

Parties

VASTINT UK B.V. a company incorporated under the laws of the Netherlands (trade register no. 34363986) and whose registered address is at Hettenheuvelweg 51, 1101 BM Amsterdam Zuidoost, The Netherlands (the **Employer**)

[DEPROM LV SIA a company registered in Latvia (registered number 40103366728) and whose registered office address is at Aluksnes Street 5 - 12, Riga, Latvia, LV-1045] (the **Trade Contractor**)

Recitals

- First** The Employer wishes to have: the design, supply and installation of the above ground elements of the superstructure for buildings 2.1, 2.2 and 2.3 in Plot MU2, Sugar House Island, including the precast floor elements of all buildings, and the delta beam elements to all buildings, and ancillary works and services (the **Works**) carried out on or about Plot MU2, Sugar House Island, off High Street, London E15 2RB (the **Site**) in accordance with the conditions (comprising the clauses set out in sections 1 to 9 together with and including schedules 1 to 9 inclusive) (hereinafter together called the **Conditions**) and the Employer has had drawings and either a specification or work schedules prepared which show and describe the work to be done.
- Second** The Works are to be carried out as part of a Project comprising 3nr commercial buildings within plot MU2 comprising approx. 30,000m² of Cat A office development and ground floor flexible commercial space and associated infrastructure and landscaping being procured by the Employer and the Construction Manager as his agent.
- Third** For the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004 the status of the Employer is, at the Base Date, that stated in the Contract Particulars.
- Fourth** The Trade Contractor and the Employer have agreed a fixed price for certain plant, materials and labour activities which will apply for the purposes of the Works, the Trade Contract Sum and any variations to each of these. These fixed prices are set out in the Detailed Price Breakdown.
- Fifth** The division of the Works into Sections is shown in the Specification/Work Schedules and/or the Trade Contract Drawings or in such other documents as are identified in the Contract Particulars.
- Sixth** The Works include the entire design and construction of TCDP Works in accordance with clauses 2.2 and 2.15 (the **Trade Contractor's Designed Portion**).
- Seventh** The Employer has supplied to the Trade Contractor documents showing and describing or otherwise stating his requirements for the carrying out of the Works including the design and construction of the Trade Contractor's Designed Portion (the **Employer's Requirements**). The drawings are numbered/listed in Appendix A5 (Document Register (Contract Specific)) to the Employer's Requirements (the **Trade Contract Drawings**).
- Eighth** In response to the Employer's Requirements the Trade Contractor has supplied to the Employer:
- documents showing and describing the Trade Contractor's proposals for the design and construction of the Trade Contractor's Designed Portion (the **Trade Contractor's Proposals**);
 - an analysis of the Trade Contract Sum (including relating to the design of the Trade Contractor's Designed Portion) (the **Detailed Price Breakdown**).

- Ninth** The Trade Contractor confirms that it shall be responsible in all respects for the design of the Trade Contractor's Designed Portion and design development, selection of goods and materials and satisfaction of performance specifications.
- Tenth** The Trade Contractor has checked the Employer's Requirements and confirms that the Trade Contractor's Proposals meet with the Employer's Requirements and there is no discrepancy within and/or between the two documents and the Trade Contractor shall be fully responsible in all respects for the design of the TCDP Works (whether contained in the Employer's Requirements or the Trade Contractor's Proposals) and design development, selection of goods and materials and satisfaction of performance specifications.

Articles

Now it is hereby agreed as follows:

Article 1 Trade Contractor's obligations

The Trade Contractor shall carry out and complete the Works in accordance with the Contract Documents.

Article 2 Trade Contract Sum

The Employer shall pay the Trade Contractor at the times and in the manner specified in the Conditions the [insert figure] pounds (£[insert figure]) (the **Trade Contract Sum**).

Article 3 Construction Manager

For the purposes of this Trade Contract the Construction Manager is Copper Projects Ltd of Ground Floor, 1 Dane's Yard, Stratford, London E15 2QL or, if he ceases to be the Construction Manager, such other person as the Employer shall nominate in accordance with clause 3.4 of the Conditions.

Article 4 Principal Designer

The Principal Designer for the purposes of the CDM Regulations is Liberty Safety Services Ltd of 295 High Street, Rainham, Gillingham, Kent, ME8 8DS or such replacement as the Employer at any time appoints to fulfil that role.

Article 5 Principal Contractor

The principal contractor for the Site for the purposes of the CDM Regulations is the Construction Manager or such other person as the Employer at any time appoints to fulfil that role. The principal contractor for the majority of the Wider Site, excluding the Site but including access through the Wider Site to the Site (the **Site Wide Principal Contractor**) is Avondale Construction Ltd or such other person as the Employer at any time appoints to fulfil that role.

Article 6 Adjudication

If any dispute or difference arises under this Trade Contract, either Party may refer it to adjudication in accordance with clause 9.2.

Article 7 Legal proceedings

Subject to Article 6, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Trade Contract.

Article 8 Vastint UK Services Limited

Vastint UK Services Limited (VUKS) has been appointed as the Employer's development manager in relation to the development of which the Works form part. In that capacity, VUKS shall handle routine day to day instructions and correspondence relating to this Trade Contract on behalf of the Employer. The Trade Contractor shall therefore be entitled to treat any such routine, day to day instructions and correspondence that it receives from VUKS (and its employees) as if such instructions and correspondence had been given by the Employer itself.

Contract Particulars

Clause	Subject	
Fourth Recital and clause 4.5	Construction Industry Scheme (CIS)	Employer at the Base Date is a 'contractor' for the purposes of the CIS
Sixth Recital	Description of Sections	<p>Section 1 – all works required for Building 2.3.</p> <p>Section 2 – all works required for Building 2.2</p> <p>Section 3 – all works required for Building 2.1</p>
Seventh Recital	Employer's Requirements	Are as set out in Part 1 of Schedule 7 .
Eighth Recital	Trade Contractor's Proposals	Are as set out in Part 2 of Schedule 7.
Eighth Recital	Detailed Price Breakdown	Is as set out in Schedule 8.
1.1	Base Date (<i>date on which the Trade Contract Sum was agreed</i>)	[TBC]
1.1	BIM Protocol	Is as set out in Appendix B15 (BIM Execution Plan) to the Employer's Requirements
1.1	Completion Period	Not applicable.
1.1	Sections: Completion Period for Sections	<p>Section 1 : [tbc] [weeks]</p> <p>Section 2 : [tbc] [weeks]</p> <p>Section 3 : [tbc] [weeks]</p> <p>[refer to master programme which gives periods on site – needs to include manufacturing period as well]</p>
1.1	Employer's Representative	[] [name] shall act as the Trade Contractor's primary contact but [Richard Lam or Andrew Cobden] or such alternate or additional person as [Richard Lam or Andrew Cobden] may notify the Trade Contractor in writing shall also have authority to act as the Employer's Representative.
1.1	Third Party Agreements	Not applicable.
1.7	Addresses for service of notices etc. by the Parties	<p>Employer: Vastint UK B.V. c/o Vastint UK Services Limited, 135 High Street, London E15 2RB</p> <p>Trade Contractor []</p>

2.1.3d	Prohibited materials	Materials specifically prohibited are detailed in the Employer's Requirements under the heading "Prohibited and Restricted Materials".
2.40	Final Release Date	Not applicable.
2.35.2	Sections: rate of liquidated damages for each Section	£10,000 per week or part thereof but subject to a maximum aggregate amount equal to ten per cent (10%) of the Trade Contract Sum
2.40	Sections: Final Release Dates	Section 1 : 12 months Section 2 : 12 months Section 3 : 12 months from the date of practical completion of the relevant Section of the Works/ .
3.22.1	Attendance – attendance items to be supplied free of charge to the Trade Contractor are:	Those items stated in Appendix A2 (Schedule of Attendances) of the Employer's Requirements as being the responsibility of the Employer or Construction Manager.
3.22.2	Attendance – attendance items to be supplied at the Trade Contractor's cost are:	None.
4.6	Interim payments – interim Valuation Dates	The Interim Valuation Date in each month is the last working day of the month.
4.8.2	Purchase Order reference number	SE-xxxx
4.14.3	Advance Payment Bond	Is required/ Is required if any advance payments in respect of offsite materials are to exceed £xxxxx/ Is not required [TBC depending on payment arrangements]
4.16.1	Retention Percentage	five per cent (5%)
6.4.1b	Trade Contractor's insurance – injury to persons or property Insurance cover (<i>for any one occurrence or series of occurrences arising out of one event</i>)	€2,500,000 (two million five hundred thousand euros)
6.6.1	Percentage or amount of cover for professional fees	€250,000 (two hundred and fifty thousand euros)
6.12	Trade Contractor's Professional indemnity insurance Level of cover	Amount of indemnity required is for each and every claim and is £10,000,000 (ten million pounds)

	Expiry of required period of Professional Indemnity insurance is	12 years
6.14	Joint Fire Code	The Joint Fire Code does apply
	If the Joint Fire Code applies, state whether the insurer has specified that the Works are a 'Large Project':	Yes
6.17	Joint Fire Code – amendments/revisions <i>(The cost shall be borne by the Trade Contractor unless otherwise stated.)</i>	The cost, if any, of compliance with amendment(s) or revisions(s) to the Joint Fire Code shall be borne by the Employer
7.2.1	Performance bond or guarantee from bank or other approved surety	Is required
7.2.2	Guarantee from the Trade Contractor's parent company	Is required / Is not required. [tbc depending on proposed contractor]
	Parent company's name and registration number	[insert]
9.2.1	Adjudication	The Adjudicator is to be nominated as indicated below
	Nominator of Adjudicator – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)	President or a Vice-President or Chairman or a Vice-Chairman of: The Royal Institution of Chartered Surveyors

This Trade Contract has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

Signed as a deed on behalf of **VASTINT UK B.V.**
by Vastint UK Services Ltd,
acting by a director pursuant to a Power of Attorney

dated 24th January 2020 in the presence of:

.....

Andrew Cobden
Director

.....Signature of Witness

Witness signature

Witness printed name

Witness occupation

Witness address

[Signed as a deed by

a director for and on behalf of **[insert]**

Director's printed name **[insert]**

in the presence of:

Witness signature

Witness printed name

Witness occupation

Witness address

.....] OR:

Executed as a deed by **DEPROM LV SIA** acting
by

.....
Authorised signatory

and

.....
Authorised signatory

who, in accordance with the laws of Latvia are
acting under the authority of the company:

Definitions

- 1.1. Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated or referred to below:

Word or Phrase	Meaning
Adjudicator	an individual appointed under clause 9.2 as the Adjudicator.
Advance Payment Listed Items	materials, goods and/or items prefabricated for inclusion in the Works for which payment or part payment will be required prior to their delivery to the Site, the identity of which will be agreed by the Parties after the date of the Contract.
Agreement	the Agreement to which these Conditions are annexed, including its Recitals, Articles and Trade Contract Particulars.
All Risks Insurance	see clause 6.8
Approximate Quantity	a quantity in the Detailed Price Breakdown there identified as an approximate quantity. The Parties have agreed that there shall be no Approximate Quantities in the Detailed Price Breakdown or the Trade Contract Sum.
Article	an article in the Agreement.
Base Date	the date stated as such date in the Trade Contract Particulars (against the reference to clause 1.1).
Benchmark Schedule	the schedule listing elements of the Works that the Contractor will provide benchmarks for and the dates on which each such benchmark shall be provided, as well as details of what should be provided.
BIM Protocol	(where applicable) the document identified as such in the Trade Contract Particulars (against the reference to clause 1.1).
BREEAM Requirements	the Employer's requirement to attain a BREEAM rating of Excellent, as more particularly detailed in the Employer's Requirements (if applicable to the Project).
Business Day	any day which is not a Saturday, Sunday or a Public Holiday.
CDM Regulations	the Construction (Design and Management) Regulations 2015.
Certificate of Making Good	see clause 2.42.
Code of Conduct	the Interogo Holding Code of Conduct in force from time to time, a copy of which has been provided to the Trade Contractor prior to the date of this Trade Contract.
Completion Period	the period for completion of the Works or such works in a Section as stated in the Trade Contract Particulars or as revised in accordance with these Conditions
Conditions	the clauses set out in sections 1 to 9 of these Conditions, together with and including the Schedules hereto.

Conditions of Practical Completion	the pre-conditions to the occurrence of Practical Completion of the Works or a Section set out in clause 2.43 and any other such pre-conditions set out in the Employer's Requirements.
Confirmed Acceptance	the Construction Manager's instruction confirming acceptance of a Variation Quotation in accordance with Schedule 2.
Consents	the planning permissions referred to in the Trade Contract Documents or any other planning permissions relating to the Works, approval of reserved matters and all details pursuant thereto, building regulation approval, fire officer approval and any other permissions, approvals, certificates and licences that may be necessary pursuant to the Statutory Requirements or otherwise to the carrying out of the Works and if they are destroyed or damaged, the reinstatement of the Works.
Construction Industry Scheme (or 'CIS')	see the Fourth Recital.
Construction Manager	the person named in Article 3 or any successor nominated under clause 3.4.
Construction Phase Plan	those parts of the construction phase plan for the Project that are applicable to the Works and annexed to the Agreement, together with any updates and revisions of it by the Principal Contractor notified to the Trade Contractor before or during the progress of the Works.
Consultant Team	the following consultants: Carey Jones Chapman Tolcher (Architect) Gravity Engineering (Structural Engineer (substructure) & Civil engineer) Deprom (Structural Engineer (superstructure)) Futureserv (MEP Engineer) DFC (Fire Engineer) RBA (Acoustic consultant)
Covid -19	the coronavirus disease 2019, an infectious disease caused by severe acute respiratory syndrome coronavirus 2
Defects Response Schedule	the list of time periods within which certain defects arising must be remedied by the Trade Contractor pursuant to clause 2.40, as set out in Appendix B14 (Defects Response Schedule) to the Employer's Requirements.
Defined Provisional Sum	(to the extent that there are bills of quantities and regardless of the method of measurement used), the definition of the term in paragraph 2.9.1.2 of the RICS Measurement Rules.
Design Submission Procedure	the procedure set out in Schedule 1, subject to any modifications of that procedure specified in the Trade Contract Documents.
Detailed Price Breakdown	the contract sum analysis (with accompanying notes) set out in Schedule 8 to this Trade Contract.
Employer	the person named as the Employer in the Agreement.
Employer's Persons	all persons employed, engaged or authorised by the Employer, including the Construction Manager, the Consultant Team, other trade contractors and their sub-contractors and any such third party as is referred to in Clause 3.22.2 but excluding the Trade Contractor, Trade Contractor's Persons and any Statutory Undertaker.

Employer's Representative	the person(s) named in the Trade Contract Particulars to act in that capacity, or any successor appointed by the Employer.
Employer's Requirements	see the Seventh Recital and the Trade Contract Particulars.
Environment	all and any of the following media being water, air (wherever situate) as well as humans and their property, plants, animals and eco-systems.
Environmental Laws	all or any applicable law including common law, statute, civil code, statutory guidance or by-law in each case which has as its purpose or effect the protection of the Environment.
Excepted Risks	see clause 6.8.
Existing Structures	any and all existing structures within which the Project or part of it is to be executed or to which it is to form an extension, together with such works in a Section for which a Practical Completion Certificate under clause 2.34 has been issued, such works under any other trade contract in respect of the Project for which a practical completion certificate has been issued, any Section for which a Section Completion Certificate has been issued and, as from the Relevant Date, any Relevant Part taken over under clause 2.36.
Final Certificate	see clause 4.23.
Final Release Date	the date specified in the Trade Contract Particulars (against the reference to clause 2.40).
Final Trade Contract Sum	see clause 4.21.
Good Environmental Practice	good practice generally as followed by contractors skilled and experienced in the remediation and redevelopment of contaminated sites and shall be deemed to include (as a minimum) compliance with all Environmental Laws.
Gross Valuation	see clause 4.12.
Group Company	any subsidiary or holding company of the Employer or another subsidiary or holding company of such company as subsidiary and holding company are defined in s736 Companies Act 1985.
Health and Safety Policies	the Employer's, Principal Contractor's and the Trade Contractor's respective health and safety policies and arrangements, copies of each having been included within the Employer's Requirements.
Insolvent	see clause 8.1.
Interest Rate	a rate 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Trade Contract becomes overdue.
Interim Application	see clause 4.8.
Interim Certificate	either a certificate from the Construction Manager or Employer pursuant to clause 4.7.2, or in the absence of such certificate within the timescales prescribed the Trade Contractor's summary of sums due to it pursuant to clause 4.7.1.
Interim Payment Notice	see clause 4.9.2.

Interim Valuation Date	each date as specified by the Trade Contract Particulars (against the reference to clause 4.7).
Joint Fire Code	the Joint Code of Practice on the Projection from Fire of Construction Sites and Buildings Undergoing Renovation published by Construction Industry Publications Ltd and the Fire Projection Association, current at the Base Date.
Joint Names Policy	see clause 6.8.
Listed Items	materials, goods and/or items prefabricated for inclusion in the Works which are listed as such items by the Employer in a list supplied to the Trade Contractor and annexed to the Trade Contract Documents.
Nominating Notice	the notice to be served upon the Trade Contractor confirming that a Third Party will take the benefit of the Third Party Rights, as set out in Schedule 5.
Obstructions	all obstructions to the carrying out of the Works (aside from the On-Site Infrastructure) which exist on or underneath the Site prior to the commencement of the first Section of the Works and which have either been notified to the Trade Contractor in the Employer's Requirements, or which a competent contractor could reasonably identify from a visual inspection of the Site prior to commencement of the Works.
On-Site Infrastructure	all infrastructure (whether pipes, cables, sewers or otherwise and whether owned by the Employer or third parties) which exist on or underneath the Site prior to the commencement of the first Section of the Works and which have either been notified to the Trade Contractor in the Employer's Requirements, or which a competent contractor could reasonably identify from a visual inspection of the Site prior to commencement of the Works.
Parties	the Employer and the Trade Contractor together.
Party	either the Employer or the Trade Contractor.
Pay Less Notice	see clauses 4.9.5 and 4.10.1.
Practical Completion	when the Works reach a stage of completeness where there are no apparent deficiencies or defects in the Works and so that there are no incomplete works, the condition or completion of which would prevent normal, reasonable and beneficial occupation and use (and where relevant, a building control certificate has been issued in relation to the applicable Works or Section); and the Site has been cleared of all temporary buildings, builder's plant and equipment, unused materials and rubbish; and the Works and the Site have been left in a clean, tidy and safe condition; provided that the Works shall not be considered incomplete by reason of minor defects which can be remedied without interference or interruption of the use of the Site as aforesaid.
Practical Completion Certificate	see clause 2.34.2.
Practical Completion Procedure	the procedure of inspecting the Works set out in the Employer's Requirements (including the Completion and Handover Strategy set out in Appendix B11 to the Employer's Requirements, where included in the Trade Contract), by which the Construction Manager and Employer judge whether Practical Completion of a Section or the Works has occurred, and identifies any snags or other defects in the Works to be remedied by the Trade Contractor notwithstanding that Practical Completion may have occurred.
Pre-agreed Adjustment	see clause 2.27.2.

Principal Contractor	the Construction Manager or other contractor named in Article 5 or any successor appointed by the Employer.
Principal Designer	the person named in Article 4 or any successor appointed by the Employer.
Project	the project of which the Works form part as briefly described in the Third Recital.
Project Completion Certificate	the certificate issued under clause 3.25 following practical completion of work under the last trade contract to be completed for the Project.
Project Insurance Policy	the Joint Names Policy or policies covering the Project to be effected and maintained by the Employer under clause 6.6.
Project Section Completion Certificate	the certificate issued under clause 3.25 following practical completion of work under the last trade contract to be completed for a section of the Project.
Provisional Sum	a sum provided for work that the Employer may or may not decide to have carried out, or which cannot be accurately specified in the Trade Contract Documents.
Public Holiday	Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday.
Recitals	the recitals in the Agreement.
Related Trade Contract	any trade contract entered into between the Trade Contractor and either the Employer or Vastint UK Services Ltd, either before or after the date of this Trade Contract, for the carrying out of works at the Site or the Wider Site.
Relevant Date	see clause 2.36.
Relevant Event	see clause 2.30.
Relevant Matter	see clause 4.19
Relevant Omission	see clause 2.27.3.
Relevant Part	see clause 2.36.
Retention	see clauses 4.15 and 4.16.
Retention Percentage	the percentage stated in the Trade Contract Particulars (against the reference to clause 4.16.1).
RICS Measurement Rules	the RICS New Rules of Measurement – Detailed Measurement for Building Works (NRM2).
Samples and Testing Protocol	the processes by which the Employer shall be entitled to test goods and materials which the Trade Contractor proposes to use in the Works, or to test installed Works, as set out in the Employer's Requirements.
Scheme	Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998.
Sections	(where applicable) the sections into which the Works have been divided, as referred to in the Fifth Recital and the Trade Contract Particulars.

Shared Welfare Facilities	the welfare facilities within the Wider Site which will be made available to the Trade Contractor for use in the carrying out of the Works, the details of which are set out in the Employer's Requirements.
Site	See the First Recital
Site Materials	all unfixed materials and goods delivered to and placed on or adjacent to the Project which are intended for incorporation therein.
Site Wide Principal Contractor	the contractor named in Article 5 as having been appointed as principal contractor in respect of the Wider Site (excluding the Site and other individual development sites from time to time) or any successor appointed by the Employer
Specified Perils	see clause 6.8.
Standard Method of Measurement	the Standard Method of Measurement of Building Works, 7 th Edition, produced by The Royal Institution of Chartered Surveyors and the Construction Confederation, current, unless otherwise stated in the Detailed Price Breakdown, at the Base Date (references in that publication to "the Appendix" being read as references to the Trade Contract Particulars).
Statutory Requirements	any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law, including the Consents, which affects the Works or performance of any obligations under this Trade Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Works.
Statutory Undertaker	any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed engaged or authorised by it upon or in connection with that work.
TCDP Works	those parts of the Works for which the Trade Contractor takes design responsibility as part of the Trade Contractor's Designed Portion, being the items set out in the table at Section A, paragraph 2 of the Employer's Requirements (but only if any items are so set out).
Third Party	any party who: (i) has/will have an interest in; and/or (ii) has acquired/will acquire an interest in; and/or (iii) has provided/will be providing finance/refinance in connection with the property comprising the Project or any substantial part or parts thereof and/or the works comprising the Project or any substantial part or parts thereof; which shall for the avoidance of doubt include Vastint UK Services Ltd but which shall not include any party acquiring an interest (whether freehold or leasehold) in a single residential unit.
Third Party Agreements	any and all agreements relating to or affecting the Works or the completed Works (including the execution of the Works and their design) or any part of the Works which have been entered into by the Employer before the date of this Trade Contract and disclosed to the Trade Contractor before the date of this Trade Contract including (but not limited to) those agreements listed in the Trade Contract Particulars, any agreements for lease and/or any agreements pursuant to section 38 and/or 278 of the Highways Act 1980 and/or pursuant to section 104 of the Water Industry Act 1991 and/or pursuant to section 106 of the Town and Country Planning Act 1990 and/or section III of the Local Government Act 1972.
Third Party Rights	the rights to be provided in favour of a Third Party pursuant to clause 7.4 and the issue of a Nominating Notice, as set out in Schedule 4.

Trade Contract	the completed Agreement, these Conditions and the Trade Contract Documents.
Trade Contract Documents	the Trade Contract Drawings, the Employer's Requirements, the Detailed Price Breakdown and (where applicable) the BIM Protocol.
Trade Contract Drawings	the drawings referred to in the Seventh Recital.
Trade Contract Particulars	the particulars in the Agreement and there described as such, including the entries made by the Parties.
Trade Contract Programme	the programme for the carrying out of the Works to be agreed by the Employer and the Contractor, which is to comply with the master programme set out in the Employer's Requirements (if any) or as issued by the Employer, as amended and updated from time to time.
Trade Contract Sum	the sum stated in Article 2.
Trade Contractor	the person named as the Trade Contractor in the Agreement.
Trade Contractor's Design Documents	the drawings, details and specifications of materials, goods and workmanship and other related documents and information prepared by or for the Trade Contractor in relation to the Trade Contractor's Designed Portion (including such as are contained in the Trade Contractor's Proposals or referred to in clause 2.9.4), together, where applicable, with any other design documents or information to be provided by him under the BIM Protocol.
Trade Contractor's Designed Portion	see the Sixth Recital.
Trade Contractor's Persons	the Trade Contractor's employees and agents, all other persons employed or engaged on or in connection with the Works or any part of them and any other person properly on the site in connection therewith, excluding the Employer, Employer's Persons and any Statutory Undertaker.
Trade Contractor's Proposals	see the Eighth Recital and the Trade Contract Particulars.
Valuation	a valuation in accordance with the Valuation Rules, pursuant to clause 5.2, or in accordance with clause 5.3.3, as applicable.
Valuation Rules	see clauses 5.6 to 5.12.
Variation	see clause 5.1.
Variation Quotation	see clause 5.3 and Part 2 of Schedule 2.
Vastint UK Services Ltd	Vastint UK Services Limited a company registered under the laws of England and Wales (company number 07394552) whose registered office is at 135 High Street, London E15 2RB
VAT	Value Added Tax.
Vesting Certificate	a vesting certificate in a form to be agreed by the Parties at the time it is agreed an Advanced Payment Listed Item is needed.
Wider Site	the site owned in parts by the Employer and Vastint UK Services Ltd off High Street, London E15 on which the Development is to be carried out, as more particularly described in the Employer's Requirements.

Works

the work referred to in the Agreement, as more particularly shown, described or referred to in the Trade Contract Documents, which is to be carried out by the Trade Contractor as part of the Project, including any changes made to that work in accordance with this Trade Contract.

Interpretation

1.2. Reference to Clauses etc.

Unless otherwise stated, a reference in the Agreement or in these Conditions to a clause or Schedule is to that clause in or Schedule to these Conditions and, unless the context otherwise requires, a reference in a Schedule to a paragraph is to that paragraph of that Schedule.

1.3. Agreement etc. to be read as a whole

The Agreement and these Conditions are to be read as a whole. In the event of any inconsistency occurring between the contents of respectively:

- i) the Conditions;
- ii) the Articles;
- iii) the Recitals;
- iv) the Detailed Price Breakdown;
- v) the Employer's Requirements, within which the order shall be:
 - a Section A;
 - b Appendix A3 (Document Register – Contract Specific)
 - b any other "A" Appendices;
 - c Section B;
 - d "B" Appendices;
- vi) the Trade Contractor's Proposals; and
- vii) any other Contract Document,

the contents of the document earlier in the order shall prevail over any document later in the order.

1.4. Headings, References to Persons, Legislation etc.

In the Agreement and these Conditions, unless the context otherwise requires:

- 1.4.1. the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Trade Contract;
- 1.4.2. the singular includes the plural and vice versa;
- 1.4.3. a gender includes any other gender;
- 1.4.4. a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 1.4.5. a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
- 1.4.6. references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information, be deemed to include information in a form or medium conforming to that protocol.

1.5. Reckoning Periods of Days

Where under this Trade Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.

