts installed as part of the Works will not be permitted in order to move boxed items.

3. ACCESS

- 3.1 The School will only be accessed by designated vehicular routes.
- 3.2 Drivers of vehicles must:
 - 3.2.1 drive along the designated route between the Existing Buildings and the Sites;
 - 3.2.2 drive at a safe speed, taking cognisance of the weather, and use of the road by others including pedestrians;
 - 3.2.3 reverse only in the presence of a second person; and
 - 3.2.4 comply with all speed limits.

4. CARTONS/CRATES/CAGES

- 4.1 Cartons, crates, cages and labels for use by the School will be provided by the Contractor in accordance with the Decant Programme given below.
- 4.2 An area within the Existing Buildings shall be identified by the School/ Employer for the short-term storage of the empty cartons and crates upon delivery.
- 4.3 Guidance will be provided by the Contractor regarding the use of the cartons/ crates and cages, labels and tape.
- 4.4 The Contractor shall allow for the total provision of [ten thousand (10,000)] cartons/crates and cages [two thousand five hundred (2,500)]² cartons/crates or cages per School (total

¹¹⁶ This protocol is an indicative example.

weight of each carton or crate when packed shall not exceed twenty-four kilograms (24kg)). The cartons will be cardboard based with lids stackable six (6) high (or similar). Crates will be proprietary stackable plastic moving crates with hinged plastic securable lids. Cages may be used to move items that are not able to be fitted into cartons or crates. Items to be moved in cages will need to be individually identified in a specific decant list and agreed with the decant contractor. Any change to this provision shall constitute a [Variation/ Change] and must be agreed with the Employer for the DfE ahead of decant implementation.

- 4.5 Where crates are used in lieu of cartons and not returned by the School at the designated time or are misplaced, this will also constitute a [Variation/Change]. Any [Variation]/[Change] not agreed with the Employer in advance of the start of the decant will be deemed invalid, and cannot be agreed in retrospect, or once the decant has commenced.
- 4.6 Where there are hazardous materials to be moved (such as chemicals) the School will be responsible for packing and unpacking these, but the contractor shall be responsible for moving them. The moving of Radioactive sources shall be the School's responsibility as they possess the relevant licences.

5. **LABELLING**

- 5.1 It is recommended to the School that colour coded labels should be used for designated areas of both the Existing Buildings and the [New Buildings] [Refurbished Buildings]. This is crucial to the success of the decant process when receiving and distributing cartons within the [New Buildings] [Refurbished Buildings]. Coloured labels will be supplied by the Contractor, and designations agreed with the School. The Employer will inform the School staff in advance of the dates detailed on the Decant Programme.

6. **CARTON AND CRATE SEALING AND CONFIDENTIALITY**

- 6.1 The School will be responsible for identifying all sensitive or confidential material that needs to be moved via Cartons or Crates. The School must agree an appropriate sealing and logging method with the Contractor to ensure that they are satisfied the confidentiality is maintained during the move. The Contractor must have a record process to monitor the move of all confidential cartons or crates identified by the School. The School must countersign that the identified crates have moved and been received in the appropriate location. The Contractor must identify any damage to cartons or crates identified as having sensitive information immediately to the School's agreed representative.

7. **LEGACY ICT EQUIPMENT**

- 7.1 The Contractor shall carry out the following:
 - 7.1.1 Final ICT Audit/inventory to include:
 - Recording of equipment - details and confirmation of final numbers
 - Condition report by exception
 - Mapping to area data sheets for new locations.
 - 7.1.2 Testing of legacy equipment to include:
 - (a) Backup of system and user data (School responsibility, checked by contractor)
 - (b) Power down and re-start testing

- (c) Physical condition report
- 7.1.3 Management of the broadband and phone line relocation
- 7.1.4 Implementation of network services to maintain School operations as required during decant phase
- 7.1.5 Decommissioning, demounting and packaging of equipment for movement:
 - (a) Servers and related equipment
 - (b) Legacy network equipment (insofar as it applies) – including wireless hubs
 - (c) Specialist legacy equipment e.g. CAD/CAM and D&T equipment
 - (d) Interactive white boards and AV equipment
 - (e) Printers and MFD as required
 - (f) Other peripherals as required
 - (g) User devices as required
- 7.1.6 Movement to new locations
- 7.1.7 Unpacking and condition testing prior to re-installation
- 7.1.8 Re-installation/re-mounting, re-commissioning, testing and power testing:
 - (a) Servers and related equipment installed on racks as appropriate
 - (b) Legacy network equipment installed in racks and integrated with new solution – including VLAN configuration to School requirements
 - (c) Specialist legacy equipment e.g. CAD/CAM and D&T equipment
 - (d) Interactive whiteboards and AV equipment both in teaching and performance spaces
 - (e) Telephony installed and integrated with ICT network as required
 - (f) Printers and MFD installed and integrated as required
 - (g) Other peripherals installed and integrated as required
 - (h) User devices as required
- 7.1.9 Handover to Employer and School
 - (a) Inventory and condition report – pre and post move
 - (b) Testing report
 - (c) Training on new systems
- 7.1.10 In addition to decant the Contractor will provide services to support school resources to ensure that the School is able to operate the ICT equipment in its new location. This should include access to a key contact that should be available to direct any request for assistance. Examples include; switch re-configuration or the re-distribution of ICT equipment should it be required. The scope of the

support will be subject to the School staff's own capacity and capabilities and the type of school and should be confirmed during dialogue.

- 7.2 With regard to the re-commissioning of legacy ICT equipment, the Contractor will provide a minimum of 10 engineer days for School-specific configuration.¹¹⁷

8. RELOCATION OF LEGACY FURNITURE AND SPECIALIST EQUIPMENT SUCH AS SCIENCE AND DESIGN TECHNOLOGY

- 8.1 The Contractor shall include for the relocation of legacy furniture and specialist equipment as identified in the legacy furniture list and as detailed on the FFE plans which detail where legacy furniture will be located within the School.
- 8.2 The Contractor is deemed to have reviewed all FFE for decant where it is located within the existing school and confirmed its ability and suitability for decant to the new location as per FFE plans. Any FFE identified by the Contractor that will not be able to be decanted to the new school must be identified to the School at least one term prior to the decant commencing. If the Contractor identifies items of FFE that they are not able to decant they must specify the reason for the item not being able to be decanted.
- 8.3 The Contractor are responsible for ensuring that the correct facilities are provided for the recommissioning of equipment in its new location i.e. provision of plugs, terminations, and connectors. Where specialist equipment requires refurbishment by the School in order to ensure compliance with current regulations, this must be identified by the Contractor at least 3 months prior to the planned decant. This identification will need to clearly identify what connections and assumptions have been made for the items' installation and commissioning into its final location. The School will be responsible for ensuring that any refurbishment works are completed in line with the identified requirements. Where items where Schools have organised refurbishment are not returned in time for the planned decant timeline, the School will have to accept responsibility for the installation and commissioning of the item into its final location, however the Contractor shall still make available the agreed service terminations for the installation to be completed as planned.
- 8.4 The Contractor is responsible for coordinating the correct fixing down or installation of FFE and specialist equipment that is relocated from the Existing Buildings to the [New Buildings][Refurbished Buildings][New Buildings and Refurbished Buildings].

