

20-20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED

SECTION A Preliminary Information

16-17/3
21/07/21

SECTION B Project Information

EMPLOYERS REQUIREMENTS

SECTION A Contract Sum and Conditions

APPENDIX 1 Potential List
for

APPENDIX 2 JCT Design and Build Contract 2019
Special Conditions

PROPOSED CLADDING REMEDIAL WORKS TO 20-20 HOUSE SKINNER LANE LEEDS LS7 1BB

DECEMBER 2021

SECTION 1 Conditions of Contract 1/1-1/13

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SECTION 4 Contract Sum Analysis 20-20 House (Residential Management) Limited Management Office 20-20 House Skinner Lane Leeds LS7 1BD

APPENDIX 1 Document List

APPENDIX 2 JCT Design and Build Contract 2016 Special Conditions

Monmouth and Partners Limited Chartered Quantity Surveyors 21 Kings Road Brinsoppe Leeds LS16 9JN

Principal Designer GWP Architecture Limited Broken House 1 Lidget Lane Leeds LS3 1PO

Project Design

D The Employer has commissioned the preparation of a project design, details of which are included within the Employers Requirements

The design has been approved by the Employer and forms part of the Employers Requirements

Planning Application

L The Planning Application will be submitted by the Main Contractor and conditions arising will be discharged by the Main Contractor and where necessary prior to the works commencing on site.

SECTION 1

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CONDITIONS OF CONTRACT

Project Particulars

- A The project comprises cladding remedial works to block of residential flats including associated works

Site Location

- B The project is located at 20-20 House, Skinner Lane, Leeds, LS7 1BB

Names of Parties

- C The names and addresses of the parties to be named in the contract are as follows:-

Employer:

20-20 House (Residential Management) Limited
Management Office
20-20 House
Skinner Lane
Leeds LS7 1BB

Employers Agent :

Colin S Charlesworth and Partners Limited
Chartered Quantity Surveyors
21 Kings Road
Bramhope
Leeds LS16 9JN

Principal Designer :

GWP Architecture Limited
Bracken House
1 Lidgett Lane
Leeds LS8 1PQ

Project Design

- D The Employer has commissioned the preparation of a project design, details of which are included within the Employers Requirements

The design has been approved by the Employer and forms part of the Employers Requirements

Planning Application

- E The Planning Application will be submitted by the Main Contractor and conditions arising will be discharged by the Main Contractor and where necessary prior to the works commencing on site.

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Contractors Role

- A The Contractor shall be entirely responsible for the design and construction of the works and shall include in his tender for all items necessary to complete the whole of the works to the satisfaction of the Employer

Contract Documents

- B The contract documents are listed in Appendix 1 of this document

Conditions of Contract

- C The Articles of Agreement and Conditions of Contract shall be the Design and Build Contract 2016 Edition issued by the Joint Contracts Tribunal and the Conditions thereof are to be read as incorporated herein together with the Schedules annexed to the Conditions

D For the purpose of pricing, sub-clauses not shown shall be deemed to be included in the main clause

Please note : The standard form of Contract is to be altered by the Special Conditions Document contained in Appendix 2 of this document, including contract amendments and additional conditions :

Part 1 – Amendments (Pages 1 to 19)

Part 2 – Additional Conditions (Pages 20 to 27)

Articles of Agreement - Recitals

D **First Recital**

The Employer wishes to have the design, construction, completion and defects rectification for the cladding remedial works to a block of residential flats including associated works (“the Works”) and the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements (“the Employer’s Requirements”).

Second Recital

In response to the Employer’s Requirements the Contractor has supplied to the Employer:

Contract Sum Analysis (see Section 3 of this document)

Which he will adopt for carrying out and completing the Works in accordance with the Contract including its Conditions and Schedules and the additional Special Conditions as stated above (“the Conditions”).

Conditions of Contract (contd)

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Third Recital

- A The Employer has examined the Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements

Fourth Recital

- B For the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars

Fifth Recital

- C The works are not divided into Sections and Fifth Recital is deleted

Sixth Recital

- D Framework Agreement – Not Applicable

Seventh Recital

- E Whether any of Supplemental Provisions 1 to 10 apply is stated in the Contract Particulars

Articles

Now it is hereby agreed as follows

F **Article 1: Contractor's Obligations**

The Contractor shall complete the design for the Works and carry out and complete the construction of the Works in accordance with the Contract Documents.

G **Article 2: Contract Sum**

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions, the VAT exclusive sum of ***One Million Five Hundred and Four Thousand Three Hundred and Eighty Pounds and One Penny (£ 1,504,380.01)*** ("the Contract Sum") or such other sum as shall become payable under this Contract.

Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and

any disputes or differences in connection with the enforcement of any decision of an Adjudicator

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A Article 3: Employer's Agent

For the purposes of this Contract the Employer's Agent is Colin S Charlesworth and Partners Ltd, 21 Kings Road, Bramhope, Leeds, LS16 9JN or such other person as the Employer shall nominate in his place.

Except to the extent that the Employer may otherwise specify by written notice to the Contractor, the Employer's Agent shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and otherwise to act for the Employer under any of the Conditions.

B Article 4: Employer's Requirements and Contractors' Proposals

The Employer's Requirements, the Contractor's Proposals and the Contract Sum Analysis are those referred to in the Contract Particulars.

C Article 5: Principal Designer

The Principal Designer for the purposes of the CDM Regulations is GWP Architecture Ltd, Bracken House, 1 Lidgett Lane, Leeds, LS8 1PQ or such replacement as the Employer at any time appoints to fulfil that role

D Article 6: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role

E Article 7: Adjudication

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

F Article 8: Arbitration

Where Article 8 applies, then, subject to Article 7 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.8 and the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR). The exceptions to this Article 8 are:

- any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and
- any disputes or differences in connection with the enforcement of any decision of an Adjudicator

A **Article 9: Legal Proceedings**

Subject to Article 7 and (where it applies) to Article 8, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract

B **Article 10 : Incorporation of Special Conditions**

The Recitals, Articles, Contract Particulars, Conditions and Schedules are subject to the Special Conditions (see Appendix 2 of this document)

Contract Particulars

C The contract particulars will be completed as follows :-

Fourth Recital and clause 4.5	Construction Industry Scheme (CIS) Employer at the Base Date is not a contractor for the purposes of the CIS
Fifth Recital	Descriptions of Sections Not applicable
Sixth Recital	Framework Agreement Not applicable
Seventh Recital And Part 1 of Schedule 2	Supplemental Provisions – Part 1 Named Sub-Contractors Supplemental Provision 1 applies Valuation of Changes – Contractor's estimates Supplemental Provision 2 applies Loss and expense – Contractor's estimates Supplemental Provision 3 applies
Seventh Recital and Part 2 of Schedule 2	Supplemental Provisions – Part 2 Acceleration Quotation Supplemental Provision 4 applies Collaborative working Supplemental Provision 5 applies Carried to Collection

Conditions of Contract (contd)

	Health and safety
	Supplemental Provision 6 applies
	Cost savings and value improvements
	Supplemental Provision 7 applies
	Sustainable development and environmental considerations
	Supplemental Provision 8 applies
	Performance indicators and monitoring
	Supplemental Provision 9 does not apply
	Notification and negotiation of disputes
	Supplemental Provision 10 applies
	Employer's nominee
	Leave blank
	Contractor's nominee
	Leave blank
Article 4	Employer's Requirements
	See Employers Requirements Document
Article 4	Contractor's Proposals
	See Employers Requirements Document
Article 4	Contract Sum Analysis
	See Employers Requirements Document
Article 8	Arbitration
	Article 8 and clauses 9.3 to 9.8 (Arbitration) do not apply
Clause 1.1	Base Date
	30 November 2021

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Conditions of Contract (contd)

Clause 1.1	BIM Protocol Not applicable Date for Completion of the Works (where completion by sections does not apply) 2 September 2022 Sections : Dates for Completion of Sections Section 1 : Section 2 : Section 3 :
Clause 1.7	Addresses for service of notices by the Parties Leave blank
Clause 2.3	Date of Possession of the Site (where possession by Sections does not apply) 7 March 2022 Sections : Dates of Possession of Sections Section 1 : Section 2 : Section 3 :
Clause 2.4	Deferment of possession of the site (where possession by Sections does not apply) Clause 2.4 applies 6 Weeks Sections : deferment of possession of Sections Section 1 : Section 2 : Section 3 : Carried to Collection

Conditions of Contract (contd)

Clause 2.17.3	Limit of Contractor's liability for loss of use etc. No Limit
Clause 2.29.2	Liquidated damages (where completion by Sections does not apply) £ 3,000.00 per week Sections : rate of liquidated damages for each section Section 1 : Section 2 : Section 3 :
Clause 2.34	Sections : Section Sums Section 1 : Section 2 : Section 3 :
Clause 2.35	Rectification Period (where completion by sections does not apply) 12 Months Sections : Rectification Periods Section 1 : Section 2 : Section 3 :
Clause 4.2, 4.12 and 4.13	Fluctuations Provision no Fluctuations Provision applies
Clause 4.6	Advance payment Clause 4.6 does not apply

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Conditions of Contract (contd)

	Advance Payment Bond
	An advance payment bond is not required
Clause 4.7.1	Method of payment – alternatives Alternative B applies
Clause 4.7.2	Interim Payments – Interim Valuation Dates The first Interim Valuation Date is 7 April 2022 and thereafter the same date in each month or the nearest Business Day in that month
Clause 4.15.4	Listed Items – uniquely identified Delete entry
Clause 4.15.5	Listed Items – not uniquely identified Delete entry
Clause 4.17	Contractor's Retention Bond Does not apply
Clause 4.18.1	Retention Percentage 3 %
Clause 5.5	Dayworks Not applicable
Clause 6.4.1	Contractors insurance : injury to persons or property – insurance cover £ 5,000,000.00
Clause 6.5.1	Insurance – liability of Employer whether the Works are a 'Large Project'

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Conditions of Contract (contd)

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	Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event £ 10,000,000.00
Clause 6.7 and Schedule 3	<p>Insurance of the works – Insurance Options</p> <p>Insurance Option C applies (delete options A and B)</p> <p>Percentage to cover professional fees</p> <p>Leave blank</p> <p>Where Insurance Option C applies, paragraph C.1 applies</p>
Clause 6.10 and Schedule 3	Terrorism Cover – details of the required cover Leave blank
Clause 6.15	<p>Professional Indemnity insurance</p> <p>Level of cover – Amount of indemnity required relates to claims or series of claims arising out of one event and is £ 5,000,000.00</p> <p>Cover for pollution and contamination claims £ 5,000,000.00</p>
Clause 9.2.1	Expiry of required period of Professional Indemnity Insurance is 12 Years
Clause 6.17	Joint Fire Code The Joint Fire Code applies
Clause 9.4.1	If the Joint Fire Code applies, state whether the insurer Under Schedule 3, Insurance A, B or C (paragraph C.2) Has specified that the Works are a ‘Large Project’ Yes
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Conditions of Contract (contd)

Clause 6.20	Joint Fire Code – amendments / revisions
	The cost, if any, of compliance with amendments or revisions to the Joint Fire Code shall be borne by the Contractor
Clause 7.2	Assignment / grant by Employer of rights under Clause 7.2
	Leave blank
Clause 7.3.1	Performance bond or guarantee from bank or other approved surety
	Leave blank
Clause 7.3.2	Guarantee from the Contractor's parent company
	Leave blank
Clause 7.4	Third Party Rights and Collateral Warranties
	Required as detailed in the Employers Requirements Document
Clause 8.9.2	Period of suspension
	Leave blank
Clause 8.11.1.1 to 8.11.1.6	Period of suspension
	Leave blank
Clause 9.2.1	Adjudication
	The Adjudicator is : Leave blank Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) The Royal Institution of Chartered Surveyors
Clause 9.4.1	Arbitration – appointor of Arbitrator (and of any replacement) President or a Vice – President of the Royal Institution of Chartered Surveyors

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Contract Execution

A The Contract will be executed as a Deed

Contract Documents

B The Contract Documents will comprise the Employers Requirements, the Contractors Proposals, the Contract Sum Analysis and any other relevant documents agreed between the parties

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COLLECTION

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The Contractor shall supply all the labour and materials required for the best of their judgement in accordance with the latest British Standard specifications, with the latest edition of the Approved Code of Practice issued by the Department of the Environment. In all cases, the labour and materials shall be supplied to the Employer's approval.

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The Contractor shall be required to provide a programme of work

and timescale of delivery for the completion of the various

works and shall be required to do so in the Employer's satisfaction prior

to the start of the contract.

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SECTION 2

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PRELIMINARIES

Materials, Goods and Workmanship

- A The whole of the labour and materials shall be the best of their respective kinds, shall comply with the latest British Standard specifications with Building Regulations and, in the case of radio-active projects, with the requirements of the Inspectorate of the Department of the Environment. In all cases, the labour and materials shall at all times be to the entire approval of the Employer who may reject the whole or any part thereof as he thinks proper.

Programme Charts

- B The successful contractor shall be required to prepare a programme of work and this shall be in sequence of trades for the construction of the various sections and shall be amplified in detail to the Employer's satisfaction prior to signing of the contract.

Tenders

- C The Contractor is requested to submit a fixed price lump sum tender, inclusive of Value Added Tax, where applicable for all labour and materials required in completing the work, on the appropriate tender forms supplied for the purpose, and will be required to commence the work immediately upon receipt of the official order to do so. The Employer does not bind itself to accept the lowest or any tender, and will not be responsible for any cost in the preparation of tenders incurred by firms submitting those tenders.