1.6. Contracts (Rights of Third Parties) Act 1999

Subject to clause 7.1 and such rights of any Third Party as take effect pursuant to clauses 7.3 or 7.4, nothing in this Trade Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

1.7. Notices and Other Communications

1.7.1. Save where expressly provided otherwise in this Trade Contract, any notice or other communication between the Parties, or by or to the Construction Manager, that is expressly referred to in the Agreement or these Conditions (including, without limitation, each application, approval, consent, confirmation, counter-notice, decision, instruction or other notification) shall be in writing.

1.7.2. Subject to clause 1.7.4, each such notice or other communication and any documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing for the purposes of this Trade Contract.

1.7.3. Subject to clauses 1.7.2 and 1.7.4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if delivered by hand or sent by pre-paid post to:

1.7.3.1. the recipient's address stated in the Trade Contract Particulars, or to such other address as the recipient may from time to time notify to the sender; or

1.7.3.2. if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.

1.7.4. Any notice expressly required by this Trade Contract to be given in accordance with this clause 1.7.4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.

1.7.5. If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

1.8. Effect of Final Certificate

1.8.1 Except as provided in clause 1.8.2, 1.8.3 and 1.8.4 (and save in respect of fraud), the Final Certificate shall have effect in any proceedings under or arising out of or in connection with this Trade Contract (whether by adjudication or legal proceedings) as:

a conclusive evidence that any necessary effect has been given to all the terms of this Trade Contract which require that an amount be added to or deducted from the Contract Sum or that an adjustment be made to the Trade Contract Sum save where there has been any accidental inclusion or exclusion of any work, materials, goods or figure in any computation or any arithmetical error in any computation, in which event the Final Certificate shall have effect as conclusive evidence as to all other computations;

b conclusive evidence that all and only such extensions of time, if any, as are due under clause 2.28 have been given; and

c conclusive evidence that the reimbursement of direct loss and/or expense, if any, to the Trade Contractor pursuant to clause 4.17 is in final settlement of all and any claims which the Trade

Contractor has or may have arising out of the occurrence of any of the Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.

1.8.2 If adjudication or other proceedings have been commenced by either Party before the Final Certificate is issued, the Final Certificate shall have effect as conclusive evidence as provided in clause 1.8.1 upon and from the earlier of either:

- a the conclusion of such proceedings, in which case the Final Certificate shall be subject to the terms of any decision, award or judgment in or settlement of such proceedings; or
- b the expiry of any period of 12 months from or after the issue of the Final Certificate during which neither Party takes any further step in such proceedings, in which case the Final Certificate shall be subject to any terms agreed in settlement of any of the matters previously in issue in such proceedings.

1.8.3 If adjudication or other proceedings are commenced by either Party within 28 days after the Final Certificate has been issued or if any proceedings are commenced for the purpose specified in and within the period stated in clause 1.8.4, the Final Certificate shall have effect as conclusive evidence as provided in clause 1.8.1 save only in respect of the matters to which those proceedings relate.

1.8.4 In the case of a dispute or difference on which an Adjudicator gives his decision on a date after the date of issue of the Final Certificate, if either Party wishes to have that dispute or difference determined by legal proceedings, that Party may commence legal proceedings within 28 days of the date on which the Adjudicator gives his decision.

1.9. **Effect of Certificates other than Final Certificate**

Save as stated in clause 1.8 no certificate of the Employer or the Construction Manager shall of itself be conclusive evidence that any works, any materials or goods or any design completed by the Trade Contractor for the Trade Contractor's Designed Portion to which the certificate relates are in accordance with this Trade Contract

1.10. **Whole Agreement**

This Trade Contract supersedes all and any other agreements or arrangements that may have existed between the Parties relating to the Works. The Trade Contractor warrants to the Employer that it does not enter into this Trade Contract in reliance of any antecedent or collateral representations undertakings or promises of any nature whatsoever made by or on behalf of the Employer.

1.11. **Interpretation and precedence of drawings and other descriptions of the Works**

For the avoidance of doubt:

- 1.11.1 where two versions of a drawing exist, unless confirmed otherwise by the Employer or the Construction Manager the new version supersedes the old; and
- 1.11.2 a description of the Works supersedes a drawing.

1.12. **Code of Conduct**

The Trade Contractor shall act diligently during the term of this Trade Contract and shall never knowingly act in a manner which either is, or may be, prejudicial to the operations, reputation or business interests of the Employer or its affiliates. The Trade Contractor confirms that it has read and understood the Code of Conduct and agrees to comply with it as well as any other rules and policies as may be communicated by the Employer or the Construction Manager from time to time during the term of this Trade Contract.

1.13. **Applicable Law**

This Trade Contract shall be governed by and construed in accordance with the laws of England.

2 CARRYING OUT THE WORKS

General Obligations

2.1.1 The Trade Contractor shall carry out and complete the Works with all due diligence and in a proper and workmanlike manner in accordance with good building practice and in compliance with the Trade Contract Documents (including the Health and Safety Policies), the Construction Phase Plan and Statutory Requirements and shall give all notices required by the Statutory Requirements. When requested to do so by the Construction Manager the Trade Contractor shall provide the Construction Manager with evidence that he has complied with all Statutory Requirements and given all notices required by the Statutory Requirements. Where the Employer's authorisation or completion of documentation in respect of the Statutory Requirements is required the Trade Contractor shall furnish the relevant documentation to the Construction Manager and permit the Employer a period of ten (10) Business Days to authorise or complete it.

2.1.2 In the event that the Statutory Requirements change after the date of this Trade Contract the consequences of that change shall be treated as a Variation, save that where such change has been set out draft regulations or a parliamentary Bill prior to the date of this Trade Contract, the Trade Contractor shall have no entitlement to any adjustment of the Trade Contract Sum nor any extension of time to the Completion Period nor any other loss and/or expense as a result of that change, except in the case of a change to import duties imposed after the date of this Trade Contract as a result of the withdrawal of the UK from the European Union which shall for the avoidance of doubt be a Variation.

Prohibited materials

2.1.3 The Trade Contractor warrants that it has not used and shall not use and has exercised and shall continue to exercise the standard of skill and care required by clause 2.2.1 to ensure that it has not and shall not specify, authorise, cause or allow to be used in the Works any products or materials which at the time of their specification, authorisation or use:

- a do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
- b are generally known in the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
- c do not comply with the guidance set out in the publication entitled "Good Practice in the Selection of Construction Materials" issued by the British Property Federation and the British Council of Offices; and/or
- d are specifically prohibited by this Trade Contract.

2.1.4 The Trade Contractor will immediately notify the Construction Manager if it becomes aware of any proposed or actual specification and/or use in the Works of any products and/or materials which do not comply with clause 2.1.3.

Consents and Permissions

- 2.1.5 The Trade Contractor agrees that it shall provide the Employer with all reasonable assistance to secure all permissions, approvals or consents (whether statutory, from a Third Party, from an adjoining owner or otherwise) needed to carry out the Works and that it will comply with all reasonable requests of the Construction Manager or Employer in relation to the same, including complying with any such request within any reasonable time period requested by the Construction Manager or Employer to allow the Employer to procure a permission, approval or consent in sufficient time prior to the intended commencement date for the Works.
- 2.1.6 In the event that a failure to secure a permission, approval or consent causes a delay to the commencement of the Works, to the extent that such failure is as a result of the Trade Contractor having failed to comply with a reasonable request from the Construction Manager or Employer pursuant to clause 2.1.5 there shall be no addition to the Trade Contract Sum and no extension to any Completion Period.

Trade Contractor's Designed Portion

- 2.2 Without prejudice to any expressed or implied warranties or conditions or to the generality of clause 2.1, the Trade Contractor warrants to the Employer that:
- 2.2.1 the design of the Trade Contractor's Designed Portion including the selection of any specification for the kinds and standards of the materials, goods and workmanship to be used in the TCDP Works has been and will be carried out:
- a using all the reasonable skill and care to be expected of a professionally qualified and competent designer of the relevant discipline experienced in the carrying out of such work for projects of a similar size, scope, value, character and complexity to the Works; and
 - b in accordance with the Trade Contract Drawings and the Detailed Price Breakdown (to the extent they are relevant); and
 - c in compliance with all Consents (including the discharge of any reserved matters in planning consents relating to the Works), Statutory Requirements, relevant codes of practice British Standards or EU equivalents and manufacturers recommendations; and
- 2.2.2 the Works will when completed comply with any performance specification or requirements included or referred to in the Employer's Requirements or the Trade Contractor's Proposals, this Trade Contract or in any Variation; and
- 2.2.3 it shall, in relation to any design produced for the Trade Contractor's Designed Portion by or on behalf of the Trade Contractor, including where the Trade Contractor has been given the opportunity to select a similar item or design to one provided to it by (or on behalf of) the Employer, seek the Construction Manager's and the Employer's approval to that design or alternative item by complying with the requirements of the Design Submission Procedure set out in Schedule 1; and
- 2.2.4 it shall in relation to the TCDP Works comply with the Construction Manager's directions for the integration of the design of the Trade Contractor's Designed Portion with the design of the Works as a whole, subject to the provisions of clause 3.9.3; and
- 2.2.5 in carrying out the design of the Trade Contractor's Designed Portion it has complied and will comply with regulations 8 to 10 of the CDM Regulations.
- 2.2.6 For the avoidance of doubt, nothing in this clause 2.2 shall oblige the Trade Contractor to warrant that the design of the TCDP Works shall be 'fit for purpose'.

Materials, Goods and Workmanship

- 2.3.1 All materials and goods for the Works shall, so far as procurable, be of the kinds and standards described in the Employer's Requirements and/or the Trade Contract Drawings or, if not there specifically described, as described in the Trade Contractor's Proposals or documents referred to in clause 2.9.4 and in any event shall be of such kinds and of such quality as are necessary to enable the Trade Contractor to comply with his obligations under this Trade Contract. The Trade Contractor shall not substitute any materials or goods so described without the Construction Manager's consent, which shall not be unreasonably delayed or withheld but shall not relieve the Trade Contractor of his other obligations.
- 2.3.2 Workmanship for the Works shall be of the standards described in the Employer's Requirements or, if not there specifically described, as described in the Trade Contractor's Proposals and in any event shall be of such quality as is necessary to enable the Trade Contractor to comply with his obligations under this Trade Contract.
- 2.3.3 Where and to the extent that it is expressly stated in the Trade Contract Documents that approval of the quality of materials or goods or of the standards of workmanship is required, such quality and standards shall be to the Construction Manager's satisfaction (acting reasonably). To the extent that the quality of materials and goods or standards of workmanship are neither described in the manner referred to in clause 2.3.1 or 2.3.2 nor stated to be a matter for such approval or satisfaction materials and goods shall be new and appropriate for their use and materials, goods and workmanship shall be of satisfactory quality.
- 2.3.4 The Trade Contractor shall upon the request of the Construction Manager provide him with reasonable proof that the materials and goods used comply with this clause 2.3. To the extent this involves any opening up or inspection of the Works then this shall be a "Relevant Event" in the circumstances described in clause 2.30.2b.
- 2.3.5 Ownership of any goods and materials found within, removed or recovered from the Property as part of the Works shall, save where clause 3.21 applies or unless otherwise directed by the Construction Manager, remain with the Trade Contractor, who shall arrange for their safe removal from the Site in accordance with the BREEAM Requirements (if applicable to the Project).
- 2.3.6 The Trade Contractor shall ensure that the Trade Contractor's Persons are registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.

2.3.7 Environmental practice and law

The Trade Contractor shall carry out and complete the Works in accordance with:

- a Good Environmental Practice and Environmental Laws (including any Statutory Requirements relating to Good Environmental Practice and Environmental Laws); and
- b the BREEAM Requirements (if applicable to the Project).

Commencement, Progress and Occupation

Date of Commencement

2.4 The Trade Contractor shall:

- 2.4.1 As soon as practicable following the date of this Trade Contract commence and carry out the offsite preparatory stages of the Works, including offsite design and manufacture of precast panels, in order to be ready to commence onsite Works in accordance with the Trade Contract Programme; and

- 2.4.2 upon the expiry of 4 weeks' from the Construction Manager's notice in writing to commence work on site (but not before unless otherwise agreed by the Parties), enter upon the site of the Project and commence the execution of the Works.

Progress of the Project and the Works

- 2.5 The Works shall be carried out and completed in accordance with the Trade Contract Programme and reasonably in accordance with the progress of the Project or each relevant Section of it, subject, as respects construction but not design work, to receipt by the Trade Contractor of notice to commence work in accordance with those particulars and subject to clauses 2.27 to 2.30.

Occupation of the Site

- 2.6 The Construction Manager shall permit the Trade Contractor to occupy so much of the site of the Project as is reasonably required for the execution of the Works, but such occupation shall not be exclusive and the Trade Contractor shall not object to the use or occupation of that part of the site by any other person engaged by the Employer on or in connection with the Project unless such use or occupation will or is likely to cause or contribute to any delay to or obstruction of the Trade Contractor in the execution of the Works.

Principal Contractors and access to the Site

- 2.7.1 The Trade Contractor acknowledges that during the carrying out of the Works:

- a the Principal Contractor will control the Site; and
- b the Site Wide Principal Contractor will control the Wider Site,

and that in relation to the Site and the Wider Site the Principal Contractor and Site Wide Principal Contractor shall respectively be responsible to coordinate any works carried out, ensure health and safety policies and procedures are complied with and controlling access to and from the Site or the Wider Site (as the case may be).

- 2.7.2 The Trade Contractor further acknowledges that prior to the date of this Trade Contract it has been given sufficient opportunity to meet with the Principal Contractor and the Site Wide Principal Contractor and to review, understand and agree all necessary details, procedures, working methods and similar which will allow the Trade Contractor to carry out the Works notwithstanding that the Principal Contractor will control the Site and the Site Wide Principal Contractor will control the Wider Site (for example details of access to the Site for the Trade Contractor's personnel and deliveries, arrangements for the loading and unloading of materials within the Wider Site if necessary etc.). If necessary the Trade Contractor and the Principal Contractor or the Site Wide Principal Contractor (as appropriate) shall amend such details to obtain the approval of the local planning authority or other relevant authority having jurisdiction with respect to the Works.

Works by Third Parties and Statutory Undertakers

- 2.8.1 In relation to works to be carried out by third parties and Statutory Undertakers which are set out in the Employer's Requirements, the Trade Contractor acknowledges that it has been given the opportunity to programme the carrying out of the Works to accommodate such works by third parties and Statutory Undertakers.
- 2.8.2 Where such third parties and/or Statutory Undertakers carry out their works in accordance with the programme agreed with the Trade Contractor pursuant to clause 2.8.1, the Trade Contractor agrees that it shall have no entitlement to any addition to the Trade Contract Sum or extension to the Completion Period as a result of the carrying out of such Works.

- 2.8.3 Where such third parties and/or Statutory Undertakers fail to carry out their works in accordance with the programme agreed with the Trade Contractor pursuant to clause 2.8.1, any delay in the carrying out the Works or any Section suffered by the Trade Contractor as a result of such failure shall be a Relevant Event for the purposes of clause 2.30.7, provided always that:
- a to the extent that such failure by the third parties and/or Statutory Undertakers arose as a result of any act or omission of the Trade Contractor (for example failing to carry out any necessary preparatory works in accordance with the programme agreed pursuant to clause 2.8.1), the Trade Contractor shall not be entitled to claim that a Relevant Event has occurred; and
 - b in all circumstances the failure by the third parties and/or Statutory Undertakers shall not give rise to a Relevant Matter for the purposes of clause 4 (or any other entitlement to loss and/or expense or an addition to the Trade Contract Sum), except where such failure amounts to an impediment, prevention or default by an Employer's Person as further described in clause 4.19.
- 2.8.4 Where a third party undertakes any of the Works on behalf of the Trade Contractor, the Trade Contractor shall be fully liable for the actions of that third party notwithstanding that no sub-contract exists between them.
- 2.8.5 The Trade Contractor acknowledges that the Completion Period (or each applicable Section Completion Period) includes an allowance by the Trade Contractor for the time which will be required for Statutory Undertakers and Third Parties to carry out their works (assuming those works are completed in accordance with the agreed programme).
- 2.8.6 To the extent that any works to be undertaken on the Site by third parties, including Statutory Undertakers, was not set out in the Employer's Requirements or was introduced after the date of this Trade Contract, the occurrence of those works shall be treated as a Variation requested by the Employer pursuant to clause 5.1. The Trade Contractor acknowledges that any such third party works for which a Variation is agreed pursuant to clause 5 shall be treated as works set out in the Employer's Requirements and to which clauses 2.8.1, 2.8.2 and 2.8.3 shall apply.

Supply of Documents, Setting Out etc.

Trade Contract Documents

- 2.9.1 The Trade Contract Documents shall be prepared in duplicate and once completed one set shall remain in the custody of the Employer and the other set shall be returned or issued to the Trade Contractor.
- 2.9.2 The Trade Contractor shall keep upon the site and available to the Construction Manager and/or any Third Party's Surveyor or their respective representatives at all reasonable times a copy of each of the following documents, namely: the Trade Contract Drawings, the unpriced bills of quantities; the Trade Contractor's Design Documents (where applicable); the Trade Contract Programme; the information or documents referred to in clause 2.10.1; and the drawings and details referred to in clauses 2.11 and 2.13.
- 2.9.3 None of the documents referred to in this clause 2.9 or provided or released to the Trade Contractor in accordance with clauses 2.10 to 2.13 shall be used by the Trade Contractor for any purpose other than this Trade Contract, and the Employer and the Construction Manager shall not divulge or use except for the purposes of this Trade Contract any of the rates or prices in the Detailed Price Breakdown.
- 2.9.4 Without prejudice to any other provision of this Trade Contract, the Parties acknowledge the possibility that in respect of part or parts of the Works, the Parties have agreed design detail or detail as to the manner in which the Works will be carried out which are not set out in the Trade Contract Documents. In such instances the Trade Contractor acknowledges that in carrying out the Works it shall take account of and comply with any such additional detail(s) as have been agreed notwithstanding that they do not appear in the Trade Contract Documents.

Photographs and videos of the Works and the Property

- 2.9.5 Save as set out in the Employer's Requirements the Trade Contractor shall not without the prior written approval of the Employer take or permit to be taken any photos or videos of the Works, the Property or any part or parts of them or publish alone or in conjunction with any other person any articles photos or other illustrations relating to the Works, the Property or any part or parts of them; nor shall he impart to any publication journal or newspaper or any radio or TV programme any information relating to the Works and/or the Property.

Publicity/confidentiality

- 2.9.6 The Trade Contractor shall not (and shall procure that no sub-contractor employed by it shall) disclose to any person or publish or make any statement concerning this Trade Contract, the Works, the Employer or any matters arising from or relating to the Trade Contract, the Works or the Employer directly or indirectly without the prior written authority of the Employer during the Works or at any time thereafter (except as may be required by law or in order to properly perform its obligations under this Trade Contract (or in the case of the Trade Contractor's sub-contractors, as may be required in order to properly perform their obligations under their contracts in relation to the Works)).
- 2.9.7 Both the Employer and the Trade Contractor shall keep confidential and shall not without the others written consent disclose to any third party any trade or business secrets or similar confidential information supplied by the other Party except as shall be absolutely necessary for the proper performance of this Trade Contract.

Use of design

- 2.9.8 The Trade Contractor shall not use any of the Trade Contract Documents or the Trade Contractor's Design Documents for any purpose whatsoever other than in relation to the design of the TCDP Works and carrying out of the Works under this Trade Contract.

Provision of information

- 2.9.9 The Trade Contractor shall provide, without charge to the Employer:
- a upon request by the Construction Manager or Employer such documents and information as may be reasonably requested to demonstrate the Trade Contractor's compliance with this Trade Contract; and
 - b upon request by the Construction Manager or Employer information evidencing that the Trade Contractor has paid any sub-contractors employed by it all sums which became due and owing during the month preceding the date of the Employer's request for such information; and
 - c such information and assistance as is within the Trade Contractor's possession or control to the Employer as the Employer reasonably requests to enable it to make any claims in relation to capital allowances provided that such obligation shall determine eighteen (18) months following the date of Practical Completion.

Construction information and Trade Contractor's Master Programme

- 2.10.1 The Trade Contractor acknowledges that prior to the date of this Trade Contract:
- a the Construction Manager or Employer has provided him with any pre-construction information required to be provided under Regulation 4 of the CDM Regulations; and
 - b he has agreed the Trade Contract Programme with the Construction Manager and/or Employer for the execution of the Works and which identifies the critical paths. It is acknowledged that the Trade Contract Programme shall be updated from time to time by the Parties and in each such instance a copy of the revised programme shall be circulated to the Parties in writing.

- 2.10.2 The Trade Contractor agrees that if at any point during the carrying out of the Works the Trade Contract Programme at that date is not being complied with due to a default by the Trade Contractor it shall be liable to the Employer for (and the Employer shall be entitled to set off the same against any sums which would otherwise be due to the Trade Contractor) any additional costs and/or expenses incurred by the Employer to a Statutory Undertaker or third party contractor as a result of the Trade Contractor's failure to comply with the Trade Contract Programme.
- 2.10.3 Nothing in the descriptive schedules or similar documents, or in the master programme or any amendment or revision of it, shall however impose any obligation beyond those imposed by the other Trade Contract Documents.
- 2.10.4 In relation to any TCDP Works, the Trade Contractor in addition to complying with clause 2.2, shall without charge provide the Construction Manager with copies of:
- a such Trade Contractor's Design Documents and (if requested) related calculations and information, as are reasonably necessary to explain or amplify the Trade Contractor's proposals; and
 - b all levels and setting out dimensions which the Trade Contractor prepares or uses for the purposes of carrying out and completing the Trade Contractor's Designed Portion.
- 2.10.5 The Trade Contractor's Design Documents and other information referred to in clause 2.10.4a shall be provided to the Construction Manager as and when necessary from time to time in accordance with the Trade Contractor's Design Submission Procedure set out in Schedule 1 or as otherwise stated in the Trade Contract Documents, and the Trade Contractor shall not commence any work to which such a document relates before the Construction Manager and the Employer have approved the same in accordance with that procedure.

Levels and Setting Out of the Works

- 2.11.1 The Trade Contractor will be responsible for all setting out and level control of the Works, from a master setting out point and a master datum. The Trade Contractor should check the accuracy of the works which preceded the Works on-site and notify the Construction Manager of any discrepancy outside of agreed specification and tolerances. This must be completed in sufficient time prior to commencement of the Works to allow others (if needed) to complete remedial actions to those preceding works.
- 2.11.2 The Trade Contractor shall be responsible for, and shall at no cost to the Employer amend, any errors arising from his own inaccurate setting out of the Works. With the Employer's consent, the Construction Manager may instruct that such errors shall not be amended and an appropriate deduction shall be made from the Trade Contract Sum for those that are not required to be amended.

Detailed Price Breakdown

- 2.12 Unless in respect of any specified item or items it is otherwise specifically stated in the Detailed Price Breakdown, the Detailed Price Breakdown has been prepared in accordance with the Standard Method of Measurement and any addendum to it issued for the purposes of obtaining a Variation Quotation shall be prepared on the same basis.

Further Drawings, Details and Instructions

- 2.13.1 The Construction Manager shall from time to time, without charge to the Trade Contractor, provide him with such further drawings or details as are reasonably necessary to explain and amplify the Trade Contract Drawings and shall issue such instructions (including those for or in regard to the expenditure of Provisional Sums) as are necessary to enable the Trade Contractor to carry out and complete the Works in accordance with this Trade Contract.

- 2.13.2 The further drawings, details and instructions shall be provided or given at the time it is reasonably necessary for the Trade Contractor to receive them, having regard to the progress of the Works, or, if in the Construction Manager's opinion practical completion of the Works or relevant Section is likely to be achieved before the expiry of the relevant Completion Period, having regard to that Completion Period.
- 2.13.3 Where the Trade Contractor has reason to believe that the Construction Manager is not aware of the time by which the Trade Contractor needs to receive such further drawings, details or instructions, he shall, so far as reasonably practicable, notify the Construction Manager sufficiently in advance as to enable the Construction Manager to comply with this clause 2.13.
- 2.13.4 Notwithstanding the above the Trade Contractor shall be responsible for ensuring that all sub-contractors and suppliers employed by it provide the Construction Manager at the proper time consistent with the progress of the Works such information and drawings of every type and description as they have undertaken to provide and are reasonably necessary and in sufficient detail to explain and amplify the Trade Contract Drawings or to enable the Works to be completed in accordance with this Trade Contract.

Design of the Works

Trade Contractor's Review of the Works

- 2.14.1 The Trade Contractor acknowledges that prior to the date of this Trade Contract it has been given the opportunity to review the content of the Employer's Requirements, the Trade Contract Drawings and the Detailed Price Breakdown and to verify:
- a that no discrepancies exist between the Trade Contract Documents (including any unstated departures from the method of preparation referred to or any error in description or in quantity or any omission of items); and
 - b the adequacy (in terms of buildability and connection to the TCDP Works) of any design contained within the Trade Contract Documents; and
 - c that the Trade Contractor will be able to carry out and complete its obligations under this Trade Contract, including the design of the TCDP Works, in reliance on the Trade Contract Documents; and
 - d where any element of the Trade Contract Documents does not (or if constructed as part of the Works would not) comply with any Statutory Requirements,

and where the Trade Contractor is not able to so verify the content of the Trade Contract Documents, it has notified the Employer of that fact prior to the date of this Trade Contract.

- 2.14.2 The Trade Contractor acknowledges that:
- a in agreeing the Trade Contract Sum it has taken account of (i) any discrepancies, inadequacies or items notified to the Employer pursuant to clause 2.14.1; and (ii) any inadequate or incomplete design contained within the Trade Contract Documents, which the Trade Contractor will be required to supplement or complete as part of the Trade Contractor's Designed Portion; and
 - b it shall have no entitlement to claim any adjustment to the Trade Contract Sum, extension of time to the Completion Period or any other loss and/or expense arising as a result of (i) any discrepancy or inadequacy in the Employer's Requirements, the Trade Contractor's Proposals, the Trade Contract Drawings or the Detailed Price Breakdown; or (ii) any element of the Trade Contract Documents not complying with Statutory Requirements but which the Trade Contractor had not notified the Employer prior to the date of this Trade Contract.

Trade Contractor's Design Responsibility

- 2.15.1 The Trade Contractor is not responsible for the design of the Works save for any design which falls within the definition of the Trade Contractor's Designed Portion pursuant to this clause 2.15. The Trade Contractor acknowledges that it shall be responsible for the entire design of the Trade Contractor's Designed Portion, regardless of whether such design was in fact carried out by a third party and/or was carried out prior to the date of this Trade Contract.
- 2.15.2 In relation to the TCDP Works, the Trade Contractor shall (to the extent set out in clause 2.2) be fully responsible in all respects for the design of the Trade Contractor's Designed Portion including:
- a any design contained in the Trade Contractor's Proposals and for any discrepancy in or divergence between the Employer's Requirements and/or the Trade Contractor's Proposals and/or any drawings, details, documents and other information submitted by him in accordance with clause 2.10;
 - b but not limited to the co-ordination and integration of the elements of the Works to be designed by or on behalf of the Trade Contractor with the design of the Works carried out by third parties and/or prior to the date of this Trade Contract;
 - c all aspects of design development, selection of goods and materials; and the satisfaction of performance specifications included or referred to in the Employer's Requirements, the Trade Contractor's Proposals, this Trade Contract or any Variation.