9. REDUNDANT ITEMS OF FURNITURE AND EQUIPMENT

The [New Buildings] [Refurbished Buildings] will be provided with new equipment in accordance with the room data sheets as comprised in the Employer's Requirements and/ or as developed in accordance with this Contract. Any items of furniture and equipment redundant within the Existing Buildings not removed by the Employer in the agreed period of two weeks as detailed within paragraph 18.3 (Removal of Existing Buildings Items of Equipment) detailed below, shall be removed by the Contractor during the demolition works phase.

10. PROTECTION

A survey of the [New Buildings][Refurbished Buildings][New Buildings and Refurbished Buildings] will be carried out by the Contractor in order to identify the external entry doors to those parts offering valuable space to receive inbound cartons and crates. The flooring of any such areas will be protected by the Contractor using hardboard. The protection will be laid and removed at the

¹¹⁷ The Employer will set up a minimum integration support package, which will be dependent on school size

start and completion of the decant process. All relevant doors, passageways and walls shall also be protected as necessary.

11. IDENTIFICATION OF PORTERS

Decant porters carrying out their duties within the confines of the School will be clearly identifiable as staff of the removals firm by wearing hi-viz vest or similar. If these persons are required to perform portering duties during normal school opening hours security clearance must be obtained from the Employer.

12. REPORT TIMES ON SITE

- 12.1 Porters will arrive and remain on Site during periods agreed with the School/the Employer (8am - 6pm minimum).
- 12.2 The Employer shall be responsible for the control of opening and closing of the School buildings during the decant. Access to and from the School buildings during the decant outside of the school day shall not be unreasonably withheld by the Employer and both Parties acknowledge the requirement to work together to achieve the dates detailed within the Decant Programme.

13. CONTRACTOR'S SOLE POINT OF CONTACT (MIGRATION MANAGER)

- 13.1 A Migration Manager shall be appointed by the Contractor. He/she will be the sole point of contact for the Contractor for the decant. The Employer will designate a corresponding School Representative in accordance with the decant timescales, who will be solely responsible for direct liaison with the Migration Manager and the issue of any instructions.
- 13.2 It is to be agreed that all instructions, deviations from agreed plans etc, will be conveyed through the Migration Manager for instruction thereafter to the Contractor's site foreman and his staff. It must be acknowledged by all Parties that no approach can be made directly to any porter to alter his work practices or schedule to accommodate a task not designated in a particular system of undertaking at that time.

14. PRACTICAL COMPLETION TIMINGS ON SITE

Completion of decant is a condition precedent Practical Completion of the Works. Discussion will be required if the Employer/School intimates that the School will close at a time which may be contradictory to the completion of the necessary works in accordance with the decant timescales. This action may lead to delays in that work being undertaken. Guidance will be required at an early date and before the start date of a specific task. Working hours will generally be 8am - 6pm although additional hours of work may be required to satisfy the Construction Programme.

15. PACKING AND PREPARATION

- 15.1 The cartons and crates will be packed, labelled and securely sealed by the School/the Employer. An inventory of contents for each carton shall be compiled and confirmed with the Contractor.
- 15.2 The majority of items for packing by the School will consist of stationary, text books and may include small, lightweight teaching aid items and will include sports equipment in the form of balls, rackets, bats and the like.
- 15.3 Suitable locations for storage of the packed cartons will be identified throughout the School. These locations should be near to exit doors where access to vehicles can be relatively easily obtained.
- 15.4 Glassware and fragile instruments should be wrapped in bubble wrap which will be provided by the Contractor and transferred by the Contractor in a suitable container.

- 15.5 Photocopiers and any other leased equipment will be disconnected and removed or moved to its new location by the leasing companies responsible for this specific equipment (or by the relevant School direct if owned by the School).

16. THE MOVE

- 16.1 The decant process is to be carried out in accordance with the Decant Programme.
- 16.2 A sufficient number of vehicles (including where deemed appropriate by the Contractor mechanical moving equipment) and labour to undertake the decant process within the specified period, will be provided.
- 16.3 The Contractor shall take care in the handling of all cartons/crates and tidiness on site will be considered an essential part of that process.

17. SCHEDULE OF DECANT PROCESS/SIGN-OFF PROCEDURE

- 17.1 To achieve a systematic and economical decant the following procedure shall apply (unless varied by consent of the Parties):
- 17.1.1 one floor at a time will be completely 'boxed up' and cleared out of the Existing Buildings before commencing onto lower floors, regardless of where it is going in the [New Buildings] [Refurbished Buildings]. The Migration Manager along with the School Representative referred to in paragraph 13.1 of this Decant Protocol will upon completion of each floor check and sign off each area; and
- 17.1.2 confidential items identified in paragraph 6.1 shall be confirmed and signed off as delivered to the new location in acceptable condition.
- 17.1.3 Upon the delivery of the last carton[s] to the correct locations in the [New Buildings] [Refurbished Buildings]. the Decant Protocol will be deemed complete (other than as set out in paragraph 18 below).

18. Post Decant activities

The following activities shall occur after completion of the decant process:

18.1 Unpacking

The School/Employer shall be responsible for the unpacking of cartons and crates.

18.2 Removal of empty cartons

Following the unpacking of the cartons, the School/Employer will make available the empty cartons by the date highlighted in the Construction Programme. The Contractor will collect and remove from site the empty cartons and associated packing materials, from an agreed central storage location.

18.3 Removal of Existing Buildings items of Equipment

Within a period of two weeks prior to the relevant Completion Date, the Employer shall be entitled to remove from the Existing Buildings any remaining redundant items of school equipment.