Insurances

- D The Contractor shall, at his own expense, before the commencement of the work effect, and during the progress of the work and until the final completion of the contract keep in force an insurance in a reputable Insurance Office approved by the Employer, against all demands arising out of claims due to accidents or damage to individuals, animals or property occasioned directly or indirectly by or in the course of the execution or maintenance of the work in any part thereof, and shall hold and keep the Employer harmless and fully indemnified from and against all such, including all litigation and other expenses.

Fire Prevention/Insurance

- E The Contractor shall note that he shall comply in all respects with the "Joint Code of Practice on the Protection from fire on Construction Sites and Buildings Undergoing Renovation"

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The Contractor shall, when any part of the insurance is covered by the Employers own insurance, ensure that the appointed representative of the Employers insurers shall have the right, at all reasonable times, to enter and inspect the contract site for the purposes of ensuring that the conditions on the site comply with the Joint Code in all respects.

In the event of a breach of the Joint Code the Contractors site management shall be informed of the nature of the breach which shall specify the required remedial measures. This shall also be confirmed in writing by the Insurers to the Contractor and the Client at there respective nominated addresses.

The notice may, at the discretion of the Employers Insurers, either suspend or cancel all cover in respect of the Contract site from the date named in the notice in which case the Contractor shall be deemed to have made, at no cost to the client, his own arrangements to cover for fire protection to or in excess of the standard covered by the suspended or cancelled Employers insurance to a similar or greater insured value. This insurance shall be retained until such time as the Employers cover is reinstated by the Employers insurers in writing at a time when they are satisfied that all remedial measures have been completed.

Order and Control of Works

A The Employer shall have power and authority to issue such instructions as he may deem necessary as to the order of proceeding and carrying out the works and the contractor shall be bound by such instructions of the Employer or any person or persons authorised by him to give instructions.

Overtime

B No work is to be executed outside normal working hours without the prior consent of the Employer.

Provide All Plant

C The Contractor is to include for all scaffold, tools, plant, labour, transport, and everything necessary for the proper and expeditious completion of the work in accordance with the drawings whether the same be specifically mentioned or otherwise , and is to afford proper facilities and free use of scaffolding to the various sub-contractors and specialists engaged on the work by the Contractor , for the due and proper performance of their works.

Temporary Electrical Power and Water Supply

- A Temporary electric and water will be provided by the Contractor for the duration of the contract period. The Contractor must agree with the Employer where the temporary supplies are to be taken from and undertake all works in connection with providing the temporary supplies and pay all costs in connection with consumption of the services, including metering if required.

Setting Out and Levelling

- B The Contractor shall be responsible for the correct setting out of the several works and shall amend at his own expense any errors arising from incorrect setting out. In all cases, figured dimensions are to be accepted as correct in preference to scaled dimensions, and should the specification and drawings be at variance, the Employers shall decide as to which shall be executed.

Management Costs

- C The Contractor is to keep a competent foreman or charge-hand on the site throughout the whole of the contract, and notice in writing is to be given to the Employer if it is intended to replace the foreman. A sufficient number of men are to be retained on the site for the proper and expeditious completion of the works.

The Contractor shall allow for all on and off-site management costs.

Sub-Contractors

- D The Main Contractor shall not sub-contract the works or any part thereof without the written authority of the Employers which consent shall not be unreasonably withheld.

Costs

- E The Contractor is to pay all necessary charges with respect to the National Health and Unemployment Insurance Acts, Holidays with Pay, and any other statutory charges which may be introduced before the date of tender and brought into force before or during the period of the contract.

Maintain and Protect Property

- F Should any loss or damage occur to roads services or surrounding properties or the like, from the execution of the works, the Contractor shall make good at his own cost to the entire satisfaction of the Employer.

Watching, Lighting and Temporary Supplies

- A Include for all watching, lighting, temporary barriers, and protection as may be necessary to all works, materials and plant, including all safety measures required by the Employer, Local Authorities, other responsible bodies and with due regard to the Health & Safety at Work Act, and for all temporary electric lighting which should be transformed down to 110 volts, heating and power connections including services as required to ensure the proper and expeditious completion of the work including payment for all current consumed and for all charges and fees. Include for disconnection and/or removal when no longer required. The Employer's Electrical Services Engineer is to be consulted in all cases before any connections are made. The Contractor's attention is drawn to the DOE Advisory Leaflet No 59 on the use of electricity on site and the IEE Regulations.

Police Requirements

- B The Contractor is required to observe all Police, Local Authority and other regulations in the delivery of plant and other materials and unloading and parking of vehicles. No vehicle, plant or materials will be allowed to remain on the road or pavement without the express permission of the Local Authority.

Interruption Of Services

- C The Contractor shall not, without the permission of the Employer, interrupt or interfere with the operation of existing services and not, in the case of works or statutory authorities or private owners, without the permission of such authorities or owners.

Should the Contractor do any damage, he shall be responsible for making good thereof to the satisfaction of the Employer, authorities or owners as the case may be.

Electrical Supply on Site

- D All cranes, concrete mixers etc are to be electrically powered. All electricity powered portable hand tools must be transformed down to 110 volts. The transformers should comply with BS171 when the nominal output voltage exceeds 25 volts and BS 3535 when the nominal output does not exceed 25 volts. The Contractor must supply his own transformer in all cases.

Antiquities

- E Any coins, valuables or antiquities found on the site are to remain the property of the Employer and are to be handed over immediately to the Employer.

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Temporary Storage

- A Provide all temporary storage lock-ups for materials and tools, temporary mess rooms and latrines for workmen, together with comprehensive first-aid kit which is to be readily accessible, maintain all in proper condition and remove from site on completion.

Protection of Works

- B The Contractor shall case up and protect all works including nominated sub-contractors work, from liabilities and damages by frost, inclement weather, traffic and other causes. Any work damaged to be taken down and re-executed or otherwise made good by and at the expense of the Contractor to the satisfaction of the Employer.

Notice Boards

- C Under no circumstances shall the Contractor or his sub-contractor display notice boards or any other form of advertising unless express permission is given by the Employer. Small direction signs may be displayed by the Contractor to facilitate the delivery of materials to the site in a position agreed with the Employer.

Discrepancies

- D Should any discrepancy between the plans and specification be noticed during the preparation of the tenders, this is to be pointed out to the Employer before the tender is made. The drawings and this specification will form part of the contract documents and nothing is to be omitted which is shown or can be reasonably implied from either. When neither the drawings nor the specification contain any notice of minor parts of works the intention of which the inclusion is nevertheless clearly to be inferred, such parts or works are obviously necessary for the due completion of the contract shall be provided by the Contractor and shall be deemed to be included in this Specification.

Adhere to General Specification

- E The Contractor will also be required to adhere to the Conditions of Contract, General Specifications, Detailed Specifications of Requirements as stated and he is to include for any expenses incurred in complying with these conditions including all notices and paying such fees as may be required by Local and other Authorities. At all times he is to comply with the current Health and Safety at Work Act Regulations.

Defects

- A The Contractor will be required to make good any defects which may appear within the defects period from the date of the completion of the works and which arises either:-
- (a) from defective materials, workmanship or design (other than a design made, furnished or specified by the Purchaser and for which the Contractor has disclaimed responsibility in writing within a reasonable time after receipt of the Purchaser's instructions), or
 - (b) from any act or omission by the Contractor during the said period.

Any subsequent latent defects that may appear after the expiration of the defects liability period, and which can be attributed to faulty materials and/or labour, shall be deemed to be the responsibility of the General Contractor and shall be rectified by him at his own expense.

Daywork

- B Time sheets for any daywork must be rendered weekly in duplicate. Time sheets must be signed by the Employer and should give exact details of the work, loose phrases such as "Assistance" being avoided. At monthly intervals priced summaries must be submitted so that the value of daywork executed may be incorporated in the interim valuation.

The Employer shall have the power to reduce the amount of time and materials shown on such daywork sheets if, in his opinion, such amounts exceed that which should reasonably have been expended in producing the results having regard to the circumstances in which the work was carried out.

Temporary Hoardings

- C The Contractor shall provide all necessary temporary enclosures, fencing, hoardings, fans, planked footways, guard rails, gantries and the like for the proper performance of the works, for the protection of the public and for meeting the requirements of any local or other statutory authority and shall allow for altering and adapting as necessary.

The Contractor must liaise with the Employer and agree standards of protection etc.

Working Hours

- D Working hours are limited to 8.00 am to 6.00 pm Monday to Friday and 9.00 am to 1.00 pm Saturday (no work on a Sunday or Public Holiday)

Security

- A The Contractor will be solely responsible for the security for the site and will be expected to maintain strict control over visitors and deliveries of materials, fixtures and fittings.

A set of keys enabling entry to the site by the Employer in emergency circumstances are to be handed over to the Employer during the first week of the Contract.

Existing Sewers Services Etc

- B All existing sewers, drainage systems, gas, electric, water and all other services on the site and to adjoining premises shall be fully maintained during the progress of the works and the Contractor shall take all necessary steps to prevent any temporary supports for the same before any excavation piling works or demolition operations are commenced. Buried services shall be protected as they become exposed and shall be supported as necessary. The Contractor shall be responsible for maintaining close liaison with the Local Authority and Utility Authorities so as to avoid any disruption of the existing services.

Existing Materials Containing Asbestos

- C If materials containing asbestos, or materials suspected of containing asbestos, are discovered by the Contractor or during the excavation of the works, the Contractor shall suspend all of his activities that may disturb the asbestos or any asbestos dust that may have already been released and shall immediately inform the Employer of the discovery.

The Contractor shall arrange for the necessary sampling and analysis of the suspected asbestos materials and shall then inform the Employer on the action to be taken in respect of any potentially hazardous material.

Exclusion of Asbestos

- D Building components or products containing asbestos shall not be included in the works.

Site Safety

- E The Contractor will comply with his/her/its own safety policy and safe working systems. In the case of the construction contracts the Contractor will carry out the work in compliance with the Health and Safety at Work etc Act, the CDM Regulations, the construction regulations and codes of practice currently in force and construction safety information published by the Building Employers Confederation, notwithstanding any specific requirements of the Employer.

Preliminaries (Contd)

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The responsibility, financial or otherwise, for complying with the act, regulations, codes of practice, guidance notes or any other rules whatsoever which concern the health, safety and welfare of the persons who may be affected by the work, lies solely with the Contractor and no further charge for so complying shall be made by the Contractor or the Employer.

The Contractor will allow the Employer's Safety Officers to visit the site or place of work.

Temporary Roads

- A Allow for forming access to and on the site with all necessary temporary roads and gangways.

General Equipment

- B The Contractor must not use the Employers equipment such as buckets, brushes, shovels, ladders, scaffolding etc for the purpose of carrying out the work..

Fire Precautions

- C Where the use of a blow lamp, boiler, welding equipment and other such heat generating apparatus is necessary, extreme care should be taken to ensure that the danger of fire is kept to a minimum. At all times a container of water will be to hand, and appropriate fire extinguishers made available for use.

All "hot" works shall be ceased one hour before the end of each day's work and a final inspection will be made before leaving the site.

Fire escape routes are to be kept unobstructed and if necessary illuminated at all times.

Clearing Sites / Waste Disposal Skips

- D Allow for clearing away all dirt, rubbish and superfluous materials as they accumulate and provide tips and other means of disposal of such surplus, and leave the whole of the site tidy and clean on completion to the entire satisfaction of the Employer.

Wherever waste disposal skips are to be sited against a building they are to be positioned a minimum of 2.4m horizontally from any wall opening including windows, doors, ventilation grilles etc regardless of the height of the opening above the skip. Where this is impractical the skip must be the enclosed type with lockable doors. In all circumstances waste open type skips may only be used with the Employer's agreement.

Should such rubbish not be cleared away within 24 hours of verbal instructions having been given to do so by the Employer or his representative, then the Employer will have the rubbish removed by his own staff and the cost of the work will be charged to the Contractor or deducted from any monies due to him.

Access to and Possession and Use of the Site

- A Access to the site and location of the site compound will be agreed on site with the Employer prior to commencement of the works.

No deviation from the restrictions agreed will be permitted without prior approval from the Employer.

The Contractor shall not enter the site until he has received instructions from the Employer to do so.

The Contractor shall not use the site for any purpose other than carrying out the works.

The Contractor shall not bring any materials from any other location nor any waste not produced at the Employer premises for disposal on Employer premises, including for disposal into a waste skip or other container arranged by the Contractor.

Keeping Drains Clear

- B Special care must be taken to ensure that no building materials or foreign matters are washed into the drains and sewers. Should any such materials be allowed to enter the drains and sewers, they must be cleaned out immediately by the Contractor to the satisfaction of the Employer.

Samples

- C The Employer may require the Contractor to submit samples of any material to be used in the works, and may give or withhold approval of any submitted samples and in the latter case may require the Contractor to re-submit further samples until approved.

Testing of Materials

- D The Employer may require the Contractor to test any of the materials used in the works and the Contractor shall then carry out or arrange for any firm nominated by the Employer to carry out such tests as the Employer may require. If the results of such tests are satisfactory then the Contractor will be paid the costs for carrying out such work. Should the tests prove unsatisfactory then all costs shall be borne by the Contractor.

Personal Protective Equipment

- A The Contractor shall provide Personal Protective Equipment to all operatives and sub-contractors including industrial safety helmets to BSEN397 for the use of all personnel on site, including all and visiting professional or technical representatives of the Employer, and all Sub-Contractors.

Parking

- B Parking by the Contractor will be agreed with the Employer prior to commencement of the works.

Site Meetings

- C The Contractor shall allow for all expenses in convening and attending site meetings and shall be responsible for arranging for attendance at these meetings by Sub-Contractors when their presence is required.

Temporary Telephone

- D Provide and maintain a telephone service for the Foreman for the full period of the works and pay all charges and expenses.