Notice of Discrepancies etc.

- 2.16.1 If after the date of this Trade Contract the Trade Contractor becomes aware of:
- a any departure, error, omission or inadequacy as is referred to in clause 2.14.2; or
 - b any other discrepancy or divergence in or between any of the Trade Contract Documents; or
 - c any discrepancy between an instruction of the Construction Manager and the Trade Contract Documents,
- he shall immediately give notice with appropriate details to the Construction Manager, including the Trade Contractor's proposed amendment for removing it, who shall issue instructions in that regard within 7 days of such notification.
- 2.16.2 If in any emergency compliance with the Statutory Requirements necessitates the Trade Contractor supplying materials and/or executing work before receiving instructions under clause 2.16.1, the Trade Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance.
- 2.16.3 The Trade Contractor shall forthwith notify the Construction Manager of the emergency and of the steps that he is taking under clause 2.16.2.
- 2.16.4 The Trade Contractor shall not have or make any claim for an extension of time under clauses 2.28 and 2.29 or for loss and/or expense under clauses 4.17 to 4.19 and clause 8.9 shall not have effect where and to the extent that the cause of the progress of the Works having been delayed, affected or suspended by any discrepancy, mistake, inaccuracy or omission to which clauses 2.16.1a and 2.16.1b relate.

Discrepancies in Trade Contractor's Design Documents

2.17.1 In relation to the TCDP Works:

- a the Trade Contractor accepts entire responsibility for the Trade Contractor's Design Documents and for any discrepancy, mistake, inaccuracy or omission in the Trade Contractor's Design Documents whether or not the whole or any part of the Trade Contractor's Design Documents have been prepared by or on behalf of the Employer; and
- b any mistake, inaccuracy or omission in the Trade Contractor's Design Documents or in any drawings details documents or information referred to in clause 2.2 and Schedule 1 shall be corrected by the Trade Contractor without cost to the Employer; and
- c where there is a discrepancy, mistake, inaccuracy or omission within any of the documents forming part of the Trade Contractor's Design Documents or between the Trade Contractor's Design Documents the Trade Contractor shall inform the Construction Manager in writing of his proposed amendment to remove the discrepancy; and (subject always to compliance with Statutory Requirements) the Construction Manager shall decide between the discrepant items or otherwise may accept the Trade Contractor's proposed amendment and the Trade Contractor shall be obliged to comply with the decision or acceptance by the Construction Manager without cost to the Employer.

2.17.2 The Trade Contractor shall not have or make any claim for an extension of time under clauses 2.28 and 2.29 or for loss and/or expense under clauses 4.17 to 4.19 and clause 8.9 shall not have effect where and to the extent that the cause of the progress of the Works having been delayed, affected or suspended by any such discrepancy, mistake, inaccuracy or omission as is referred to in this clause 2.17 or any failure by the Trade Contractor to provide necessary drawings or documents in due time.

Errors and failures – other consequences

2.18 No extension of time shall be given, and clauses 4.17 to 4.19 and 8.9 shall not have effect, where or to the extent that the cause of the progress of the Works having been delayed, affected or suspended is:

2.18.1 as a result of a suggestion by the Trade Contractor to implement alternative working methods or designs in the Works from those agreed or stated in the Employer's Requirements; or

2.18.2 an error, divergence, omission or discrepancy in the Employer's Requirements, Trade Contractor's Proposals or in anything provided under clause 2.9.4, or any failure of the Trade Contractor, in completing the Trade Contractor's Design Documents, to comply with clause 2.2.3; or

2.18.3 failure by the Trade Contractor to provide in due time any necessary Trade Contractor's Design Documents or related calculations or information either:

- a as required by clause 2.10.5; or
- b in response to an application from the Construction Manager that specifies the documents or information and date agreed by the Parties by which it is reasonably necessary for him to receive them, having regard to the progress of the Project and the Works (or, where practical completion of the Works or Section is likely to be achieved before the expiry of the relevant Completion Period, having regard to that expiry date).

Use of the Site

- 2.19.1 The Trade Contractor shall at all times during the carrying out of the Works:
- a comply with any specific requirements in relation to security set out in the Employer's Requirements and/or as notified to it by the Principal Contractor and/or the Site Wide Principal Contractor (as applicable) in relation to the security of the Site, the Wider Site and the Works. Where such requirements are made known to the Trade Contractor after the date of this Trade Contract this shall be treated as a Variation;
 - b take all reasonable safety and other measures shall be taken to prevent damage or injury to any person or property;
 - c not affix flags, posters, placards, signs or other form of advertisement to or displayed from or on the boundaries of the Site or the Wider Site without the Employer's consent, the Employer acknowledging that the Trade Contractor may require a single sign identifying itself and the professional team as carrying out the Works;
 - d keep any area of the Site within which the Works are being carried out tidy and properly cleaned of any surplus materials, rubble, rubbish and waste brought to the Site or produced by the Trade Contractor, and no goods or materials shall be deposited or stored at the Site which are not required within a reasonable time for carrying out the Works;
 - e make proper provision for the support and use of any land, walls, buildings, roads or footpaths on or near the Site which are affected by the Works; and
 - f at Practical Completion leave any area of the Site within which the Works have been carried out in full repair and in a good and clean condition, and the Site cleared of all unused materials, plant and equipment brought to the Site or produced by the Trade Contractor with all temporary structures erected by the Trade Contractor removed.
- 2.19.2 For the duration of the carrying out of the Works the Trade Contractor shall take all reasonable precautions to preserve the On-Site Infrastructure in the state and condition it is found at the date the works commence on the relevant Section, unless damage to or interference with the On-Site Infrastructure forms part of the proper carrying out of the Works, or is otherwise agreed in writing by the Employer after the date of this Trade Contract.
- 2.19.3 In the event that in breach of this clause 2.19 the Trade Contractor damages any On-Site Infrastructure, the Trade Contractor shall be liable for any costs and/or losses incurred by the Employer as a result of the damage or interference caused.

Trade Contractor's Inspection of the Site

- 2.20.1 The Trade Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before the date of this Trade Contract or commencing the Works (whichever is the earlier) as to the form and nature of the Site, the extent, nature and difficulty of the work and materials necessary for the completion of the Works, the means of communication with and restrictions of access to the Site, including the feasibility of unloading or storing materials at the Site, the accommodation he may require, and in general to have obtained for himself all necessary information as to risks, contingencies and

all other circumstances influencing or affecting the Works. The Trade Contractor shall not be entitled to any extension of time or to any additional payment on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Trade Contractor be released from any of the risks accepted or obligations undertaken by him under this Trade Contract on the ground that he did not or could not have foreseen any matter which might affect or have affected the execution of the Works.

- 2.20.2 In the inspection of the Site the Trade Contractor will be deemed to have determined the position of all On-Site Infrastructure and the Obstructions and the Trade Contract Sum shall be deemed to be inclusive of all costs which may be incurred in carrying out any diversions of the underground and over-ground services and/or drainage and the costs of the Trade Contractor's operations in the vicinity of any such services (unless otherwise provided for in the Employer's Requirements) including whether oversailing licences shall be required.
- 2.20.3 On the discovery of obstructions to the carrying out of the Works in or under the Site the Trade Contractor shall notify the Construction Manager as soon as reasonably practicable and shall, where continued work on or around such obstruction could endanger life, the Works or any property, cease the carrying out of the Works in that part of the Site immediately. Where such obstruction to the carrying out of the Works is part of the On-Site Infrastructure and/or the Obstructions, the Trade Contractor shall have no entitlement to any adjustment to the Contract Sum nor any right to an extension of time to any Completion Period as a result of any additional costs incurred by the Trade Contractor or any change to the Works which is necessary following such discovery.

Nuisance and Trespass

- 2.21.1 Prior to the commencement of the Works on Site the Trade Contractor, the Employer and the Site Wide Principal Contractor shall discuss adjoining owners or interests which the Parties believe may be at risk of suffering a nuisance through the carrying out of the Works. The Parties shall work together to agree a strategy to minimise the risk of such nuisance occurring.
- 2.21.2 The Trade Contractor shall at all times ensure that there is no trespass by the Trade Contractor, its servants, agents, sub-contractors, design consultants or suppliers (including without limitation the over sailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by the carrying out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons (including but without limitation) the occupiers of adjoining or neighbouring property and members of the public.
- 2.21.3 Without prejudice to the generality of clause 6.2 the Trade Contractor shall at all times take all reasonable steps to prevent any nuisance (including, but without limitation, any noisy working operations noxious fumes or the deposit on public highways of any material or debris) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works or of any obligation pursuant to clauses 2.34 and 2.40 and shall defend (where such action or proceeding is brought against the Trade Contractor) or, at the Employer's option, assist the Employer in defending any action or proceeding which may be instituted in relation thereto.
- 2.21.4 The Trade Contractor shall be liable for any failure or default by the Trade Contractor in performing his obligations under this clause 2.21 save only where such trespass, nuisance or interference is the consequence of a Variation or other instruction of the Construction Manager or the Employer (which is not itself the result of any negligence default or breach of contract by or on behalf of the Trade Contractor) and which could not have been avoided by the Trade Contractor using all reasonable and practical means.

Fees, Royalties and Patent Rights

Fees or Charges Legally Demandable

- 2.22 The Trade Contractor shall pay all fees or charges (including any rates or taxes) legally demandable under any Statutory Requirement. The amount of any such fees or charges (including any rates or taxes other than VAT) shall be included in the calculation of the Final Trade Contract Sum unless they:
- 2.22.1 are priced in the Trade Contract Documents; or
- 2.22.2 relate solely to the Contractor's Designed Portion (in which case they shall be deemed to be included in the Contract Sum).

Patent Rights and Royalties -Trade Contractor's Indemnity

- 2.23 Where the carrying out of the Works as described by or referred to in the Trade Contract Documents or any Variation Quotation of which there is Confirmed Acceptance involves the supply or use of any patented article, process or other invention, all royalties or other sums payable in respect of such supply and use shall be deemed to have been included in the Trade Contract Sum and the Trade Contractor shall indemnify the Employer from and against all claims and proceedings which may be brought or made against the Employer, and all damages, costs and expense to which he may be put, by reason of the Trade Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes or inventions.

Patent Rights – Instructions

- 2.24.1 Where in order to comply with the Construction Manager's or Employer's instructions, other than in relation to a Variation Quotation of which there is Confirmed Acceptance, it is necessary for the Trade Contractor in carrying out the Works to supply and/or use any patented article, process or other invention, the Trade Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights relating to it and all royalties, damages or other sums which the Trade Contractor may be liable to pay to the persons entitled to such rights shall be included in the calculation of the Final Trade Contract Sum.
- 2.24.2 If prior to the instructions being carried out the Construction Manager, the Employer or the Trade Contractor is or becomes aware that such supply or use may infringe any patent rights, he shall promptly notify and consult the other and the Instructions shall not take effect unless confirmed by the Construction Manager or the Employer.

Unfixed Materials and Goods – Property, Risk etc.

Materials and goods – on site

- 2.25 Site Materials shall not be removed from storage on or adjacent to the Works except for use on the Works without the Construction Manager's consent, such consent not to be unreasonably delayed or withheld. Where their value has in accordance with clauses 4.9 and 4.14 been included in any Interim Certificate under which the amount properly due to the Trade Contractor has been paid by the Employer, they shall upon such payment become the Employer's property, but, subject to clause 6.8, the Trade Contractor shall remain responsible for loss or damage to them. Payment for such goods and materials shall be subject to the requirements of clause 4.14 and in the case of any Listed Items to the Trade Contractor demonstrating to the Employer's satisfaction that:
- 2.25.1 such materials and goods are intended for inclusion in the Works;
- 2.25.2 nothing remains to be done to such materials or goods to complete the same up to the point of their inclusion in the Works;
- 2.25.3 such materials or goods are stored securely at the Site and are clearly labelled as being the property of the Employer;

- 2.25.4 where such materials or goods were ordered from a supplier by the Trade Contractor or one of its sub-contractors, the contract for their supply is in writing and expressly provides that the property therein shall pass unconditionally to the Trade Contractor or sub-contractor (as the case may be) upon their delivery to or placing on or adjacent to the Works;
- 2.25.5 where such materials or goods were ordered from a supplier by one of the Trade Contractor's sub-contractors, the relevant sub-contract is in writing and expressly provides that on the property in such materials or goods passing to the sub-contractor the same shall immediately thereon pass to the Trade Contractor;
- 2.25.6 where such materials or goods were manufactured or assembled by one of the Trade Contractor's sub-contractors, the sub-contract is in writing and expressly provides that the property in such materials or goods shall pass unconditionally to the Trade Contractor upon their delivery to or placing on or adjacent to the Works;
- 2.25.7 the goods and materials are in accordance with this Trade Contract;
- 2.25.8 the Trade Contractor provides the Employer with reasonable proof that the property in such materials or goods is in him and that he has paid any sums due in respect of such materials or goods and that appropriate conditions set out in clauses 2.25.1 to 2.25.7 have been complied with.

Materials and goods – ordering

- 2.26 The Trade Contractor shall not place any order for materials and goods required in the Works unless the drawings for that part or those parts of the Works have been approved by the Construction Manager and the Employer and, where applicable, the provisions of the Samples and Testing Protocol have been complied with.

Adjustment of Completion Period

Related Definitions and Interpretation

- 2.27 In clauses 2.28 to 2.30 and, so far as relevant, in the other clauses of these Conditions:
- 2.27.1 any reference to delay or extension of time includes any further delay or further extension of time;
- 2.27.2 **Pre-agreed Adjustment** means the fixing of a revised Completion Period for the Works or for such works in a Section by the Confirmed Acceptance of a Variation Quotation;
- 2.27.3 **Relevant Omission** means the omission of any work or obligation through an instruction for a Variation under clause 3.13 or through an instruction under clause 3.15 in regard to a Defined Provisional Sum.

Notice by Trade Contractor of Delay to Progress

- 2.28.1 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Works or of such works in any Section is being or is likely to be delayed the Trade Contractor shall forthwith give notice to the Construction Manager of the material circumstances, including, insofar as the Trade Contractor is able, the cause or causes of the delay, and shall identify in the notice any event which in his opinion is a Relevant Event.
- 2.28.2 In respect of each event identified in the notice the Trade Contractor shall, if practicable in such notice or otherwise in writing as soon as possible thereafter, give particulars of its expected effects, including an estimate of any expected delay in the completion of the Works or of such works in any Section beyond the relevant Completion Period.
- 2.28.3 The Trade Contractor shall forthwith notify the Construction Manager of any material change in the estimated delay or in any other particulars and supply such further information as the Construction Manager may at any time reasonably require.

Fixing Completion Period

- 2.29.1 If, in the Employer's opinion, on receiving a notice and particulars under clause 2.28 (and provided the Trade Contractor has complied with clause 2.29.6):
- a any of the events which are stated to be a cause of delay is a Relevant Event; and
 - b completion of the Works or of such works in any Section is likely to be delayed thereby beyond the relevant Completion Period,
- then, save where these Conditions expressly provide otherwise, the Employer shall give an extension of time by fixing such extended period as the Completion Period for the Works or such works in a Section as he then estimates to be fair and reasonable.
- 2.29.2 Whether or not an extension is given, the Employer (or the Construction Manager on the Employer's behalf, in accordance with clause 3.1.3) shall notify the Trade Contractor of the Employer's decision in respect of any notice under clause 2.28 as soon as is reasonably practicable and in any event within 4 weeks of receipt of the required particulars. Where the period from receipt to the expiry of the Completion Period is less than 4 weeks, he shall endeavour to do so prior to the expiry of the Completion Period.
- 2.29.3 The Employer shall in his decision state:
- a the extension of time that he has attributed to each Relevant Event; and
 - b (in the case of a decision under clause 2.29.4 or 2.29.5) the reduction in time that he has attributed to each Relevant Omission.
- 2.29.4 After the first fixing of an extended Completion Period in respect of the Works or such works in a Section, either under clause 2.29.1 or by a Pre-agreed Adjustment, but subject to clauses 2.29.6c and 2.29.6d, the Employer may by notice to the Trade Contractor, giving the details referred to in clause 2.29.3, fix a Completion Period for the Works or such works in that Section shorter than that previously fixed if in his opinion the fixing of such shorter Completion Period is fair and reasonable, having regard to any Relevant Omissions for which instructions have been issued after the last occasion on which a new Completion Period was fixed for the Works or for such works in that Section.
- 2.29.5 After the expiry of the Completion Period for the Works or for such works in a Section, if this occurs before the date of Practical Completion, the Employer may, and not later than the expiry of 12 weeks after the date of Practical Completion shall, by notice to the Trade Contractor, giving the details referred to in clause 2.29.3:
- a fix a Completion Period for the Works or for such works in the Section later than that previously fixed if in his opinion that is fair and reasonable having regard to any Relevant Events, whether on reviewing a previous decision or otherwise and whether or not the Relevant Event has been specifically notified by the Trade Contractor under clause 2.28.1; or
 - b subject to clauses 2.29.6c and 2.29.6d, fix a Completion Period shorter than that previously fixed if in his opinion that is fair and reasonable having regard to any instructions for Relevant Omissions issued after the last occasion on which a new Completion Period was fixed for the Works or such works in the relevant Section; or
 - c confirm the Completion Period previously fixed.
- 2.29.6 Provided always that:
- a the Trade Contractor shall constantly use his reasonable endeavours to prevent delay in the progress of the Works or of such works in any Section, however caused, and to prevent their completion being delayed or further delayed beyond the relevant Completion Period;

- b in the event of any delay the Trade Contractor shall do all that may reasonably be required to the satisfaction of the Employer to proceed with the Works or such works in a Section;
- c no decision of the Employer under clause 2.29.4 or 2.29.5b shall fix a Completion Period for the Works or for such works in any Section shorter than that stated in the Trade Contract Particulars; and
- d no decision under clause 2.29.4 or 2.29.5b shall alter the length of any Pre-agreed Adjustment unless the relevant Variation or other work to which it relates is itself the subject of a Relevant Omission.

Relevant Events

- 2.30 The following are the Relevant Events referred to in clauses 2.28 and 2.29 (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 Trade Contractor, his servants or agents or any sub-contractor or supplier or their respective servants or agents save in respect of any delay that falls under the Relevant Event described in clause 2.30.9 (Specified Perils):
- 2.30.1 Variations and any other matters or instructions which under these Conditions are to be treated as, or as requiring, a Variation;
 - 2.30.2 Construction Manager's or Employer's instructions:
 - a under any of clauses 3.14, 3.15 (excluding an instruction for expenditure of a Defined Provisional Sum) or 5.3.2; or
 - b for the opening up for inspection or testing of any work, materials or goods under clause 3.16 or 3.17.4 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Trade Contract or unless the opening up for such inspection or test was reasonably required by reason of any similar, equivalent or associated work, materials or goods having been shown by a previous inspection or test not to be in accordance with this Trade Contract (and then provided that such subsequent test was requested within a reasonable time after the initial test revealed the work, materials or goods were not in accordance with this Trade Contract);
 - 2.30.3 compliance with clause 3.21.1 or with Construction Manager's instructions under clause 3.21.2;
 - 2.30.4 the execution of work for which an Approximate Quantity is not a reasonably accurate forecast of the quantity of work required;
 - 2.30.5 suspension by the Trade Contractor under clause 4.11 of the performance of any or all of his obligations under this Trade Contract;
 - 2.30.6 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Trade Contractor or any Trade Contractor's Person;
 - 2.30.7 a failure by a Statutory Undertaker or third party contractor to carry out its works in accordance with the programme agreed with the Trade Contractor pursuant to clause 2.8, provided that the failure to carry out the works did not occur as a result of a failure by the Trade Contractor to carry out all necessary preparatory work in accordance with clause 2.8;
 - 2.30.8 exceptionally adverse weather conditions (meaning weather conditions which the Met office records in the area nearest the Site shown as being exceptionally adverse for that time of year);
 - 2.30.9 loss or damage occasioned by any Specified Peril;

- 2.30.10 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 2.30.11 any strike, lock-out or local combination of workmen which directly affects the carrying out of the Works; provided that such strike or lock-out is not solely carried out by employees of the Trade Contractor or its sub-contractors or suppliers and has not been caused (in whole or part) by the conduct of the Trade Contractor, its sub-contractors or suppliers;
- 2.30.12 the exercise after the Base Date by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Trade Contractor or any Trade Contractor's Person but which directly affects the execution of the Project; and
- 2.30.13 force majeure including, for the avoidance of doubt, Covid-19 directly affecting the execution of the Works but only to the extent new impacts of Covid-19 arise after the Base Date.

Acceleration

Instruction to Accelerate

- 2.31.1 The Employer (or the Construction Manager on the Employer's behalf) may at any time during the carrying out of the Works issue an instruction to the Trade Contractor to submit, within 14 days of its receipt, a written quotation for achieving, by acceleration, a reduction of the Completion Period for the Works or such works in any Section, as then estimated.
- 2.31.2 The Employer's instruction shall state:
 - a the required period of the reduction;
 - b such extensions of the Completion Period for the Works or for such works in the relevant Sections as have already been given at the date of the instruction, together with an estimate of any extensions of time which have been applied for by the Trade Contractor and are likely to be given.

Trade Contractor's Right of Reasonable Objection

- 2.32 If the Trade Contractor makes reasonable objection to the Construction Manager's instruction under clause 2.31.1 the instruction shall be either withdrawn at no cost to the Employer or varied and re-issued in a form such that the Trade Contractor is able to comply with the instruction.

Practical Completion, Lateness and Damages

Notice of Practical Completion

- 2.33.1 The Trade Contractor shall give to the Construction Manager written notice of the anticipated date of Practical Completion of the Works or a Section:
 - a three (3) months before, specifying the week in which it is anticipated the Works or Section will achieve Practical Completion;
 - b one (1) month before, specifying the day on which it is anticipated the Works or Section will achieve Practical Completion.
- 2.33.2 Following receipt of the Trade Contractor's notice pursuant to clause 2.33.1b, the Construction Manager shall, within such one (1) month period, inspect the Works or Section, with a view to confirming that Practical Completion has occurred in accordance with clause 2.34.

Practical Completion and certificates

- 2.34.1 As soon as the Trade Contractor considers that Practical Completion of the Works or a Section has been reached it shall notify the Construction Manager and Employer's Representative in writing, proposing a date on which the Practical Completion Procedure can commence. The Construction Manager and Employer's Representative (and any other parties entitled to attend with him pursuant to the terms of this Trade Contract) shall attend the Site of the Works or Section on the date proposed (or such alternative date as may subsequently be agreed in writing by the Trade Contractor) and carry out the Handover and Completion Strategy.
- 2.34.2 If having carried out the Practical Completion Procedure the Employer's Representative considers that the Works have achieved Practical Completion, and subject to satisfaction in full of the Conditions of Practical Completion, it shall give the Trade Contractor a written statement to that effect (which shall be referred to as the Practical Completion Certificate).
- 2.34.3 The Trade Contractor shall complete and make good such outstanding items of work and defects as are identified through the Practical Completion Procedure in accordance with the timescales prescribed in the Defects Response Schedule. The Trade Contractor shall be liable to the Employer for any damage caused to the Works and/or the Property as a result of such making good, which may (at the Employer's discretion) be satisfied by the Trade Contractor remedying the damage caused at no cost to the Employer.

Non-Completion Certificates

- 2.34A If the Trade Contractor fails to complete the Works or a Section by the relevant Completion Date, the Employer or Construction Manager shall issue a certificate to that effect (a "Non-Completion Certificate"). If a new Completion Date is fixed after the issue of such a certificate, such fixing shall cancel that certificate and the Employer or Construction Manager shall where necessary issue a further certificate.

Payment or allowance of liquidated damages

- 2.35.1 Provided:
- a the Employer or Construction Manager has issued a Non-Completion Certificate; and
 - b the Employer has notified the Trade Contractor before the due date of the next interim payment due to the Trade Contractor, or the Final Certificate (as the case may be) that he may require payment of, or may withhold or deduct, liquidated damages,
- the Employer may, not later than 5 days before the final date for payment of an amount which would otherwise be payable under clause 4 (whether pursuant to clause 4.7 or clause 4.23), give notice to the Trade Contractor in the terms set out in clause 2.35.2.
- 2.35.2 A notice from the Employer under clause 2.35.1 shall state that for the period between the Completion Date and the date of Practical Completion of the Works or that Section:
- a he requires the Trade Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or lesser rate stated in the notice, in which event the Employer may recover the same as a debt; and/or
 - b that he will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the Trade Contractor.

- 2.35.3 If the Employer fixes a later Completion Date for the Works or a Section or such later Completion Date is stated in a Confirmed Acceptance, the Employer shall pay or repay to the Contractor any amounts recovered, allowed or paid under clause 2.35 for the period up to that later Completion Date provided always that the fixing of such later Completion Date shall not invalidate the Employer's notice or the notification in writing from the Employer as to deduction of liquidated and ascertained damages and the payment or repayment of the amounts under this clause shall be limited to the net difference between the amounts deducted and the amounts properly due after the fixing by the Employer of the later Completion Date.
- 2.35.4 If the Employer in relation to the Works or a Section has notified the Trade Contractor in accordance with clause 2.35.1b that he may require payment of, or may withhold or deduct, liquidated damages then, unless the Employer states otherwise in writing, clause 2.35.1b shall remain satisfied in relation to the Works or Section, notwithstanding the issue of any further Non-Completion Certificate.

Partial Occupation by Employer

Trade Contractor's Consent

- 2.36 If at any time or times before the date of issue by the Employer's Representative of the Practical Completion Certificate for the Works or such works in a Section the Employer wishes to take over any part or parts of the Works or such works in a Section and the Trade Contractor's consent has been obtained (which consent shall not be unreasonably withheld or delayed), then, notwithstanding anything expressed or implied elsewhere in this Trade Contract, the Employer may take over such part or parts. The Employer's Representative shall thereupon give the Trade Contractor notice identifying the part or parts taken over and giving the date when the Employer took over those part or parts (the **Relevant Part** and the **Relevant Date** respectively).

Practical Completion Date

- 2.37 For the purposes of clauses 2.40 and 4.16.1, practical completion of the Relevant Part shall be deemed to have occurred on the Relevant Date.

Defects etc – Relevant Part

- 2.38 When in the Construction Manager's opinion any defects, shrinkages or other faults in the Relevant Part which he has required to be made good under clause 2.40 have been made good, he shall issue a certificate to that effect.

Insurance -Relevant Part

- 2.39 As from the Relevant Date the Project insurance obligations of the Employer shall cease in respect of the Relevant Part (but not otherwise) and the Existing Structures (if any) shall from that date be deemed to include the Relevant Part.

Defects

Schedules of Defects and Instructions

- 2.40.1 If any defects, shrinkages or other faults in the Works or such works in a Section appear prior to the Final Release Date due to materials, goods or workmanship not being in accordance with this Trade Contract or any failure of the Trade Contractor to comply with his obligations in respect of the Trade Contractor's Designed Portion:
- a such defects, shrinkages and other faults shall be specified by the Employer's Representative in a schedule of defects which he shall deliver to the Trade Contractor as an instruction not later than 14 days after the Final Release Date; and

- b prior to issue of that schedule, the Employer's Representative may whenever he considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this clause 2.40.1b shall be issued after delivery of that schedule or more than fourteen (14) days after the Final Release Date.