Decant Programme

Activity	Date	School
Empty cartons delivered to the Existing Buildings by the Contractor		TBC
Empty cartons packed by the School		
Filled cartons transported from the Existing Buildings to the [New Buildings][Refurbished Buildings][New Buildings and Refurbished Buildings] by the Contractor		
Date for Completion		
Crates and cages unpacked and available for collection		
Note The dates in this programme will be varied by an agreement of the Parties (acting reasonably) in the event that there is a material delay to the relevant Date or Dates for Completion.		

ANNEX 23

[EMPLOYER PLANNING CONDITIONS]¹¹⁸

¹¹⁸ This should list any planning conditions that the Contractor cannot discharge. Each Employer Planning Condition should be clearly identified in Annex 23. It is acknowledged that some planning conditions require both the Contractor's and the Employer's input in order to discharge them. In such circumstances, the responsibilities of each party should be clearly set out in the table in this Annex 23.

ANNEX 24

[THIRD PARTY AGREEMENTS]¹¹⁹

¹¹⁹ Delete if there are no Third Party Agreements or the Third Party Agreements are not in a position to be appended to the Contract.

ANNEX 3A – PROFESSIONAL TEAM WARRANTY DEEDS

DEED OF WARRANTY

DATED _____ **[*****]**

[***] LIMITEDPLC (1)**

and

[***] LIMITEDPLC (2)**

and

[***] LIMITEDPLC (3)**

DEED OF COLLATERAL WARRANTY BY [***]**

RELATING TO [***]**

WALKER MORRIS LLP

33 Wellington Street
LEEDS
LS1 4DL
Tel: 0113 2832500
Fax: 0113 2459412
Draft no: [*****]
Ref: [*****]

THIS DEED IS MADE ON [***]**

BETWEEN:

- (1) [*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Professional**)
- (2) [[*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Contractor**)] or [[*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Developer**)]
- (3) [*****] **LimitedPLC** (company number [*****]) whose registered office is at [*****] (the **Beneficiary**)

IN CONSIDERATION of the sum of £1.00 paid by the Beneficiary, receipt of which the Professional acknowledges, it is agreed as follows:

Interpretation

In this Deed unless the context requires otherwise:

1.1 The following words and expressions mean:

the Agreement an agreement dated [*****] and made between the Developer (1) and the Beneficiary (2) under which [the Developer agreed (inter alia) to [sell][let] the Property to the Beneficiary][the Beneficiary agreed to provide finance to the Developer for the carrying out of the Development];

the Appointment the appointment dated [*****] by which the [Developer][Contractor] appointed the Professional as [*****] in connection with the Development [which was subsequently novated from the Developer to the Contractor by a Deed of Novation dated [*****]];

the Beneficiary [*****] includes anyone to whom the benefit of this Deed is validly assigned;

the Building Contract the building contract entered into or to be entered into between the Developer (1) and the Contractor (2) for the design and carrying out of the Development and any replacement of it;

[the Contractor [***]]**

[the Developer [***]]**

the Development the [refurbishment][redevelopment] of the Property as described in the Agreement and the Building Contract;

Group Company means any subsidiary, subsidiary undertaking, holding company or holding undertaking of the Beneficiary, or any other company or undertaking which has the same ultimate holding company or parent undertaking as the Beneficiary (whether directly or indirectly) as defined in section 1159 and Schedule 6 and section 1162 and Schedule 7 of the Companies Act 2006 (as amended);

the Property [*****];

Related Entity means any body corporate or partnership entity which is at any time an 'associated person' or 'associate' of or in respect of the Beneficiary, or which is associated with the Beneficiary, as defined in and for the purposes of sections 121 and 131 of the Building Safety Act 2022.

- 1.2 Any reference to any form of legal entity includes all other forms of legal entity.
- 1.3 Obligations by more than one person are joint and several and where any party under this Deed at any time is more than one person references to it are to each person individually as well as jointly with the others comprising it.
- 1.4 The clause headings in this Deed are for reference only and shall not be taken into account in its construction or interpretation.

2. Acknowledgement

The Professional acknowledges that it owes the Beneficiary a professional duty of care arising out of its position as a consultant to the Development and warrants that:

- 2.1 it has performed and will continue to perform its duties under the Appointment as required by, and in accordance with the Appointment; and
- 2.2 it has exercised and will continue to exercise the standard of skill and care reasonably to be expected of a competent consultant experienced in works of a similar size, scope and complexity to the Building Contract Works in the performance of its duties under the Appointment

but the Professional shall not have any greater liability to the Beneficiary under this clause than it would have had if the Beneficiary had been named as a joint client in the Appointment.

3. Deleterious materials

The Professional further warrants that it has exercised and will continue to exercise the standard of skill and care referred to in clause 2 to ensure:

- 3.1 that the materials specified by it for use or incorporation in the Development are or will be in accordance with British Standards and Codes of Practice and/or any other regulations current at the date of specification;
- 3.2 no materials shall be specified which are not in accordance with the British Council for Offices latest publication "Good Practice in the Selection of Construction Materials" (or such further publication which may supersede or amend this); and
- 3.3 that no other material or method of use generally known at the time of specification to be deleterious to health and safety, to the integrity of buildings or other structures or plant or machinery or not in accordance with good building practice will be specified by it for use or incorporation in the Development and that it will not authorise any of them to be used.

4. Licence to use plans etc.

- 4.1 The copyright in all drawings, documents, reports, models, plans, specifications, CAD materials, bills of quantity, calculations, work, designs or inventions of any type provided by the Professional in connection with the Development at any time (the **Copyright Material**) shall remain vested in the Professional.
- 4.2 The Beneficiary and any person authorised by it is granted an irrevocable royalty free licence to use and reproduce the Copyright Material for all purposes relating to the Development and the Property including (without limitation) the completion, construction, reconstruction, modification, extension, repair, use, letting, sale and advertisement of the Development and the Property but the Professional shall not be liable for any use of the Copyright Material for any purpose other than that for which it was originally prepared by the Professional.
- 4.3 The licence granted by clause 4.2 includes the right to grant sub-licences and that licence and any sub-licences granted shall be transferable to third parties without restriction.
- 4.4 The Professional shall allow the Beneficiary and anyone authorised by it access to the Copyright Material at any time and shall supply copies of it, or any part of it, to the Beneficiary and any authorised person on request.

- 4.5 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the performance of its services under the Appointment shall be paid by the Professional who shall indemnify the Beneficiary against all claims, proceedings, damages, costs and expenses suffered or incurred by it because of the Professional infringing or being held to infringe any intellectual property rights in the performance of its duties under the Appointment.
- 4.6 The Professional waives any rights it may have under Chapter IV (Moral Rights) and Part 1 of the Copyright Designs and Patents Act 1988 in relation to the Development or the Copyright Material.