Safeguarding the Works

- E The Contractor shall be responsible for the whole of the works, materials and plant at all times including nights, Sundays and holidays, and is to provide all necessary measures to prevent trespass of unauthorised persons on to the works and shall take all other steps which may be necessary from time to time to protect the works. He will have to replace everything lost or stolen and reinstate any work damaged at his own expense. No steps, ladders or other plant shall be left accessible for unauthorised persons to enter the building or adjoining buildings.

Drying Out

- F The Contractor will be responsible for drying out the building immediately before handing over and at other times as may be necessary to facilitate progress and completion of the works, including the work of Sub-Contractors and to protect manufactured joinery and other items from damage by maintaining an adequate temperature within the building after installation of such components, and shall allow for all costs, including the provision of necessary appliances, labour, fuel, electricity, water, supervisions, insurances, attendance and maintenance and everything necessary during and outside normal working hours to comply with these requirements.

Cleaning on Completion

- A Remove all temporary markings, coverings and protective wrappings unless otherwise instructed.

Clean the works thoroughly inside and out and remove all splashes and deposits etc.

Schedule of Conditions

- B A schedule of conditions supported by photographs shall be prepared by the Contractor and agreed with the Employer in respect of all existing roads and car park areas (or the like) which will be used by the Contractor and any other existing site features for which the Contractor is responsible and which may be subject to damage

Inspection of Site Prior to Tendering

- C The Contractor shall visit and inspect the site at his own expense previous to tendering and shall acquaint himself with the site, the accessibility of the site, the position and extent of all services, hidden services and mains, local conditions, the full extent and character of the work covered by the Contract, the supply of and conditions affecting labour, materials and the conditions under which the work is required to be executed. No claim for variation, alteration or extra payment will at any time be considered or admitted on the grounds of lack of knowledge of the works, lack of information, deficiency of description occasioned by any default of inspection on the part of the Contractor, or by any contingency arising which could be ascertained or indicated as a result of such inspection.

Site Compound

- D The Contractor is to provide, erect, maintain and remove on completion all temporary fences, buildings, paths and the like to form the site compound.

Particular attention is drawn to the following:-

- (a) Solid heras type fencing is to be erected around the whole of the site compound perimeter.
- (b) The Contractor will be allowed to lay a temporary hardstanding over the existing grassed area within the site compound, including an access strip linking the compound with the existing access road.
- (c) The Contractor will be responsible for making good any damage caused and for reinstating the site compound area to its original condition on completion of the works.

Limitations on Use of Existing Facilities

A The Contractors attention is drawn to the following restrictions for which due allowance must be made in his tender:-

(a) Restricted parking and access to the site. Under no circumstances will the Contractor be allowed to use the public roads or pavements for storage of materials and siting of skips or the like, without Local Authority approval.

(b) Careful consideration must be given by the Contractor to the siting of the skips.

Site Office

B The Contractor shall provide and maintain a site office and welfare facilities during the Contract, from within his own site accommodation.

Weekend Working

The contractor is to ascertain for himself whether or not it will be necessary to work weekends in order to comply with the programme.

Should the Contractor deem it necessary to work weekends, he is to include in his tender for all associated costs. No addition to the contract sum will be allowed for any work executed outside normal working hours.

The Contractor is to liaise with the Employer representatives to agree mutually convenient times for working outside normal working hours, and is to give them prior notice of his intended working periods

As Fitted Drawings

C The Contractor is to provide the Employer with complete "As Fitted" drawings on completion of the works. The drawings must be produced using the CAD system, and copies of all relevant software must also be provided.

CDM Regulations

D The Contractor will be required to present his construction phase Health and Safety plan for the project with specific reference to the risks associated with the construction methods to be adopted on the project.

The Contractor will be required to take on the role of Principal Contractor as defined in the CDM regulations.

The Contractor shall develop a construction phase Health & Safety Plan prior to commencement of works. Setting up the site or commencement of the works will not be permitted until all clearances and approval are given in writing.

The contractor is advised to comply with the Approved Code of Practice for Managing Health & Safety in Construction as issued by the Health & Safety Executive.

Practical Completion

- A The project shall not be deemed 'practically complete' until the Principal Contractor has adequately provided the following information:
- i) 'As built', record drawings and plans used and produced throughout the construction process along with associated design criteria.
 - ii) General details of the construction methods and materials used.
 - iii) Details of the structures equipment and maintenance facilities.
 - iv) Maintenance procedures and requirements for the structure.
 - v) Test and Commissioning reports on all services.
 - vi) Manuals produced by specialist contractors and suppliers which outline operating and maintenance procedures for plant and equipment installed as part of the structures.
 - vii) Details on the location and nature of utilities and services, including emergency and firefighting systems, fire integrity and protection.
 - viii) Identification and location of potentially hazardous materials.
 - ix) Other relevant information.
 - x) The above information should also be recorded on a CD or DVD.

Policy on Smoking

- B Smoking is prohibited on site and adjacent areas.

Pre-start Condition Survey

- C Prior to starting works on site the Contractor should carry out a condition survey of the areas, rooms, access ways, etc that are to be used or worked upon by the Contractor. This information should be recorded by photographs or video recordings and must be verified by the Employer, as a true record of the site prior to the works starting on site.

A copy of this to be retained by the Employer.

Preliminaries (Contd)

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Contractor's Compound / Access Routes

Construction of the Contractors Compound, Parking and Access Routes to the site will be agreed with the Employer before works commence on site.

Planning Conditions

The Planning Application will be submitted by the Main Contractor and the conditions arising will be discharged by the Main Contractor and where necessary prior to the works commencing on site. The Main Contractor will pay all fees and charges in connection.

Building Regulations

The Contractor from appointment must continue the Building Regulation process through to approval.

SECTION 2 – PRELIMINARIES

Carried to Section 4 –
Contract Sum Analysis

£

Carried to Collection

SECTION 3

£

PROJECT SPECIFIC REQUIREMENTS

Consultants Employed by the Contractor

- A The following consultant prepared the drawings for building regulation approval :

GWP Architecture Ltd – Bracken House, 1 Lidgett Lane, Leeds, LS8 1PQ

Fire Prevent Ltd – Phil Dodgson & Partners, First Floor, 68 Uppermoor, Pudsey, Leeds, LS28 7EX

Assent Building Control - Assent Head Office, Assent House, 4 Navigation Court, Calder Park, Wakefield, WF2 7BJ

Meetings During The Construction Period

- B The Contractor will be required to attend the following meetings once the project has commenced on site :

1. Site meetings every four weeks
2. Meetings to sign off samples etc.
3. Additional meetings as deemed necessary by the Employer

Contractors Compound / Access Routes

- C Location of the Contractors Compound, Parking and Access Routes to the site to be agreed with the Employer before works commence on site

Planning Conditions

- D The Planning Application will be submitted by the Main Contractor and the conditions arising will be discharged by the Main Contractor and where necessary prior to the works commencing on site. The Main Contractor will pay all fees and charges in connection.

Building Regulations

- E The Contractor from appointment must continue the Building Regulation process through to approval.

The Contractor must employ an appropriate consultant and pay all fees and charges in obtaining Building Regulation approval.

Collateral Warranties

A The Contractor will provide the following Warranties in connection with the works and pay all costs in connection with obtaining the warranties :

1. Contractor Warranty to Homes England
2. Fire Engineer Warranty to Homes England
3. Contractor Warranty to Employer
4. Fire Engineer Warranty to Employer
5. Architect Warranty to Employer

COLLECTION

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SECTION 4

Contract Sum Analysis

SECTION 3 – PROJECT SPECIFIC REQUIREMENTS

Carried to Section 4 – Contract Sum Analysis

£

SECTION 4

Contract Sum Analysis

Castles.		20:20 Building, Leeds				
	Description	Quantity	Unit	Rate	Total	
1	Preliminaries Site Supervision and working drawings	1	item	105,694.88	£ 105,694.88	
2	Welfare Unit	1	item	1,300.00	£ 1,300.00	
3	Skips	1	item	26,000.00	£ 26,000.00	
4	Insurances	1	item	6,000.00	£ 6,000.00	
5	Building Control/Planning	1	item	26,170.00	£ 26,170.00	
6	Fire/Cladding Engineer	1	item	29,450.00	£ 29,450.00	
7	Access - Scaffold / MWEPS	1	item	202,000.00	£ 202,000.00	
8	Remove existing cladding, insulation and secondary timber support and breather membrane. New Tyvek Firecurb fire retardant breather membrane, aluminium helping hand brackets and rail system, 100mm thick Rockwool Rainscreen Duo slab insulation A1 fire rated and 9mm thick James Hardie plank cladding	1	item	871,967.50	£ 871,967.50	
9	Open state 1 hour fire rated vertical cavity fire barriers at abutment with window	1	item	59,229.64	£ 59,229.64	
10	Perforated mill finish aluminium closure to head and jambs of openings	1	item	17,917.99	£ 17,917.99	
11	Opening up	1	item	26,255.00	£ 26,255.00	
12	Remove and replace cladding to Regent Street elevation	1	item	13,500.00	£ 13,500.00	
13	Remove and replace soffit to Skinner Lane elevation	1	item	9,100.00	£ 9,100.00	
14	Remove and replace glazed spandrel panels	1	item	3,000.00	£ 3,000.00	
15	Mechinical and electrical items	1	item	30,000.00	£ 30,000.00	
16	Remedial works to balconies (11 Nr)	1	item		incl	
17	Deduct costs already paid to date (item 6 + 11)				-£ 55,705.00	
	SUB-TOTAL				£ 1,371,880.01	
	Provisional Sums (as directed by SRA)					
18	Phase 1 validation works (opening up)	1	item	25,000.00	£ 25,000.00	
19	Off site parking due to scaffolding	1	item	7,500.00	£ 7,500.00	
20	Contingency	1	item	100,000.00	£ 100,000.00	
	TOTAL				£ 1,504,380.01	

APPENDIX 1

Document List

The following Drawings will be the Contract Drawings :

Project Nr : 2121-GWP-01

00 DR A (PA)	0001	P01	Location Plan 1:1250
01 DR A (100)	0001	P01	Cladding Panel Details 1:5
	0002	P01	Cladding Panel Details 1:5
	0003	P01	Cladding Panel Details 1:5
(PA)	0005	P01	Existing Elevations
	0006	P01	Proposed Elevations Panel Types 1:200
	0020	01	Cladding Panel Type Schedule
(SK)	0022	P01	Cavity Barrier Location 1:100
	0023	P01	Cavity Barrier Location 1:100
	0024	P01	Cavity Barrier Location 1:100
	0025	P01	Cavity Barrier Location 1:100
	0100	P01	Demolition Elevation 1:200

The following Documents will be the Contract Documents :

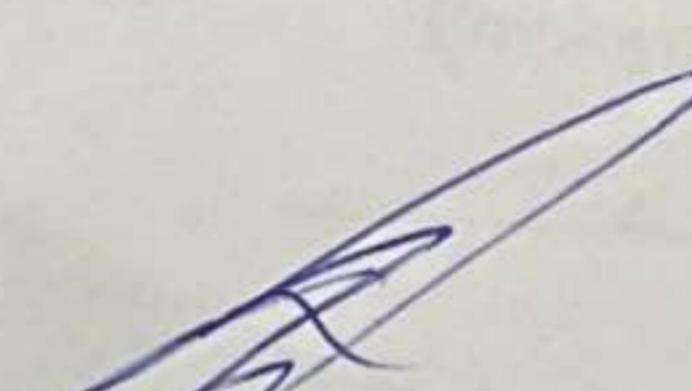
Employers Requirement Document (copy not included on CD)

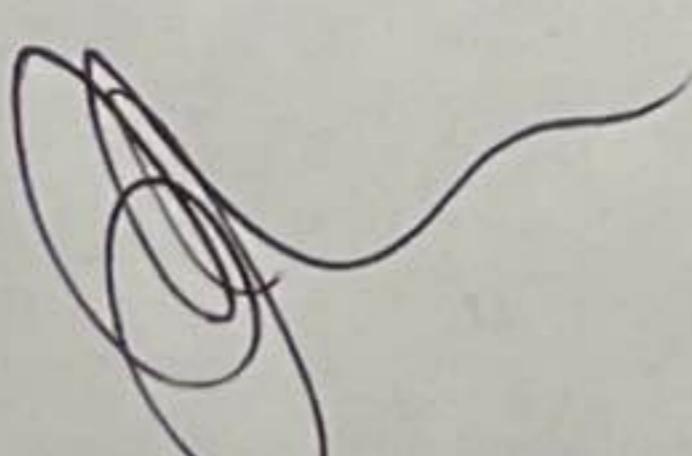
Fire Safety Report

Vulcalap Excluded Aluminium A2 Fire Rated Rainscreen Plank System Brochure

Hardie Plank Products Brochure

Note : Copies of the drawings and documents are contained on a CD attached to this document

Employer 

Contractor 



Agreement Between
20 – 20 House (Residential Management) Limited
and Castle Special Projects LLP
Appendix 1 Contract Documents

Project :

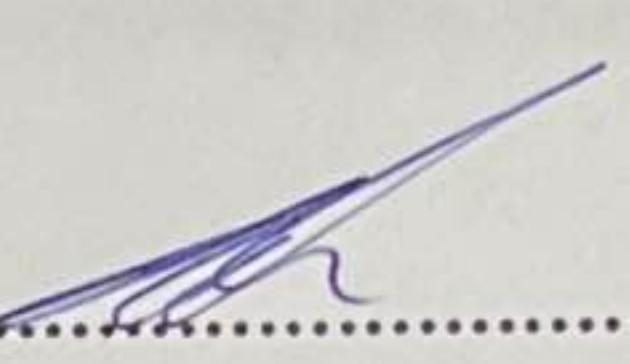
Cladding Remedial
Works To 20 - 20
House LS7 1BB

Contractor to sign here

Employer to sign here

APPENDIX 2

JCT DESIGN AND BUILD CONTRACT 2016 SPECIAL CONDITIONS

Employer 

Contractor 

The Schedule, Articles, General Conditions and Standard Conditions apply to the Special Conditions.