2.40.2 Within the timescales required by the Defects Response Schedule (or such other time as may be agreed by the Parties) after receipt of such schedule or instructions, the defects, shrinkages and other faults shall at no cost to the Employer be made good by the Trade Contractor unless the Employer's Representative instructs otherwise. If he so instructs otherwise, and in respect of any defects, shrinkages or other faults not made good by the Contractor within the timescales required by the Defects Response Schedule, an appropriate deduction may be made in the calculation of the Final Trade Contract Sum (or any Retention then held by the Employer) in respect of the defects, shrinkages or other faults not made good and the Employer shall be entitled to apply such deduction to the cost of procuring third party contractors to rectify them.

2.40.3 When entering upon the Site to carry out any rectification or other works following Practical Completion in respect of the Works, the Trade Contractor shall cause as little disruption and inconvenience to any tenants or other permitted occupier(s) as reasonably possible and shall make good all damage caused by such entry and (other than in the cases of emergency) comply with the reasonable security requirements of any such tenants or other occupier(s).

Trade Contractor's failure to rectify Defects

2.40.4 If the Trade Contractor fails to comply with the Employer's instructions in accordance with those periods of time set out in clause 2.40.2 then the Employer may:

- a instruct others to rectify the defect identified by the Employer's instruction under clause 2.40; and
- b deduct and/or recover from the Trade Contractor as a debt (and at its discretion using any amount of the Retention held by the Employer at that point for this purpose) any and all costs arising out of or in connection with the instruction of others to rectify the defects on behalf of the Trade Contractor.

Employer's Protection of the Works

2.41.1 The Employer shall take responsibility for protecting the Works or such works in a Section at all times after their date of practical completion and may (but without any derogation from that responsibility) seek or take the advice of the Trade Contractor as to protection measures which the Trade Contractor may consider necessary or appropriate. The liability of the Trade Contractor under clause 2.40 shall be reduced to the extent that any defect, shrinkage or fault appearing in the Works after that date is the result of:

- a fair wear and tear; or
- b failure by the Employer adequately to protect the Works; or
- c any other act, default or omission by the Employer or by any Employer's Person.

Certificate of Making Good

2.42 When in the Construction Manager's opinion the defects, shrinkages or other faults in the Works or in such works in a Section which under clause 2.40 he has required to be made good have been made good, he shall issue a certificate to that effect (a 'Certificate of Making Good'), and completion of that making good shall for the purposes of this Trade Contract be deemed to have taken place on the date stated in that certificate.

Trade Contractor's Design Documents

Documentation to be provided pre and post practical completion

- 2.43.1 On or before Practical Completion of the Works or the relevant Section, the Trade Contractor shall without further charge to the Employer supply for the retention and use of the Employer those documents listed in the Employer's Requirements as being delivered prior to Practical Completion and save as set out in clause 2.43.2 until the provisions of this clause have been complied with the Trade Contractor shall not be entitled to any payment of Retention that would (but for this provision) become due and payable under this Trade Contract, provided that the provisions of this clause shall not apply to any retention payable to the Trade Contractor prior to Practical Completion by virtue of clause 2.37.
- 2.43.2 Where at the date of Practical Completion the Trade Contractor has been unable to supply to the Employer one or more of the documents required by clause 2.43.1 and the Employer's Requirements, the Employer shall be entitled (in its discretion but acting reasonably) to release a proportion of the Retention equivalent to the proportion of the documents which the Trade Contractor has been able to supply by that date (such proportion being judged in terms of importance to the Project rather than number).
- 2.43.3 The Trade Contractor shall without further charge to the Employer supply to the Employer (to the extent they have not been provided in accordance with clause 2.43.1) those documents listed in the Employer's Requirements as being delivered after Practical Completion within the timescales set out for the provision of such documents in the Employer's Requirements. In the event that the Trade Contractor does not comply with any of the requirements of this clause 2.43.3 and the applicable time period set out in the Employer's Requirements, the Employer shall be entitled to procure their carrying out by others and either recover the costs incurred in doing so from the Trade Contractor as a debt, or deduct them from the next payment which would otherwise be due to the Trade Contractor pursuant to clause 4.
- 2.43.4 If prior to the Final Release Date errors are discovered in the drawings and information supplied by the Trade Contractor in accordance with clauses 2.43.1 and 2.43.3 or if as the result of any adjustment or remedial work carried out after the date of Practical Completion but prior to the Final Release Date the said drawings and information no longer show or describe the Works as required by clause 2.43.1 or 2.43.3 then the Trade Contractor as soon as reasonably practicable shall amend the said drawings and information so that they comply with the requirements of clause 2.43.1 or clause 2.43.3.
- 2.43.5 If any local or statutory authority or any Statutory Undertaker requests copies of any drawing produced by the Trade Contractor pursuant to this Trade Contract, the Trade Contractor shall provide as many copies of such drawings as have been requested directly to that authority or Statutory Undertaker.

Copyright and Use

- 2.44.1 Subject to any rights in any designs, drawings and other documents supplied to the Trade Contractor for the purposes of this Trade Contract by or on behalf of the Employer or the Construction Manager, all rights including (without limitation) copyright in all Trade Contractors Design Documents shall remain vested in the Trade Contractor.
- 2.44.2 The Trade Contractor hereby grants to the Employer an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Trade Contractor's Design Documents for any purpose whatsoever connected with the Works and/or the Site including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Works and/or the Site PROVIDED THAT the Trade Contractor shall not be liable for any use by the Employer of any of the Trade Contractor's Design Documents for any purpose other than that for which they were prepared.
- 2.44.3 The Trade Contractor represents and warrants that the Trade Contractor's Design Documents do not and will not infringe any intellectual property rights of any third party; and the Trade Contractor shall be liable for any

costs, losses and/or expenses incurred by the Employer due in whole or part to the Trade Contractor's Design Documents being determined to have infringed another's copyright and/or other intellectual property rights.

2.44.4 The licence referred to in clause 2.44.2:

- a carries the right to grant sub-licences and shall be transferable to third parties; and
- b shall subsist notwithstanding any suspension or determination of the Trade Contractor's employment under this Trade Contract and/or the termination of this contract in either case for any reason whatsoever.

2.44.5 The Trade Contractor shall not be liable for any use by the Employer of any of the Trade Contractor's Design Documents for any purpose other than that for which they were prepared.

2.44.6 The Trade Contractor hereby irrevocably waives any rights it may have by virtue of Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988 both in the Trade Contractor's Design Documents and the Works

Third Party Agreements

2.45.1 The Employer has provided the Trade Contractor with copies of the Third Party Agreements and the Trade Contractor shall be deemed to have full knowledge of the requirements of the Third Party Agreements and shall perform the Works so as to ensure that the Employer and/or any Group Company are not put in breach of their obligations in the Third Party Agreements and/or rendered liable to pay compensation under any of the Third Party Agreements.

2.45.2 The Employer may enter into further third party agreements with third parties relating to the Works after the date of this Trade Contract. Upon being supplied with copies of, or relevant extracts from those agreements the Trade Contractor shall, with effect from the date on which it was provided with copies or extracts, comply with the requirements of such further third party agreements to the extent they affect or relate to the carrying out of the Works and to the extent that they do not conflict with the terms of this Trade Contract. The Trade Contractor's obligation to comply with such further third party agreements shall be a Variation, although the Trade Contractor acknowledges that there may (depending on the circumstances) be no financial or time consequences arising as a result of that Variation.

Benchmarks

2.46 Notwithstanding the Completion Period for the Works and/or each Section, the Trade Contractor agrees that it shall provide the Employer with benchmarks of the items specified in the Benchmark Schedule within sufficient time to allow the Employer to comment on and/or approve them prior to related orders being placed or the applicable works commencing on Site.

3 CONTROL OF THE WORKS

Construction Manager

3.1. Authority of Construction Manager

3.1.1. Subject to clause 3.1.2 all acts, decisions and instructions of the Construction Manager under this Trade Contract are done, made or issued on behalf of the Employer.

3.1.2. Subject to clause 4.10.1.1, acts, decisions and instructions specifically stated to be those of the Employer are to be acts, decisions and instructions of the Employer and not those of the Construction Manager.

- 3.1.3. All instructions and decisions under this Trade Contract relating to Relevant Events and Relevant Matters, including without limitation all instructions to proceed with Variations, are to be notified to the Trade Contractor by the issue of a completed site instruction form in the form set out in Appendix B9 to the Employer's Requirements, or such other form as may be notified by the Employer's Representative from time to time, and such form is to be signed by the Employer's Representative and/or the Construction Manager, except that, where (i) the value of such instruction or decision is greater than one thousand pounds (£1,000) or (ii) such instruction gives rise to an extension of time, such form must be signed by the Employer's Representative. No such instruction or decision is valid for the purpose of this Trade Contract unless it complies with this clause.
- 3.1.4. References in this Trade Contract to 'the Employer' shall be deemed to include the Employer's Representative and all decisions, approvals, certificates, and instructions and similar of the Employer are to be made by the Employer's Representative. No such decision, approval, certificate, instruction or similar of the Employer is validly made unless made or confirmed by the Employer's Representative.
- 3.1.5. Subject to clauses 3.1.2 and 3.1.3, the Trade Contractor shall be entitled to assume and to rely on as a fact that any function exercised by the Construction Manager under this Trade Contract has been authorised by the Employer and the Trade Contractor shall not be liable for any costs, claims, loss, damage or other expenses incurred or suffered by the Employer in consequence of the compliance by the Trade Contractor with any function exercised by the Construction Manager which was not so authorised.

Access and Representatives

3.2. Access for Employer and Construction Manager

The Employer, the Construction Manager and any person authorised by either of them (including any surveyor instructed by a Third Party or by any authority with planning or other statutory authority over the Works or a part of them) shall at all reasonable times have access to the Works and to the workshops or other premises of the Trade Contractor where work is being prepared for this Trade Contract. Such access shall include attendance at any inspections of the Works or any part of them undertaken pursuant to the Samples and Testing Protocol and the Practical Completion Procedure. When work is to be prepared in workshops or other premises of a sub-contractor, the Trade Contractor shall by a term in the sub-contract secure so far as possible a similar right of access to those workshops or premises for the Employer, the Construction Manager and any person authorised by either of them and take any steps reasonably necessary to make that right effective. Access under this clause 3.2 may be subject to such reasonable restrictions as are necessary to protect proprietary rights.

3.3. Person-in-Charge

- 3.3.1 The Trade Contractor shall ensure that at all times he has on the site competent people-in-charge and any instructions given to that person by the Construction Manager or the Employer shall be deemed to have been issued to the Trade Contractor.
- 3.3.2 The Trade Contractor shall ensure that, so long as the people-in-charge remain employees or servants of the Trade Contractor and are not incapacitated by illness or otherwise not absent from work as a consequence of their reasonable holiday entitlement, the Trade Contractor's people-in-charge will undertake overall supervision of the Works for whatever time may be required to ensure the completion of the Works in accordance with this Trade Contract.
- 3.3.3 The Employer may at any time request the removal from the Works of any one or more of the Trade Contractor's personnel for reasons of incompetence or inefficiency and request the prompt appointment of a satisfactory substitute.

3.4. Replacement of Construction Manager

- 3.4.1. If the Construction Manager at any time ceases to hold that post, the Employer shall as soon as reasonably practicable nominate a replacement and notify the Trade Contractor.

- 3.4.2. No replacement Construction Manager appointed for this Trade Contract shall be entitled to disregard or overrule any certificate, opinion, decision, consent, approval or instruction given nor expressed by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Trade Contract to do so.

3.5. Trade Contractor's Responsibility

Irrespective of the Construction Manager's obligations to the Employer, the Trade Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with these Conditions. That responsibility shall not be affected by:

- 3.5.1 the Construction Manager or the Employer at any time inspecting the Works, any workshop or other premises or any work in preparation there; or
- 3.5.2 the inclusion of the value of any work, materials or goods in a certificate for payment or by his issuing any certificate of practical completion or Certificate of Making Good; or
- 3.5.3 any act or omission by or on behalf of the Employer in inspecting approving or informing itself about anything relating to the Works; or
- 3.5.4 any direction, admission, approach, consent, approval, confirmation, comment, sanction, acknowledgement or advice made or given by or on behalf of the Employer or the Construction Manager.

Sub-Contracting

3.6. Consent to Sub-Contracting

- 3.6.1. The Trade Contractor shall not without the Employer's consent sub-contract the whole or any part of the Works. For the avoidance of doubt, the Employer has consented to the Trade Contractor sub-contracting the following:

- 3.6.1.1. Production - Mitau Prefab SIA;
- 3.6.1.2. Assembly (part) - LNB Facades & Cladding Limited; and
- 3.6.1.3. Transportation - DFDS Logistics Baltic SIA.

- 3.6.2. Where there is a Trade Contractor's Designed Portion, the Trade Contractor shall not without the Employer's consent sub-contract the design for it.
- 3.6.3. In no case shall any such consent or any sub-contracting in any way affect the Trade Contractor's obligations under any other provision of this Trade Contract. When requesting such consent the Trade Contractor shall submit to the Construction Manager for approval (such approval not to be unreasonably withheld or delayed) a copy (with financial information redacted) of the terms of engagement or sub-contract governing the proposed appointment of the relevant sub-consultant or sub-contractor and shall incorporate such amendments thereto as the Construction Manager and/or the Employer may reasonably require.
- 3.6.4. The provisions of this clause 3.6 and of clause 3.7 shall not apply to the execution of part of the Works by a Statutory Undertaker, who shall not in that capacity be a sub-contractor within the terms of this Trade Contract.
- 3.6.5. The Parties shall after the date of this Trade Contract agree any sub-contractors which shall not be entitled to sub-contract any element of their sub-contract package without the consent of the Employer.

3.7. Negotiations with sub-contractors and recommendations by the Employer

- 3.7.1 The Employer shall at its discretion be entitled to join the Trade Contractor in negotiating a sub-contract package to be awarded as part of the Works.

- 3.7.2 Following such negotiation and review the Employer will make a recommendation to the Trade Contractor of the identity of the sub-contractor which the Trade Contractor should employ to carry out those works, including any design work required. That recommendation may include a price which has been agreed with the proposed sub-contractor for the carrying out of that sub-contract package.
- 3.7.3 The Trade Contractor shall at its own discretion elect whether to accept the Employer's recommendation and employ the recommended sub-contractor to carry out that sub-contract package, or to source and employ an alternative sub-contractor.
- 3.7.4 The Trade Contractor acknowledges that if it elects to accept the Employer's recommendation pursuant to clause 3.7.2, the performance of the recommended sub-contractor shall be entirely the responsibility of the Trade Contractor and the Trade Contractor shall have no claim for any addition to the Trade Contract Sum or any extension of the Completion Period as a result of a failure by the recommended sub-contractor to carry out the sub-contract package in accordance with its sub-contract with the Trade Contractor.
- 3.7.5 In the event that the Trade Contractor wishes to source and employ an alternative sub-contractor than that recommended by the Employer, the Trade Contractor agrees that in seeking the Construction Manager's approval pursuant to clause 3.6 it shall in addition set out its reasonable justification for not appointing the Employer's recommended sub-contractor.

3.8. Conditions of Sub-Contracting

It shall be a condition of any sub-contract (regardless of whether the sub-contractor was selected following a recommendation by the Employer or the Trade Contractor) that:

- 3.8.1. the sub-contractor's employment under the sub-contract shall not terminate immediately upon the termination (for any reason) of the Trade Contractor's employment under this Trade Contract;

- 3.8.2. the sub-contract shall provide:

- a that, except for use on the Works, no Site Materials delivered to the Works by or for the sub-contractor shall be removed without the Trade Contractor's written consent (such consent not to be unreasonably delayed or withheld) and that:

- (i) where, in accordance with clauses 4.7 and 4.12 of these Conditions, the value of any Site Materials has been included in any interim Certificate under which the amount properly due to the Trade Contractor has been paid to him, they shall upon such payment become, and the sub-contractor shall not deny that they have become, the Employer's property;
- (ii) if the Trade Contractor pays the sub-contractor for any Site Materials before their value is included in an Interim Certificate, they shall upon such payment become the Trade Contractor's property;

Provided that the Trade Contractor shall not give consent as referred to in clause 3.8.2a without the prior consent of the Construction Manager under clause 2.25 of these Conditions,

- b that the sub-contractor shall give access to workshops or other premises in accordance with clause 3.2 of these Conditions;
- c that each party to the sub-contract shall in relation to the Project and the site comply with applicable CDM Regulations;
- d that if by a final date for payment under the sub-contract the Trade Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Trade Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made;

- e a requirement to provide collateral warranties in favour of the Employer and/or any Third Party which would allow the Trade Contractor to comply with its obligations pursuant to clause 7.5;
- f that to the extent that any sub-contractor is carrying out any design or other professional services that the sub-contractor shall maintain professional indemnity insurance cover at a level reasonably acceptable to the Employer with a reputable insurer for a period of twelve years from Practical Completion and that it shall provide sufficient evidence of such insurance; and
- g that the categories and extent of costs and losses payable to the sub-contractor by the Trade Contractor upon termination (if any) shall be equivalent to the relevant provisions of clause 8 of this Trade Contract and no additional or further categories of costs or losses to those provided for in clause 8 shall be payable; and
- h the terms of the sub-contract are such that they will allow the Trade Contractor to comply with its obligations under this Trade Contract.

3.8.3. where documents or information and/or the grant of licences are or may be required from the sub-contractor for the BIM Protocol, where applicable, and/or for the purposes of clauses 2.43 and 3.23 of these Conditions, the sub-contract shall also provide for the supply and grant to and by the subcontractor of all information and licences reasonably necessary for that purpose.

Construction Manager's and Employer's Instructions

3.9. Compliance with Instructions

The Trade Contractor shall forthwith comply with all instructions issued to him by the Employer or the Construction Manager on any matter on which these Conditions expressly empower the Construction Manager to issue instructions, save that:

- 3.9.1. where an instruction requires a Variation of the type referred to in clause 5.1.2, the Trade Contractor need not comply to the extent that such Variation would compromise health and safety and/or the design of any part of the Works that had been carried out at the date of such instruction;
- 3.9.2. where an instruction for a Variation is given which under clause 5.3.1 requires the Trade Contractor to provide a Variation Quotation, the Variation shall not be carried out until the Employer or the Construction Manager has in relation to it issued either a Confirmed Acceptance or a further instruction under clause 5.3.2;
- 3.9.3. if the Trade Contractor considers that compliance with any instruction would adversely affect the efficacy of the design of the Trade Contractor's Designed Portion or his compliance with applicable CDM Regulations and if within seven (7) days of receipt of the instruction he gives notice to the Construction Manager specifying that adverse effect, the instruction shall not take effect unless and until confirmed by the Construction Manager;
- 3.9.4. in the case of a notification by the Trade Contractor under clause 2.24.2, the Trade Contractor need not comply pending Confirmation of the instruction.

3.10. Non-Compliance with Instructions

Subject to clause 3.12, if within 7 days after receipt of a notice from the Employer or Construction Manager requiring compliance with an instruction the Trade Contractor does not comply, the Employer may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The Trade Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction may be made in the calculation of the Final Trade Contract Sum or may be recoverable from the Trade Contractor by the Employer as a debt.

3.11. Instructions other than in Writing

- 3.11.1. Where the Construction Manager or the Employer gives an instruction otherwise than in writing, it shall be of no immediate effect but the Trade Contractor shall confirm its terms in writing to the Construction Manager or the Employer (as applicable) within seven (7) days, and, if he does not dissent by notice to the Trade Contractor within seven (7) days from receipt of the Trade Contractor's confirmation, it shall take effect as from the expiry of the latter seven (7) day period.
- 3.11.2. If prior to or within seven (7) days from receipt of the Trade Contractor's confirmation the Construction Manager or the Employer (as applicable) confirms the terms of the instruction in writing (which confirmation must comply with clause 3.1.3 where applicable), it shall take effect from the date and in the terms of the Construction Manager or the Employer's confirmation.
- 3.11.3. If neither the Trade Contractor nor the Construction Manager or Employer (as applicable) confirms such an instruction in the manner and time stated but the Trade Contractor nevertheless complies with it, the Construction Manager or Employer (as applicable) may at any time prior to the issue of the Final Certificate confirm it with retrospective effect.

3.12. Provisions Empowering Instructions

On receipt of an instruction the Trade Contractor may request the Construction Manager to notify him which provision of these Conditions empowers its issue and the Construction Manager shall forthwith comply with the request. If the Trade Contractor thereafter complies with that instruction with neither Party then having invoked any dispute resolution procedure under this Trade Contract to establish the Employer's or Construction Manager's powers in that regard, the instruction shall be deemed to have been duly given under the specified provision.

3.13. Instructions Requiring Variations

- 3.13.1. The Employer or (subject to clause 3.1.3) the Construction Manager may issue instructions requiring a Variation.
- 3.13.2. In respect of the Trade Contractor's Designed Portion, any instruction requiring a Variation shall be an alteration to or modification of the Employer's Requirements.
- 3.13.3. The Employer or (subject to clause 3.1.3) the Construction Manager may sanction in writing any Variation made by the Trade Contractor otherwise than pursuant to an instruction.
- 3.13.4. No Variation required or sanctioned by the Employer or the Construction Manager shall vitiate this Trade Contract.

3.14. Postponement of Work

The Employer or (subject to clause 3.1.3) the Construction Manager may issue instructions in regard to the postponement of any work to be executed under this Trade Contract.

3.15. Instructions on Provisional Sums

The Employer or (subject to clause 3.1.3) the Construction Manager shall issue instructions in regard to the expenditure of Provisional Sums included in the Detailed Price Breakdown or in the Employer's Requirements.

3.16. Inspection - Tests

- 3.16.1 The Trade Contractor acknowledges that in relation to any materials notified as such by the Construction Manager or Employer (acting reasonably), it shall not be entitled to incorporate those materials into the Works unless and until the Employer has approved them in accordance with the requirements of the Samples and Testing Protocol.
- 3.16.2 The Construction Manager or Employer may issue instructions requiring the Trade Contractor to provide samples of materials or open up for inspection any work covered up or to arrange for or carry out any test of

any materials or goods (whether or not already incorporated in the Works) or of any executed work in accordance with the Samples and Testing Protocol. Where such opening up, testing or inspection were carried out in accordance with the Samples and Testing Protocol, their cost (including the cost of making good) shall not be added to the Trade Contract Sum. Where any testing or samples are required which are in addition to or not in accordance with the Samples and Testing Protocol, their cost (including the cost of making good) shall be added to the Trade Contract Sum, unless the inspection or test shows that the materials, goods or work are not in accordance with this Trade Contract or unless the opening up, inspection or test was reasonably required by reason of any similar, equivalent or associated work materials or goods having been shown by a previous inspection or test not to be in accordance with this Trade Contract or provided for in the Trade Contract Documents.

3.17. Work not in accordance with the Trade Contract

If any work, materials or goods are not in accordance with this Trade Contract the Construction Manager, in addition to his other powers, or the Employer may:

- 3.17.1. issue instructions in regard to the removal from the site of all or any of such work, materials or goods;
- 3.17.2. after consultation with the Trade Contractor, allow all or any such work, materials or goods to remain, in which event he shall notify the Trade Contractor to that effect but that shall not be construed as a Variation and an appropriate deduction may be made in the calculation of the Final Trade Contract Sum;
- 3.17.3. after consultation with the Trade Contractor, issue such Variation instructions as are a reasonably necessary consequence of any instruction under clause 3.17.1 and/or notification under clause 3.17.2 (but to the extent that such instructions are reasonably necessary, they shall be disregarded in the calculation of the Final Trade Contract Sum and no extension of time shall be given); and/or
- 3.17.4. issue such instructions under clause 3.16 to open up for inspection or to test as are reasonable in all the circumstances to establish to his reasonable satisfaction the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that those instructions are reasonable, whatever the results of the opening up, they shall be disregarded in the calculation of the Final Trade Contract Sum but clauses 2.29 and 2.30.2.2 shall apply unless the inspection or test shows that the work, materials or goods are not in accordance with this Trade Contractor unless the opening up for such inspection or test was reasonably required by reason of any similar, equivalent or associated work materials or goods having been shown by a previous inspection or test not to be in accordance with this Trade Contract or provided for in the Trade Contract Documents.

3.18. Workmanship not in accordance with the Trade Contract

Where there is any failure to comply with clause 2.1 in regard to the carrying out of work in a proper and workmanlike manner or in accordance with the Construction Phase Plan, the Construction Manager, in addition to his other powers, or the Employer may, after consultation with the Trade Contractor, issue such instructions (whether requiring a Variation or otherwise) as are in consequence reasonably necessary. To the extent that such instructions are reasonably necessary, no amount shall be taken in to account in the calculation of the Final Trade Contract Sum and no extension of time shall be given.

3.19. Executed work

In respect of any materials, goods or workmanship, as comprised in executed work, which under clause 2.3 are to be to his reasonable satisfaction, the Construction Manager or the Employer, if he is dissatisfied, shall give the reasons for such dissatisfaction to the Trade Contractor within a reasonable time from the execution of the unsatisfactory work.

3.20. Exclusion of Persons from the Project

The Construction Manager or the Employer may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the site of the Project of any person employed thereon. An instruction requiring

the exclusion of any person from the Site who does not speak English shall be considered reasonable if that person does not also comply with all HSE requirements applicable to non-English speaking labour on site.

3.21. Antiquities

3.21.1. All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating it during the progress of the Works shall become the Employer's property. Upon discovery of any such object the Trade Contractor shall forthwith:

- a use his best endeavours not to disturb the object and cease work if and insofar as its continuance would endanger the object or prevent or impede its excavation or removal;
- b take all steps necessary to preserve the object in the exact position and condition in which it was found; and
- c inform the Construction Manager of its discovery and precise location.

3.21.2. The Construction Manager shall issue instructions as to action to be taken concerning any object reported under clause 3.21.1, which (without limiting his powers) may require the Trade Contractor to permit the examination, excavation or removal of the object by a third party.

3.22. Attendance and Special Requirements

3.22.1 The Construction Manager or the Employer shall provide, free of charge to the Trade Contractor, the items of attendance stated in the Trade Contract Particulars.

3.22.2 Any other items of attendance or special requirements may be provided by the Construction Manager or the Employer and, if so agreed and stated in the Trade Contract Particulars, the Trade Contractor shall pay to the Employer either the agreed price or, in the absence of such agreement, a fair and reasonable price for such other items or special requirements.

3.22.3 The Employer and the Trade Contractor shall not, and shall respectively ensure that the Employer's Persons and the Trade Contractor's Persons do not, wrongfully use or interfere with plant, ways, scaffolding, temporary works, appliances or other property belonging to or provided by others or infringe any Statutory Requirements, but nothing in this clause 3.22.3 shall affect the rights of the Employer or of the Trade Contractor to carry out their respective statutory duties and contractual obligations under this Trade Contract.

