

APPENDIX 1

CONDITIONS

THIS CONTRACT SHALL INCORPORATE ALL THE PROVISIONS OF THE JOINT CONTRACTS TRIBUNAL MINOR WORKS BUILDING CONTRACT 2016 AS AMENDED BY THE FOLLOWING AMENDMENTS:

Insert new Recital 9 as follows:

Recital 9 the Contractor agrees to carry out the Works in accordance with the documents identified in the Contents which are hereby incorporated into the Agreement and together referred to as the "Contract Documents".

SECTION 1: DEFINITIONS AND INTERPRETATION

1.1 Amend clause 1.1 as follows:

In the definition of "Conditions", **insert** the following after the words "sections 1 to 7":
"as amended by the schedule of amendments attached to the Agreement"

Insert new definition of "Confidential Information" as follows: "information that ought to be considered confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998."

Insert new definition of "Employer" as follows: "the person named as Employer in the Agreement and its successors in title and assigns."

Insert new definition of "EIR" as follows: "the Environmental Information Regulations 2004 together with any guidance and/or code of practice issued by the Information Commissioner or relative Government department in relation to such regulations."

Insert new definition of "Employer's Policies" as follows: "the policies referred to in the tender documentation including the Employer's Sustainable Procurement Code of Practice set out in Schedule 9 hereto."

Insert new definition of "FOIA" as follows: "the Freedom of Information Act 2000 and any subordinate legislation made under that Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to that Act."

Insert new definition of "FOIA Code" as follows: "the Department of Constitutional Affairs Code of Practice on the Discharge of functions of Public Authorities under Part I FOIA or any replacement or revision of that Code."

Insert new definition of "Group Company" as follows: "any subsidiary or holding company of the Contractor or another subsidiary or holding company of such company, as 'subsidiary' and 'holding company' are defined in s1159 of the Companies Act 2006."

Insert new definition of “Information” as follows: “information as defined in Section 84 of the FOIA and which relates to the Contract (or any preceding tender process leading up to it), the Contractor, or any sub-contractor, of the Works.”

In the definition of “Interest Rate”, **replace** “5%” with “2.5%”

Insert new definition of “Request for Information (or “Request”)” as follows: “a request for Information within the meaning given in Section 1 of the FOIA or any request for Information under the EIR.”

Insert new definition of “Subordinate Legislation” as follows: “the meaning given in Section 84 of the FOIA.”

Insert new definition of “Sustainability Code of Practice” as follows: “London Borough of Lewisham’s Sustainable Procurement Code of Practice for Contractors, Suppliers and Service Providers set out in Schedule 9 (Employer’s Policies)”;

Insert new definition of “Working Day” as follows: “the meaning given in Section 10 of the FOIA.”

SECTION 2: CARRYING OUT THE WORKS

2.1.4 **Insert** new clause 2.1.4 as follows:

“The Contractor warrants that it has used and shall continue to use the reasonable skill, care and diligence required of a contractor carrying out similar works to the Works to see that there are not used or specified in the Works any materials which by their nature or application contravene any British Standard or EU equivalent or which are considered to be deleterious in the UK building industry at the time of use or specification or which contravene the recommendations contained in the publication “Good Practice in Selection of Construction Materials” (2011: British Council for Offices).”

2.5.1 **Insert** in line 1 after the word “Requirements” the words: “which could not reasonably have been foreseen by the Contractor at the date of tender”.

2.7 **Insert** at the end of the clause the words: “Any delay which would give rise to an extension of time under this clause 2.7 which is concurrent with another delay for which the Contractor is responsible shall not be taken into account. The Contractor shall not be entitled to any extension of time in respect of any delay attributable to any act, breach of contract, negligence, omission or default by the Contractor or any agent, employee or other person engaged by the Contractor.”

2.9 **Insert** in line 2 after the words “has complied sufficiently with” the words: “clause 2.9A and”.

2.9A **Insert** new clause 2.9A as follows:

2.9A “The Architect/Contract Administrator shall not certify practical completion until in all respects, the Contractor has completed all of its obligations in relation to the construction, including (without limitation):

.1 the Works have been completed in accordance with the Contract and are free from apparent defects, subject only to minor defects which do not affect or impair the use, enjoyment, occupation and/or fitting out of the Works by the Employer. Such minor items shall be deemed for the purposes of clause 2.11 to be defects appearing within the Rectification Period; and

- .2 the following records and documents have been provided:
- .1 the Building Control Certificate;
 - .2 the Fire Safety Certificate;
 - .3 two (2) sets of as-built drawings;
 - .4 two (2) sets of all keys;
 - .5 gas, water and electric meter numbers and readings; and
 - .6 any other relevant approvals or certificates identified in the Employer's Requirements as being the Contractor's responsibility"

2.12 **Insert** new clause as follows:

"Product guarantee

The Contractor shall, within 14 days of the Employer's request, procure a product guarantee in favour of the Employer on terms acceptable to the Employer from the parties responsible for the works identified in the Contents."