5. Insurance

- 5.1 The Professional shall maintain professional indemnity insurance in an amount of not less than £[*****] in respect of each and every claim from the date of this Deed until 15 years following the date of practical completion of the Development under the Building Contract (the **Insurance**) subject to it being available at commercially reasonable rates.
- 5.2 Any increased or additional premium required by any insurer by reason of the Professional's own claims record or other acts or omissions or any other matters or things particular to the Professional shall be deemed to be within commercially reasonable rates under clause 5.1.
- 5.3 If the Insurance ceases to be available at commercially reasonable rates the Professional shall immediately inform the Beneficiary.
- 5.4 As and when reasonably requested to do so by the Beneficiary the Professional shall produce for inspection adequate documentary evidence that the Insurance is being maintained and that the current premium has been paid.
- 5.5 The Professional shall fully comply with all requirements of, or which relate to, the Insurance.

6. Step in rights [FUNDER AND DEVELOPER ONLY]

- 6.1 If the Agreement is terminated by the Beneficiary [Contractor the Professional shall on receipt of written notice from the Beneficiary accept the instructions of the Beneficiary, or its appointee, to the exclusion of the [Developer][Contractor] in respect of the Appointment.

6.2

- 6.2.1 The Professional will not, without first giving the Beneficiary at least 30 days' prior written notice, exercise any right it may have to terminate the Appointment, treat the Appointment as repudiated by the [Developer][Contractor] or discontinue the performance of any of its duties under the Appointment.
- 6.2.2 The Professional's right to take any of the steps specified in clause 6.2.1 shall cease if before the expiry of the Professional's notice the Beneficiary serves written notice on the Professional requiring it to accept the instructions of the Beneficiary, or its appointee, to the exclusion of the [Developer][Contractor] in respect of the Appointment.
- 6.3 Neither the Beneficiary, nor its appointee, shall have any liability to the Professional under the Appointment unless and until the Beneficiary gives notice to the Professional under clause 6.1 or clause 6.2.2 when the Beneficiary, or its appointee, as appropriate, shall be liable for the performance of the [Developer's][Contractor's] obligations under the Appointment, including the payment of all outstanding and future sums properly due to the Professional and the Professional shall be liable to the Beneficiary, or its appointee, as appropriate, for the performance of the Professional's obligations under the Appointment as well as the Professional's obligations under this Deed.
- 6.4 The Professional shall not be concerned or required to enquire whether, and shall be bound to assume that, as between the [Developer][Contractor] and the Beneficiary, the Beneficiary is entitled to give any notice served under clause 6.1.
- 6.5 The Professional shall not incur any liability to the [Developer][Contractor] in complying with this clause and the [Developer][Contractor] confirms that the Beneficiary's rights under this clause override any obligations of the Professional to the [Developer][Contractor] under the Appointment.
- 6.6 The Professional confirms to the Beneficiary that the Appointment is in existence at the date of this Deed and that all sums due to it under the Appointment are up to date.
- 6.7 The [Developer][Contractor] has joined in this Deed to confirm its agreement to its terms.
- 6.8 Developer.

7. Partnership provisions

If the Professional is a partnership:

- 7.1 references in this Deed to the **Professional** shall be to each and every present and future partner of the partnership and any successor partnership;
- 7.2 the liability of each and every partner under this Deed shall be joint and several;
- 7.3 this Deed shall not terminate on the death, retirement or resignation of any partner;
- 7.4 the persons executing this Deed on behalf of the Professional warrant to the Beneficiary that they are authorised to enter into this Deed on behalf of the Professional and that this Deed shall be effective and binding on every partner in the Professional.

8. General

- 8.1 Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this Deed shall be commenced against the Professional after the expiry of 12 years from the date of practical completion (as defined by the Building Contract).
- 8.2 The Professional shall not exercise any right of legal or equitable set off or any rights of deduction that may be available under the Appointment against any entitlement of the Beneficiary, or its appointee, under this Deed.
- 8.3 The Beneficiary shall not be bound by any variation to the terms of the Appointment where that variation reduces the liability of the Professional to the Beneficiary under this Deed unless the Beneficiary has given written consent to the same.
- 8.4 The Professional will provide the Beneficiary, or its appointee, with any information relating to the Development that they reasonably request.
- 8.5 The benefit of this Deed is in addition to any other rights or remedies whether in negligence or otherwise which the Beneficiary or its appointee may have against the Professional.

9. Notices

Section 196 of the Law of Property Act 1925, as amended by the Recorded Delivery Service Act 1962, applies to the service of all notices in connection with this Deed except that it shall be deemed to be amended as follows:

- 9.1 In this clause **Working Day** means any day from Monday to Friday (inclusive) other than bank or public holidays.
- 9.2 The final words of section 196(4) “and that service be delivered” shall be deleted and replaced with “and that service shall be deemed to be made on the second Working Day after the registered letter has been posted”.
- 9.3 Any notice may be sufficiently served by facsimile when service shall be deemed to be made on the day of transmission if transmitted before 4.00 pm on a Working Day but otherwise on the next following Working Day.

10. Assignment and further Deeds

- 10.1 The benefit of this Deed may be assigned without the Professional’s [Developer][Contractor] consent:
 - 10.1.1 to any Group Company;
 - 10.1.2 by way of security or by way of re-assignment on redemption; and
 - 10.1.3 on two other occasions.
- 10.2 Notice of any assignment made under this clause shall be given to the [Developer][Contractor] Professional provided always that failure to provide such notice shall not in any way invalidate or otherwise affect the assignment.
- 10.3 The Professional shall not contend that any assignee of this Deed under clause 10.1 is precluded from recovering any loss resulting from any breach of this Deed (whenever the breach occurred) because that person is an assignee of this Deed and not the original promisee or because the Beneficiary or any intermediate assignee escaped loss due to its having disposed of its interest in the Development.
- 10.4 Except as allowed by this clause the benefit of this Deed is personal to the Beneficiary.

10.5 [The Professional agrees that, if the Beneficiary requires it, it will enter into further warranty deeds in respect of the Property in the same form as this Deed (with the omission of [Developer][Contractor] this sub-clause), with only any amendments that are needed to give proper meaning and efficacy to the further warranty deeds, in favour of the first [sub-lets]sub-lets to which the Beneficiary or its appointee [lets][sub-lets]sub-lets the Property or any part of it.]

11. Jurisdiction and Governing Law

This Deed shall be governed by and interpreted in accordance with English law and the parties irrevocably submit to the jurisdiction of the English courts.