3.22.4 The Trade Contractor acknowledges that:

- a provided the Construction Manager or Employer provides the items of attendance envisaged pursuant to this clause 3.22 and the Employer's Requirements, it shall have no claim for an addition to the Trade Contract Sum or entitlement to other loss and expense in the event that they are insufficient to carry out the Works; and
- b the Construction Manager and/or Employer may throughout the course of the Works monitor the Trade Contractor's usage of any items supplied free of charge pursuant to clause 3.22.1 and in the event that any are such items are used for any purpose not related to the Works, a sum equivalent to the cost of that item used by the Trade Contractor shall be deducted from the Trade Contract Sum; and

3.23 CDM Regulations

Each Party undertakes to the other that in relation to the Project and site he will duly comply with applicable CDM Regulations. In particular but without limitation:

3.23.1 the Employer shall ensure that the Principal Designer carries out his duties and shall ensure that the Principal Contractor carries out his duties under those regulations;

- 3.23.2 whether or not clause 2.2.5 applies, the Trade Contractor shall comply with regulations 8 and 15;
- 3.23.3 compliance by the Trade Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Trade Contractor to an extension of time; and
- 3.23.4 if the Employer appoints a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Trade Contractor with details of the new appointee.

Other Provisions

3.24 Strikes – Loss or Expense

- 3.24.1 If the Project or the Works are affected by a strike, lock-out or local combination of workmen affecting any trade employed upon them or engaged in preparation, manufacture or transportation of any goods or materials required for them:
- a neither Party shall have any claim on the other for any loss and/or expense resulting from such action;
 - b the Construction Manager shall take all reasonably practicable steps to keep the site open and available for the use of the Trade Contractor;
 - c the Trade Contractor shall take all reasonably practicable steps to continue with the Works.
- 3.24.3 Nothing in this clause 3.24 shall affect any other right of either Party under this Trade Contract if such action occurs.

3.25 Project Certificates

When practical completion of the last trade contract to be completed in respect of the Project or a section of the Project has been certified, the Employer's Representative shall forthwith issue to the Trade Contractor a Project Completion Certificate or Project Section Completion Certificate and practical completion of the Project or relevant section of the Project shall for all the purposes of this Trade Contract be deemed to have taken place on the date stated in that certificate.

3.26 Incorrect Instructions

Should the Construction Manager or the Employer issue an instruction pursuant to this Trade Contract which could in any way be deemed, but for the provisions of this clause 3.26 to relieve the Trade Contractor from his liabilities or obligations or be against statute or good building practice, then the Trade Contractor shall notify the Construction Manager and the Employer in writing of the effect of such instruction and the Construction Manager or Employer shall then confirm whether or not the instruction remains effective within five (5) Business Days.

3.27 Meetings

- 3.27.1 The Trade Contractor shall attend meetings to discuss the progress of the Works:
- a as often as required by, and in accordance with, the meeting requirements set out in the Employer's Requirements; and
 - b as and when reasonably requested by the Construction Manager and/or the Employer.

- 3.27.2 The Trade Contractor agrees that it will ensure that one of the people in charge attends every meeting required by the Construction Manager and/or the Employer, unless otherwise agreed in writing by the Construction Manager and/or the Employer (as appropriate to the meeting).

4 PAYMENT

Trade Contract Sum

4.1. Adjustment Basis

- 4.1.1. The Trade Contract Sum shall not be adjusted or altered in anyway other than in accordance with the express provisions of these Conditions.
- 4.1.2. The Final Trade Contract Sum shall be calculated in accordance with clause 4.21.

4.2. Items included in adjustments

- 4.2.1 The Trade Contract Sum shall be adjusted by:
- a any amounts agreed by the Employer or the Construction Manager on the Employer's behalf (in accordance with clause 3.1.3) and the Trade Contractor in respect of Variations and other work of the types referred to in clause 5.2.1; and
 - b the amounts stated in any Variation Quotation for which there is a Confirmed Acceptance, and by the amount of any Variations valued under clause 5.3.3.
- 4.2.2 There shall be deducted from the Trade Contract Sum:
- a all Provisional Sums and the value of all work for which an Approximate Quantity is included in the Detailed Price Breakdown or in the Employer's Requirements;
 - b the amount of each Valuation under clause 5.6.2 or 5.9.3 of items omitted in accordance with a Variation, together with the amount included in the Detailed Price Breakdown for any other work as referred to in clause 5.10;
 - c any amounts deductible under clauses 2.10, 2.35, 2.40, 2.43, 2.47, 3.10, 3.17.2, 3.22, 6.16.2, 7.3 or 7.5; and
 - d any other amount required by this Trade Contract to be deducted from the Trade Contract Sum.
- 4.2.3 There shall be added to the Trade Contract Sum:
- a any amounts payable by the Employer to the Trade Contractor as a result of payments made or costs incurred by the Trade Contractor under clauses 2.22, 2.24 and 3.16;
 - b the amount of the Valuation of any Variation, including the valuation of other work as referred to in clause 5.10 but excluding any omission;
 - c the amount of the Valuation of work executed by, or the amount of any disbursements by, the Trade Contractor in accordance with Employer's or Construction Manager's instructions as to the expenditure of Provisional Sums included in the Detailed Price Breakdown or in the Employer's

Requirements and of all work for which an Approximate Quantity is included in the Detailed Price Breakdown or in the Employer's Requirements;

- d any amounts ascertained under clause 4.18;
- e any amounts paid by the Trade Contractor under clause 6.17 which the Trade Contractor is entitled to have added to the Trade Contract Sum;
- f any amounts payable under clause 4.11.2; and
- g any other amount required by this Trade Contract to be added to the Trade Contract Sum.

4.3. Taking Adjustments into Account

Where these Conditions provide that an amount is to be added to, deducted from or dealt with by adjustment of the Trade Contract Sum, then, as soon as the amount is ascertained in whole or in part, the ascertained amount shall be taken into account in the next Interim Certificate.

Taxes

4.4. VAT

- 4.4.1. The Trade Contract Sum and the Final Trade Contract Sum are exclusive of VAT and in relation to each payment to the Trade Contractor under this Trade Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.
- 4.4.2. If after the Base Date the supply of any goods or services to the Employer becomes exempt from VAT there shall be paid to the Trade Contractor an amount equal to the input tax on the supply to the Trade Contractor of goods and services that contribute to the Works which as a consequence of that exemption the Trade Contractor cannot recover.

4.5. Construction Industry Scheme (CIS)

If the Employer is or at any time up to the final payment becomes a 'contractor' for the purposes of the CIS, his obligation to make any payment under this Trade Contract is subject to the provisions of the CIS.

Payments, Certificates and Notices - General Provisions

4.6. Interim Payments – Due Dates

During the period up to the due date for the final payment fixed under clause 4.23.3 and whether periodic payments or stage payments are stated in the Trade Contract Particulars to apply, the monthly due dates for interim payments shall in each case be the date seven (7) days after the relevant Interim Valuation Date, commencing with the Interim Valuation Date next following the commencement of the Works on site.

4.7. Interim Certificates

- 4.7.1 The Trade Contractor shall no earlier than the Interim Valuation Date, submit to the Construction Manager and the Employer's Representative a valuation of the amount it believes will be due to it in respect of the interim payment at that due date, together with any supporting information reasonably required to support its valuation including, where the valuation includes the full value of or the final instalment of the full value of an activity set out in the Detailed Price Breakdown, a copy of the completed works inspection record signed by the Construction Manager as required by clause 4.12.1. In assessing the amount due, the Employer shall

consider the relevant summary and supporting information and shall give the Trade Contractor details of how the amount due has been assessed.

- 4.7.2 The Employer shall confirm the amount it believes will be due to the Trade Contractor within seven (7) days of receiving a valuation from the Trade Contractor pursuant to clause 4.7.1 (this confirmation being the “Interim Certificate”). In the event that the Employer fails to provide such confirmation within this seven (7) day period, the amount set out in the Trade Contractor’s valuation shall be deemed to have been approved (and shall be deemed to be the Interim Certificate).

4.8. Trade Contractor’s Payment Applications and Payment Notices

- 4.8.1 On confirmation of the Interim Certificate pursuant to clause 4.7.2 (whether received from the Construction Manager or Employer or deemed), the Trade Contractor shall no earlier than the due date to which that Interim Certificate relates submit its application for payment to the Employer, each such application being an “Interim Application”.

- 4.8.2 To be considered a valid Interim Application for the purposes of this Trade Contract the Interim Application must, in addition to the requirements of clause 4.8.1:

- a be addressed to “Accounts Payable, Vastint UK B.V., c/o 135 High Street, London E15 2RB”; and
- b clearly state the relevant purchase order reference number as stated in the Trade Contract Particulars or as otherwise notified by the Construction Manager or Employer from time to time; and
- c set out details of:
 - i the amount of the Trade Contract Sum already paid to the Trade Contractor prior to that application for payment; and
 - ii the amount of any Retention the Trade Contractor believes should be deducted from the sum which would otherwise be due for payment; and
- d be accompanied by the Interim Certificate; and
- e be sent by email to “accounts.uk@vastint.eu”, the Employer’s Representative and the Construction Manager; and
- f include the Trade Contractor’s Construction Industry Scheme registration details and the Trade Contractor’s bank account details (including IBAN and BIC codes); and
- g include such additional supporting documentation as may be reasonably required and agreed by the Construction Manager or Employer from time to time, including any referred to in clause 4.7.1.

4.9. Interim and Final Payments - Final Date and Amount

- 4.9.1. The final date for payment of each interim payment and the final payment shall be thirty (30) days from the later of the due date and the date on which the Trade Contractor submits a valid Interim Application pursuant to clause 4.8.
- 4.9.2. The Employer may within five (5) days of receipt of the Trade Contractor’s Interim Application issue a payment notice (an **Interim Payment Notice**), stating the sum that he considers to be or have been due at the due date to the Trade Contractor in respect of the interim payment, calculated in accordance with clause 4.12, and the basis on which that sum has been calculated. Subject to any Pay Less Notice given by the Employer under clause 4.9.5, the sum to be paid by the Employer on or before the final date for payment shall be the sum stated as due in the Interim Payment Notice.

- 4.9.3. If an Interim Payment Notice is not issued in accordance with clause 4.9.2, the sum to be paid by the Employer shall, subject to any Pay Less Notice under clause 4.9.5, be the sum stated as due in the Interim Application.
- 4.9.4. Subject to any Pay Less Notice given by the paying Party under clause 4.9.5, the paying Party shall pay the sum stated as due in the Interim Application, Interim Payment Notice or the Final Certificate on or before the final date for payment.
- 4.9.5. Where:
- a the Employer intends to pay less than the sum stated as due from him in an Interim Application, the Final Certificate or an Interim Payment Notice; or
 - b if the Final Certificate shows a balance due to the Employer, the Trade Contractor intends to pay less than the sum stated as due,
- the Party by whom the payment is stated to be payable shall not later than five (5) days before the final date for payment give the other Party notice of that intention in accordance with clause 4.10.1 (a 'Pay Less Notice'). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
- 4.9.6. If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by its final date for payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made
- 4.9.7. Any such unpaid amount and any interest under clause 4.9.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Trade Contractor's rights to suspend performance under clause 4.11 or to terminate his employment under Section 8.

4.10. Pay Less Notices and Other General Provisions

- 4.10.1. A Pay Less Notice given by either Party shall specify the sum he considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated. Such notice:
- a (where it is to be given by the Employer) may be given on his behalf by the Construction Manager or Employer's Representative or by any other person who the Employer notifies the Trade Contractor as being authorised to do so but, in the case of a payment for which an Interim Certificate or the Final Certificate is not issued in due time, may not be given until the Trade Contractor has in respect of the payment given an Interim Payment Notice;
 - b (where it is to be given by the Trade Contractor) shall be sent to the Employer, with a copy to the Construction Manager.
- 4.10.2. In relation to the requirements for the issue of Interim Certificates and the Final Certificate and the giving of Pay Less Notices, it is immaterial that the amount then considered to be due maybe zero.
- 4.10.3. The Employer is entitled to exercise any rights under this Trade Contract to withhold or deduct from a sum due to the Trade Contractor, subject to clause 4.9.5, even if that sum includes any Retention due for release under clause 4.16.

4.11. Trade Contractor's Right of Suspension

- 4.11.1. If the Employer fails to pay a sum payable to the Trade Contractor in accordance with clause 4.9 (together with any VAT property chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Trade Contractor has given notice to the Employer, with a copy to the Construction Manager, of his intention to suspend the performance of his obligations under this Trade

Contract and the grounds for such suspension, the Trade Contractor, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.

- 4.11.2. Where the Trade Contractor exercises his right of suspension under clause 4.11.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 4.11.3. Applications in respect of any such costs and expenses shall be made to the Employer and the Trade Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

Interim Payments – Calculation of Sums Due

4.12. Gross Valuation

The Gross Valuation for each interim payment shall be the total of the amounts referred to in clauses 4.12.1 and 4.12.2 less the deductions referred to in clause 4.12.3, each calculated as at the Interim Valuation Date:

- 4.12.1. the total values of the following which are subject to Retention:
 - a the work properly executed by the Trade Contractor (including work so executed for which a value has been agreed pursuant to clause 5.2.1 or which has been valued under the Valuation Rules and work for which there is a Confirmed Acceptance of a Variation Quotation), but excluding any amounts referred to in clause 4.12.2d. The value of the work in each activity set out in the Detailed Price Breakdown shall be a proportion of the price stated for the work in that activity equal to the proportion of the work in that activity that has then been properly executed;
 - b Site Materials, provided they are adequately protected against weather and other casualties and are not on the Works prematurely; and
 - c Listed Items (if any) for which the conditions set out in clause 4.14 are satisfied;
- 4.12.2. the total of the following which are not subject to Retention:
 - a any amounts to be included in accordance with clause 4.3 as a result of payments made or costs incurred by the Trade Contractor under clause 2.22, 2.24, 3.16, 6.9.2 or 6.17;
 - b any amounts payable under clause 4.11.2;
 - c the amount of any loss and/or expense to which the Trade Contractor is entitled under clause 4.17.1 or 5.3.3 or by a Confirmed Acceptance;
 - d any amounts in respect of reinstatement work under clause 6.10.4;
 - e any other amount which is required by this Trade Contract to be added in the calculation of the Final Trade Contract Sum;
- 4.12.3. any amounts deductible under clause 2.10, 2.35, 2.40, 2.43, 2.47, 3.10, 3.17.2, 3.22, 6.16.2, 7.3 or 7.5 shall be deducted.

4.13. Sums due as Interim Payments

The sum due as an interim payment shall in each case be the Gross Valuation less the following deductions:

- 4.13.1. any amount which may be deducted and retained by the Employer under clauses 4.15 to 4.17;
- 4.13.2. the sums stated as due in previous Interim Certificates; and

- 4.13.3. any sum paid in respect of any Interim Payment Notice given after the issue of the latest Interim Certificate.

4.14. Off-site materials and goods

No payment shall be made for any goods and materials until:

- 4.14.1 save where clauses 4.14.2 and/or 4.14.3 apply, they are incorporated into the Works;
- 4.14.2 in the case of any Listed Items, they are brought to the Site and the provisions of clause 2.25 have been complied with; and
- 4.14.3 in the case of any Advance Payment Listed Items, a Vesting Certificate and, if specified in the Contract Particulars against the reference to this clause that an Advance Payment Bond is required, a duly executed and completed Advance Payment Bond, from a bond provider approved by the Employer and for the full value of any advance payments, has been provided to the Employer.

Retention

4.15. Rules on Treatment of Retention

The Employer's interest in the Retention shall not be fiduciary and the relationship of the Employer and the Trade Contractor with regard to the same shall be solely that of debtor and unsecured creditor. Any right of the Employer to deduct or to set off any amount (whether arising under any express term or under any rule of law or equity) shall be exercisable against any monies due or to become due to the Trade Contractor whether or not such monies consist of or include any Retention. The Employer shall:

- 4.15.1 have no obligation to invest the Retention or any part of the Retention;
- 4.15.2 have no obligation to segregate the Retention or any part of the Retention in a separate bank account or in any other manner;
- 4.15.3 be entitled to the full and unencumbered beneficial interest in the Retention or any part of the Retention (including without limitation interest and income arising from the Retention).

4.16. Retention - Amounts and Periods

- 4.16.1. The Retention which may be deducted under Interim Certificates and retained by the Employer shall be the following percentages of the total amount (or proportion of that amount) included in the Gross Valuation under clause 4.12.1 for work and (where applicable) Site Materials and Listed Items calculated in accordance with the following rules:
- 4.16.2. the Retention Percentage may be deducted from so much of the total amount as relates to work which has not reached practical completion (excluding from the total amount any proportion of it attributable to a Relevant Part);
- 4.16.3. half the Retention Percentage may be deducted from so much of the total amount as relates to work which has reached practical completion for the period up to the Final Release Date or, if later, the date of issue of the Certificate of Making Good (or, where applicable, the later of those dates in respect of the relevant Section).
- 4.16.4. The Employer shall release the Retention to the Trade Contractor as follows:
- a Half of the Retention for each Section shall be released on the date on which both:

- (i) the drawings and other information referred to in clause 2.43 have been provided to the Employer (subject to the Employer's right pursuant to clause 2.43.2 to release the Retention notwithstanding that one or more documents may not have been provided at that date); and
 - (ii) the Trade Contractor has carried out and completed to the reasonable satisfaction of the Employer, all work and/or remedied all defects in the Section as may be notified to the Trade Contractor as outstanding and to be carried out or remedied (as the case may be) as a condition of Practical Completion of that Section, or as may be detailed in any list annexed to the written notice of Practical Completion;
- b Half of the Retention for each Section shall be released on the later of:
- (i) the Final Release Date for that Section; or
 - (i) the issue of the Certificate of Making Good for that Section.

Loss and Expense

4.17. Matters Materially Affecting Regular Progress

If in the execution of this Trade Contract the Trade Contractor incurs or is likely to incur any direct loss and/or expense because regular progress of the Works or any part of them has been or is likely to be materially affected by any Relevant Matter, he shall, subject to compliance with the provisions of clause 4.18 be entitled to reimbursement of that loss and/or expense provided always that:

- 4.17.1 the Trade Contractor shall have made reasonable and proper efforts to avoid or reduce such loss and expense; and
- 4.17.2 notwithstanding any other provision of this clause 4.17 and clause 4.18, the Trade Contractor shall not become entitled to the addition of any amount to the Trade Contract Sum or to any other payment (other than any amount which is recovered by the Employer under any policy of insurance maintained in accordance with this Trade Contract) in respect of any costs, loss or expense incurred by reason of any error, omission, negligence or default of the Trade Contractor, his employees or agents or of any sub-contractor or supplier or any of their employees or agents; and
- 4.17.3 no such entitlement arises where these Conditions provide that no amount shall be taken into account in the calculation of the Final Trade Contract Sum or otherwise exclude the operation of this clause 4.17 or to the extent that the Trade Contractor is reimbursed for such loss and/or expense under another provision of these Conditions.

4.18. Notification and Ascertainment

- 4.18.1. Notwithstanding any other provision of this Trade Contract, the Trade Contractor's right to claim loss and/or expense pursuant to clause 4.17 or otherwise shall be subject to the condition precedent that
 - a the Trade Contractor shall notify the Construction Manager: (i) of the occurrence of a Relevant Matter within four (4) weeks of its occurrence; and (ii) of the effect of the Relevant Matter as soon as the likely effect of that Relevant Matter on regular progress becomes (or should have become) reasonably apparent to him; and
 - b the notification under 4.18.1a(ii) shall be accompanied by or, as soon as reasonably practicable, followed by the Trade Contractor's initial assessment of the loss and/or expense incurred and any further amounts likely to be incurred, together with such information as is reasonably necessary to enable the Construction Manager to ascertain the loss and/or expense incurred; and

- c the Trade Contractor shall thereafter, within twelve (12) weeks and in such form and manner as the Construction Manager may reasonably require, update that assessment and information at monthly intervals until all information reasonably necessary to allow ascertainment of the total amount of such loss and expense has been supplied.

4.18.2. Within twenty eight (28) days of receipt of the initial assessment and information and 14 days of each subsequent update of them the Employer (or the Construction Manager on the Employer's behalf, in accordance with clause 3.1.3) shall notify the Trade Contractor of the ascertained amount of the loss and/or expense incurred, each ascertainment being made by reference to the information supplied by the Trade Contractor and in sufficient detail to enable the Trade Contractor to identify differences between it and the Trade Contractor's assessment.

4.19. Relevant Matters

The following are the Relevant Matters:

- 4.19.1. Variations (excluding those where the amount of loss and/or expense has been agreed by Confirmed Acceptance of a Variation Quotation but including any other matters or instructions which under these Conditions are to be treated as a Variation);
- 4.19.2. Construction Manager's or Employer's instructions:
 - a under clause 3.14 or 3.15 (excluding an instruction for expenditure of a Defined Provisional Sum);
 - b for the opening up for inspection or testing of any work, materials or goods under clause 3.16 (including making good), unless the cost is provided for in the Detailed Price Breakdown or unless the inspection or test or series of inspections or tests show that the work, materials or goods are not in accordance with this Trade Contract or unless the inspection or test was reasonably required as a result of a previous inspection or test or series thereof;
- 4.19.3. compliance with clause 3.21.1 or with Construction Manager's instructions under clause 3.21.2;
- 4.19.4. any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Trade Contractor or any Trade Contractor's Person; and
- 4.19.5. any cost arising as a result of the Trade Contractor suspending the Works pursuant to clause 4.11.

4.20. Reservation of Trade Contractor's Rights and Remedies

Reimbursement of the Trade Contractor for loss and/or expense under clauses 4.17 to 4.19 shall be deemed to be full compensation for the Trade Contractor in respect of which the compensation is paid and the Employer shall have no further liability to the Trade Contractor in respect of such matters arising under the Trade Contract or generally at law.

Final Adjustment and Final Payment

4.21. Final Trade Contract Sum

The Final Trade Contract Sum shall be the Trade Contract Sum adjusted by:

- 4.21.1. the amount of each Valuation and any amounts agreed by the Employer (or the Construction Manager on the Employer's behalf, in accordance with clause 3.1.3) and the Trade Contractor in respect of Variations and other work of the types referred to in clause 5.2.1, whether by Confirmed Acceptance of a Variation Quotation or otherwise;

- 4.21.2. any other amounts referred to in clause 4.12.2 (excluding any loss and/or expense to the extent included under clause 4.21.1) and any amounts deductible or allowable under clause 4.12.3;
- 4.21.3. the deduction of all Provisional Sums and the value of any work described as provisional in the Trade Contract Documents and, where there are bills of quantities, the value of all work for which an Approximate Quantity is included in those bills or in the Employer's Requirements; and
- 4.21.4. any other amount which under this Trade Contract may or is required to be taken into account in the calculation of the Final Trade Contract Sum.

4.22. Calculation of Final Trade Contract Sum

- 4.22.1. Not later than 3 months after the issue by the Employer of the certificate of practical completion of the Works, the Trade Contractor shall provide the Employer with all documents necessary for calculating the Final Trade Contract Sum.
- 4.22.2. Not later than 3 months after receipt by the Employer of the documents referred to in clause 4.22.1 the Employer shall prepare and send to the Trade Contractor a provisional calculation in accordance with clause 4.21.

4.23. Final Certificate and Final Payment

- 4.23.1. The Employer shall issue the Final Certificate to the Trade Contractor not later than 2 months after whichever of the following occurs last:
 - a the Final Release Date or (where there are Sections) the last such date;
 - b the date of issue of the Certificate of Making Good under clause 2.42 or (where there are Sections) the last such certificate to be issued; or
 - c the date on which the Employer sends to the Trade Contractor a copy of the statement to be prepared under clause 4.22.2.
- 4.23.2. The Final Certificate shall set out:
 - a the Final Trade Contract Sum; and
 - b the sum of amounts already stated as due in Interim Certificates,

and (without affecting the rights of the Trade Contractor in respect of any interim payment not paid in full by the Employer by its final date for payment) the final payment shall be the difference (if any) between the two sums, which shall be shown in the Final Certificate as a balance due to the Trade Contractor from the Employer or vice versa. The Final Certificate shall state the basis on which that amount has been calculated.
- 4.23.3. The due date for the final payment shall be the date of issue of the Final Certificate or, if that statement is not issued within the 2 month period referred to in clause 4.23.1, the last day of that period and subject to clause 4.23.6, the final date for payment shall be thirty (30) days from its due date.
- 4.23.4. If the party by whom the final payment is stated to be payable ("the payer") intends to pay less than the stated balance, he shall not later than 5 days before the final date for payment give the other Party a Pay Less Notice in accordance with clause 4.9.5.
- 4.23.5. Where a Pay Less Notice is given under clause 4.23.4, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.
- 4.23.6. If the Final Certificate is not issued in accordance with clauses 4.23.1 and 4.23.2:

- a the Trade Contractor may at any time after expiry of the 2 month period referred to in clause 4.23.1 give notice to the Employer with a copy to the Construction Manager (a "Final Payment Notice") stating what the Trade Contractor considers to be the amount of the final payment due to him under this Trade Contract and the basis on which the sum has been calculated and, subject to any Pay Less Notice given under clause 4.23.6c, the final payment shall be that amount;
- b if the Trade Contractor gives a Final Payment Notice, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 2 month period that the Final Payment Notice is given;
- c following the Final Payment Notice the Employer may not later than 5 days before the final date for payment give a Pay Less Notice in accordance with clause 4.9.5 and, if he gives such notice, the provisions of clause 4.23.5 shall correspondingly apply.

4.23.7. If the Payer fails to pay the final payment, or any part of it, by the final date for its payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made. The Trade Contractor confirms that the interest paid pursuant to this clause is a substantial remedy for late payment in compliance with section 9 of The Late Payment of Commercial Debts (Interest) Act 1998.

4.23.8. Acceptance of a payment of interest under this clause 4.23 shall not in any circumstances be construed as a waiver of any right to proper payment of the principal amount due.

4.23.9. The final payment and any interest under this clause 4.23 shall be a debt due from the payer to the other Party.

4.23.10. Where the Employer has given notice or notices complying with clause 4.9.5 and either Party refers a dispute concerning such notice or notices and/or the withholding or deduction of any payment under that notice to adjudication under clause 9.2 and the Adjudicator finds that any further amount over and above that set out in the notice should be paid, then payment of such amount should be made not later than 5 Business Days from the Adjudicator's decision or the final date for that instalment whichever is the later date.

Related Trade Contracts

4.24.1 The Trade Contractor acknowledges that the Parties intention is for further Related Trade Contracts to be entered into after the date of this Trade Contract but during the carrying out of the Works.

4.24.2 The Trade Contractor agrees that it shall have no claim for a Relevant Event, Relevant Matter and/or any other entitlement to additional costs and/or loss and expense under this Trade Contract as a result of:

- a any negligent action or omission or other default by the Trade Contractor pursuant to a Related Trade Contract which impacts on the carrying out of the Works; and/or
- b any failure by the Trade Contractor to coordinate (or to adequately coordinate) the works to be carried out under a Related Trade Contract with the carrying out of the Works.