Contract Particulars

Sch 2
The reference to the Schedule 2 in the General Conditions, Particulars, and in the Standard Conditions is replaced by the reference to the Schedule 2 in the Special Conditions.

Procedure

4.2, 4.12 and 4.13 (relating to the notice period) and 4.14 (relating to the period for payment) are deleted.

A.2.2
If the works are not substantially completed by the date for completion, the Employer may terminate the contract.

[]

(EMPLOYER)

DEVELOPMENT AT 2020 HOUSE

JCT DESIGN AND BUILD CONTRACT 2016

SPECIAL CONDITIONS

PART 1 - AMENDMENTS

The Recitals, Articles, Contract Particulars, Conditions and Schedules are amended as follows:

Recitals

Third Recital Delete and substitute:

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

- 1 as to the feasibility and practicality of the Employer's Requirements with respect to the design and construction of the Works;
- 2 that the Contractor's Proposals are in conformity therewith; and
- 3 that the Works can be carried out within the timescale envisaged in this Contract and at the cost indicated in the Contract Sum Analysis.

Articles of Agreement

Arbitration

8 Delete.

Incorporation of Special Conditions

10 Add as Article 10:

Article 10: Incorporation of Special Conditions

The Recitals, Articles, Contract Particulars, Conditions and Schedules are subject to the Special Conditions.

Contract Particulars

Sch 2

The notes as to the application of paragraphs 1 - 3 of Schedule 2 contained in the Contract Particulars, and in Schedule 2 itself, do not apply. Each of those paragraphs applies unless the completed entry against that paragraph in the Contract Particulars states that it does not apply.

Fluctuations Provision

4.2, 4.12 and 4.13 Select the entry "no Fluctuations Provision applies".

Interim Payments - Interim Valuation Dates

4.7.2 At the entry for clause 4.7.2, amend "nearest Business Day" to "nearest subsequent Business Day".

Execution Provisions

The Articles are to be executed as a deed.

Conditions

Definitions

- 1.1 Delete the definitions of **Purchaser** and **Tenant**.
- 1.1 In the definition of **Conditions**, after "hereto", add "and the Special Conditions".
- 1.1 Add the following definitions:

Development means the Site and/or the Works

Final Payment Date means the final date for payment of the final payment determined in accordance with clause 4.9.1

Force Majeure (or force majeure) means any unpredictable occurrence for which neither Party is responsible, attributable either to the forces of nature or to other circumstances not confined in their effects wholly or principally to the Parties, any Employer's Persons or Contractor's Persons, the Site or the Works

Group Company means any subsidiary company or holding company or another subsidiary company or holding company of such company, as "subsidiary" and "holding company" are defined in s1159, Companies Act 2006, as amended, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in s1159 (1) (a)

Mortgagee means a person providing finance or re-finance in respect of the Development or any part of it and/or having or acquiring a mortgage or charge over the Development or any part of it

Purchaser means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest

Site means the site of the Works

Special Conditions means the special conditions annexed

Tenant means a person having or acquiring a leasehold interest in the Development or any part of it, other than a Purchaser

Third Party Agreements means any contracts entered into by the Employer with any consultant and/or contractor and any funding agreements, agreements for lease, development agreements, sale contracts, statutory agreements, licences and/or any other agreements that the Employer may enter into with any third party or may be bound by in respect of the Development and the term **Third Party Agreement** shall mean any such contract, agreement or licence

Agreement etc. to be read as a whole

- 1.3 In line 1, delete "Nothing". Substitute "Save for the Special Conditions (where and to the extent that they form part of the Contract Documents) nothing".

Contracts (Rights of Third Parties) Act 1999

- 1.6 Delete and substitute:

This Contract is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

Notices and other communications

1.7A

Add as clause 1.7A:

Any notice, certificate or other communication (**notice**) to be given under Section 4 (**Payment**) may, in addition to any other permitted method of service, be delivered by hand or sent electronically to the e-mail address of the addressee, provided, if sent by e-mail and not delivered by hand, a copy is sent on the same day or on the next Business Day to the addressee by pre-paid first class post. Any notice served in accordance with this clause 1.7A takes effect as being given and served:

- .1 if delivered by hand or sent by e-mail by 5.30 pm on a Business Day, on that day; but otherwise,
- .2 on the next Business Day.

Effect of Final Statement

1.8.1

In line 1, delete "due date for the final payment specified in clause 4.24.5" and substitute "Final Payment Date".

1.8.1.1

Delete sub-clause 1.8.1.1.

1.8.2.1

Delete "date of issue of the relevant statement" and substitute "Final Payment Date".

1.8.2.2

In line 2, delete "date of issue of the relevant statement" and substitute "Final Payment Date".

Effect of payments

1.9

In line 1, delete "Save as stated in clause 1.8, no". Substitute "No".

Consents and approvals

1.10

Delete everything after "withheld" to the end of the sentence and substitute:

except that the Employer's consent under clause 7.2 shall be in his absolute discretion.

General obligations

2.1.5

Add as clause 2.1.5:

.1 Save in respect of any matter which is expressly stated in the Employer's Requirements to be the Employer's responsibility, the Contractor shall (at its own cost):

.1 obtain as soon as requisite all decisions, permissions, consents and approvals required under or for the purposes of the Development Control Requirements (**Permissions**), insofar as they have not already been obtained;

.2 give all notices required to be given under any Statutory Requirements or Development Control Requirements or any Permissions (insofar as it has the requisite authority to do so);

- .3 obtain the discharge of all conditions referred to in any Development Control Requirements or Permissions and advise the Employer (in sufficient time to prevent delay) of the dates by which any such conditions have to be discharged in order to prevent delay to the Works;
- .4 prepare or cause to be prepared in good time and from time to time as often as shall be necessary and submit for the Employer's approval (such approval or reasons for refusal to be provided within 20 Business Days of receipt by the Employer) every application for any outstanding Permissions;
- .5 provide to the Employer two paper copies and one digital copy of all relevant correspondence relating to any application for any Permissions and two copies of any applications submitted, decision notices received and notices issued under or in relation to any Permissions, Development Control Requirements and/or Statutory Requirements; and
- .6 pay all fees or other charges due in accordance with any Permissions, Statutory Requirements or Development Control Requirements insofar as they have not been paid by the Employer prior to the date of this Contract.]

Materials, goods and workmanship

2.2.1 After the first sentence of clause 2.2.1, insert:

Subject to the foregoing, all materials and goods shall be new and appropriate for their use and of a satisfactory quality.

2.2.2 Add at the end:

Subject to the foregoing, all workmanship shall be of a satisfactory quality.

Care of the Works

2.2A Add as clause 2.2A:

The Contractor shall take all reasonable steps necessary for the care and protection of the Works and Site Materials, for so long as the Site is in his possession in accordance with clause 2.3.

Prohibited materials

2.2B Add as clause 2.2B:

Save as required under or pursuant to any other provision of this Contract the Contractor shall not use or permit to be used in the Works any materials which by their nature or application:

- .1 contravene any British Standard or EU equivalent;
- .2 contravene the recommendations of the British Council for Offices' publication *Good Practice in the Selection of Construction Materials* (2011); or
- .3 are generally considered to be deleterious within the building design professions.

Work not forming part of the Contract

2.6 Add before the colon in line 2:

, or wishes to permit to be carried out by any third person

2.6

At the end of the clause, add:

For the purposes of this clause 2.6 and clauses 2.26.6 (*Relevant Events*) and 4.21.5 (*Relevant Matters*) any such third person shall be treated as an Employer's Person.

Contractor's programme

2.8A

Add as clause 2.8A:

On or before the Date of Possession (or if there are Sections, the first such date) the Contractor shall provide the Employer with a programme for the execution of the Works identifying the critical paths and any other details specified in the Contract Documents, and shall provide a revised programme if and whenever the Works are materially delayed.

Preparation of Employer's Requirements

2.11

Delete.

Employer's Requirements - inadequacy

2.12

Delete and substitute:

If either Party finds any design for the Works to be defective he shall so notify the other Party and the Contractor shall inform the Employer in writing of his proposals for removing such defect and, having obtained the Employer's consent thereto, shall remove such defect in accordance with such proposals, at his own cost and without any extension of time for the completion of the Works or any part of the Works.

Notice of discrepancies etc.

2.13

Delete.

Discrepancies in documents

2.14

Delete and substitute:

.1 If either Party finds any discrepancy in or between any of:

- the Employer's Requirements;
- the Contractor's Proposals;
- any instruction for a Change;
- any construction information issued under clause 2.8,

he shall give the other Party written notice of the discrepancy.

.2 Where the discrepancy is in the Employer's Requirements but is resolved by the Contractor's Proposals, the Contractor's Proposals shall prevail.

.3 Where the discrepancy results from or is within an instruction for a Change, the Employer shall issue a further instruction for a Change to resolve the discrepancy, save that where the Parties have agreed an estimate for the carrying out of such Change under Supplemental Provision 2 of Schedule 2, such estimate shall remain binding notwithstanding the issue of a further instruction for a Change to resolve the discrepancy and the Contractor shall not be entitled to any additional (or revised) adjustment of the Contract Sum and/or additional (or revised) extension of time for completion of the Works in respect of the issue of such further instruction.

- .4 In the case of any other discrepancy the Contractor shall inform the Employer of his proposals for resolving the discrepancy, and the Employer shall decide between the discrepant items or otherwise may accept the Contractor's proposals. The Contractor shall be obliged to comply with the decision or acceptance by the Employer without cost to the Employer and without any extension of time for the completion of the Works or any part of the Works.
- .5 Nothing in this clause 2.14 relieves the Contractor of the obligation to comply with Statutory Requirements nor of his responsibility for the design of the Works.

Contractors design warranty

2.17

Delete and substitute:

The Contractor shall be responsible and liable for all of the design of the Works and warrants that there has been exercised and will be exercised in the design of the Works and each and every part of the Works (including any design contained in the Employer's Requirements) all the skill and care reasonably to be expected of duly qualified and experienced professional designers undertaking the design of works similar in scope and character to the Works or such part of the Works.

Materials and goods - on site

2.21

In line 2, delete "Interim Payment" and substitute:

Gross Valuation in respect of which the Interim Payment due has been paid or allowed

2.21

In line 3, after "payment", insert "or allowance".

Materials and goods - off site

2.22

In lines 1 and 2, delete "Interim Payment" and substitute:

Gross Valuation in respect of which the Interim Payment has been paid or allowed

Fixing Completion Date

2.25.1.2

In line 1, after "Section", add "has been or" and change the "," at the end of the sub-clause to ";" and".

2.25.1.3

After the end of clause 2.25.1.2 add a new clause 2.25.1.3:

and provided that any delay caused by a Relevant Event which is concurrent with another delay for which the Contractor is responsible shall not be taken into account,

Delay caused by Contractors default

2.25A

Add as clause 2.25A:

Notwithstanding any other provision, the Contractor shall not become entitled to any extension of time for the completion of the Works or any part of the Works on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or of any of the Contractor's Persons.

Relevant Events - Employers instructions

2.26.2.1

Delete.

2.26.2.2

Delete and substitute:

under any of clauses:

- 3.10 (*Instructions to postpone any work*);
- 3.11 (*Instructions to expend Provisional Sums*), to the extent that, prior to the issue of the instructions, the Employer's Requirements had provided insufficient information for the Contractor to make adequate allowance for the effects on programme of those instructions); or

2.26.2.3 In line 2, delete "or 3.13.3".

In line 3, after "Contract" insert "or unless provided for in the Employer's Requirements or the Contractor's Proposals"

Relevant Events - suspension by Contractor

2.26.5 In line 1, after "under clause 4.11" insert "or clause 8.10.3".

Relevant Events — industrial disputes

2.26.11 Add before the semi-colon in line 3:

but this clause 2.26.11 shall not apply if the strike, lock-out or combination of workmen is limited to the Works, the Contractor or any Contractor's Persons

Relevant Events - Force Majeure

2.26.14 Delete and substitute:

any other occurrence or circumstances amounting to Force Majeure.

Practical completion

2.27 Delete lines 1 and 2 and substitute:

When the practical completion of the Works or a Section is achieved and, with respect to the same, the Contractor has complied with clause 2.37 (*As-built drawings*), and with his obligations as to the supply of documents and information under clause 3.16 (*CDM Regulations*), and with clause A9 of the Special Conditions (*Energy performance certificate*) and with clause A10 of the Special Conditions (*Completion certificate*) and with any other requirements of the Employer's Requirements as to matters to be complied with prior to the certification of practical completion, then:

2.27A Add as clause 2.27A:

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

2.27B Add as clause 2.27B:

The Contractor shall comply with any procedures set out within the Employer's Requirements and/or the Third Party Agreements for the inspection and/or testing of the Works and/or any Section prior to practical completion and for the handover of the Works and/or any Section to the Employer upon practical completion of the Works or any Section.