12. Contracts (Rights of Third Parties) Act 1999

12.1 A person who is not a party to this Deed 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 that Act.

12.2 Notwithstanding clause 12.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

IN WITNESS of which the parties to this Deed have duly executed it on the date specified on page one.

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

[*****])

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

SIGNED as a Deed (but not delivered)

until the date hereof) by the said)

[*****])

in the presence of)

the witness named below)

Name of witness

Address

Occupation

ANNEX 3B – BUILDING CONTRACTOR WARRANTY DEEDS

CONTRACTOR WARRANTY

DATED _____ 20[]

[CONTRACTOR]

and

[]

DUTY OF CARE DEED

relating to []

THIS DEED is dated
BETWEEN:

20[]

- (1) [CONTRACTOR] (Company Number []) whose registered office is at [] (the “**Contractor**”); and
- (2) [] of [] (the “**Beneficiary**”, which expression includes its successors in title and permitted assigns).

BACKGROUND

- (A) By a building contract dated [] (the “**Building Contract**”) the Employer has appointed the Contractor to carry out and complete the Works in relation to the Sites.
- (B) The Contractor is obliged under the Building Contract to enter into this Deed in favour of the Beneficiary.
- (C) The Contractor has agreed to duly execute and deliver this Deed in favour of the Beneficiary.

1. DEFINITIONS AND INTERPRETATIONS

In this Deed unless the context otherwise requires, any defined term in this Deed shall have the same meaning given to such term in the Building Contract.

2. OPERATIVE PROVISIONS

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Contractor, receipt of which the Contractor acknowledges.

3. CONTRACTOR’S WARRANTIES AND LIABILITIES

3.1 The Contractor warrants to the Beneficiary that:

- 3.1.1 it has carried out and completed and will continue to carry out and complete the Works and its duties and obligations under the Building Contract in accordance with the Building Contract;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in the design of the Works the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer of the appropriate discipline(s) acting independently under a separate contract with the Employer and experienced in carrying out design such as that required under the Building Contract in relation to works of a similar size, scope, nature, complexity, location, timescale and value to the Works in relation to:
 - (a) any design of the Works;
 - (b) the selection and standards of all goods, materials, equipment or plant for the Works;
- 3.1.3 it has not and shall not use, and subject to the standard of skill, care and diligence set out in clause 3.1.2, nor permit, specify or approve for use in connection with the Works any materials which at the time of use:

- (a) are known to be deleterious (either to health and safety or to the durability of the Works); or
- (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
- (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.

3.2 The Contractor shall have no liability under this clause 3 that is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Building Contract as joint employer.

3.3 For the avoidance of doubt the Contractor warrants to the Beneficiary that the Contractor shall not raise any defence to a claim by the Beneficiary under this Deed on the grounds that the losses in respect of which the Beneficiary seeks damages, compensation or other relief are not losses suffered or to be suffered by the Employer or that the Employer has suffered no loss. The Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Employer of any monies due under the Contract.

4. **COPYRIGHT**

4.1 The Intellectual Property Rights in the Contractor's Design Documents prepared by or on behalf of the Contractor in relation to the Building Contract and the work executed by him remains the property of the Contractor. The Contractor hereby grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to use and reproduce the Contractor's Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Beneficiary to grant sub-licences to third parties in the same terms as this licence provided always that the Contractor shall not be liable to any licensee for any use of the Contractor's Design Documents or the use of the Intellectual Property Rights in the Contractor's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Contractor.

4.2 The Beneficiary may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to clause 4.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Beneficiary.

4.3 In the event that the Contractor does not own the copyright or any Intellectual Property Rights in any of the Contractor's Design Documents the Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Beneficiary to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Contractor is unable to procure the right to grant to the Beneficiary in accordance with the foregoing the Contractor shall procure that the third party grants a direct licence to the Beneficiary on industry acceptable terms.

- 4.4 The Contractor waives any moral right to be identified as author of the Contractor's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Contractor's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.
- 4.5 In the event that any act unauthorised by the Beneficiary infringes a moral right of the Contractor in relation to the Contractor's Design Documents the Contractor undertakes, if the Beneficiary so requests and at the Beneficiary's expense, to institute proceedings for infringement of the moral rights.
- 4.6 The Contractor warrants to the Beneficiary that he has not granted and shall not (unless authorised by the Beneficiary) grant any rights to any third party to use or otherwise exploit the Contractor's Design Documents.
- 4.7 The Contractor shall supply copies of the Contractor's Design Documents to the Beneficiary upon paying a reasonable copying charge.
- 4.8 In carrying out the Works the Contractor shall not infringe any Intellectual Property Rights of any third party. The Contractor shall indemnify the Beneficiary against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Contractor hereby covenants with the Beneficiary that it:

- 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Contract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than [REDACTED] in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance and shall maintain the same until the expiry of fifteen (15) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and
- 5.1.2 will provide evidence (as and when reasonably required to do so by the Beneficiary) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.

¹ Limit shall reflect the main contract level of cover

5.2 Any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things peculiar to the Contractor shall be deemed to be within commercially reasonable rates.

5.3 The Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Contractor is unable to maintain and/or is not maintaining such insurance in which case the Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Contractor upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Beneficiary and shall further discuss means of best protecting the respective positions of the Beneficiary and the Contractor in respect of the Works.

6. **ASSIGNMENT**

6.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Contractor on two (2) occasions only and the Beneficiary will notify the Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.

6.2 The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

7. **NOTICES**

7.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

7.1.1 Contractor: [e-mail address]²

7.1.2 Beneficiary: [e-mail address]³

or as otherwise specified by the relevant party by notice in writing to the other party.

7.2 Any notice sent by hand or by post in accordance with clause 7.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

8. **BENEFICIARY'S REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including without prejudice to the generality of the foregoing any remedies in negligence and

² Insert e-mail address

³ Insert e-mail address

no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

10. **SUB-CONTRACTORS**

Following a written request from the Beneficiary the Contractor will (unless it has already done so) procure that its sub-contractors shall execute a deed of collateral warranty in the relevant form specified in the Building Contract in favour of any person in whose favour the Building Contract obliges the Contractor to give or procure the giving of such a warranty.

11. **SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Deed.

12. **WAIVER**

12.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

12.2 No waiver under clause 12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

13. **THIRD PARTY RIGHTS**

13.1 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 13 shall not affect any right or remedy which exists or is available to any person apart from such Act.

13.2 Notwithstanding clause 13.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

14. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

15. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

16. **ELECTRONIC EXECUTION**

Each party agrees that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this agreement as if signed by manuscript signature.