4.24.2 Notwithstanding any other provision of this Agreement, the Employer shall be entitled to deduct from or set-off against any monies due from it to the Trade Contractor (including any retention monies) under this Trade Contract and/or any Related Trade Contract:

- a any sum or sums which the Trade Contractor is liable to pay to the Employer (or Vastint UK Services Ltd as the case may be) under or pursuant to this Trade Contract or the applicable Related Trade Contract(s); and/or

- b the amount of any claim that the Employer (or Vastint UK Services Ltd as the case may be) may have in respect of any breach of or failure by the Trade Contractor in any way to observe or perform the provisions of this Trade Contract or the applicable Related Trade Contract.

5 VALUATION OF WORK AND VARIATIONS

General

5.1. Definition of Variations

The term "Variation" means:

- 5.1.1 the alteration or modification of the design, quality or quantity of the Works including:
 - a the addition, omission or substitution of any work;
 - b the alteration of the kind or standard of any of the materials or goods to be used in the Works;
 - c the removal from the site of any work executed or Site Materials other than work, materials or goods which are not in accordance with this Trade Contract;
 - d the acceleration, deceleration and/or suspension of the Works or any part or parts of the Works;
 - e the execution, sequencing or completion of the Works in any specific order,
 - 5.1.2 the imposition by the Employer of any obligations or restrictions in regard to the matters set out in this clause 5.1.2 or the addition to or alteration or omission of any such obligations or restrictions so imposed or imposed by the Employer in the Detailed Price Breakdown or in the Employer's Requirements in regard to:
 - a access to the site or use of any specific parts of the site;
 - b limitations of working space;
 - c limitations of working hours; or
 - d the execution or completion of the work in any specific order.
 - 5.1.3 a request by the Employer that works be undertaken on the Site by third parties not employed by the Contractor, to which the provisions of clause 2.8 shall apply, but which were not set out in the Employer's Requirements.
- #### **5.1A Trade Contractor Variations**
- 5.1A.1 If, whether through its review of the Works pursuant to clause 2.14, the design of the Trade Contractor's Designed Portion or otherwise, the Trade Contractor believes that a Variation is required, it shall notify the Construction Manager in writing as soon as reasonably practicable, providing such information as the Construction Manager may reasonably require to evaluate the consequences of carrying out such Variation (or of not carrying it out). The Construction Manager shall not be obliged to instruct any Variation requested by the Trade Contractor, such decision being entirely at the Employer's discretion, but subject to clause 5.1A.2 any Variation so instructed shall be treated as an instruction given by the Construction Manager for the purposes of clause 5.2.1a.
 - 5.1A.2 No change to the Employer's Requirements, obligations or restraints referred to in clause 5.1.2 or Variation requested by the Trade Contractor pursuant to clause 5.1A.1 shall be treated as a Variation which requires an adjustment to the Trade Contract Sum or an extension of time to the Completion Period insofar as it is (i) carried out by the Trade Contractor without the prior written approval of the Employer; or (ii) arises or is

instructed as a result of, or in consequence of, any negligence, default or breach on the part of the Trade Contractor or any of the Trade Contractor's Persons.

5.2. Valuation of Work

5.2.1 Unless otherwise agreed by the Construction Manager and the Trade Contractor (whether by Confirmed Acceptance of a Variation Quotation or otherwise), a valuation ('Valuation') shall be made by the Construction Manager of the items referred to in this clause 5.2.1 in accordance with clauses 5.6 to 5.12 ('the Valuation Rules'), namely:

- a all Variations required by the Employer's or Construction Manager's instructions or subsequently sanctioned by one of them in writing but excluding any to which clause 5.3.3 applies;
- b all work which under these Conditions is to be treated as a Variation;
- c all work executed by the Trade Contractor in accordance with the Employer's or Construction Manager's instructions as to the expenditure of Provisional Sums included in the Trade Contract Sum and/or Detailed Price Breakdown or work included in them that is described as provisional; and
- d all work executed by the Trade Contractor for which an Approximate Quantity has been included in the Detailed Price Breakdown or in the Employer's Requirements; or

Such Valuation insofar as it relates to the Trade Contractor's Designed Portion shall be in accordance with clause 5.9.

5.3. Variation Quotation

5.3.1. If the Construction Manager in his instruction for a Variation states that the Trade Contractor is to provide a quotation in accordance with the provisions of Part 2 of Schedule 2 (a 'Variation Quotation'), the Trade Contractor shall subject to receipt of sufficient information provide a quotation in accordance with those provisions, unless within 7 days of his receipt of that instruction (or such longer period as is either stated in the instruction or agreed between them) he notifies the Construction Manager that he disagrees with the application of the procedure to that instruction.

5.3.2. If the Trade Contractor notifies his disagreement within that period, he shall not be obliged to provide that quotation and the Variation shall not be carried out unless and until the Construction Manager gives a further instruction that the Variation is to be carried out and is to be valued by a Valuation.

5.3.3. Where a Variation Quotation has been made for work and a Confirmed Acceptance issued, then, if the Construction Manager subsequently issues an instruction requiring a Variation of that work, the Valuation of that Variation shall be made on a fair and reasonable basis having regard to the content of that quotation and that Valuation shall include the direct loss and/or expense, if any, incurred by the Trade Contractor because the regular progress of the Works or of any part of them is materially affected by compliance with the instruction. The Valuation Rules shall apply only to the extent that they are consistent with those requirements.

5.4. Trade Contractor's Right to be Present at Measurement

Where it is necessary to measure work for the purpose of a Valuation the Construction Manager shall give the Trade Contractor an opportunity to be present at the time of such measurement and to take such notes and measurements as the Trade Contractor may require.

5.5. Giving Effect to Valuations, Agreements etc.

The Final Trade Contract Sum shall be adjusted for each Confirmed Acceptance or other agreement by the Construction Manager and the Trade Contractor under clause 5.2 and for each Valuation.

The Valuation Rules

5.6. Measurable Work

5.6.1. To the extent that the Valuation relates to the execution of additional or substituted work which can properly be valued by measurement or to the execution of work for which an Approximate Quantity is included in the Detailed Price Breakdown and subject to clause 5.9 in the case of TCDP Works, such work shall be measured and shall be valued in accordance with the rules in this clause 5.6.1 and those in clauses 5.7, 5.10, 5.11 and 5.12:

- a where the additional or substituted work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of work set out in the Trade Contract Documents, the rates and prices for the work set out in the Detailed Price Breakdown shall determine the valuation;
- b where the additional or substituted work is of similar character to work set out in the Trade Contract Documents but is not executed under similar conditions thereto and/or significantly changes its quantity, the rates and prices for the work set out in the Detailed Price Breakdown shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in conditions and/or quantity;
- c where the additional or substituted work is not of similar character to work set out in the Trade Contract Documents, the work shall be valued at fair rates and prices;
- d where the Approximate Quantity is a reasonably accurate forecast of the quantity of work required the rate or price for the Approximate Quantity shall determine the valuation; and
- e where any Approximate Quantity is not a reasonably accurate forecast of the quantity of work required, the rate or price for that Approximate Quantity shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in quantity.

Provided that clauses 5.6.1d and 5.6.1e shall apply only to the extent that the work has not been altered or modified other than in quantity.

5.6.2. To the extent that a Valuation relates to the omission of work set out in the Trade Contract Documents and subject to clause 5.9 in the case of TCDP Works, the rates and prices for the work set out in the Detailed Price Breakdown shall determine the valuation of the work omitted.

5.7. General Rules

In any valuation of work under clause 5.6:

- 5.7.1. measurement shall be in accordance with the same principles as those governing the preparation of the Detailed Price Breakdown;
- 5.7.2. allowance shall be made for any percentage or lump sum adjustments in the Detailed Price Breakdown;
- 5.7.3. an allowance, where appropriate, shall be made for any addition to or reduction of preliminary items of the type referred to in the Standard Method of Measurement, provided that no such allowance shall be made in respect of compliance with a Construction Manager's instruction for the expenditure of a Defined Provisional Sum.

5.8. Day work

Where the execution of work cannot be valued in accordance with clause 5.6 or 5.9, as applicable, the Valuation shall be based on the Schedule of Day work Rates, if any, included in the Detailed Price Breakdown but if not included it shall comprise:

- 5.8.1. the prime cost of such work (calculated in accordance with the Detailed Price Breakdown) together with Percentage Additions to each section of the prime cost at the rates stated in Detailed Price Breakdown or, if they apply in respect of labour, at the All-Inclusive Rates stated therein; or
- 5.8.2. where the work is within the province of any specialist trade and the RICS and the appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of day work, the prime cost of such work calculated in accordance with that definition current at the Base Date, together with Percentage Additions on the prime cost at the rates stated in the Detailed Price Breakdown or, if they apply in respect of labour, at the All-Inclusive Rates stated therein.

Provided that in any case vouchers specifying the time daily spent upon the work, the workmen's names, the plant and the materials employed shall be delivered for verification to the Construction Manager not later than 7 Business Days after the work has been executed.

5.9. Trade Contractor's Designed Portion – Valuation

Valuations relating to the Trade Contractor's Designed Portion shall be made under this clause 5.9.

- 5.9.1. Allowance shall be made in such Valuations for the addition or omission of the relevant design work.
- 5.9.2. The valuation of additional or substituted work shall be consistent with the values of work of a similar character set out in the Detailed Price Breakdown, making due allowance for any change in the conditions under which work is carried out and/or any significant change in the quantity of the work so set out. Where there is no work of a similar character set out in the Detailed Price Breakdown a fair valuation shall be made at the open market value.
- 5.9.3. The valuation of the omission of work set out in the Detailed Price Breakdown shall be in accordance with the values there in for such work.
- 5.9.4. Clauses 5.7.2, 5.7.3, 5.8 and 5.10 shall apply so far as is relevant.

5.10. Change of Conditions for Other Work

If as a result of:

- 5.10.1. compliance with any instruction requiring a Variation;
- 5.10.2. compliance with any instruction as to the expenditure of a Provisional Sum other than instructions in relation to Defined Provisional Sums;
- 5.10.3. compliance with any instruction as to the expenditure of a Defined Provisional Sum, to the extent that the instruction for that work differs from the description given for such work in the Detailed Price Breakdown; or

there is a substantial change in the conditions under which any other work is executed (including TCDP Works), that other work shall be treated as a Variation and shall be valued in accordance with the provisions of this Section 5.

5.11. Additional Provisions

- 5.11.1. To the extent that a Valuation does not relate to the execution of work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Variation cannot reasonably be effected in the Valuation by the application of clauses 5.6 to 5.10, a fair valuation shall be made.

- 5.11.2. No allowance shall be made under the Valuation Rules for any effect upon the regular progress of the Works or of any part of them or for any other direct loss and/or expense for which the Trade Contractor would be reimbursed by payment under any other provision in these Conditions.

5.12. No Loss of Profit

- 5.12.1 In the event that the Employer or Construction Manager omits any part or parts of the Works by virtue of any instruction pursuant to this clause 5 whether relating to a provisional sum item or otherwise, the Employer shall not be liable to the Trade Contractor for any loss of profit and/or contracts and/or opportunities and/or any consequential losses and/or liabilities arising out of or in connection with the removal of such works other than the following:

- i) where such instruction to omit any part or parts of the Works which are ongoing at the date of instruction include the offsite manufacture of panels at a facility managed by the Contractor, the Contractor shall be entitled to the reasonable and unavoidable costs of keeping such facility on standby for production until the earlier of a) the expiry of three months after the date of the instruction; b) the date on which such facility was planned to cease production for the purposes of the Works or part of the Works; and c) the date on which the Contractor is able to use such facility for another contract or customer;
- ii) any reasonable and unavoidable costs of paying for accommodation for the Contractor's staff in the UK which will no longer be required due to the instruction to omit any part or parts of the Works for a maximum period of three months after the date of instruction;
- iii) the reasonable transit costs associated with materials in transit to the Site at the date of an instruction to omit any part or parts of the Works; and
- iv) the reasonable costs of the Contractor maintaining its design team for a maximum period of two weeks after an instruction to omit any part or parts of the Works where as part of the instruction the Contractor is required to finish and handover all existing design work.

6 INJURY, DAMAGE AND INSURANCE

Personal Injury and Property Damage

6.1. Trade Manager's Liability – Personal Injury or Death

The Trade Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works (including in the performance of the Trade Contractor's obligations under clause 2.40), except to the extent that the same is due to any act or neglect of the Employer, any Employer's Person or any Statutory Undertaker.

6.2. Trade Contractor's Liability – Loss, Injury or Damage to Property

Subject to clause 6.3, the Trade Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal (including as a result of any obstruction, trespass, nuisance or interference with any rights of way, light, air or water) in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works (or any obligation pursuant to clause 2.40) and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Trade Contractor of any Trade Contractor's Person.

6.3. Loss or Damage to Existing Structures or their Contents

- 6.3.1. The Trade Contractor's liability and indemnity under clause 6.2 excludes any loss or damage to Existing Structures or to any of their contents required to be insured under that schedule that is caused by any of the risks or perils required or agreed to be insured against under this clause 6.

- 6.3.2. The exclusion in clause 6.3.1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Trade Contractor or any Trade Contractor's Person.
- 6.3.3. The reference in clause 6.2 to 'property real or personal' does not include the Project, work executed, Site Materials up to and including the date of issue of the certificate of practical completion of the Works or, if earlier, the date of termination of the Trade Contractor's employment, except that:
- a after the date of issue of a certificate of practical completion in respect of works in a Section, such works shall no longer be regarded as 'the Works' or 'work execute' for these purposes; and
 - b if clause 2.37 has been operated, the Relevant Part shall no longer be so regarded after the Relevant Date.

Insurance against Personal Injury and Property Damage

6.4. Trade Contractor's Insurance of his Liability

- 6.4.1. Without limiting or affecting his indemnities to the Employer under clauses 6.1 and 6.2, the Trade Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:
- a in respect of claims for personal injury to or the death of any employee of the Trade Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and
 - b for all other claims to which clause 6.4.1 applies shall indemnify the Employer in like manner to the Trade Contractor (but only to the extent that the Trade Contractor may be liable to indemnify the Employer under the terms of this Trade Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Trade Contract Particulars for clause 6.4.1.
- 6.4.2. As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.9 shall apply.

6.5. Excepted Risks

Notwithstanding clauses 6.1, 6.2 and 6.4.1, the Trade Contractor shall neither be liable to indemnify the Employer nor obliged to insure against any personal injury to or the death of any person or any damage, loss or injury to the Project, Site Materials, work executed, the site or any other property, caused by the effect of an Excepted Risk.

Insurance of the Project and Existing Structures

6.6. Obligation to Insure

- 6.6.1 The Employer shall takeout and maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.7 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage or amount, if any, stated in the Trade Contract Particulars to cover professional fees) and (subject to clause 2.39) shall maintain such Joint Names Policy up to and including the date of issue of the Practical Completion Certificate or, if earlier, the date of termination of the Trade Contractor's employment.
- 6.6.2 The obligation to maintain the Joint Names Policy shall not apply in relation to a Section after the date of issue of the Section Completion Certificate for that Section.
- 6.6.3 The Trade Contractor acknowledges that the Joint Names Policy taken out by the Employer pursuant to clause 6.6.1 shall not include any cover for the Trade Contractor's plant, equipment and/or machinery used in carrying out the Works and any storage facilities used for them (save where such storage facility is a building

owned by the Employer and for which the Employer has in place a separate contents insurance policy)). The Trade Contractor agrees that it shall take out and maintain a Joint Names Policy for All Risks Insurance to cover such plant, equipment and/or machinery and storage facilities for their full reinstatement value and (subject to clause 2.39) shall maintain such Joint Names Policy up to and including the date of issue of the Practical Completion Certificate or, if earlier, the date of termination of the Trade Contractor's employment.

6.7. Existing structure and contents – Joint Names Policy for Specified Perils

6.7.1 The Employer shall effect and maintain a Joint Names Policy in respect of any Existing Structures, together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils and shall maintain the interest of the Trade Contractor in the policy as an insured up to and including the date of issue of the certificate of practical completion of the Works or (if earlier) the date of termination of the Trade Contractor's employment.

6.7.2 For the purpose of this clause 6.7 the Existing Structures shall from the Relevant Date include any Relevant Part to which clause 2.34 refers and shall include such works in a Section after the date of issue of a certificate of practical completion in respect of those works under clause 2.31 and shall from the date of issue of a Section Completion Certificate include the relevant Section.

6.8. Related Definitions

In these Conditions the following phrases shall have the following meanings:

All Risks Insurance	insurance which provides cover against any physical loss or damage to work executed, Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring or propping of the Project which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:
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- (a) property which is defective due to:
 - (i) wear and tear,
 - (ii) obsolescence, or
 - (iii) deterioration, rust or mildew.
- (b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective;
- (c) the Trade Contractor's plant, equipment and/or machinery used in carrying out the Works and any storage facilities used for them (save where such storage facility is a building owned by the Employer and for which the Employer has in place a separate contents insurance policy);
- (d) loss or damage caused by or arising from:
 - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any

property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority;

(ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event; or

(iii) an Excepted Risk.

Excepted Risk: the risks comprise:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
- (c) any act of terrorism.

Joint Names Policy: a policy of insurance which amongst others includes the Employer and the Trade Contractor as composite insured under which the insurers have no right of recourse against any person named as an insured, or, pursuant to clause 6.8, recognised as an insured there under.

Specified Perils: fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks.

6.9. Evidence of Insurance

6.9.1. Where a Party is required by this Trade Contract to effect and maintain an insurance policy or cover under any of clauses 6.4, 6.6, 6.7 or 6.12, or is responsible for ensuring that it is effected and maintained, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.

6.9.2. If either the Employer or the Trade Contractor defaults in taking out or in maintaining the Policy it is required to maintain, the other party may himself take out and maintain a Policy against any risk in respect of which the default has occurred and the amount paid or payable by him in respect of the premiums shall either be added to or deducted from the Trade Contract Sum (as appropriate).

6.10. Loss or Damage – Insurance Claims and Reinstatement

6.10.1. If during the carrying out of the Works any loss or damage affecting any work executed or to be executed or Site Materials is occasioned by any of the risks covered by the Project Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any of the Existing Structures or their contents, the Trade Contractor shall forthwith upon it occurring or becoming apparent give notice to the Construction Manager of its nature, location and extent.

6.10.2. Subject to clause 6.10.5, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Trade Contractor under this Trade Contract.

- 6.10.3. The Trade Contractor, for himself and for all his sub-contractors recognised as an insured under that Project Insurance Policy, shall authorise the insurers to pay to the Employer all monies from such insurance, and from any policies covering Existing Structures or their contents that are effected by the Employer.
- 6.10.4. Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Project Insurance Policy, the Trade Contractor shall after any inspection required by the insurers under the Project Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Project. Reinstatement work under this clause 6.10.4 shall be treated as a Variation.
- 6.10.5. Where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Variation.

6.11. Sub-Contractors – Specified Perils Cover under Project Insurance Policies

The Employer shall ensure that the Project Insurance Policy provides for recognition of each sub-contractor of the Trade Contractor as an insured under the policy in respect of loss or damage by the Specified Perils to the Project or the Site Materials. Where there are Sections and the sub-contractors works relate to more than one Section, the recognition for such sub-contractor shall nevertheless cease in relation to a Section upon the issue of such certificate or other document for his work in that Section.

Professional Indemnity Insurance

6.12. Obligation to Insure

The Trade Contractor shall:

- 6.12.1. forthwith after this Trade Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy without unusual or onerous conditions and excesses with reputable insurers based in the European Union with a limit of indemnity of the type and in an amount not less than that stated in the Trade Contract Particulars;
- 6.12.2. thereafter, provided it is available at commercially reasonable rates to organisations of equivalent size and type to the Contractor's practice/organisation, maintain such insurance until the expiry of the period stated in the Trade Contract Particulars from the date of practical completion of the Project;
- 6.12.3. as and when reasonably requested to do so by the Employer or the Construction Manager, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained; and
- 6.12.4. not compromise settle or waive any insurance claim it may have relating to any liability under this Trade Contract without the Employer's prior consent provided that nothing in this clause shall prevent the Trade Contractor's insurers from taking over (in the Trade Contractor's name) the defence of any claim made by the Employer under this Trade Contract (in that capacity) from conducting and settling it as they see fit,

these obligations continuing in full force and effect notwithstanding any suspension or termination of this Trade Contract or determination of the Trade Contractor's employment under this Trade Contract in either case for any reason whatsoever.

6.13. Increased Cost and Non-Availability

If the insurance referred to in clause 6.12 ceases to be available at commercially reasonable rates, the Trade Contractor shall immediately give notice to the Employer so that the Trade Contractor and the Employer can discuss the means of best protecting their respective positions in the absence of such insurance.

Joint Fire Code – Compliance

6.14. Application of Clauses

Clauses 6.15 to 6.17 apply where the Trade Contract Particulars state that the Joint Fire Code applies.

6.15. Compliance with Joint Fire Code

The Parties shall comply with the Joint Fire Code; the Employer shall ensure such compliance by all Employer's Persons and the Trade Contractor shall ensure such compliance by all Trade Contractor's Persons.

6.16. Breach of Joint Fire Code – Remedial Measures

6.16.1 If a breach of the Joint Fire Code occurs and the insurers under the Project Insurance Policy specify by notice to the Employer or the Trade Contractor the remedial measures they require (the 'Remedial Measures'), the Party receiving the notice shall send copies of it to the other and to the Construction Manager, and then:

- a subject to clause 6.16.1b, where the Remedial Measures relate to the obligation of the Trade Contractor to carry out and complete the Works, the Trade Contractor shall ensure that the Remedial Measures are carried out by such date as the insurers specify; and
- b to the extent that the Remedial Measures require a Variation to the Works as described in the Trade Contract Documents or in a Construction Manager's or Employer's instruction, the Construction Manager shall issue such instructions as are necessary to enable compliance. If, in an emergency, compliance with the Remedial Measures in whole or in part requires the Trade Contractor to supply materials or execute work before receiving instructions under this clause 6.16.1b, the Trade Contractor shall supply the materials and execute the work reasonably necessary to secure immediate compliance. The Trade Contractor shall forthwith notify the Construction Manager of the emergency and of the steps he is taking. Save to the extent they relate to the Trade Contractor's Designed Portion, the work and materials reasonably necessary shall be treated as if executed and supplied under a Variation instruction.

6.16.2 If the Trade Contractor, within 7 days of receipt of a notice specifying Remedial Measures not requiring a Construction Manager's or Employer's instruction under clause 6.16.1b does not begin to carry out or thereafter fails without reasonable cause regularly and diligently to proceed with the Remedial Measures, then the Employer may employ and pay other persons to carry out those Remedial Measures. The Trade Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction shall be made in the calculation of the Final Trade Contract Sum.

6.17. Joint Fire Code – Amendments / Revisions

If after the Base Date the Joint Fire Code is amended or revised and the Joint Fire Code as amended or revised is, under a Joint Names Policy, applicable to the Project, any cost of compliance by the Trade Contractor with any amendment or revision to the Joint Fire Code shall be borne as stated in the Trade Contract Particulars. If it is to be borne by the Employer, it shall be included in the calculation of the Final Trade Contract Sum.

7 ASSIGNMENT, THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

Assignment

7.1.1 The Employer may assign its entire rights and benefits under this Trade Contract to any person having or acquiring an interest in the Works and the Employer's said rights and benefits may be charged and/or assigned by way of security and may be re-assigned on redemption. The Trade Contractor may not assign the benefit of this Trade Contract without the written consent of the Employer.

7.1.2 The Trade Contractor undertakes with the Employer not to contend that any person to whom this Trade Contract may be assigned will be precluded from recovering under this Trade Contract any loss resulting from any breach of this Trade Contract either by reason that the person is an assignee and not the original party to this Trade Contract or by reason that the Employer named in this Trade Contract or any intermediate owner of the Employer's interest in the Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.

Performance Bonds and Guarantees

- 7.2 The Trade Contractor shall on the execution of this Trade Contract provide to the Employer whichever of the following the Trade Contract Particulars state as being required:
- 7.2.1 a performance bond issued in favour of the Employer by a bank or insurance company acceptable to the Employer duly registered and trading in the United Kingdom and executed as a deed in the form set out in Part 1 of Schedule 9 in an amount equivalent to 10% of the Trade Contract Sum; or
- 7.2.2 a guarantee by the Trade Contractor's parent company identified in the Trade Contract Particulars executed as a deed in the form set out in Part 2 of Schedule 9;

And notwithstanding any other provision of this Trade Contract the Employer shall not be obliged to make any payment and the Trade Contractor shall not be entitled to payment until such bond or guarantee has been executed and delivered to the Employer.

Collateral Warranties and Third Party Rights

Contractor's Warranties

- 7.3.1 The Trade Contractor shall execute as a deed and deliver to the Employer within 10 Business Days of a written request to do so from or on behalf of the Employer from time to time deeds of collateral warranty in favour of any Third Party in respect of whom a Nominating Notice has not been served pursuant to clause 7.4, such collateral warranty or warranties shall be in the appropriate form set out in Schedule 3 with only such changes as the Employer may approve.
- 7.3.2 Notwithstanding any other terms of this Trade Contract the Trade Contractor and the Employer agree that if a collateral warranty or warranties requested pursuant to this clause 7.3 has or have not been provided within 10 Business Days of being so requested, the Employer shall be entitled to issue a Pay Less Notice in accordance with clause 4.9.5 in respect of the sum of five thousand pounds (£5,000) for each deed which has/have not been provided from any sums specified in the Interim Certificate or Final Certificate (as the case may be) which would otherwise be due and payable at the time such collateral warranty or warranties is/are outstanding and thereafter a further five thousand pounds (£5,000) for each deed which remains outstanding from any sums specified in each and every following Interim Certificate or Final Certificate (as the case may be). Any amounts so retained shall become due for release to the Trade Contractor only when the outstanding collateral warranty or warranties have been provided.

Third Party Rights

- 7.4.1 The Employer shall, at any time, be entitled to issue a Nominating Notice to the Trade Contractor conferring the benefit of the Third Party Rights on a Third Party (save in circumstances where such Third Party has already had a duly executed warranty for its benefit provided pursuant to clause 7.3 above) with effect from the date of the relevant Nominating Notice.
- 7.4.2 Subject to clause 7.4.3, the Parties may terminate the Trade Contractor's engagement under this Trade Contract or agree to rescind this Trade Contract or amend, vary or waive any terms of this Trade Contract or settle any dispute or other matter arising out of or in connection with this Trade Contract on such terms as they see fit and without the consent of any Third Party.
- 7.4.3 The Parties shall not be entitled to vary or amend the Third Party Rights without the consent of any person who has been identified in any Nominating Notice issued pursuant to clause 7.4.1.

Sub-Contractors' Warranties

7.5.1 The Trade Contractor shall procure that every sub-contractor reasonably requested by the Employer (an indicative list of such sub-contractors being included in Appendix B18 to the Employer's Requirements, but it is acknowledged such list is not exhaustive) shall execute as a deed and deliver to the Employer within 15 Business Days of a request to do so from or on behalf of the Employer from time to time a deed or deeds of collateral warranty in favour of:

- a the Employer; and/or
- b any Third Party;

Such collateral warranty or warranties to be in the appropriate form set out in Schedule 6 with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed).