Payment or allowance of liquidated damages

- 2.29.2 Delete lines 1 and 2 and substitute:
- A notice from the Employer under this clause 2.29.2 shall state that for the period between the Completion Date and the date of practical completion of the Works or that Section or, if earlier, the date on which the Contractor's employment under this Contract is terminated or this Contract is otherwise terminated for any reason:
- 2.29.2 At the end of the clause, add:
- The Employer's notice under this clause 2.29.2 may also suffice as the Employer's notification under clause 2.29.1.2 provided it is given before the due date for the final payment.
- 2.29.3 In line 2, after "pay or repay", insert "or allow".
- Defects etc. — Relevant Part**
- 2.32 At the end of clause 2.32, add:
- Provided that the Employer shall not be required to issue such notice any earlier than 14 days after the end of the Rectification Period applicable to such Relevant Part.
- Defects - rectification**
- 2.35.2 In line 3 delete "after delivery of that schedule or".
- Defects requiring urgent attention**
- 2.35A Add as clause 2.35A:
- The Contractor shall comply with any requirements of the Employer's Requirements in relation to the making good of defects. Without prejudice to any such requirements, in cases of urgency the Employer may require any matter notified under clause 2.35 to be made good within such period of time specified by the Employer as the circumstances require.
- Defects etc. at Practical Completion**
- 2.35B Add as clause 2.35B:
- Clause 2.35 applies mutatis mutandis to any defects, shrinkages or faults present at the date of practical completion and to any items of incomplete work at that date.
- Requirements re making good**
- 2.35C Add as clause 2.35C:
- The Contractor shall ensure that in making good any defects, shrinkages or other faults it shall cause as little inconvenience as possible to the Employer or to any party occupying the completed Works and shall promptly make good any damage arising from such making good at its own cost and to the Employer's reasonable satisfaction.

Notice of Completion of Making Good

2.36 At the end of clause 2.36, add:

Provided that the Employer shall not be required to issue any notice to that effect any earlier than 14 days after the end of the relevant Rectification Period.

Copyright and use

2.38 Delete and substitute:

- .1 The Contractor grants to the Employer an irrevocable, non-exclusive, royalty-free licence to use and reproduce any of the drawings, details, specifications, calculations and other documents which have been or are prepared by or on behalf of the Contractor relating to the Works and the designs contained in them (**Documents**) for any purpose connected with the Works (other than by the reproduction of such designs in any extension to the Works) and to grant sub-licences in the terms of this licence but the copyright in the Documents shall remain vested in the Contractor. The Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were prepared. The Employer shall on written request be entitled to be supplied by the Contractor with complete copies of the Documents.
- .2 The Contractor warrants that the use of the Documents for the purposes of the Works will not infringe the rights of any third person and the Contractor shall indemnify the Employer against all resulting costs, liabilities, damages and expenses arising out of any breach of such warranty.
- .3 The Contractor waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 80 of that Act as against the Employer or any licensee or assignee of the Employer.
- .4 In the event that an act unauthorised by the Employer infringes a moral right of the Contractor in relation to the Documents the Contractor hereby undertakes to institute proceedings for infringement of those moral rights if the Employer requests it to do so and the Employer shall bear the cost of such proceedings.

Project meetings

3.2A Add as clause 3.2A:

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

Sub-contracting

3.3.1

After "Contract" in the last line of clause 3.3.1, add:

and the Contractor shall be as responsible for the acts and omissions of any sub-contractor or of any other of the Contractor's Persons as if such acts or omissions were the acts and omissions of the Contractor

Conditions of sub-contracting

3.4.2.1.1

In line 3, delete "and that Interim Payment has been paid by the Employer". Substitute:

and the amount of that Interim Payment has been paid or allowed by the Employer

In line 4, after "payment", insert "or allowance".

3.4.2.6 Add as clause 3.4.2.6:

.6 that the Contractor may assign the sub-contract to the Employer without the consent of the sub-contractor.

3.4.4 Add as clause 3.4.4:

the sub-contract shall in all respects be compatible with the terms of this Contract unless otherwise agreed in writing by the Employer, such agreement not to be unreasonably withheld.

Instructions requiring Changes

3.9.1. Delete everything after "subject to clause 3.9.4" to the end of the clause.

Postponement of work

3.10 Add at the end: "Notice is given, the amount of the payment to be made by the paying contractor before the final date for payment is the sum stated as due in the Pay Less No such instructions necessitated by a discrepancy in the Contractor's Design Documents or by any failure of the Works to conform to any requirement of this Contract shall be a Relevant Event or Relevant Matter for the purposes of clause 2.25 or clause 4.19.

Instructions on Provisional Sums

3.11 In line 1, amend "shall" to "may".

Work not in accordance with the Contract

3.13.1 After "removal from the site" insert "or rectification".

3.13.2 Delete "(to which the proviso in clause 3.9.1 applies)".

3.13.3 Delete everything after "Contract Sum" in lines 5 and 6 to the end of the clause and substitute:

and no extension of time shall be given.

Workmanship not in accordance with the Contract

3.14 Delete from "Where" in line 1 to "Plan" in line 2 and substitute:

Where there is any failure to comply with clause 2.1.1, clause 2.2.1 or clause 2.2.2, the Employer, in

Interim Payments - Contractor's Interim Payment Applications, due dates and Payment Notices

4.7 Delete clauses 4.7.2 and 4.7.3 and substitute:

4.7.2 Each Interim Payment shall be valued as at the relevant Interim Valuation Date. The due date applicable to each Interim Payment is 7 days after the later of:

4.7.2.1 the relevant Interim Valuation Date; and

4.7.2.2 the date the Employer receives the Contractor's application for such payment submitted in accordance with this clause 4.7.

4.7.3 No earlier than 7 days before, and no later than 7 days after each Interim Valuation Date (until the due date for the final payment under clause 4.24.5), the Contractor shall submit an application for an Interim Payment to the Employer (**Interim Payment Application**) calculated in accordance with this Section 4, stating his valuation of the Interim Payment becoming due to him on the due date, and showing how that valuation has been calculated.

Relevant statement and Final Payment Notice

4.8 In line 2, delete "the relevant statement (as defined in clause 4.24.5.3)". Substitute:
the Final Statement or Employer's Final Statement under clause 4.24 (**relevant statement**)

Interim and final payments - final date and amount

4.9.1 In line 1, delete "14 days from its due date" and substitute "28 days from its due date".

4.9.5 Delete the last sentence and substitute:

Where a Pay Less Notice is given, the amount of the payment to be made by the paying party on or before the final date for payment is the sum stated as due in the Pay Less Notice (without derogation from the right of the payee to dispute the notice).

Pay Less Notices and other general provisions

4.10.4 Delete: *Contractor's obligations under clause 2.36 (Defects)*

Payment for goods on Site - passing of property

4.13.1.2 Add before the semi-colon at the end:

and provided the Contractor has supplied the Employer with evidence showing that property in such materials and goods will pass to the Employer in accordance with clause 2.21 *and Definitions*

Rules on treatment of Retention

4.16 Delete and substitute:

The Employer shall be under no fiduciary obligation with regard to any Retention; and any right of the Employer to deduct or to set off any amount (whether under any express term or under any rule of law or equity) shall be exercisable against any sum due to the Contractor, whether or not such sum consists of or includes Retention.

Relevant Matters — Instructions for opening up/testing

4.21.2.2 In line 2, after "making good)," add "unless provided for in the Employer's Requirements or in the Contractor's Proposals or"

Loss and expense

4.21A Add as clause 4.21A: *Insurance Policy*

Subject to clause 6.13 (*Insurance and reinstatement*), the Contractor shall not be entitled to any addition to the Contract Sum nor to any other financial adjustment under clause 4.20 for any cost, loss or expense incurred by reason of any error, omission, negligence or default of the Contractor or of any of the Contractor's Persons.

Final Statement and Final Payment

4.24.5

Delete and substitute:

The due date for the final payment shall be the date one month after the later of:

- .1 the date of expiry of the Rectification Period, or if there are Sections, the date of expiry of the last of such periods to expire; and
- .2 the date on which the Contractor duly completes all of the items required to be made good or completed under clause 2.35 (Defects).

4.24.6

In line 1, delete "due date for the final payment". Substitute "date 5 days before the Final Payment Date".

In line 4, delete "due date" and substitute "Final Payment Date".

Contractor's liability - personal injury or death

6.1

In line 3, after "Works", add:

or the Contractor's obligations under clause 2.35 (Defects)

6.16

Contractor's liability - loss, injury or damage to property

6.2

In line 4, after "Works", add:

or the Contractor's obligations under clause 2.35 (Defects)

7

Loss or damage to Existing Structures or their contents

6.3.1 After "option" in line 4, add:

and which loss or damage occurs while such insurance is required to be maintained

Related Definitions

6.8

In the definition of Joint Names Policy, after "Contractor", insert:

and any one or more third persons specified in writing by the Employer to the Contractor, being persons having or acquiring an interest in or mortgage or charge over the Site or the Works

Evidence of insurance

6.12.3

Add as clause 6.12.3:

If it is demonstrated to a Party who has taken out insurance under clause 6.12.2 (First Party) that this causes any insurance protection to be duplicated, the second Party may require the First Party to cancel such duplicated cover, to the extent that it is practicable for him to do so, in which case the costs to be met by the second Party under clause 6.12.2 shall be limited to the net cost to the First Party of arranging and cancelling cover.

Preservation of Works Insurance Policy

6.12A

Add as clause 6.12A:

Each Party shall comply with the requirements of the Works Insurance Policy to be complied with on his part, and neither Party shall by any act or neglect cause such

insurance to be void or voidable or entitle the insurer to refuse any claim (in whole or in part) in respect of any risk or amount for which such policy is expressed to provide indemnity.

Uninsured damage

6.13A Add as clause 6.13A:

The Contractor shall reinstate at his own cost any loss of or damage to the Works or Site Materials occasioned by a cause within exclusion (a) or (b) or (c)(ii) in the definition of "All Risks Insurance" occurring by reason of any breach of duty on his part.

Loss or damage to Existing Structures - right of termination

6.14 Delete clause 6.14 and substitute:

If in consequence of the loss of or damage to the Works or an Existing Structure the Employer determines that it is impractical or not in his commercial interests to proceed with the Works, he may by notice terminate the Contractor's employment, in which case clause 8.12 (other than clause 8.12.3.5) shall apply.

Professional indemnity insurance

6.15 ~~Delete.~~

~~any other breach of this Contract sufficiently serious to be consequential or
materially consequent to justify the termination of the Contractor's employment.~~

6.16 ~~Delete.~~

Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties

7

Delete the whole of Section 7 and substitute:

7.1 The Employer's rights under this Contract may be:

- .1 charged and/or assigned by way of security, and may be re-assigned by way of release from or upon discharge of the security;
- .2 assigned absolutely to any Group Company of the assignor; and
- .3 assigned absolutely on two other occasions only.

7.2 The Contractor may not assign the benefit of this Contract or any entitlement under it without the written consent of the Employer, save that the Contractor may assign the right to receive any payment by way of debt factoring.

Meaning of insolvency

8.1.1.4 Delete ":" from the end of the sub-clause and substitute ";".

8.1.1.5 Add as clause 8.1.1.5:

on the obtaining of a moratorium for the company, or on the making of an order by the court that it should be subject to a moratorium, in each case under Part A1 of that Act; or

8.1.1.6 Add as clause 8.1.1.6:

on the making of an order by the court sanctioning a compromise or arrangement under Part 26A of the Companies Act 2006.

Termination - failure to rectify work

8.4.1.3 In line 2, after "remove", insert "or rectify".

Termination - assignment and sub-letting

8.4.1.4 Delete and substitute:

commits a breach of clause 3.3 or clause 7.2; or

Termination - failure to provide bond or guarantee

8.4.1.5 At the end of the clause delete "," and substitute ";" or"

8.4.1.6 Add as clause 8.4.1.6:

fails to provide any bond and/or a parent company guarantee, if and as required by this Contract; or

Termination - other breach

8.4.1.7 Add as clause 8.4.1.7:

commits any other breach of this Contract sufficiently serious in its consequences or foreseeable consequences to justify the termination of the Contractor's employment,

Termination - insolvency of Contractor

8.5.1 Delete and substitute:

If the Contractor is or becomes Insolvent, the Contractor shall so notify the Employer forthwith and the Employer may at any time by notice to the Contractor, terminate the Contractor's employment under this Contract.

Termination - Contractor to vacate Site

8.5A Add as clause 8.5A:

Upon termination of the Contractor's employment (or any purported termination by the Employer), the Contractor shall forthwith vacate the Site, unless the Parties otherwise agree or otherwise provided in this Contract.

Corruption and regulation 73(1)(b) of the PC Regulations

8.6 Add at the end of clause 8.6:

In addition, the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where there is a breach of the warranties and undertakings in clause A16.2 (Modern Slavery Act 2015).

Consequences of termination under clauses 8.4 to 8.6

8.7.3A Add as clause 8.7.3A:

.1 the due date for payment of any final amount payable under clause 8.7.5 shall be:

.1 if the Employer takes steps to procure the completion of the Works and the making good of defects in accordance with clause 8.7.1, the date which is three months after such completion and making good are concluded; or

- .2 if the Employer decides not to procure (or not to continue to procure) the completion of the Works, the date which is 28 days after the date on which the Employer comes to that decision,

but if at the date which is 12 months after termination of the Contractor's employment, the Employer is not proceeding as in clause 8.7.3A.1.1, the due date for payment of any final amount shall be the day after the end of that 12 month period;

- .2 the Employer shall whenever requested provide the Contractor with sufficient information to enable the Contractor to determine whether such due date has occurred or when it is likely to occur;

8.7.4

Delete and substitute:

not later than 5 days after the due date for payment in clause 8.7.3A the Employer shall provide the Contractor with an account of the following (**Termination Account**):

- .1 the total value of the Works executed and Site Materials as at the date of termination (**Termination Value**);
- .2 the total of the amounts previously paid to the Contractor under this Contract (plus any amounts to be credited to the Employer in respect of the period to the date of termination, eg liquidated damages accrued due under clause 2.29) (**Payments and Credits**);
- .3 (if relevant) the total further amount (additional to the Termination Value) which would have become payable to the Contractor for the fulfilment of all his outstanding obligations under this Contract, had it not been terminated (**Prospective Works Value**); and
- .4 (if relevant) the total amount of the costs and expenses reasonably and/or necessarily incurred by the Employer, including any under clause 8.5.3.3 or 8.7.1, and/or any other loss or damage for which the Contractor is liable, whether resulting from the termination or otherwise, including any loss or damage arising as a result of any delay in the completion of the Works or any Section beyond the later of the applicable Completion Date under this Contract and the date on which the Contractor's employment under this Contract is terminated (**Employer's Costs and Losses**);

8.7.5

Delete and substitute: I provide to the Expert and to each other such information and documentation as is in their possession or command and as the Expert requires, to for the purposes of the Termination Account:

- .1 the difference between the Termination Value and the Payments and Credits shall be an amount to be paid or credited to the Contractor or Employer, according to whether the difference represents an underpayment or overpayment to the Contractor in respect of the Termination Value;
- .2 If the Employer's Costs and Losses exceed the Prospective Works Value, the difference shall be an amount to be paid or credited to the Employer, but otherwise shall be irrelevant; and
- .3 the amount to be shown as payable in the Termination Account shall be computed accordingly and shall be a debt payable by the Employer to the Contractor or by the Contractor to the Employer, as the case requires;

8.7.6

Add as clause 8.7.6:

the final date for payment of the amount due under the Termination Account shall be 14 days after the due date in clause 8.7.3A.