17. **LIMITATION**

Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this deed shall be commenced against the Contractor after the expiry of 12 years from the date of Practical Completion of the Works.

The parties agree that this Deed needs to be executed by the Contractor only and that this Deed is irrevocably and unconditionally released to the Beneficiary for completion.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.⁴

⁴ Note: this warranty needs to be signed by the Contractor only.

[EXECUTED AS A DEED] by [CONTRACTOR] acting
by a Director and its Secretary/two Directors:

.....
Director

.....
Director/Secretary]

[OR]
[EXECUTED AS A DEED] by [CONTRACTOR] acting
by a Director in the presence of a Witness:

.....
Director

Signature (Witness)

Print Name

Address

.....

.....

Occupation]

ANNEX 3C – PRIMARY SUB-CONTRACTOR WARRANTY DEEDS

Principal Sub-Contractor Warranty in favour of the Employer

DATED _____ 20[]]

[PRINCIPAL SUB-CONTRACTOR]

and

[EMPLOYER]

and

[CONTRACTOR]

DUTY OF CARE DEED

relating to []

20[]

- ## BACKGROUND

- ## 1. DEFINITIONS AND INTERPRETATIONS

2. OPERATIVE PROVISIONS

3. PRINCIPAL SUB-CONTRACTOR'S WARRANTIES AND LIABILITIES

- ¹ Insert details of relevant sub-contract package.

- (a) any design of the Subcontract Works;
- (b) the selection and standards of all goods, materials, equipment or plant for the Subcontract Works;

3.1.3 it has not and shall not use, and subject to the standard of skill, care and diligence set out in clause 3.1.2, nor permit, specify or approve for use in connection with the Subcontract Works any materials which at the time of use:

- (a) are known to be deleterious (either to health and safety or to the durability of the Subcontract Works); or
- (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
- (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.

3.2 The Principal Sub-Contractor shall have no liability under this clause 3 than is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Employer to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Employer had been a party to the Subcontract as joint employer.

3.3 For the avoidance of doubt the Principal Sub-Contractor warrants to the Employer that the Principal Sub-Contractor shall not raise any defence to a claim by the Employer under this Deed on the grounds that the losses in respect of which the Employer seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Principal Sub-Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Subcontract.

4. **COPYRIGHT**

4.1 In this clause 4 “**Principal Sub-Contractor’s Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Principal Sub-Contractor in relation to the Subcontract Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.

4.2 The Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents prepared by or on behalf of the Principal Sub-Contractor in relation to the Subcontract and the work executed by it remains the property of the Principal Sub-Contractor. The Principal Sub-Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Principal Sub-Contractor’s Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the

Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Principal Sub-Contractor shall not be liable to any licensee for any use of the Principal Sub-Contractor's Design Documents or the use of the Intellectual Property Rights in the Principal Sub-Contractor's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Principal Sub-Contractor.

- 4.3 The Employer may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Employer.
- 4.4 In the event that the Principal Sub-Contractor does not own the copyright or any Intellectual Property Rights in any of the Principal Sub-Contractor's Design Documents the Principal Sub-Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Employer to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Principal Sub-Contractor is unable to procure the right to grant to the Employer in accordance with the foregoing the Principal Sub-Contractor shall procure that the third party grants a direct licence to the Employer on industry acceptable terms.
- 4.5 The Principal Sub-Contractor waives any moral right to be identified as author of the Principal Sub-Contractor's Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Principal Sub-Contractor's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Employer or any licensee or assignee of the Employer.
- 4.6 In the event that any act unauthorised by the Employer infringes a moral right of the Principal Sub-Contractor in relation to the Principal Sub-Contractor's Design Documents the Principal Sub-Contractor undertakes, if the Employer so requests and at the Employer's expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Principal Sub-Contractor warrants to the Employer that he has not granted and shall not (unless authorised by the Employer) grant any rights to any third party to use or otherwise exploit the Principal Sub-Contractor's Design Documents.
- 4.8 The Principal Sub-Contractor shall supply copies of the Principal Sub-Contractor's Design Documents to the Employer upon paying a reasonable copying charge.
- 4.9 In carrying out the Subcontract Works the Principal Sub-Contractor shall not infringe any Intellectual Property Rights of any third party. The Principal Sub-Contractor shall indemnify the Employer against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Principal Sub-Contractor hereby covenants with the Employer that it:
 - 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Subcontract (including in connection with any errors

or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than [REDACTED] in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance and shall maintain the same until the expiry of fifteen (15) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Principal Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

- 5.1.2 will provide evidence (as and when reasonably required to do so by the Employer) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.
- 5.2 Any increased or additional premium required by insurers by reason of the Principal Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Principal Sub-Contractor shall be deemed to be within commercially reasonable rates.
- 5.3 The Principal Sub-Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Principal Sub-Contractor is unable to maintain and/or is not maintaining such insurance in which case the Principal Sub-Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Principal Sub-Contractor upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Employer and shall further discuss means of best protecting the respective positions of the Employer and the Principal Sub-Contractor in respect of the Subcontract Works.

6. **NOTICES**

- 6.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:
- 6.1.1 Principal Sub-Contractor: [e-mail address]³
- 6.1.2 Employer: [e-mail address]⁴

² Limit shall reflect the level of cover required for the Principal Sub-Contractor in the main contract which may be lower

³ Insert e-mail address

⁴ Insert e-mail address

6.1.3 Contractor: [e-mail address]⁵

or as otherwise specified by the relevant party by notice in writing to the other parties.

- 6.2 Any notice sent by hand or by post in accordance with clause 6.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

7. **ASSIGNMENT**

- 7.1 The benefit of and the rights of the Employer under this Deed may be assigned without the consent of the Principal Sub-Contractor on two (2) occasions only and the Employer will notify the Principal Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.