7.5.2 If the Trade Contractor fails to procure the execution and delivery to the Employer of such deed or deeds of warranty within 15 Business Days of the request to do so the Employer shall be entitled to issue a Pay Less Notice in accordance with clause 4.9.5 in respect of the sum of five thousand pounds (£5,000) for each deed which has/have not been provided from any sums relating to the services or work of the relevant sub-contractor(s) then in default and which would otherwise be due and payable under the terms of this Trade Contract and thereafter a further five thousand pounds (£5,000) for each such deed from any sums relating to the services or work of the relevant sub-contractor in each and every following Interim Certificate or Final Certificate as the case may be. Any amounts so retained shall become due for release to the Trade Contractor only when the warranties from the relevant sub-contractor have been provided duly executed to the Employer.

Manufacturer's Warranties and Guarantees

7.6 The Trade Contractor agrees that it shall procure product guarantees and warranties in favour of the Employer in relation to the completed Works, on such terms as are reasonably practicable in the market at the time of carrying out the Works and in particular in relation to those items (forming part of the Works) listed in the Employer's Requirements.

8 TERMINATION

General

8.1. Meaning of Insolvency

For the purposes of these Conditions:

8.1.1. a company becomes insolvent:

- a when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
- b on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
- c on the passing of a resolution for voluntary winding-up without a declaration of solvency under Section 89 of that Act; or
- d on the making of a winding-up order under Part IV or V of that Act.

8.1.2. a partnership becomes insolvent:

- a on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under Section 420 of that Act; or
- b when sequestration is awarded on the estate of the partnership under Section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.

8.1.3. an individual becomes insolvent:

- a on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or
- b on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.

8.1.4. a person also becomes insolvent if:

- a he enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
- b (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this clause 8.1.

Each of clauses 8.1.1 to 8.1.4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

8.2. Notices under Section 8

8.2.1. Any termination of this Trade Contract shall only take effect on receipt of the relevant notice (or following the prescribed time period after receipt, in accordance with this section 8).

8.2.2. Each notice referred to in this Section shall be given in accordance with clause 1.7.4.

8.3. Other Rights, Reinstatement

8.3.1. The provisions of clauses 8.4, 8.4A, 8.5, 8.6, 8.7 and 8.11 are without prejudice to any other rights and remedies of the Employer. The provisions of clauses 8.9 and 8.10 and (in the case of termination under either of those clauses) the provisions of clause 8.12, are the exclusive rights and remedies of the Trade Contractor.

8.3.2. Irrespective of the grounds of termination, the Trade Contractor's employment may at any time be reinstated if and on such terms as the Parties agree.

8.4. Default by Trade Contractor

8.4.1. If, before practical completion of the Works, the Trade Contractor:

- a without reasonable cause wholly or substantially suspends the carrying out of the Works or the design of the Trade Contractor's Designed Portion; or
- b fails to proceed regularly and diligently with the Works or the design of the Trade Contractor's Designed Portion; or
- c refuses or neglects to comply with a notice or instruction from the Construction Manager or Employer requiring him to remove any work, materials or goods not in accordance with this Trade Contract and by such refusal or neglect the Works are materially affected; or
- d fails to comply with clause 3.6 or 7.1.1; or

- e fails to comply with clause 3.23; or
- f fails to maintain a sufficient or adequate labour force on Site to comply with requirements of this Trade Contract; or
- g commits a material breach of the terms of this Trade Contract not otherwise specified in sub-clauses 8.4.1a to 8.4.1f,

the Construction Manager may give to the Trade Contractor a notice specifying the default or defaults (a 'specified' default or defaults).

- 8.4.2. If the Trade Contractor continues a specified default for 14 days from receipt of the notice under clause 8.4.1, the Employer may on, or within 14 days from, the expiry of that initial 14 day period by a further notice to the Trade Contractor terminate the Trade Contractor's employment under this Trade Contract.
- 8.4.3. If the Employer does not give the further notice referred to in clause 8.4.2, (whether as a result of the ending of any specified default or otherwise) but the Trade Contractor repeats a specified default (whether previously repeated or not) then, upon or within a reasonable time after such repetition, the Employer may by notice to the Trade Contractor terminate that employment.

8.4A Termination of Related Trade Contracts

- 8.4A.1 In the event that the Trade Contractor's engagement under any Related Trade Contract is terminated due to reasons of default by the Trade Contractor pursuant to that Related Trade Contract, the Employer shall for a period of fourteen (14) days after such termination is effected be entitled at any time by written notice to the Trade Contractor to terminate the Trade Contractor's employment under this Trade Contract.
- 8.4A.2 If at the expiry of the fourteen (14) day period referred to in clause 8.4A.1 the Employer has not served notice on the Trade Contractor to terminate its engagement under this Trade Contract, the Employer's right to terminate this Trade Contract pursuant to clause 8.4A.1 shall be deemed to have been waived in relation to the termination of that Related Trade Contract (but for the avoidance of doubt a separate right of termination pursuant to clause 8.4A.1 shall arise in the event that another Related Trade Contract is terminated due to reasons of default by the Trade Contractor).

8.5. Insolvency of Trade Contractor

- 8.5.1. If the Trade Contractor is Insolvent, the Employer may at any time by notice to the Trade Contractor terminate the Trade Contractor's employment under this Trade Contract.
- 8.5.2. The Trade Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1.
- 8.5.3. As from the date the Trade Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:
 - a clauses 8.7.4, 8.7.5 and 8.7.6 shall apply as if such notice had been given; and
 - b the Trade Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works and the design of the Trade Contractor's Designed Portion shall be suspended; and
 - c the Employer may at the Trade Contractor's expense take reasonable measures to ensure that the site, the Works and Site Materials are adequately protected and that

such Site Materials are retained onsite; the Trade Contractor shall allow and shall not hinder or delay the taking of those measures.

- 8.5.4 Ownership in all existing Material and other physical embodiments of designs relating to the TCDP Works shall transfer from the Trade Contractor to the Employer immediately prior to the Trade Contractor becoming Insolvent.

8.6. Corruption

The Employer shall be entitled by notice to the Trade Contractor to terminate the Trade Contractor's employment under this or any other contract with the Employer if, in relation to this or any other such contract, the Trade Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010.

8.7. Consequences of Termination under Clauses 8.4 to 8.6

If the Trade Contractor's employment is terminated under clause 8.4, 8.4A, 8.5 or 8.6:

- 8.7.1. the Employer may employ and pay other persons to carry out and complete the Works and/or (where applicable) the design of the Trade Contractor's Designed Portion and to make good and defects of the kind referred to in clause 2.40, and those parties may enter upon the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;
- 8.7.2. the Trade Contractor shall immediately:
- a cease all further work, except for such works as may have been instructed by the Employer for the protection of life or property or for safety reasons;
 - b deliver up to the Employer all drawings, details, plans, specifications, schedules, reports, calculations and other works and the designs contained in them (whether in the course of preparation or completed) in respect of the Works (including, where there is a Trade Contractor's Designed Portion, the Trade Contractor's Design Documents);
 - c deliver up to the Employer all plant, materials and other work for which the Trade Contractor has received payment;
 - d if required by the Construction Manager or the Employer to do so, deliver up any such goods and materials on Site at the date of termination for which the Trade Contractor has not received payment but which the Employer wishes to retain on Site;
 - e when required in writing by the Construction Manager or the Employer to do so (but not before), remove or procure the removal from the Site of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Trade Contractor or any Trade Contractor's Persons (other than any goods and materials which the Employer wishes to retain under 8.7.2 d above); and
 - f vacate the Site;
- 8.7.3. if so required by the Construction Manager, the Trade Contractor shall within 14 days of the date of termination, assign to the Employer, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Trade Contract;
- 8.7.4. no further sum shall be due to the Trade Contractor under this Trade Contract other than any amount that may become due to him under clause 8.7.6 and the Employer need not pay any sum that has already become due either:
- a insofar as the Employer has given or gives a Pay Less Notice under clause 4.9.5; or

- b if the Trade Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become Insolvent.

8.7.5. following completion of the Works and the making good of defects, an account of the following shall within 3 months thereafter be set out in a certificate issued by the Construction Manager or a statement prepared by the Employer:

- a the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 8.7.1 and, where applicable, clause 8.5.3c, and of any direct loss and/or damage caused to the Employer and for which the Trade Contractor is liable, whether arising as a result of the termination or otherwise;
- b the amount of payments made to the Trade Contractor; and
- c the total amount which would have been payable for the Works in accordance with this Trade Contract.

8.7.6. If the sum of the amounts stated under clauses 8.7.5a and 8.7.5b exceeds the amount stated under clause 8.7.5c, the difference shall be the debt payable by Trade Contractor to the Employer or, if that sum is less, by the Employer to the Trade Contractor.

8.8. Not used

8.9. Default by Employer

8.9.1. If the Employer:

- a does not pay by the final date for payment the amount due to the Trade Contractor in accordance with clause 4.9 and/or any VAT properly chargeable on that amount; or
- b interferes with or obstructs the issue of any certificate due under this Trade Contract; or
- c fails to comply with clause 7.1; or
- d fails to comply with clause 3.23,

the Trade Contractor may give to the Employer a notice specifying the default or defaults (a 'specified' default or defaults).

8.9.2. If a specified default or a specified suspension event continues for 14 days from the receipt of notice under clause 8.9.1, the Trade Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Trade Contractor's employment under this Trade Contract.

8.9.3. If the Trade Contractor for any reason does not give the further notice referred to in clause 8.9.2, but (whether previously repeated or not):

- a the Employer repeats a specified default; or
- b a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby,

then, upon or within a reasonable time after such repetition, the Trade Contractor may by notice to the Employer terminate the Trade Contractor's employment under this Trade Contract.

8.10. Insolvency of Employer

- 8.10.1. If the Employer is Insolvent, the Trade Contractor may by notice to the Employer, or the Employer may by notice to the Trade Contractor, terminate the Trade Contractor's employment under this Trade Contract;
- 8.10.2. The Employer shall immediately notify the Trade Contractor if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1;
- 8.10.3. As from the date the Employer becomes Insolvent, the Trade Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works and the design of the Trade Contractor's Designed Portion shall be suspended and an extension of time for completion shall be given under clause 2.29 equal to the period of suspension.

8.11. Termination at will

In addition to any other rights the Employer may have enabling him to terminate the employment of the Trade Contractor under the Trade Contract, the Employer may at any time by giving notice in writing to the Trade Contractor, with immediate effect, terminate the Trade Contractor's employment at will under the Trade Contract.

8.11A Termination by either Party for force majeure etc

- 8.11A.1 If, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of twelve (12) months or more by reason of one or more of the following events:

- 8.11A1.1 force majeure;
- 8.11A1.2 Employer's or Construction Manager's instructions under clause 2.16, 3.13 or 3.14 issued as a result of the negligence or default of any Statutory Undertaker;
- 8.11A1.3 loss or damage to the Works occasioned by any of the Specified Perils or Excluded Risks;
- 8.11A1.4 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat; or
- 8.11A1.5 the exercise by the United Kingdom government of any statutory power which directly affects the execution of the Works,

then either Party, subject to clause 8.11A.2, may upon the expiry of that relevant period of suspension give notice to the other that, unless the suspension ceases within 14 days after the date of receipt of that notice, he may terminate the Trade Contractor's employment under this Contract. Failing such cessation within that 14 day period, he may then by further notice terminate that employment.

- 8.11A.2 The Trade Contractor shall not be entitled to give notice under clause 8.11A.1 in respect of the matter referred to in clause 8.11A.1.3 where the loss or damage to the Works occasioned by a Specified Peril was caused by the negligence or default of the Trade Contractor or of any of the Trade Contractor's Persons.

8.12. Consequences of Termination under clauses 8.9 to 8.11

Upon any termination of the Trade Contractor's engagement under the Trade Contract pursuant to clauses 8.9, 8.10, 8.11 or 8.11A:

- 8.12.1. no further sums shall become due to the Trade Contractor otherwise than in accordance with this clause 8.12;
- 8.12.2. the Trade Contractor shall immediately:

- a cease all further work, except for such works as may have been instructed by the Employer for the protection of life or property or for safety reasons, and vacate the Site;
 - b deliver up to the Employer all drawings, details, plans, specifications, schedules, reports, calculations and other works and the designs contained in them (whether in the course of preparation or completed) in respect of the Works (including, where there is a Trade Contractor's Designed Portion, the Trade Contractor's Design Documents);
 - c deliver up to the Employer all plant, materials and other work for which the Trade Contractor has received payment;
 - d in the case of termination under clause 8.11 only, and only if required by the Construction Manager or the Employer to do so, deliver up any such goods and materials on Site at the date of termination for which the Trade Contractor has not received payment but which the Employer wishes to retain on Site;
 - e when required in writing by the Construction Manager or Employer to do so (but not before), remove or procure the removal from the Site of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Trade Contractor or any Trade Contractor's Persons (other than any goods and materials to which 8.12.2d above applies);
- 8.12.3. following vacation of the Site, the Trade Contractor shall as soon as reasonably practicable prepare and submit his final account to the Employer together with sufficient supporting information and documents as may be reasonably required;
- 8.12.4. such final account shall set out:
- a the total gross value of the Works properly executed at the date of termination and which would be payable under the Trade Contract if the Trade Contractor's employment had not been terminated;
 - b the reasonable costs of removal under clause 8.12.2e;
 - c the demonstrated cost of materials or goods properly (and not prematurely) ordered for the Works for which the Trade Contractor has paid or is legally bound to pay for and can prove ownership of at the date of termination; the Trade Contractor hereby warranting that such payment will entitle the Employer to treat such materials and goods as the sole property of the Employer without lien and/or its commitment to design fees;
 - d in the case only of termination pursuant to clause 8.9, 8.10, 8.11 or 8.11A1.3 (but, in the case of clause 8.11A1.3, only where the loss or damage to the Works was caused by the negligence or default of the Employer or any of the Employer's Persons), the reasonable and properly mitigated direct loss and/or expense incurred by the Trade Contractor as a result of the termination
 - e in the case only of termination pursuant to clause 8.9, 8.10, 8.11.1 or 8.11A1.3 (but, in the case of clause 8.11A1.3, only where the loss or damage to the Works was caused by the negligence or default of the Employer or any of the Employer's Persons) and to the extent not already included in amounts payable under 8.12.4 a, b, c or d above:
 - i) where the Works which are ongoing at the date of termination include the offsite manufacture of panels at a facility managed by the Contractor, the reasonable and unavoidable costs of keeping such facility on standby for production until the earlier of a) the expiry of three months after the date of termination; b) the date on which such facility was planned to cease production for the purposes of the Works; and c) the date on which the Contractor is able to use such facility for another contract or customer;
 - ii) Any reasonable and unavoidable costs of paying for accommodation for the Contractor's staff in the UK which will no longer be required due to the termination, for a maximum period of three months after the date of termination;

- iii) Reasonable transit costs associated with materials in transit to the Site at the date of termination; and
- iv) Reasonable costs of maintaining its design team for a maximum period of two weeks after termination in order to finish and handover all existing design work.

but for the avoidance of doubt 8.12.4 d and e above shall not include:

- (i) any loss of profit (save for any profit already earned through the carrying out of the Works), loss of opportunity or other indirect or consequential losses arising;
- (ii) any amount due to the Trade Contractor's Persons in respect of work carried out or goods or materials supplied at the date of termination (in relation to which the only amounts payable shall be the amounts calculated in accordance with clause 8.12.4a and 8.12.4c); and
- (ii) any amount due to the Trade Contractor's suppliers or subcontractors as a result of the Trade Contractor's failure to comply with clause 3.8.2;

8.12.5. if in the reasonable opinion of the Employer the Trade Contractor's final account lacks sufficient information and documents to enable the Employer to determine the final account the Employer shall be entitled to request in writing from the Trade Contractor such further information and documents as is reasonably required to allow the Employer to properly calculate the Trade Contractor's final account at the date of termination and any such requested information and documents shall be provided by the Trade Contractor not later than 28 (twenty-eight) calendar days after the Employer's first written request;

8.12.6. as soon as reasonably practicable following the receipt by the Employer of the Trade Contractor's final account the Employer and the Trade Contractor shall endeavour to reach agreement as to the final account;

8.12.7. the final payment shall be shown as a balance properly due from the Employer to the Trade Contractor or from the Trade Contractor to the Employer (as the case may be) and calculated as:

a the amount equal to the Trade Contractor's final account;

less the aggregate of:

- b any amount(s) that may be deducted and retained by the Employer from the Trade Contractor under the Trade Contract or any other agreement between the Employer and the Trade Contractor; and
- c any amounts due to the Employer from the Trade Contractor under the Trade Contract or any other agreement between the Employer from the Trade Contractor;
- d the amounts previously paid under the Trade Contract to the Trade Contractor by the Employer; and

8.12.8. the payer shall pay the payee the amount properly due in respect of the final payment calculated in accordance with clause 8.12.7 within 30 days of its submission to the payer.

9 SETTLEMENT OF DISPUTES

Mediation

9.1 Subject to Article 7, if a dispute or difference arises under this Trade Contract which cannot be resolved by direct negotiation, each Party shall give serious consideration to any request by the other to refer the matter to mediation.

Adjudication

9.2 If a dispute or difference arises under this Trade Contract which either Party wishes to refer to adjudication, the Scheme shall apply, subject to the following:

- 9.2.1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Trade Contract Particulars;
- 9.2.2 where the dispute or difference is or includes a dispute or difference relating to clause 3.17.4 and as to whether an instruction issued there under is reasonable in all the circumstances:
- a the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute;
 - b if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the instruction under clause 3.17.4 is reasonable in all the circumstances.
- 9.3 The Trade Contractor agrees that notwithstanding any dispute between the Parties, and pending resolution of such dispute pursuant to this clause 9, it shall continue to carry out the Works in accordance with this Trade Contract.

SCHEDULES

Schedule 1 Trade Contractor's Design Submission Procedure

(clause 2.10.5)

1. This Design Submission Procedure applies to any approval of an element of design which the Trade Contractor is required to procure from the Construction Manager and the Employer, including (but not limited to) where the Trade Contractor has been given the opportunity to select a similar item or design to one provided to it by (or on behalf of) the Employer. Where as part of procuring an approval, consent or permission pursuant to clause 2.1.5 the Trade Contractor is required to secure the approval of a third party to a document it has produced, the provisions of this Schedule 1 do not apply to such approval and the Trade Contractor shall be responsible for submitting the applicable document to the third party in a manner and timescale which will allow their approval.
2. Each document for which the Trade Contractor is required to secure the approval of the Construction Manager and the Employer during the course of fulfilling its obligations under this Trade Contract (including but not limited to the Trade Contractor's Design Documents) shall be submitted by the means stated in this Schedule 1, unless any specific directions as to the format, quantity and/or quality of a document is stated in the Employer's Requirements or agreed by the Parties after the date of this Trade Contract.
3. Unless otherwise agreed by the Construction Manager and the Employer in writing, the Trade Contractor shall only be entitled to submit documents for approval by the Construction Manager and the Employer as part of set design packages and only when the entirety of the documents required for that design package are ready for submission. The packages in which the Trade Contractor must submit each document are set out in the Employer's Requirements. Unless otherwise agreed in writing by the Construction Manager and the Employer any document submitted for approval by the Trade Contractor which does not form part of (and is not accompanied by the remainder of) one of the design packages set out in the Employer's Requirements, shall not be considered for approval by the Construction Manager and the Employer and its submission shall be at the Trade Contractor's own cost and risk.
4. The Trade Contractor acknowledges that it shall not be entitled to use any document it produces for procurement or in the carrying out of the Works until it has been approved in accordance with this Schedule 1.
5. The Trade Contractor shall supply the applicable document to the Construction Manager and the Employer in accordance with this Schedule 1 in sufficient time to allow the process set out to take place, acknowledging the purpose of the document. (For example if the document is to be used in a tender process, it must be submitted sufficiently far in advance of the date on which tenders are to be issued.) In the event that the Trade Contractor fails to do so it shall have no entitlement to an extension of time or any loss and/or expense arising as a result of any delay to the Works.
6. Following receipt of any document for approval from the Trade Contractor the Construction Manager and Employer shall, within the time period specified either in the Employer's Requirements or by the Construction Manager following a request by the Contractor, return one copy of that document to the Trade Contractor marked "A", "B" or "C" provided that a document shall be marked "B" or "C" only where the Construction Manager and / or Employer considers that it is not in accordance with this Trade Contract.
7. If the Construction Manager and Employer do not respond to a document submitted for approval in the time required pursuant to paragraph 6, it shall be regarded as marked "A".

8. Where the Construction Manager and /or Employer marks a document submitted for its approval "B" or "C", he shall identify by means of a written comment why he considers that it is not in accordance with this Trade Contract.
9. When a document submitted for approval by the Trade Contractor is returned by the Construction Manager and /or Employer:
 - 9.1. if it is marked "A", the Trade Contractor shall carry out the TCDP Works in strict accordance with that document;
 - 9.2. if it is marked "B", the Trade Contractor may carry out the TCDP Works in accordance with that document, provided that the Construction Manager's and Employer's comments are incorporated into it and an amended copy of it is promptly submitted to the Construction Manager and Employer; or
 - 9.3. if it is marked "C", the Trade Contractor shall take due account of the Construction Manager's and Employer's comments on it and shall either forthwith resubmit it to the Construction Manager and Employer in amended form for comment in accordance with this Schedule 1 or notify the Construction Manager and Employer under paragraph 11.
10. The Trade Contractor shall not carry out any work in accordance with a document marked "C" and the Employer shall not be liable to pay for any work within the TCDP Works executed otherwise than in accordance with documents marked "A" or "B".
11. If the Trade Contractor disagrees with a comment of the Construction Manager or Employer and considers that the document in question is in accordance with this Trade Contract, he shall within 7 days of receipt of the comment notify the Construction Manager that he considers that compliance with the comment would give rise to a Variation. Such notification shall be accompanied by a statement setting out the Trade Contractor's reasons. Upon receipt of such a notification the Construction Manager and Employer shall within 7 days either confirm or withdraw the comment and, where the comment is confirmed, the Trade Contractor shall amend and resubmit the document accordingly.
12. Provided always that:
 - 12.1. confirmation or withdrawal of a comment in accordance with paragraph 7 shall not signify acceptance by either the Construction Manager or the Employer that the relevant document or amended document is in accordance with this Trade Contract or that compliance with the Construction Manager's and /or Employer's comment would give rise to a Variation;
 - 12.2. where in relation to a comment by the Construction Manager or Employer the Contractor does not notify him in accordance with paragraph 11, the comment in question shall not be treated as giving rise to a Variation; and
 - 12.3. neither compliance with the design submission procedure in this Schedule nor with the Construction Manager's and/or Employer's comments shall diminish the Trade Contractor's obligations to ensure that documents it produces and the design of the TCDP Works are in accordance with this Trade Contract.
13. Where any document submitted for approval by the Construction Manager and Employer is returned marked "A" or "B", the Trade Contractor shall be responsible for circulating copies of that document to all parties involved in that part of the Works, including any comments which accompanied the document, noting where this document supersedes a previous version.

Schedule 2 – Variation Quotation

1. Submission of Variation Quotation

- 1.1. Any instruction of the Construction Manager requesting a Variation Quotation shall provide sufficient information to enable the Trade Contractor to provide that quotation, which shall comprise the matters set out in paragraph 2 of this Part 2, in compliance with the instruction. If the Trade Contractor reasonably considers that the information provided is not sufficient, then, not later than 7 days from the receipt of the instruction, he shall notify the Construction Manager who shall supply that information.
- 1.2. The Trade Contractor shall submit his Variation Quotation to the Construction Manager in compliance with the instruction not later than 21 days from the later of:
 - 1.2.1. the date of receipt of the instruction; or
 - 1.2.2. the date of receipt by the Trade Contractor of sufficient information as referred to in paragraph 1.1.
- 1.3. The Variation Quotation shall remain open for acceptance by the Construction Manager for 14 days from its receipt by him.
- 1.4. The work for which the Trade Contractor has submitted his Variation Quotation shall not be carried out by the Trade Contractor until receipt by the Trade Contractor of the Confirmed Acceptance issued by the Construction Manager under paragraph 3.

2. Content of the Variation Quotation

The Variation Quotation shall separately comprise:

- 2.1. the amount to be taken into account in the calculation of the Final Trade Contract Sum (other than any amount to which paragraph 2.3 refers) including the effect of the instruction on any other work, supported by all necessary calculations, which shall be made by reference, where relevant, to the rates and prices in the Detailed Price Breakdown and including also, where appropriate, allowances for any adjustment of preliminary items;
- 2.2. any adjustment to the Completion Period for the Works and/or such works in any Section (including, where relevant, a shorter Completion Period than any Completion Period given in the Trade Contract Particulars) to the extent that such adjustment is not included in any revision of a Completion Period made by the Construction Manager under clause 2.29 or in any other Confirmed Acceptance;
- 2.3. the amount to be paid in respect of direct loss and/or expense that is not included in any other Confirmed Acceptance or in any ascertainment under clause 4.18 or 5.3.3;
- 2.4. a fair and reasonable amount in respect of the cost of preparing the quotation; and
- 2.5. where specifically required by the instruction, indicative information in statements on:
 - 2.5.1. the additional resources (if any) required to carry out the Variation; and
 - 2.5.2. the method of carrying out the Variation.

Each part of the quotation shall contain supporting information that is reasonably sufficient to enable that part to be evaluated by the Construction Manager.

3. Acceptance of the Variation Quotation

If the Employer (or the Construction Manager on the Employer's behalf in accordance with clause 3.1.3) wishes to accept a Variation Quotation, the Employer or Construction Manager shall within the period for acceptance confirm such acceptance by an instruction to the Trade Contractor stating:

- 3.1. the adjustment to be made in calculating the Final Trade Contract Sum, including any amounts to which paragraphs 2.3 and 2.4 refer, for complying with the instruction; and
- 3.2. any revised period or periods for completion of the Works or (where applicable) such works in the relevant Section.

4. Variation Quotation Not Accepted

- 4.1. If a Variation Quotation is not accepted by the expiry of the period for acceptance, the Employer (or the Construction Manager on the Employer's behalf in accordance with clause 3.1.3) shall on the expiry of that period either:
 - 4.1.1. instruct that the Variation is to be carried out and is to be valued under the Valuation Rules (clauses 5.6 to 5.12); or
 - 4.1.2. instruct that the Variation is not to be carried out.

5. Costs of Variation Quotation

If a Variation Quotation is not accepted, a fair and reasonable amount shall be added to the Trade Contract Sum in respect of the cost of its preparation provided that it has been prepared on a fair and reasonable basis. Non-acceptance by the Employer or the Construction Manager of a quotation shall not of itself be evidence that the quotation was not prepared on such a basis.

6. Restriction on Use of Variation Quotation

Unless the Construction Manager or the Employer issues a Confirmed Acceptance of a Variation Quotation, neither the Construction Manager nor the Employer nor the Trade Contractor may use the quotation for any purpose whatsoever.

7. Time Periods

The Construction Manager and the Trade Contractor may agree to increase or reduce any period referred to in clause 5.3.1 or this Schedule; confirmation of such agreement shall be notified to the Trade Contractor by the Construction Manager.