Employer's decision not to complete the Works

8.8

Delete.

Payments on account

8.8A Add as clause 8.8A:

If the Contractor's employment is terminated under clause 8.4, 8.5 or 8.6 the following shall apply:

- .1 At any time before service of the Employer's Termination Account under clause 8.7.4, the Employer may serve on the Contractor a particularised forecast of the amount of the debt for which the Contractor will become liable under clause 8.7.5, or if it is not practicable to forecast the full amount of such debt, the Employer may forecast an amount below which such debt could not fall in any foreseeable circumstances, and in either case the Employer may thereafter from time to time serve a revised forecast whenever it is practicable to make such revised forecast.
- .2 The Contractor may agree any forecast provided under clause 8.8A.1 or may propose any lesser forecast and in that case the amount agreed or proposed shall be payable by the Contractor to the Employer as an on-account payment in respect of the Contractor's liability under clauses 8.7.5.
- .3 Any Employer's forecast under clause 8.8A.1 if not agreed, may be referred for determination by an expert (**Expert**).
- .4 The Expert, if not a person agreed by the Parties, may be appointed on the application of either Party by the nominating body specified for the purposes of clause 9.2.1 in the Contract Particulars, but the Expert shall act as an expert and not as an arbitrator, nor as an adjudicator.
- .5 In respect of any Employer's forecast, the Expert may order the Contractor to make an on-account payment to the Employer of such amount (if any) as he sees fit, and in respect of any Employer's revised forecast (or in respect of any application made to him by the Contractor) may order the payment of such further amount (or may order the repayment of all or any part of any previous on-account payment) as he sees fit.
- .6 The Parties shall provide to the Expert and to each other such information and documentation as is in their possession or command and as the Expert requires, to enable him to determine any matter referred to him for decision (other than any information or documentation that would enjoy privilege from disclosure in legal proceedings).
- .7 The Parties are jointly and severally liable to the Expert for his fees and expenses, provided that, as between the Parties, the Expert may make such order or orders as he sees fit as to liability for any costs in and of the expert determination.
- .8 In the absence of fraud, the Expert shall have no liability to either Party for any act or omission in connection with the discharge of his functions as Expert.
- .9 The Parties shall be bound by and shall comply with any order or direction of the Expert until the discharge of the Contractor's liability to the Employer (or of the Employer's liability to the Contractor) under clause 8.7.5, provided that any order of the Expert as to the costs in and of the expert determination shall be final. Any on-account payments or repayments made pursuant to this clause 8.8A shall be taken into account in the determination of the amount of any debt due by either Party to the other, pursuant to clause 8.7.5.

Default by Employer

- 8.9.1.1A Add as clause 8.9.1.1A:
fails to comply with the decision of an adjudicator appointed under clause 9.2 requiring him to pay any amount to the Contractor (save to the extent that the court has granted relief from enforcement of the adjudicator's decision, subject to the Employer's compliance with any condition attaching to such relief); or

- 8.9.2 In the last 2 lines of clause 8.9.2, after "Contractor's Person", insert:
or, in the case of any impediment or prevention, save to the extent that the same is in consequence of the exercise of the rights of the Employer and/or any Employer's Person under this Contract,

Insolvency of Employer

- 8.10.1 In line 1, after "notice to the Employer", insert:
or the Employer may by notice to the Contractor
Add at the end of clause 8.10.3 before the full stop:
and an extension of time for completion shall be given under clause 2.25 equal to the period of suspension
Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations¹

- 8.11.1.3 Delete.
8.11.2 Delete.
Consequences of Termination under clauses 8.9 to 8.11, etc.

- [8.12] In line 1, after "8.9 to 8.11", add:
, under clause 8.13
In line 3, after "clause 8.11.", add:
8.12.3
8.12.4.1 Delete "or 8.10" and substitute ", 8.10 or 8.13".]²
8.12.5 Delete "within 28 days of its submission to the other Party".
8.12.6 Add as clause 8.12.6:

The due date for payment of any amount under this clause 8.12 is 6 months after the date of termination. The final date for payment is 28 days after the due date.

¹ Consider whether it is necessary to reserve for the Employer an unqualified right of elective termination under clause 8.11, eg if the business case for development is dependent upon some other specific transaction which is capable of becoming abortive.

² Delete the amendments to clauses 8.12, 8.12.3 and 8.12.4.1 if new clause 8.13 (additional right of termination) is not included. Note that as drafted on an elective termination the Employer is obliged to pay direct loss and/or damage caused to the Contractor by the termination. If a different position is required clause 8.12.4.1 should be deleted.

Employer's additional right of termination

8.13

Add as clause 8.13:

- 8.13.1 Without prejudice to any other rights of the Employer under this Contract, the Employer shall be entitled at any time by notice to the Contractor to terminate the Contractor's employment under this Contract for convenience.
- 8.13.2 If the Employer gives notice of termination under clause 8.13.1, then upon and from such termination the provisions of clauses 8.12.1 to 8.12.6 shall apply.
- 8.13.3 For the purpose of clause 8.2.1 any notice of termination given under this clause 8.13 shall be deemed to have been given reasonably.

Adjudication

9.2

Add as clauses 9.2.3 to 9.2.9:

- .3 the Adjudicator shall have power to determine more than one dispute under this Contract at the same time, and if requested to do so by either Party shall determine any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him;
- .4 when he gives his decision, the Adjudicator shall give written reasons for the decision;
- .5 no legal proceedings to finally determine a dispute that is referred to adjudication may be commenced after the date (Relevant Date) which is 90 days after the date of issue of the Adjudicator's decision;
- .6 if neither Party commences such legal proceedings before the Relevant Date the Adjudicator's decision shall be final and conclusive between the Parties;
- .7 for the purposes of the adjudication and any such legal proceedings commenced after the date of referral of the dispute to adjudication, the referral to adjudication stops the running of time under the Limitation Act 1980 in respect of the dispute;
- .8 the burden of proof in legal proceedings is unaltered by an Adjudicator's decision; and
- .9 the time limit in clause 9.2.5 does not apply to any appeal from the judgment of a court of law and does not run from the date of issue of an Adjudicator's decision that is declared by the court or agreed by the Parties to have been invalid; upon such declaration or agreement, the running of time under the Limitation Act 1980 resumes.

Arbitration

9.3-9.8

Delete clauses 9.3 - 9.8 inclusive.

Schedule 2 - Supplemental Provisions

Named Sub-Contractors

1.7

Add as paragraph 1.7:

- .1 The Employer's Requirements may provide for any Named Sub-Contract Work to be executed by a person or any of a number of persons specified in the Employer's Requirements. In the latter case the following provisions apply.
- .2 The Contractor shall choose which of those persons is to be appointed as his Named Sub-Contractor for that work.

- .3 If the Contractor is unable to enter into a sub-contract with the person of his choice, for a reason which the Employer is unable to remove under paragraph 1.1.2.1, then unless the Employer elects to apply paragraph 1.1.2.2 or 1.1.2.3, the Contractor shall choose another person so specified in the Employer's Requirements, and the Employer shall not be obliged to invoke either of those paragraphs unless the Contractor is unable to enter into a sub-contract with any of those persons.

Schedule 5 - Third Party Rights

Delete Schedule 5.

Schedule 7 - Fluctuations

A9.2 Delete.

Options B & C If JCT Fluctuations Option B or C applies, the equivalent provision in that Option to paragraph A9.2 of Option A does not apply.

A9.3 Whenever subsequently required to do so by the Employer, the Contractor shall provide documentary evidence that the insurance required hereunder is being maintained.

Contractor's warranty

A9.1 The Contractor shall whenever required to do so by the Employer and within 14 days of the Employer's written request execute and deliver a deed or deeds of warranty in favour of any Mortgagor and/or Purchaser under Tenant and/or Nominees England in the terms of the draft Certificate of warranty contained in Appendix 1.

A9.2 If the Contractor breaches clause A2.1, the Employer shall be entitled to give the Contractor written notice specifying the breach. If such breach is not rectified by the Contractor within 14 days after service of such notice, then no further payment shall be due to the Contractor hereunder whilst such breach remains to be rectified.

Consultants

A9.1 Within 21 days after the date of this Contract the Contractor shall appoint the following consultants (or such other consultants as the Employer shall approve) for the purposes of the Works:

Architect:

Fire Engineer:

A9.2 The consultants shall be appointed by deed in the terms of the respective draft appointment documents contained in Appendix 2, with such modifications (if any) as the Contractor or any consultant shall propose and the Employer shall approve.

A9.3 Within 7 days after the appointment of each consultant the Contractor shall supply to the Employer a copy of such consultant's deed of appointment.

A9.4 The Contractor shall ensure that each consultant, forthwith upon his appointment, executes and delivers a deed of warranty in favour of the Employer in the form of the draft deed contained in Appendix 3, mutatis mutandis, with such modifications (if any) as the Contractor or consultant shall propose and the Employer shall approve. It requires the Contractor shall himself execute and deliver such deed of warranty forthwith upon the Employer's request.

A9.5 Whenever the Employer from time to time requires and within 14 days of the Employer's written request, the Contractor shall ensure that each consultant executes and delivers a deed of warranty in favour of the Employer, and Mortgagor and/or Purchaser under Tenant and/or Nominees England in the form of the draft contained in Appendix 4, mutatis mutandis, with such modifications (if any) as the Contractor or consultant shall propose and the Employer shall approve. It requires the

PART 2 - ADDITIONAL CONDITIONS

The following additional conditions shall have effect:

A1 Professional indemnity insurance

- A1.1 The Contractor warrants that there is in force a policy of professional indemnity insurance covering his liabilities hereunder for negligent design and specification, with a limit of indemnity of not less than £2,000,000.00 in the aggregate. The Contractor agrees to maintain such insurance at all times until 12 years after the practical completion of the Works (or if sooner until 12 years after the termination of his employment hereunder), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable.
- A1.2 If for any period such insurance is not available on commercially reasonable terms, the Contractor shall forthwith inform the Employer, and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Contractor to obtain.
- A1.3 Whenever reasonably required to do so by the Employer, the Contractor shall provide documentary evidence that the insurance required hereunder is being maintained.

A2 Contractor's warranty

- A2.1 The Contractor shall whenever required to do so by the Employer and within 14 days of the Employer's written request execute and deliver a deed or deeds of warranty in favour of any Mortgagee and/or Purchaser and/or Tenant and/or Homes England in the terms of the draft Contractor's warranty contained in Appendix 1.
- A2.2 If the Contractor breaches clause A2.1, the Employer shall be entitled to give the Contractor written notice specifying the breach. If such breach is not rectified by the Contractor within 14 days after service of such notice, then no further payment shall be due to the Contractor hereunder while such breach remains to be rectified.

A3 Consultants

- A3.1 Within 21 days after the date of this Contract the Contractor shall appoint the following consultants (or such other consultants as the Employer shall approve) for the purposes of the Works:
- Architect: ♦
- Fire Engineer: ♦
- A3.2 The consultants shall be appointed by deed in the terms of the respective draft appointments contained in Appendix 2, with such modifications (if any) as the Contractor or any consultant shall propose and the Employer shall approve.
- A3.3 Within 7 days after the appointment of each consultant the Contractor shall supply to the Employer a copy of such consultant's deed of appointment.
- A3.4 The Contractor shall ensure that each consultant, forthwith upon his appointment, executes and delivers a deed of warranty in favour of the Employer in the form of the draft deed contained in Appendix 3, mutatis mutandis, with such modifications (if any) as the Contractor or consultant shall propose and the Employer shall approve. If requisite the Contractor shall himself execute and deliver such deed of warranty forthwith upon the Employer's request.
- A3.5 Whenever the Employer from time to time requires and within 14 days of the Employer's written request, the Contractor shall ensure that each consultant executes and delivers a deed or deeds of warranty in favour of the Employer, any Mortgagee and/or Purchaser and/or Tenant and/or Homes England in the form of the draft contained in Appendix 3, mutatis mutandis, with such modifications (if any) as the Contractor or consultant shall propose and the Employer shall approve. If requisite the

Contractor shall himself execute and deliver such deed of warranty forthwith upon the Employer's request.

A3.6 The Contractor shall:

- (a) comply with its obligations under each appointment and shall ensure that the consultants comply with their respective obligations under the appointments; and
- (b) not dismiss any of the consultants or vary the terms of any appointment without the written approval of the Employer.