- 7.2 The Principal Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8. **EMPLOYER'S REMEDIES**

The rights and benefits conferred upon the Employer by this Deed are in addition to any other rights and remedies it may have against the Principal Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

10. **STEP-IN RIGHTS IN FAVOUR OF THE EMPLOYER**

- 10.1 Without prejudice to the Principal Sub-Contractor's statutory rights the Principal Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to:

⁵ Insert e-mail address

- 10.1.1 terminate or treat as terminated or repudiated the Subcontract or its engagement under it without first giving to the Employer not less than 30 Business Days' prior written notice; or
 - 10.1.2 discontinue or suspend the performance of any duties or obligations under the Subcontract without first giving to the Employer not less than 7 Business Days' prior written notice.
- 10.2 Any notice given by the Principal Sub-Contractor pursuant to clause 10.1 above shall:
 - 10.2.1 specify the Principal Sub-Contractor's ground for terminating or treating as terminated or repudiated the Subcontract or its engagement under it or for discontinuing or suspending its performance under it (as applicable);
 - 10.2.2 specify any other breaches by the Contractor; and
 - 10.2.3 state the amount (if any) of monies outstanding under the Subcontract (whether or not such amounts result from a breach entitling the Principal Sub-Contractor to terminate or treat as terminated or repudiated the Subcontract or to discontinue or suspend the performance of any duties or obligations under the Subcontract (as applicable)).
- 10.3 Within the period of any notice given by the Principal Sub-Contractor pursuant to clause 10.1:
 - 10.3.1 the Employer may give written notice to the Principal Sub-Contractor that the Employer will henceforth become the client under the Subcontract to the exclusion of the Contractor and thereupon the Principal Sub-Contractor will admit that the Employer is its client under the Subcontract and the Subcontract will be and remain in full force and effect notwithstanding any of the said grounds but subject always to clause 10.3.2 below;
 - 10.3.2 if the Employer has given such notice as aforesaid or under clause 10.5 below, the Employer shall accept liability for the Contractor's obligations under the Subcontract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor which is properly specified and which is capable of remedy by the Employer; and
 - 10.3.3 if the Employer has given such notice as aforesaid or under clause 10.5, the Employer will from the service of such notice become responsible for all sums properly payable to the Principal Sub-Contractor under the Subcontract accruing due after the service of such notice but the Employer will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Subcontract.
- 10.4 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Employer to the Principal Sub-Contractor, the Employer will not be under any obligation to the Principal Sub-Contractor nor will the Principal Sub-Contractor have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Principal Sub-Contractor pursuant to clause 10.3.1 or clause 10.5 of this Deed.
- 10.5 The Principal Sub-Contractor further covenants with the Employer that if employment of the Contractor under the Building Contract is determined or the

Building Contract is terminated, the Principal Sub-Contractor, if requested by the Employer by notice in writing and subject to clause 10.3.2 and clause 10.3.3, will accept the instructions of the Employer to the exclusion of the Contractor in respect of its duties under the Subcontract upon the terms and conditions of the Subcontract and will if so requested in writing to enter into a novation agreement whereby the Employer is substituted for the Contractor under the Subcontract.

- 10.6 If the Principal Sub-Contractor is requested to enter into a novation agreement pursuant to clause 10.5 above, the Contractor agrees to enter into the same at the request of the Employer.
- 10.7 The Contractor acknowledges that the Principal Sub-Contractor will be entitled to rely on a notice given to the Principal Sub-Contractor and the Contractor by the Employer under clause 10.5 as conclusive evidence that the employment of the Contractor under the Building Contract has been determined or the Building Contract is terminated.
- 10.8 The Employer may by notice in writing to the Principal Sub-Contractor and the Contractor appoint another person to exercise its right under this clause 10 subject to the Employer remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 10.9 Upon request by the Employer the Principal Sub-Contractor agrees to co-operate with the Employer in determining the duties performed or to be performed by the Principal Sub-Contractor and to provide a copy of the Subcontract and any variations thereto and details of all monies paid and due under the Subcontract and the Building Contract.
- 10.10 As from the date of service of notice under clause 10.3.1 or 10.5 to the extent that the Subcontract operates by reference to the existence and application of the Building Contract, the Subcontract shall be administered and construed as though the Building Contract was continuing and the Subcontract shall therefore continue, subject to amendment only as necessary to reflect the fact that the Building Contract have in fact terminated and the Employer has undertaken the obligations set in clause 10.3.2.

11. **SUB-CONTRACTORS**

Following a written request from the Employer the Principal Sub-Contractor will (unless it has already done so) procure that its sub-contractors execute a deed of collateral warranty in the relevant form specified in the Subcontract in favour of any person in whose favour the Subcontract obliged the Principal Sub-Contractor to give or procure the giving of such a warranty.

12. **SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Deed.

13. **WAIVER**

- 13.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

- 13.2 No waiver under clause 13.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

14. **THIRD PARTY RIGHTS**

- 14.1 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 14 shall not affect any right or remedy which exists or is available to any person apart from such Act.

- 14.2 Notwithstanding clause 14.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

15. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

16. **CONTRACTOR ACKNOWLEDGEMENT**

The Contractor has entered into this Deed in order to acknowledge the arrangements effected hereby and undertakes to each of the Employer and the Principal Sub-Contractor to observe the provisions of this Deed at all times and not in any way to prejudice or affect the enforcement hereof or to do or permit to be done anything which would be a breach hereof.

17. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

1. **LIMITATION**

Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this deed shall be commenced against the Principal Sub-Contractor after the expiry of 12 years from the date of Practical Completion of the Works.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.

EXECUTED AS A DEED by

[PRINCIPAL SUB-CONTRACTOR] acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

THE CORPORATE SEAL of the)
SECRETARY OF STATE FOR)
EDUCATION herewith affixed is)
authenticated by:)

.....
Authorised by the Secretary of State

.....
Full name (BLOCK CAPITALS)

OR

EXECUTED AS A DEED (but not delivered
until the date hereof) by affixing the
Common Seal of [EMPLOYER] in the
presence of:

Authorised Signatory

OR

EXECUTED AS A DEED by [EMPLOYER]
acting by a Director and its Secretary/two
Directors:

Director

Director/Secretary

EXECUTED AS A DEED by
[CONTRACTOR] acting by a Director and
its Secretary/two Directors:

Director

Director/Secretary

Principal Sub-Contractor Warranty in favour of a third party

DATED _____ 20[]]

[PRINCIPAL SUB-CONTRACTOR]

and

[BENEFICIARY]

DUTY OF CARE DEED

relating to []

20[]

- ## BACKGROUND

- ## 1. DEFINITIONS AND INTERPRETATIONS

2. OPERATIVE PROVISIONS

3. PRINCIPAL SUB-CONTRACTOR'S WARRANTIES AND LIABILITIES

- ⁶ Insert details of relevant sub-contract package.

- (b) the selection and standards of all goods, materials, equipment or plant for the Subcontract Works;

3.1.3 it has not and shall not use, and subject to the standard of skill, care and diligence set out in clause 3.1.2, nor permit, specify or approve for use in connection with the Subcontract Works any materials which at the time of use:

- (a) are known to be deleterious (either to health and safety or to the durability of the Subcontract Works); or
- (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
- (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.

3.2 The Principal Sub-Contractor shall have no liability under this clause 3 than is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Subcontract as joint employer.