Schedule 3 Collateral Warranty from the Trade Contractor

dated []

Parties

[] (registration number []) [of] [whose registered office is at] [] (the **Trade Contractor**)

[] (registration number []) [of] [whose registered office is at] [] (the **Beneficiary**)

Introduction

- (A) The Client has procured the carrying out of the Project (as hereinafter defined).
- (B) The Trade Contractor carries on business as a *[insert trade contractor's discipline]* and has been appointed as such by the Client to carry out the Works upon the terms and conditions contained in the Trade Contract (both as hereinafter defined).
- (C) The Beneficiary has an interest/will have an interest in the Property or a part or parts of the Property and/or the Project and has entered into the Agreement (as hereinafter defined) in respect of the Property and/or the Project.
- (D) The Trade Contractor has agreed to enter into this warranty in favour of the Beneficiary.

Operative clauses

1 Definitions and interpretation

1.1 In this warranty the following terms have the following meanings unless inconsistent with the context:

Agreement means the [finance] [forward purchase] agreement between the Beneficiary and the Client dated [] whereby the Beneficiary has agreed to [provide finance for the carrying out and completion of the Project] [purchase the Property [and provide finance for the carrying out and completion of the Project]];

Client means Vastint UK B.V. a company incorporated under the laws of the Netherlands (trade register no. 34363986) and whose registered address is at Hettenheuvelweg 51, 1101 BM Amsterdam Zuidoost, The Netherlands ;

Documents means all drawings plans models specifications schedules reports calculations and other works (including without limitation any such items retained on or in any computer software or other electronic medium) which have been or will be prepared by or on behalf of the Trade Contractor in the course of the carrying out of the Works whether in existence or to be made or produced and including all amendments and additions to them;

Group Company means any subsidiary company or holding company of the Beneficiary or another subsidiary or holding company of such company as subsidiary and holding company are defined in section 1159 Companies Act 2006;

Moral Rights means moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988;

Practical Completion means the date of practical completion of the whole of the Works pursuant to the Trade Contract;

Project means the development of the Property to create a mix of uses including residential and commercial units all as more particularly described in the Trade Contract;

Property means the Plot [xx] of the Sugar House Island development, being constructed on land to the south of High Street, London E15, bordered by the River Lea and the Three Mills Canal, as more particularly described in the Building Contract;

Trade Contract means the contract for the Works entered into between the Client and the Trade Contractor dated [] and any further agreement(s) varying or supplementing it;

Working Day means any day except Saturday Sunday and bank or other public holidays in England;

Works means the [insert description] at the Property to be carried out pursuant to the Trade Contract.

- 1.2 The clause headings in this warranty are for convenience only and do not affect its interpretation.
- 1.3 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.4 Words of one gender include both genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.
- 1.6 References in this warranty to numbered clauses are references to the relevant clause in this warranty.

2 Consideration

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Trade Contractor (receipt of which the Trade Contractor hereby acknowledges) the Trade Contractor covenants to the Beneficiary as set out in this warranty.

3 Duty of care

The Trade Contractor warrants and undertakes to the Beneficiary that:

- 3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Trade Contract; and
- 3.2 to the extent that it has carried out any design of the Works or any part of the Works it has exercised and will continue to exercise all the reasonable skill and care to be expected of a properly qualified and competent designer of the relevant discipline experienced in the carrying out of such work for projects of a similar size scope value character and complexity to the Works; and
- 3.3 the Works have been or will be carried out in a good and workmanlike manner; and
- 3.4 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Trade Contractor's responsibilities in relation to the Works PROVIDED THAT the Trade Contractor shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if the Beneficiary had been named in place of the Client in the Trade Contract instead of being a party to this warranty; and

- 3.5 the Beneficiary shall be deemed to have relied and shall continue to rely upon the Trade Contractor's skill and judgement in respect of all matters which lie within the scope of the Trade Contractor's responsibilities in relation to the Works.

4 Prohibited materials

- 4.1 Without prejudice to the generality of clause 3 the Trade Contractor warrants that it has not and shall not use and has exercised and shall continue to exercise the standard of skill and care required by clause 3 to ensure that it has not and shall not specify authorise cause or allow to be used in the Works any products or materials which at the time of their specification, authorisation or use:
- 4.1.1 do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
- 4.1.2 are generally known to the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
- 4.1.3 do not comply with the guidance set out in the publication by Ove Arup and Partners entitled "Good Practice in the Selection of Construction Materials"; and /or
- 4.1.4 are specifically prohibited under the Trade Contract.
- 4.2 The Trade Contractor will as soon as reasonably practicable notify the Beneficiary if it becomes aware of any proposed or actual specification and /or use in the Works of any materials which do not comply with clause 4.1.

5 Copyright and moral rights

- 5.1 The Trade Contractor hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Project, the Works and/or the Property including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project, the Works and/or the Property PROVIDED ALWAYS that the Trade Contractor shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Trade Contractor.
- 5.2 The licence referred to in clause 5.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding any termination of the Trade Contract and/or the Trade Contractor's employment under the Trade Contract.
- 5.3 The Trade Contractor warrants that the use of the Documents for the purposes of the Project and/or pursuant to the licence granted pursuant to clause 5.1 shall not infringe the rights of any third party.
- 5.4 The Trade Contractor waives absolutely all Moral Rights the Trade Contractor may have in the Documents and/or the Works and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents and/or the Works.
- 5.5 When requested to do so by the Beneficiary the Trade Contractor shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Trade Contractor's reasonable copying charges in connection with complying with such request.

6 Insurance

- 6.1 The Trade Contractor shall effect and maintain professional indemnity insurance in the sum of [] pounds (£ []) [for each and every claim] [for each occurrence of series of occurrences arising out of each and every event] [in the aggregate for each year of insurance] [PROVIDED THAT such limit of indemnity may be [in the aggregate for each year of insurance] [[] pounds (£ [])] in respect of claims for pollution contamination and date recognition] without unusual or onerous conditions or excesses with reputable insurers carrying on business in the EU with effect from the date of commencement of the Works and for a period expiring no earlier than 12 years from Practical Completion PROVIDED THAT such insurance remains available to organisations of equivalent size and type to the Trade Contractor's practice/organisation at commercially reasonable rates and on commercially reasonable terms.
- 6.2 The Trade Contractor undertakes to provide to the Beneficiary on demand from time to time such evidence as the Beneficiary may reasonably require to satisfy himself that the insurance required by clause 6.1 is being maintained.
- 6.3 The Trade Contractor shall inform the Beneficiary if the insurance required by clause 6.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Trade Contractor and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.
- 6.4 The Trade Contractor shall not compromise settle or waive any insurance claim it may have relating to any liability under this warranty without the Beneficiary's prior consent PROVIDED THAT nothing in this clause shall prevent the Trade Contractor's insurers from taking over (in the Trade Contractor's name) the defence of any claim made by the Beneficiary under this warranty and (in that capacity) from conducting and settling it as they see fit.

7 Assignment

- 7.1 The Trade Contractor may not without the consent of the Beneficiary assign its rights under this warranty.
- 7.2 The Beneficiary may (without the consent of the Trade Contractor and the Client) assign the benefit of this warranty and/or its rights under this warranty:
- 7.2.1 to any mortgagee and by way of re-assignment on redemption;
- 7.2.2 to any Group Company;
- 7.2.3 on two other occasions only.
- 7.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 7.2.
- 7.4 The Trade Contractor undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

8 Notices

- 8.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered office for the time being.

8.2 Notices may be served by:

8.2.1 personal delivery; or

8.2.2 pre-paid registered or recorded delivery mail.

8.3 Notices and communications shall be deemed to have been served or received in the case of:

8.3.1 personal delivery on the date of delivery; and

8.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted.

9 Continuing effect

Notwithstanding the completion of the Works or the Project or any part of the Works or the Project this warranty shall continue to have effect.

10 Miscellaneous

10.1 Nothing in this warranty shall limit or affect any other rights or remedies (whether under any contract, at law, at equity or otherwise) which the Beneficiary would have against the Trade Contractor in the absence of this warranty.

10.2 The Trade Contractor's liability under this warranty shall not be released, diminished or in any other way affected by:

10.2.1 the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Works or to inspect any documents relating to the Property and/or the Works on behalf of the Beneficiary or the failure to appoint such a person; or

10.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.

10.3 No action or proceedings for any breach of this warranty shall be commenced against the Trade Contractor after the expiry of 12 years following Practical Completion.

10.4 The Trade Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any term in the Trade Contract and to raise the equivalent rights in defence of its liability (excluding rights of set off and counterclaim) as it would have against the Beneficiary under the Trade Contract had the Beneficiary been named as joint client with the Employer under the Trade Contract.

11 Contracts (Rights of Third Parties) Act 1999

Nothing in this warranty confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

12 Law

This warranty shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

This warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

[Execution blocks to be inserted in signature version]

Schedule 4 Third Party Rights

For the purposes of this Schedule 4 the term Beneficiary shall, in each case, mean the Third Party named in a Nominating Notice issued pursuant to clause 7.4 of the Trade Contract.

1 Duty of care

The Trade Contractor warrants and undertakes to the Beneficiary that:

- 1.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of this Trade Contract; and
- 1.2 it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent designer of the relevant discipline experienced in the carrying out of such work for projects of a similar size, scope, value, character and complexity to the Works;
- 1.3 the Works have been or will be carried out in a good and workmanlike manner; and
- 1.4 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Trade Contractor's responsibilities in relation to the Project PROVIDED THAT the Trade Contractor shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if the Beneficiary had been named in place of the Employer in the Trade Contract instead of being a beneficiary to this Schedule 4; and
- 1.5 the Beneficiary shall be deemed to have relied and shall continue to rely upon the Trade Contractor's skill and judgement in respect of all matters which lie within the scope of the Trade Contractor's responsibilities in relation to the Works.

2 Prohibited materials

- 2.1 Without prejudice to the generality of paragraph 1 the Trade Contractor warrants that it has not and shall not use and has exercised and shall continue to exercise the standard of skill and care required by paragraph 1 to ensure that it has not and shall not specify authorise cause or allow to be used in the Works any products or materials which at the time of their specification, authorisation or use:
 - 2.1.1 do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
 - 2.1.2 are generally known to the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
 - 2.1.3 do not comply with the guidance set out in the publication by Ove Arup and Partners entitled "Good Practice in the Selection of Construction Materials"; and /or
 - 2.1.4 are specifically prohibited under the Trade Contract.
- 2.2 The Trade Contractor will as soon as reasonably practicable notify the Beneficiary if it becomes aware of any proposed or actual specification and/or use in the Works of any materials which do not comply with paragraph 2.1.

3 Copyright and moral rights

- 3.1 The Trade Contractor hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Trade Contractor's Design Documents for any purpose whatsoever connected with the Works and/or the Site including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Works and/or the Site PROVIDED THAT the Trade Contractor shall not be liable for any use by the Beneficiary of any of the Trade Contractor's Design Documents for any purpose other than that for which they were prepared and provided by the Trade Contractor.

- 3.2 The Trade Contractor represents and warrants to the Beneficiary that the Trade Contractor's Design Documents do not and will not infringe any intellectual property rights of any third party; and the Trade Contractor shall be liable for any costs, losses and/or expenses incurred by the Beneficiary due in whole or part to the Trade Contractor's Design Documents being determined to have infringed another's copyright and/or other intellectual property rights.
- 3.3 The licence referred to in paragraph 3.1:
- a carries the right to grant sub-licences and shall be transferable to third parties; and
 - b shall subsist notwithstanding any suspension or determination of the Trade Contractor's employment under this Trade Contract and/or the termination of this contract in either case for any reason whatsoever.
- 3.4 The Trade Contractor hereby irrevocably waives any rights it may have by virtue of Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988 both in the Trade Contractor's Design Documents and the Works.

4 Professional Indemnity Insurance

The Trade Contractor shall effect and maintain professional indemnity insurance in the sum of ten million pounds (£10,000,000) for each and every claim without unusual or onerous conditions or excesses with reputable insurers carrying on business in the EU with effect from the date of commencement of the Works and for a period expiring no earlier than 12 years from Practical Completion PROVIDED THAT such insurance remains available to organisations of equivalent size and type to the Trade Contractor's practice/organisation at commercially reasonable rates and on commercially reasonable terms.

5 Assignment

- 5.1 The Trade Contractor may not without the consent of the Beneficiary assign its rights under this Schedule 4.
- 5.2 The Beneficiary may (without the consent of the Trade Contractor and the Employer) assign the benefit of this Schedule 4 and/or its rights under this Schedule 4:
- 5.2.1 to any mortgagee and by way of re-assignment on redemption;
 - 5.2.2 to any Group Company;
 - 5.2.3 on two other occasions only,
- and the Beneficiary agrees to provide notice to the Trade Contractor on each occasion such an assignment is effect.
- 5.3 In this Schedule 4 references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under paragraph 5.2.
- 5.4 The Trade Contractor undertakes with the Beneficiary not to contend that any person to whom the benefit of this Schedule 4 may be assigned will be precluded from recovering under this Schedule 4 any loss resulting from any breach of this Schedule 4 either by reason that the person is an assignee and not the original beneficiary of this Schedule 4 or by reason that the Beneficiary named in the Nominating Notice shall escape loss resulting from such breach by reason of the disposal of its interest in the Investigation.

6 Notices

- 6.1 Any notice to be given under this Schedule 4 shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered office for the time being.
- 6.2 Notices may be served by:
- 6.2.1 personal delivery; or
 - 6.2.2 pre-paid registered or recorded delivery mail.
- 6.3 Notices and communications shall be deemed to have been served or received in the case of:

- 6.3.1 personal delivery on the date of delivery; and
- 6.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted.

7 Continuing effect

Notwithstanding the completion of the Works or any part of the Works this Schedule 4 shall continue to have effect.

8 Miscellaneous

- 8.1 Nothing in this Schedule 4 shall limit or affect any other rights or remedies (whether under any contract, at law, at equity or otherwise) which the Beneficiary would have against the Trade Contractor in the absence of this Schedule 4.
- 8.2 The Trade Contractor's liability under this Schedule 4 shall not be released, diminished or in any other way affected by:
 - 8.2.1 the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Works or to inspect any documents relating to the Property and/or the Works on behalf of the Beneficiary or the failure to appoint such a person; or
 - 8.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.
- 8.3 No action or proceedings for any breach of this Schedule 4 shall be commenced against the Trade Contractor after the expiry of 12 years following the date of Substantial Completion of the Investigation.
- 8.4 The Trade Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any term in the Trade Contract and to raise the equivalent rights in defence of its liability (excluding rights of set off and counterclaim) as it would have against the Beneficiary under the Trade Contract had the Beneficiary been named as joint client with the Employer under the Trade Contract.

9 Law

This Schedule 4 shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

Schedule 5 Nominating Notice

TO: *[insert contractor's name]* a company incorporated under the laws of England and Wales with registered number *[insert registered number]* and whose registered office address is at *[insert registered office address]*.

FROM: **VASTINT UK B.V.**, a company incorporated under the laws of the Netherlands (trade register no. 34363986) and whose registered address is at Hettenheuvelweg 51, 1101 BM Amsterdam Zuidoost, The Netherlands (**Vastint**).

DATE: *[insert date only when notice is signed and issued]*

Dear Sirs

Plot MU2 at Sugar House Island, off Sugar House Lane, Stratford, London E15 (the Project)

You have been appointed as a trade contractor by Vastint UK B.V. under a trade contract dated *[insert date]* (the **Contract**) in respect of the Project.

Schedule 4 of the Contract (**Schedule 4**) sets out the benefits and rights which may be enforced by a third party on the issue of this notice and Vastint hereby nominates *[beneficiary's name]* of *[beneficiary's registered address]* as a third party (the **Third Party**) entitled to enforce the benefits and rights set out in Schedule 4 in accordance with the terms of the Contract as from the date of this notice.

The Third Party has or has acquired an interest in the Project or any part or parts thereof and/or is providing finance for the Project or any part or parts thereof.

Yours faithfully

.....

For and on behalf of Vastint UK B.V.

Schedule 6 Sub-contractor collateral warranties
dated []

Parties

- (1) [] (registration number []) [of] [whose registered office is at] []
[] (the **Sub Contractor**)
- (2) [] (registration number []) [of] [whose registered office is at] []
[] (the **Beneficiary**)

Introduction

- (A) The Sub Contractor carries on business as a [] sub-contractor and has been appointed as such by the Trade Contractor to carry out the Sub Contract Works upon the terms and conditions contained in the Sub Contract (as hereinafter defined).
- (B) The Beneficiary has an interest/will have an interest in the Property or a part or parts of the Property and/or the Project and has entered into the Agreement (as hereinafter defined) in respect of the Property.
- (C) The Sub Contractor has agreed to enter into this warranty in favour of the Beneficiary.

Operative clauses

1 Definitions and interpretation

- 1.1 In this warranty the following terms have the following meanings unless inconsistent with the context:

[Agreement] means the [purchase agreement] [agreement for lease] between the Beneficiary and the Client dated [] whereby the Beneficiary has agreed to [purchase the whole or part or parts of the Property [take a lease of the whole or part or parts of the Property] following completion of the Project;]

[Client] means [] (registration number []) [of] [whose registered office is at] []
[;]

Documents means all drawings plans models specifications schedules reports calculations and other works (including without limitation any such items retained on or in any computer software or other electronic medium) which have been or will be prepared by or on behalf of the Sub Contractor in the course of the carrying out of the Sub Contract Works whether in existence or to be made or produced and including all amendments and additions to them;

Group Company means any subsidiary company or holding company of the Beneficiary or another subsidiary or holding company of such company as subsidiary and holding company are defined in section 1159 Companies Act 2006;

Moral Rights means moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988;

Practical Completion means the date of practical completion of the whole of the Works pursuant to the Trade Contract;

Project means the development of the Property to create a mix of uses including residential and commercial units all as more particularly described in the Trade Contract;

Property means Plot MU2 of the Sugar House Island development on land to the south of High Street, London E15, bordered by the River Lea and the Three Mills Canal, as more particularly described in the Sub Contract;

Sub Contract means the [] entered into between the Trade Contractor and the Sub Contractor dated [] (and any further agreement(s) varying or supplementing it) for the Sub Contract Works;

Sub Contract Works means the sub contract works of [*insert description of sub-contract works*] to be carried out by the Sub Contractor under the Sub Contract in relation to the Project;

Trade Contract means the contract for the Works dated [] and entered into between the Client and the Trade Contractor and any further agreement(s) varying or supplementing it;

Trade Contractor means [] (registration number []) [of] [whose registered office is at] [];

Working Day means any day except Saturday Sunday and bank or other public holidays in England;

Works means [*insert description of the works*] at the Property to be carried out pursuant to the Trade Contract.

- 1.2 The clause headings in this warranty are for convenience only and do not affect its interpretation.
- 1.3 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.4 Words of one gender include both genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.
- 1.6 References in this warranty to numbered clauses are to a reference to the relevant clause in this warranty.

2 Consideration

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Sub Contractor (receipt of which the Sub Contractor hereby acknowledges) the Sub Contractor covenants with the Beneficiary as set out in this warranty.

3 Duty of care

The Sub Contractor warrants and undertakes to the Beneficiary that:

- 3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Sub Contract; and
- 3.2 to the extent that it has carried out any design of the Sub Contract Works or any part of the Sub Contract Works it has exercised and will continue to exercise all the reasonable skill and care to be expected of a properly qualified and competent sub-contractor and designer experienced in the carrying out of such work for projects of a similar size scope value character and complexity to the Sub Contract Works; and
- 3.3 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Sub Contractor's responsibilities in relation to the Project; and
- 3.4 the Beneficiary shall be deemed to have relied and shall continue to rely upon the Sub Contractor's skill and judgement in respect of all matters which lie within the scope of the Sub Contractor's responsibilities in relation to the Project.

4 Prohibited materials

- 4.1 Without prejudice to the generality of clause 3 the Sub Contractor warrants that it has not and shall not use and has exercised and shall continue to exercise the standard of skill and care required by clause 3.2 to ensure that it has not and shall not specify authorise cause or allow to be used in the Sub Contract Works any products or materials which at the time of their specification, authorisation or use:
- 4.1.1 do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrèment Certificate); and/or
- 4.1.2 are generally known to the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
- 4.1.3 do not comply with the guidance set out in the publication by Ove Arup and Partners entitled "Good Practice in the Selection of Construction Materials"; and /or
- 4.1.4 are specifically prohibited under the Sub Contract.
- 4.2 The Sub Contractor will as soon as reasonably practicable notify the Beneficiary if it becomes aware of any proposed or actual specification and /or use in the Project of any materials which do not comply with clause 4.1.

5 Step-in¹

- 5.1 The Sub Contractor covenants with the Beneficiary that if an event of default by the Trade Contractor shall occur under the Trade Contract at any time the Sub Contractor will, if so required by notice in writing given by the Beneficiary in accordance with clauses 5.4.1 to 5.4.3 inclusive accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor upon the terms and conditions of the Sub Contract and the Trade Contractor acknowledges that the Sub Contractor shall be entitled to rely on the notice given to the Sub Contractor by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.
- 5.2 The Sub Contractor hereby covenants that it will not exercise nor seek to exercise any right to terminate or treat as terminated the Sub Contract and/or its employment or discontinue or suspend the performance of any of its obligations under the Sub Contract without first giving to the Beneficiary prior written notice specifying the Sub Contractor's ground for terminating or treating as terminated the Sub Contract and/or its employment and/or discontinuing or suspending its performance under the Sub Contract. If the grounds are that sums which are due have not been paid by the final payment date and no effective notice to withhold payment has been given the Sub Contractor shall give not less than 10 Working Days' notice otherwise the Sub Contractor shall give 20 Working Days' notice.
- 5.3 Compliance by the Sub Contractor with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Trade Contractor giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Sub Contractor from exercising its rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provision of clause 5.4.
- 5.4 Within the relevant notice period referred to in clause 5.2 the Beneficiary or its appointee may give written notice to the Sub Contractor:
- 5.4.1 acknowledging that it assumes all the obligations of the Trade Contractor;
- 5.4.2 requiring the Sub Contractor to continue with the performance of its duties and obligations under the Sub Contract;

¹ Only required where collateral warranty is provided in favour of Employer under the Trade Contract.

- 5.4.3 undertaking unconditionally to the Sub Contractor to pay to the Sub Contractor within 5 Working Days after the date of receipt of the notice under this clause 5.4 any sums which have become properly due and payable to the Sub Contractor under the Sub Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments properly due to the Sub Contractor.
- 5.5 In the event of the Beneficiary or the appointee giving notice to the Sub Contractor in accordance with clause 5.4 the Sub Contract shall continue in full force and effect and in all respects as if the Sub Contract had been made between the Sub Contractor and the Beneficiary or its appointee (as applicable) to the exclusion of the Contractor (but without prejudice to any rights of recovery as between the Sub Contractor and the Trade Contractor) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination discontinuance or suspension.
- 5.6 The Trade Contractor confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.

6 Copyright and moral rights

- 6.1 The Sub Contractor hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Project and/or the Property including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project and/or the Property PROVIDED ALWAYS that the Sub Contractor shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Sub Contractor.
- 6.2 The licence referred to in clause 6.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding any termination of the Sub Contract or the Sub Contractor's employment under the Sub Contract.
- 6.3 The Sub Contractor warrants that the use of the Documents for the purposes of the Project and/or pursuant to the licence granted pursuant to clause 6.1 shall not infringe the rights of any third party.
- 6.4 The Sub Contractor waives absolutely all Moral Rights the Sub Contractor may have in the Documents and/or the Sub Contract Works and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents and/or the Sub Contract Works.
- 6.5 When requested to do so by the Beneficiary the Sub Contractor shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Sub Contractor's reasonable copying charges in connection with complying with such request.

7 Insurance

- 7.1 The Sub Contractor shall effect and maintain [professional indemnity insurance] [and] [product liability insurance] in the sum of [] pounds (£ []) [for each and every claim] [for each occurrence of series of occurrences arising out of each and every event] [in the aggregate for each year of insurance] without unusual or onerous conditions or excesses with reputable insurers carrying on business in the EU with effect from the date of commencement of the Sub Contract Works and for a period expiring no earlier than 12 years from Practical Completion PROVIDED THAT such insurance remains available to organisations of equivalent size and type to the Sub Contractor's practice/organisation at commercially reasonable rates and on commercially reasonable terms.

- 7.2 The Sub Contractor undertakes to provide to the Beneficiary on demand from time to time such evidence as the Beneficiary may reasonably require to satisfy himself that the insurance required by clause 7.1 is being maintained.
- 7.3 The Sub Contractor shall inform the Beneficiary if the insurance required by clause 7.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Sub Contractor and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.
- 7.4 The Sub Contractor shall not compromise settle or waive any insurance claim it may have relating to any liability under this warranty without the Beneficiary's prior consent PROVIDED THAT nothing in this clause shall prevent the Sub Contractor's insurers from taking over (in the Sub Contractor's name) the defence of any claim made by the Beneficiary under this warranty and (in that capacity) from conducting and settling it as they see fit.

8 Assignment

- 8.1 The Sub Contractor may not without the consent of the Beneficiary assign its rights under this warranty.
- 8.2 The Beneficiary may (without the consent of the Sub Contractor) assign its rights under this warranty:
- 8.2.1 to any mortgagee and by way of re-assignment on redemption;
 - 8.2.2 to any Group Company;
 - 8.2.3 on two other occasions only.
- 8.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 8.2.3.
- 8.4 The Sub Contractor undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

9 Notices

- 9.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered office for the time being.
- 9.2 Notices may be served by:
- 9.2.1 personal delivery; or
 - 9.2.2 pre-paid registered or recorded delivery mail.
- 9.3 Notices and communications shall be deemed to have been served or received in the case of:
- 9.3.1 personal delivery on the date of delivery; and
 - 9.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted.

10 Continuing effect

Notwithstanding the completion of the Project or any part of the Project this warranty shall continue to have effect.

11 Miscellaneous

- 11.1 Nothing in this warranty shall limit or affect any other rights or remedies (whether under any contract, at law, at equity or otherwise) which the Beneficiary would have against the Sub Contractor in the absence of this warranty.
- 11.2 The Sub Contractor's liability under this warranty shall not be released, diminished or in any other way affected by:
 - 11.2.1 the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Sub Contract Works or to inspect any documents relating to the Property and/or the Sub Contract Works on behalf of the Beneficiary or the failure to appoint such a person; or
 - 11.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.
- 11.3 No action or proceedings for any breach of this warranty shall be commenced against the Sub Contractor after the expiry of 12 years following Practical Completion.
- 11.4 The Sub Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any term in the Sub Contract and to raise the equivalent rights in defence of its liability (excluding rights of set off and counterclaim) as it would have against the Beneficiary under the Sub Contract had the Beneficiary been named as joint client with the Trade Contractor under the Sub Contract.

12 Contracts (Rights of Third Parties) Act 1999

Nothing in this warranty confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

13 Law

This warranty shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

This warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

[insert appropriate execution clauses]

[insert]

[insert]

Schedule 8 Contract Sum Analysis

[insert]

Schedule 9	Part 1 – Performance Bond
	[tbc]
	Part 2 – Parent Company Guarantee
	[tbc]