A3.7 If the employment of any consultant is terminated before the completion of the services allocated to him, the Contractor shall as soon as is practicable but on 7 days' notice to the Employer appoint another consultant to complete those services (save any consultant to whom the Employer shall make reasonable objection in writing). The foregoing provisions of this clause A3 shall apply to such replacement consultant, mutatis mutandis.

A3.8 If the Contractor breaches any provision of this clause A3, the Employer shall be entitled to give the Contractor written notice specifying the breach. If such breach is not rectified by the Contractor within 14 days after service of such notice, then no further payment shall be due to the Contractor hereunder while such breach remains to be rectified.]

A4 Not Used

A4.1 Not Used

A4.2 Not Used

A4.3 Not Used.

A4.4 Not Used

A4.5 Not Used

A5 Not Used

A5.1 Not Used

A5.2 Not Used

A6 [Parent company guarantee]

A6.1 Upon the execution of this Contract, the Contractor shall provide the Employer with a parent company guarantee in terms of the draft contained in Appendix 6 (or such other terms as the Employer shall have approved) executed as a deed and delivered by ♦ (**Parent Company**).

A6.2 Without derogation from clause 8.4.1.6, no payment shall become due to the Contractor under this Contract while the Contractor remains in default of this clause A6.]

A7 Site conditions

A7.1 The Employer gives no warranty or representation as to the condition of the Site or any adjoining property or any services in or under the Site or as to the accuracy or sufficiency of any soils or survey data or other data contained in any document made available to the Contractor by the Employer, or as to any recommendations or conclusions made or reached in any such document.

A7.2 The Contractor has had the opportunity to inspect the physical conditions, (including the sub-surface conditions), and other conditions of or affecting the Site and access thereto and will be deemed to have fully acquainted himself with the same and to have obtained all necessary information as to risks,

contingencies and all other circumstances which may influence or affect the execution of the Works. No failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance (whether the same ought reasonably to have been discovered or foreseen or not) will entitle the Contractor to an addition to the Contract Sum or to any extension of time for the completion of the Works or any part of the Works.

A8 Operations on Site

- A8.1 The Contractor shall provide the Employer's Agent if and as the Employer's Agent requests in writing, details of the Contractor's proposals for the means of access to the Site during the construction period, vehicle parking facilities on Site, loading and unloading areas for materials, site compounds, temporary warning and direction signs on adjacent highways and any other similar information as to the Contractor's working arrangements. If necessary the Contractor shall amend such details to obtain the approval of the local planning authority or other relevant public authority having jurisdiction with respect to the Works.
- A8.2 The Contractor shall be wholly responsible for all temporary works required in and about the construction of the Works and the design, adequacy, stability and safety thereof. The Contractor shall obtain all consents and permissions required in connection with any temporary works (including craneage).
- A8.3 In and about the execution of the Works the Contractor shall maintain and not cause any interference to any support enjoyed by any adjoining land or any structures, other than any structures which are to be demolished as part of the Works.
- A8.4 The Contractor shall:
- (a) keep all enclosures around the Site clear of graffiti, posters and other unauthorised attachments, so far as is practicable;
 - (b) secure the Site against entry by unauthorised persons and maintain effective site security and surveillance at all times in a manner approved by the appropriate insurers;
 - (c) implement measures for the regulation of traffic to and from the Site including wheel-washing procedures and street cleaning and comply with any requirements of the police or highway authorities with regard to local traffic arriving at and departing from the Site;
 - (d) carry out the Works in such a manner as not to cause any trespass or actionable nuisance and as to cause as little noise, interference, inconvenience or disturbance to the public or to the owners and occupiers of adjoining property as is reasonably practicable;
 - (e) keep the Site in a clean and tidy condition and frequently remove all rubbish, waste and surplus materials;
 - (f) obtain for itself any licences required to oversail any land outside the Site boundaries; and
 - (g) make good or meet the cost of making good of all damage caused to roads, footpaths and property adjoining the Site and to any services, arising from the carrying out of the Works.

A9 Not Used

A10 Completion certificate

The Contractor shall be responsible for obtaining a completion certificate under the Building Regulations 2010 (or if an Approved Inspector has jurisdiction, a final certificate under the Building Act 1984) in respect of the Works or any Section.

A11 Inspections and tests

No inspection, testing, approval or review and no omission to inspect, test, approve or review on the part of the Employer shall diminish any duty or liability hereunder of the Contractor.

A12 Planting and seeding

- A12.1 The Employer shall not withhold a Practical Completion Statement/Section Completion Statement only by reason that any planting or seeding or turfing remains to be carried out, if the same is prevented by reason of the season of the year.
- A12.2 Clause A12.1 shall not apply to any planting or seeding or turfing which is required by any planning consent (or any reserved matter attaching to any Development Control Requirements) to be completed before the Works or any part of the Works may be occupied or used.
- A12.3 The Contractor shall complete any planting or seeding or turfing left outstanding at practical completion as soon in the next following planting season as is practicable.
- A12.4 If after practical completion of the Works or any Section any grass or plants or shrubs or trees fail to flourish or die (other than by reason of the act or neglect of the Employer or of a third person) within the 12 month period after planting or turfing or by the end of the Rectification Period (whichever is later) the Contractor shall replace the same as soon as is practicable having regard to the weather and the season of the year.

A13 Set-off and other remedies

- A13.1 Nothing contained in this Contract (other than as to the giving of notices) excludes or limits any right of the Employer under statute or any rule of law or of equity in the nature of set-off or abatement of price.
- A13.2 If the Contractor fails to comply with any requirement of clause A1 (Professional indemnity insurance) or clause A2 (Contractor's warranty) or if the Contractor becomes Insolvent, then in addition to any other remedy it may have, the Employer shall be entitled to recover from the Contractor any premiums reasonably incurred to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection.

A14 Not Used

[A15 Third Party Agreements]

- A15.1 The Contractor shall have regard to any obligations on the part of the Employer contained in the Third Party Agreements, copies or relevant extracts of which setting out such obligations have been provided by the Employer to the Contractor before the date of this Contract. The Contractor warrants that:
- (a) it has performed and will continue to perform the Works and its other duties and obligations under this Contract in such a manner and at such times that no act, omission or default of the Contractor in relation thereto shall constitute, cause or contribute to any breach by the Employer of its obligations in the Third Party Agreements;
 - (b) it shall permit the execution of works and the grant of access to third parties, as provided for in the Third Party Agreements;
 - (c) it shall carry out and complete the Works to the standards required by (and shall comply with any relevant restrictions in) the Third Party Agreements;
 - (d) it shall comply with any obligations imposed upon the Employer under such Third Party Agreements insofar as such obligations relate to the design and construction of the Works including the making of changes to the Works, the development of the detailed design of the Works, the obtaining of required permissions and consents, the selection and appointment of sub-contractors and consultants, the provision of information to a third party relating to the

Works, the requirement for site and other meetings, certification of practical completion, the rectification of defects and the insurance of the Works; and

- (e) it is aware of the obligations, risks and liabilities of the Employer under the Third Party Agreements and it acknowledges that any losses or claims suffered or incurred by the Employer under such agreements are in the contemplation of the Contractor and shall not constitute indirect loss.

A15.2 Where copies or relevant extracts of any Third Party Agreement(s) are provided to the Contractor after the date of this Contract, the provisions of clause A15.1 shall apply, mutatis mutandis, to such Third Party Agreements, unless (and to the extent that) the Contractor notifies the Employer in writing within [7] days from receipt of such copies or extracts of the reasons why and the extent to which it is unable to comply with (either at all or without a material increase in costs) the provisions of clause A15.1 in respect of the whole or any part of such Third Party Agreement(s) and the Employer does not instruct a Change under Section 5 (Changes) to address the concerns raised by the Contractor in such notice.]

A16 Modern Slavery Act 2015

A16.1 In this clause A16:

- (a) **2015 Act** means the Modern Slavery Act 2015;
- (b) **Prevention Order** means an order under Part 2 of the 2015 Act;
- (c) **Specified Offence** means an offence under Part 1 of the 2015 Act;
- (d) **Transparency Statement** means the statement of a commercial organisation under Part 6 of the 2015 Act; and
- (e) **Supply Chain** means:
 - (i) the Contractor; and
 - (ii) any sub-contractor (of any tier) supplying goods or services to be used for the purposes of the Works.

A16.2 The Contractor warrants and undertakes that:

- (a) it has not committed any Specified Offence;
- (b) it will not, during the period in which any of its obligations under this Contract remain to be performed, commit any Specified Offence, nor by any wrongful act or omission give cause for any Prevention Order to be made against itself; and
- (c) if and as required to do so by the 2015 Act, it has made and published and/or will make and publish a Transparency Statement and that in doing so it has not wilfully made and will not wilfully make any false statement, and has not concealed and will not conceal any facts or circumstances within its knowledge tending to incriminate itself in the commission of a Specified Offence.

A16.3 The Contractor shall without delay after being requested to do so, provide to the Employer any information, records or assistance within the power or possession of the Contractor:

- (a) which the Employer requests to assist in the investigation of any reasonable suspicion that a Specified Offence has been or is being committed by any member of the Supply Chain, directly or indirectly in connection to the performance of this Contract; or
- (b) which the Employer might reasonably wish to include in any Transparency Statement it proposes to make.

- A16.4 If for the purposes of any investigation referred to in clause A16.3(a) the Employer requests the Contractor to provide access to any permanent or temporary place of work of, or to any person working for, any member of the Supply Chain, the Contractor shall take all reasonable steps available to it to ensure that such access is provided without delay.
- A16.5 If it is practicable to do so, the Contractor shall include in any contract by which it appoints another Supply Chain member, provisions imposing on that person obligations, warranties and undertakings in favour of the Contractor equivalent to those imposed on the Contractor under this clause A16.

[A17 VAT reverse charge on construction services

- A17.1 Terms used in this clause A17 which are defined in the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (**Order**) shall bear the meanings given to them in the Order.
- A17.2 For the purposes of the Order and Section 55A of the Value Added Tax Act 1994 (**Act**) the Employer hereby confirms to the Contractor that the Employer is [an end user][an intermediary supplier to whom the proviso in article [8(1)(b(ii))(aa)][8(1)(b)(ii)(bb)] of the Order applies] in respect of any supply made under this Contract. Until the Employer notifies the Contractor of any relevant change in its status the Contractor shall issue a VAT invoice to the Employer with VAT charged at the appropriate rate.

OR

- A17.2 For the purposes of the Order and Section 55A of the Value Added Tax Act 1994 (**Act**) the Employer is neither an end user nor an intermediary supplier who satisfies one of the criteria set out in article 8(1)(b(ii))(aa) and article 8(1)(b)(ii)(bb) of the Order in respect of supplies made under this Contract.
- [A17.3 The Employer [is][is not] registered for VAT.]
- A17.4 The Contractor [is][is not] registered for VAT.]
- A17.5 [The parties confirm their agreement under article 8(2)(c) that the supplies under this Contract shall not be treated as excepted supplies.]
- A17.6 Each party shall notify the other as soon as reasonably practicable of any change to its status as referred to in this clause A17.]

A18 Commencement of proceedings

The Contractor and the Employer agree that irrespective of the manner in which this Contract is executed or made each party shall be entitled to bring an action (or actions) under or in connection with it any time before the expiration of 12 years from the practical completion of the Works (or, if earlier, 12 years from the termination of the Contractor's employment under this Contract). Neither party shall rely on any limitation defence that might otherwise be available to it in defence of proceedings commenced less than 12 years after the practical completion of the Works (or, if earlier, less than 12 years after the termination of the Contractor's employment under this Contract).

A19 Interpretation

In the case of any inconsistency between these Special Conditions and any other term of this Contract the Special Conditions shall prevail. In the case of any inconsistency between the Conditions and any other term of this Contract (except these Special Conditions) the Conditions shall prevail.

APPENDIX 1 - CONTRACTOR'S WARRANTY

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Beneficiary)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Contractor)
- (3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Employer)

DATED 20[xx]

BACKGROUND

[BENEFICIARY]

- A. The Employer has engaged the Contractor to carry out "construction Works" under the Contract (as hereinafter defined).
- B. The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has/will have an interest in the Works.
- C. The Employer requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.
- D. The Contractor has agreed to enter into this agreement with the Employer and the Beneficiary for the benefit of the Beneficiary.
- E. The Beneficiary has paid £1 to the Contractor and the Employer as consideration under this agreement (receipt of which the Contractor hereby acknowledges).

AGREED TERMS

CONTRACTOR WARRANTY

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement:

1.1. Definitions

Business Day: any day which is not a Saturday, Sunday, Christmas, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

relating to [xx]

Contract: the contract dated [xx] entered into between the Contractor and the Employer (and any further agreement varying or supplementing it) for the Works.

Documents: all drawings, reports, specifications, bills of quantities, calculations and other documents and information prepared by or on behalf of the Contractor in connection with the Works.

Prohibited Materials: any materials which by their nature or application:

1. contravene any British Standard or EU equivalent;
2. contravene the recommendations of the British Council for Construction publication *Good Practice In the Selection of Construction Materials* (2011); or

"For the sole purpose of contractor to providing design services"

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Beneficiary**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**)
- (3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Employer**)

BACKGROUND

- A. The Employer has engaged the Contractor to carry out the [design and]³ construction Works under the Contract (as hereinafter defined).
- B. The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has/will have an interest in the Works.
- C. The Employer requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.
- D. The Contractor has agreed to enter into this agreement with the Employer and the Beneficiary for the benefit of the Beneficiary.
- E. The Beneficiary has paid £1 to the Contractor and the Employer as consideration under this agreement (receipt of which the Contractor hereby acknowledges).

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1. Definitions:

Business Day: any day which is not a Saturday, Sunday, Christmas, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

Contract: the contract dated [xx] entered into between the Contractor and the Employer (and any further agreement(s) varying or supplementing it) for the Works.