2.14 **Insert** new clause 2.14 as follows:

"The Contractor shall permit the execution of work not forming part of this Contract to be carried out by the Employer or by persons employed or engaged by the Employer or authorised by the Employer on the site of the Works concurrent with the Contractor's execution of the Works subject to the Contractor's reasonable requirements as to security and health and safety".

SECTION 3: CONTROL OF THE WORKS

3.1 **Delete** clause 3.1 and **insert** new clause as follows:

"The Employer may without the consent of the Contractor, assign, charge or transfer the benefit of all or any of his rights arising under or out of this Contract. The Contractor shall not, without the prior written consent of the Employer, assign, charge or transfer the benefit of all or any of his rights under this Contract to any person."

3.3.1 **Insert** at the end of the clause the following sentence:

"Forthwith upon the Employer's request, the Contractor shall deliver to the Employer a certified copy of the relevant sub-contract executed by the sub-contractor."

3.3.3 **Insert** new clause as follows:

"The Contractor shall be responsible for ensuring that all its sub-contractors and their agents and employees are fully informed of and comply with the terms and conditions of this Contract".

3.3.4 **Insert** new clause as follows:

"The Contractor shall ensure that its sub-contractors do not further sub-contract any element of the Works."

SECTION 4: PAYMENT

4.3 **Delete** "14 days" and **replace** with "28 days" in the final sentence.

4.5.4 **Delete** "5 days" and **replace** with "the day" in line 6.

4.8.3 **Delete** “14 days” and **replace** with “28 days”.

SECTION 5: INJURY, DAMAGE AND INSURANCE

5.1 **Insert** after “Works” the words: “or in the performance of the Contractor’s other obligations under Clause 2.10”.

5.2 **Insert** after the use of the word “Works” throughout clause 5.2: “or in the performance of the Contractor’s other obligations under Clause 2.10”.

5.6 **Insert** new clause as follows: “All insurances taken out by the Contractor shall contain an industry standard "indemnity to principals" clause.”

SECTION 6: TERMINATION

6.5.1 **Insert** the words “or Group Company” after the word “Contractor” in line 1.

6.7.3 **Insert** at the end of the clause the following words:

“provided that if the Employer procures the completion of the outstanding Works for less than the Employer would have had to pay the Contractor to complete the outstanding Works, then for the purposes of this clause 6.7.3, the Employer shall be deemed to have paid the same amount to procure the completion of the outstanding Works under clause 6.7.1 as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract”

6.8.3 **Delete** “7 days” and “7 day” and **replace** with “30 days” and “30 day”.

6.11 **Insert** after “6.10” the words “or 6.9A if Optional Clause 13 applies”.

6.11.5 **Insert** new clause 6.11.5 as follows:

“Upon determination of this Contract or the Contractor’s employment under it, and notwithstanding that the validity thereof may be disputed by the Contractor, the Contractor shall vacate the site and shall immediately deliver to the Employer the Works in a secure and safe condition.”

SECTION 7: SETTLEMENT OF DISPUTES

7.2A **Insert** new clause 7.2A as follows:

“The Adjudicator shall have the power to determine more than one dispute under this Contract at the same time and/or adjudicate at the same time on related disputes under this Contract and any other contract with any person relating to the development comprising the Works, 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 counter-claim at the same time as he determines any other matter referred to him.”

7.3 **Delete** this clause and insert “Arbitration shall not apply.”.

DELETE SCHEDULES 1 AND 2.

SCHEDULE 3

Delete the first paragraph and replace with the following:

7 Delete supplemental provision 7 and insert new supplemental provision 7 as follows:

Delete "Freedom of Information Act 2000 ('FOIA') and **replace** with "FOIA".

"7.1 The Contractor acknowledges that, in order to be compliant with the FOIA and the EIR, the Employer may be obliged, on request, to provide or consider the provision of Information to third parties where that Information constitutes or may constitute Confidential Information. Subject to the provisions of this clause 7, the Contractor shall assist and co-operate with the Employer (at the Contractor's expense) to facilitate the Employer's compliance with the FOIA and/or EIR in that regard.

7.2 The Contractor shall:

(i) transfer any Request for Information that it or its sub-contractors receive, to the Employer as soon as practicable after receipt and in any event within 2 Working Days of receiving that Request for Information; and

(ii) provide the Employer with a copy of all Information in its or its sub-contractors possession or power that the Employer reasonably considers is relevant to the Request in the form that the Employer requires as soon as practicable and in any event within 5 Working Days of the Employer requesting that Information and any follow up Information required by the Employer thereafter within 2 Working Days of the Employer's follow up request.