3.3 For the avoidance of doubt the Principal Sub-Contractor warrants to the Beneficiary that the Principal Sub-Contractor shall not raise any defence to a claim by the Beneficiary under this Deed on the grounds that the losses in respect of which the Beneficiary seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Principal Sub-Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Subcontract.

4. **COPYRIGHT**

4.1 In this clause 4 “**Principal Sub-Contractor’s Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Principal Sub-Contractor in relation to the Subcontract Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.

4.2 The Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents prepared by or on behalf of the Principal Sub-Contractor in relation to the Subcontract and the work executed by him remains the property of the Principal Sub-Contractor. The Principal Sub-Contractor hereby grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to use and reproduce the Principal Sub-Contractor’s Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Beneficiary to grant sub-licences to third parties in the same terms as this licence provided always that the Principal Sub-Contractor shall not be liable to any licensee

for any use of the Principal Sub-Contractor's Design Documents or the use of the Intellectual Property Rights in the Principal Sub-Contractor's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Principal Sub-Contractor.

- 4.3 The Beneficiary may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Beneficiary.
- 4.4 In the event that the Principal Sub-Contractor does not own the copyright or any Intellectual Property Rights in any of the Principal Sub-Contractor's Design Documents the Principal Sub-Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Beneficiary to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Principal Sub-Contractor is unable to procure the right to grant to the Beneficiary in accordance with the foregoing the Principal Sub-Contractor shall procure that the third party grants a direct licence to the Beneficiary on industry acceptable terms.
- 4.5 The Principal Sub-Contractor waives any moral right to be identified as author of the Principal Sub-Contractor's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Principal Sub-Contractor's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.
- 4.6 In the event that any act unauthorised by the Beneficiary infringes a moral right of the Principal Sub-Contractor in relation to the Principal Sub-Contractor's Design Documents the Principal Sub-Contractor undertakes, if the Beneficiary so requests and at the Beneficiary's expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Principal Sub-Contractor warrants to the Beneficiary that he has not granted and shall not (unless authorised by the Beneficiary) grant any rights to any third party to use or otherwise exploit the Principal Sub-Contractor's Design Documents.
- 4.8 The Principal Sub-Contractor shall supply copies of the Principal Sub-Contractor's Design Documents to the Beneficiary upon paying a reasonable copying charge.
- 4.9 In carrying out the Subcontract Works the Principal Sub-Contractor shall not infringe any Intellectual Property Rights of any third party. The Principal Sub-Contractor shall indemnify the Beneficiary against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Principal Sub-Contractor hereby covenants with the Beneficiary that it:
 - 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Subcontract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects

and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than [REDACTED] in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance and shall maintain the same until the expiry of fifteen (15) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Principal Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

- 5.1.2 will provide evidence (as and when reasonably required to do so by the Beneficiary) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.
- 5.2 Any increased or additional premium required by insurers by reason of the Principal Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Principal Sub-Contractor shall be deemed to be within commercially reasonable rates.
- 5.3 The Principal Sub-Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Principal Sub-Contractor is unable to maintain and/or is not maintaining such insurance in which case the Principal Sub-Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Principal Sub-Contractor upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Beneficiary and shall further discuss means of best protecting the respective positions of the Beneficiary and the Principal Sub-Contractor in respect of the Subcontract Works.

6. **NOTICES**

- 6.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:
- 6.1.1 Principal Sub-Contractor: [e-mail address]⁸
- 6.1.2 Beneficiary: [e-mail address]⁹
- or as otherwise specified by the relevant party by notice in writing to the other party.
- 6.2 Any notice sent by hand or by post in accordance with clause 6.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business

⁷ Limit shall reflect the level of cover required for the Principal Sub-Contractor in the main contract which may be lower

⁸ Insert e-mail address

⁹ Insert e-mail address

Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

7. **ASSIGNMENT**

7.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Principal Sub-Contractor on two (2) occasions only and the Beneficiary will notify the Principal Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.

7.2 The Principal Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8. **BENEFICIARY'S REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Principal Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

10. **SUB-CONTRACTORS**

Following a written request from the Beneficiary the Principal Sub-Contractor will (unless it has already done so) procure that its sub-contractors execute a deed of collateral warranty in the relevant form specified in the Subcontract in favour of any person in whose favour the Subcontract obliged the Principal Sub-Contractor to give or procure the giving of such a warranty.

11. **SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Deed.

12. **WAIVER**

12.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

12.2 No waiver under clause 12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

13. **THIRD PARTY RIGHTS**

13.1 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 13 shall not affect any right or remedy which exists or is available to any person apart from such Act.

13.2 Notwithstanding clause 13.1, in the event that a building liability order (as such term is defined in the Building Safety Act 2022) is made in respect of a Related Entity, such Related Entity shall be entitled to enforce each term of this Deed as if it were named as a benefitting party under this Deed.

14. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

15. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

16. **ELECTRONIC EXECUTION**

Each party agrees that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this agreement as if signed by manuscript signature.

17. **LIMITATION**

Without prejudice to any action or proceedings under this Deed that arise from a breach of section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings whatsoever for any breach of this deed shall be commenced against the Principal Sub-Contractor after the expiry of 12 years from the date of Practical Completion of the Works.

The parties agree that this Deed needs to be executed by the Principal Sub-Contractor only and that this Deed is irrevocably and unconditionally released to the Beneficiary for completion.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.¹⁰

[EXECUTED AS A DEED] by [PRINCIPAL SUB-CONTRACTOR] acting by a Director and its Secretary/two Directors:

.....
Director

.....
Director/Secretary]

[OR]
[EXECUTED AS A DEED] by [PRINCIPAL SUB-CONTRACTOR] acting by a Director in the presence of a Witness:

.....
Director

Signature (Witness)

Print Name

Address

.....

.....

Occupation]

¹⁰ Note: this warranty needs to be signed by the Principal Sub-Contractor only.

ANNEX 4 – PLANS AND SPECIFICATIONS

ANNEX 5 - DEIR SCHEDULE

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

THORPE PARK DEVELOPMENTS LIMITED)

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

EXECUTED as a Deed (but not delivered)

until the date hereof) by)

SCARBOROUGH GROUP)

INTERNATIONAL LIMITED)

acting by a director and its secretary)

or two directors)

Director

Secretary/Director

The Corporate Seal of the)

SECRETARY OF STATE)

FOR EDUCATION)

Is herewith affixed and authenticated)

.....

Authorised by The Secretary of State

.....

Full name (BLOCK CAPITALS)

.....

Seal Reference