Documents: all drawings, reports, specifications, bills of quantities, calculations and other documents and information prepared by or on behalf of the Contractor in connection with the Works.

Prohibited Materials: any materials which by their nature or application:

- .1 contravene any British Standard or EU equivalent;
- .2 contravene the recommendations of the British Council for Offices' publication *Good Practice in the Selection of Construction Materials* (2011); or

³

For use where contractor is providing design services

.3 are generally considered to be deleterious within the building design professions.

Standard of Care: all the skill and care reasonably to be expected of duly qualified and experienced professional designers undertaking the design of works similar in scope and character to the Works or such part of the Works

Works: the [design,] construction and completion of the works as required by the Contract.

- 1.2. Clause headings shall not affect the interpretation of this agreement.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11. A reference to **writing** or **written** includes fax but not email.
- 1.12. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13. References to clauses are to the clauses of this agreement.
- 1.14. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMPLY WITH BUILDING CONTRACT

- 2.1. The Contractor warrants and undertakes to the Beneficiary that:
 - 2.1.1. it has performed and shall continue to perform all of its duties and obligations under or arising out of the Contract; and
 - 2.1.2. the design for which it is responsible pursuant to the Contract has been and will be carried out using the Standard of Care required by the Contract; and
 - 2.1.3. it will, exercising the Standard of Care, not specify, use or permit for use in the Works any

Prohibited Materials; and

- 2.1.4. it will maintain all required insurances in accordance with the Contract.
- 2.2. The Contractor's liability under this warranty shall not be released, diminished or in any other way affected by the appointment by the Beneficiary of any person to survey the Works or to monitor the carrying out of the Works or to inspect any documents relating to the Works on behalf of the Beneficiary or the failure to appoint such a person, or any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.
- 2.3. In proceedings for breach of clause 2.1, the Contractor may:
 - 2.3.1. rely on any limit of liability or other term of the Contract; and
 - 2.3.2. raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Employer, under the Contract (for this purpose not taking into account any counterclaim against the actual employer under the Contract)provided that it shall not be a defence that the Employer has suffered a different loss to that of the Beneficiary
- 2.4. Notwithstanding any other provision of this warranty, and for the avoidance of doubt, the liability of the Contractor to the Beneficiary under this agreement shall be no greater in value, nature, extent and/or duration than that owing to the Employer under the Contract had the Beneficiary been named as joint employer.
- 2.5. This agreement shall not otherwise negate or diminish any duty or liability otherwise owed to the Beneficiary by the Contractor.

3. NO INSTRUCTIONS TO CONTRACTOR BY BENEFICIARY

- 3.1. The Beneficiary may not give instructions to the Contractor under this agreement.

4. COPYRIGHT

- 4.1. The copyright in the Documents shall remain vested in the Contractor but the Contractor hereby grants to the Beneficiary and its appointees an irrevocable, royalty-free, non-exclusive licence to copy and use the Documents and to reproduce the designs and contents of them for any purpose relating to the Works including but without limitation the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement and repair of the Works. Such licence shall enable the Beneficiary and its appointees to copy and use the Documents for any extension of the Works but shall not include any right or licence to reproduce the designs contained in them for any extension of the Works.
- 4.2. The licence shall be assignable to any owner from time to time of the Works or any party of them and may be sub-licensed to any owner or tenant of the Works or part of them and to any person engaged for the purposes permitted by clause 4.1.
- 4.3. The Contractor shall not be liable for any use by the Beneficiary of the Documents for any purpose other than for which they were prepared.

5. PROFESSIONAL INDEMNITY INSURANCE

- 5.1. The Contractor shall maintain professional indemnity insurance for an amount of at least £[SUM⁴] for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Works, provided that such insurance is available at commercially reasonable rates.

⁴ Insert the sum stated in the contract particulars of the Contract.

- 5.2. As and when reasonably requested to do so by the Beneficiary, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.
- 5.3. If the insurance referred to at 5.1 ceases to be available at commercially reasonable rates, the Contractor shall immediately give notice to the Employer and the Beneficiary so that the Contractor and the Employer and the Beneficiary can discuss the means of best protecting their respective positions in the absences of such insurance.

6. ASSIGNMENT

- 6.1. The Beneficiary may (without the consent of the Employer and the Contractor) assign the benefit of this warranty and/or its rights under this warranty to any mortgagee and by way of re-assignment on redemption, and on two other occasions only.
- 6.2. In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than one assignment under clause 6.1.
- 6.3. The 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 Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.

7. NOT USED

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 or principal office for the time being (or if neither are known or applicable, the last known principal business address) by personal delivery or pre-paid registered or recorded delivery mail or facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.
- 8.2. Notices and communications shall be deemed to have been served or received in the case of:
 - 8.2.1. personal delivery on the date of delivery;
 - 8.2.2. pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted;
 - 8.2.3. facsimile transmission sent in accordance with clause 8.1 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 9.1. Nothing in this warranty confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

10. GOVERNING LAW

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

11. LIMITATION PERIOD

- 11.1. No action or proceedings for any breach of this warranty shall be commenced against the Contractor after the expiry of twelve years from the date of completion of the Works.

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

[EXECUTION BLOCK]

APPENDIX 2 - CONSULTANTS' APPOINTMENTS

[Annex draft letters of appointment and, if applicable, draft deeds of novation]

APPENDIX 3 - CONSULTANTS' WARRANTIES

DATED: 10th May 2008

(THE SUB-CONTRACTOR)

(THE BENEFICIARY)

(THE CONTRACTOR)

SUB-CONTRACTOR WARRANTY

relating to [REDACTED]

APPENDIX 4 - SUB-CONTRACTORS' WARRANTIES

DATED **xx** 20xx

[THE SUB-CONTRACTOR]

[THE BENEFICIARY]

[THE CONTRACTOR]

BACKGROUND

a. The Beneficiary has engaged the Contractor to carry out the [design and] construction works under the Contract (as hereinabove defined).

b. The Contractor has engaged the Sub-Contractor to carry out the [design and] construction work.

SUB-CONTRACTOR WARRANTY

c. The Beneficiary and the Contractor require the Sub-Contractor to enter into a collateral warranty in favour of the Beneficiary.

d. The Sub-Contractor has agreed to enter into this agreement with the Contractor and the Beneficiary.

e. The Beneficiary has paid £**xx** to the Sub-Contractor and the Contractor as liquidated damages for this agreement (receipt of which is acknowledged by [the Sub-Contractor] herby acknowledged).

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1. Definitions

Business Day: any day which is not a Saturday, Sunday, Christmas, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

Contract: the contract dated [/ /] entered into between the Contractor and the Beneficiary (and any further agreements) varying or supplementing it for the Works.

Documents: all drawings, reports, specifications, lists of materials, schedules and other documents and information prepared by or on behalf of the Contractor in connection with the Sub-Contract Works.

Purchased Materials: any materials supplied by the Contractor to the Sub-Contractor.

Regulations: the regulations made under the Building Regulations.

Standard: the publication of the Royal Commission of Engineers' Association of the Professional Surveyors of Construction Materials (Glossy 1970).

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Sub-Contractor**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**)
- (3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Beneficiary**)

BACKGROUND

- A. The Beneficiary has engaged the Contractor to carry out the [design and]⁵ construction works under the Contract (as hereinafter defined).
- B. The Contractor has engaged the Sub-Contractor to carry out part of that [design and] construction work.
- C. The Beneficiary and the Contractor require the Sub-Contractor to enter into a collateral warranty in favour of the Beneficiary.
- D. The Sub-Contractor has agreed to enter into this agreement with the Contractor and the Beneficiary for the benefit of the Beneficiary.
- E. The Beneficiary has paid £1 to the Sub-Contractor and the Contractor as consideration under this agreement (receipt of which the Sub-Contractor and the Contractor] hereby acknowledge).

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1. Definitions:

Business Day: any day which is not a Saturday, Sunday, Christmas, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

Contract: the contract dated [xx] entered into between the Contractor and the Beneficiary (and any further agreement(s) varying or supplementing it) for the Works.

Documents: all drawings, reports, specifications, bills of quantities, calculations and other documents and information prepared by or on behalf of the Sub-Contractor in connection with the Sub-Contract Works.

Prohibited Materials: any materials which by their nature or application:

- .1 contravene any British Standard or EU equivalent;
- .2 contravene the recommendations of the British Council for Offices' publication *Good Practice in the Selection of Construction Materials* (2011); or

⁵ For use where contractor also provides design

.3 are generally considered to be deleterious within the building design professions.

[Standard of Care: all the skill and care reasonably to be expected of duly qualified and experienced professional designers undertaking the design of works similar in scope and character to the Works or such part of the Works]

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

Sub-Contract Works: the sub-contract works to be carried out by the Sub-Contractor under the Sub-Contract;

Works: the [design,⁶] construction and completion of the works as required by the Contract.

- 1.2. Clause headings shall not affect the interpretation of this agreement.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11. A reference to **writing** or **written** includes fax but not email.
- 1.12. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13. References to clauses are to the clauses of this agreement.
- 1.14. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMPLY WITH SUB-CONTRACT

- 2.1. The Sub-Contractor warrants and undertakes to the Beneficiary that:

⁶ For use where sub-contractor also provides design

- 1.1.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Sub-Contract; and
 - 1.1.2 [(to the extent that it has carried out any design of the Sub-Contract Works or any part of the Sub-Contract Works) the design for which it is responsible under the Sub-Contract has been and will be carried out using the Standard of Care required by the Sub-Contract; and]⁷
 - 1.1.3 [it will, exercising the Standard of Care, not specify, use or permit for use in the Works any products or materials which, at the time of use, are Prohibited Materials; and]
 - 1.1.4 it will maintain all required insurances in accordance with the Sub-Contract.
- 2.2. The Sub-Contractor's liability under this warranty shall not be released, diminished or in any other way affected by the appointment by the Beneficiary of any person to survey the Works or to monitor the carrying out of the Works or to inspect any documents relating to the Works on behalf of the Beneficiary or the failure to appoint such a person, or any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.
- 2.3. In proceedings for breach of clause 2.1, the Sub-Contractor may rely on any limit of liability or other term of the Sub-Contract.
 - 2.3.1. raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the employer, under the Sub-Contract (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Sub-Contract)
provided that it shall not be a defence that the Sub-Contractor has suffered no loss or has suffered a different loss to that of the Beneficiary
- 2.4. The liability of the Sub-Contractor under this warranty shall be no greater in value, nature, extent and/or duration than its liability under the Sub-Contract and in responding to any claim under this warranty, the Sub-Contractor may rely upon any equivalent rights of defence to those which would have existed under the Sub-Contract provided that it shall not be a defence that the Sub-Contractor has suffered a different loss to that of the Beneficiary.
- 2.5. This agreement shall not otherwise negate or diminish any duty or liability otherwise owed to the Beneficiary by the Sub-Contractor.

3. COPYRIGHT

- 3.1. The copyright in the Documents shall remain vested in the Sub-Contractor but the Sub-Contractor hereby grants to the Beneficiary and its appointees an irrevocable, royalty-free, non-exclusive licence to copy and use the Documents and to reproduce the designs and contents of them for any purpose relating to the Works including but without limitation the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement and repair of the Works. Such licence shall enable the Beneficiary and its appointees to copy and use the Documents for any extension of the Works but shall not include any right or licence to reproduce the designs contained in them for any extension of the Works.
- 3.2. The licence shall be assignable to any owner from time to time of the Works or any party of them and may be sub-licensed to any owner or tenant of the Works or part of them and to any person engaged for the purposes permitted by clause 3.1.
- 3.3. The Sub-Contractor shall not be liable for any use by the Beneficiary of the Documents for any purpose other than for which they were prepared.

4. PROFESSIONAL INDEMNITY INSURANCE

- 4.1. The Sub-Contractor shall maintain professional indemnity insurance for an amount of at least

⁷ For use where sub-contractor also provides design

£[SUM⁸]) for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Sub-Contract Works, provided that such insurance is available at commercially reasonable rates.

- 4.2. As and when reasonably requested to do so by the Beneficiary, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.
- 4.3. If the insurance referred to at 4.1 ceases to be available at commercially reasonable rates, the Sub-Contractor shall immediately give notice to the Beneficiary so that the Sub-Contractor and the Beneficiary can discuss the means of best protecting their respective positions in the absences of such insurance.⁹

5. ASSIGNMENT

- 5.1. The Beneficiary may (without the consent of the Sub-Contractor and the Contractor) assign the benefit of this warranty and/or its rights under this warranty to any mortgagee and by way of re-assignment on redemption, and on two other occasions only.
- 5.2. In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than one assignment under clause 5.1.
- 5.3. 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 Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.

6. NOTICES

- 6.1. 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 or principal office for the time being (or if neither are known or applicable, the last known principal business address) by personal delivery or pre-paid registered or recorded delivery mail or facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.
- 6.2. Notices and communications shall be deemed to have been served or received in the case of:
 - 6.2.1. personal delivery on the date of delivery;
 - 6.2.2. pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted;
 - 6.2.3. facsimile transmission sent in accordance with clause 6.1 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

7. NOT USED

8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 8.1. Nothing in this warranty confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

⁸ Insert the sum stated in the contract particulars of the Sub-Contract.

⁹ For use where sub-contractor also provides design

9. GOVERNING LAW

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

10. LIMITATION PERIOD

- 10.1. No action or proceedings for any breach of this warranty shall be commenced against the Sub-Contractor after the expiry of twelve years from the date of completion of the Sub-Contract Works.

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]

APPENDIX 5 - PERFORMANCE BOND

APPENDIX 6 - PARENT COMPANY GUARANTEE