7.3 The Contractor acknowledges that the Employer may, acting in accordance with the FOIA Code, be obliged under the FOIA or the EIR to disclose Information that is or may be Confidential Information:

(i) in certain circumstances without consulting the Contractor; or

(ii) following consultation with the Contractor and having taken the Contractor's views into account,

provided always that where clause 7.3 applies, the Employer shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

7.4 Subject to the Employer complying with its obligations under this clause 7, the Employer shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor or any sub-contractor arising from the disclosure of any Information whether or not such Information is Confidential Information falling within the scope of the FOIA or EIR.

7.5 The Contractor shall indemnify the Employer against all claims, demands, actions, costs proceedings and liabilities that the Employer incurs due to the Contractor's or any sub-contractor's breach of this clause 7.

7.6 The Contractor shall ensure that the terms of any sub-contract which it enters into with a sub-contractor replicate the provisions of this clause 7 such that the Employer has the same rights against a sub-contractor as it does against the Contractor under this clause 7.

7.7 The Contractor shall comply with the Employer's Policies set out in Schedule 9."

8.4 **Insert** new clause 8.4 as follows:

“Clause 8.1 is without prejudice to any contractual or statutory provision under which any payment is to be made earlier than the time required by that clause.”

INSERT new Schedule 4 "Processing, Personal Data and Data Subjects."

SCHEDULE 4

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

"Controller" has "the meaning given to it in the GDPR."

"Data Protection Legislation" means "(a) the General Data Protection Regulation ((EU) 2016/679) ("GDPR"); (b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (c) all applicable Law about the processing of personal data and privacy."

"Data Subject" has "the meaning given to it in the GDPR."

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679)."

"Personal Data" means "the meaning given to it in the GDPR."

- 1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor. The table below in this Schedule 4 sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of the Personal Data and categories of Data Subject.
- 1.3 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - .1 process that Personal Data only on the written instructions of the Employer unless the Contractor is required to do otherwise by law. If it is so required the Contractor shall promptly notify the Employer before processing the Personal Data unless prohibited by law;
 - .2 ensure that it has in place appropriate technical and organisational measures, which have been reviewed and approved by the Employer, to protect against any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
 - .3 ensure that all Contractor personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - .4 not transfer Personal Data outside of the EU unless the prior written consent of the Employer has been obtained and adequate measures and safeguards are implemented to ensure that the level of protection of natural persons guaranteed by the Data Protection Legislation is not undermined;
 - .5 notify the Employer immediately if it receives any request, complaint or communication from a Data Subject relating to the Employer's obligations under the Data Protection Legislation or on becoming aware of a Personal Data Breach;

- .6 provide full assistance to the Employer in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, complaints, communications, impact assessments and consultations with supervisory authorities or regulators;
- .7 at the written direction of the Employer, delete or return Personal Data (and any copies of it) to the Employer on termination of the contract unless the Contractor is required by law to retain the Personal Data.
- 1.4 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 4 and allow for audits by the Employer or the Employer's designated auditor.
- 1.5 Before allowing any third party processor to process any Personal Data related to this contract, the Contractor must:
- .1 notify the Employer in writing of the intended Sub-processor and processing;
 - .2 obtain the written consent of the Employer;
 - .3 enter into a written agreement with the third party processor including provisions which are substantially similar to those set out in this paragraph 1 of Schedule 4.
- 1.6 The Contractor shall remain fully liable for all acts or omissions of any third party processor.
- 1.7 The Contractor shall comply with any further written instructions with respect to processing by the Employer. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Personal data necessary for the performance of the Contract
Duration of the processing	Duration of the Works and Rectification Period
Nature and purposes of the processing	The nature of the processing means any operation such as collection, recording, organisation, structuring, consultation, use, disclosure by transmission, dissemination or otherwise making available, erasure or destruction of data
Type of Personal Data	Names and contact details
Categories of Data Subject	Members of staff of the Employer, the Schools, Contract Administrator and Contractor. Children and parents who access the Schools.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The personal data will be returned or destroyed on following the Rectification Period and, if requested by the Employer, the Contractor will provide a destruction certificate to confirm deletion of the data.

Schedule 5: Parent Company Guarantee

THIS GUARANTEE is made the [] day of [] 20[]

BETWEEN:

- (1) [] whose registered office is at [] (the "Guarantor"); and
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LEWISHAM of Old Town Hall, Catford Road, London, SE6 4RU** (the "Employer" which expression includes its permitted successors and assigns).

WHEREAS:

- A. This guarantee (the "Guarantee") is given in connection with a contract dated [] (the "Contract") made between the Employer of the one part and [] (the "Contractor") of the other part for the construction and part of the design of [] (the "Project").
- B. The Guarantor has agreed to guarantee the due performance of the Contractor's obligations to the Employer under the Contract in the manner set out below.

In consideration of the Employer entering into the Contract **IT IS AGREED:**

1. The Guarantor hereby guarantees to the Employer the full and due performance of all the obligations of the Contractor contained within the Contract. If the Contractor fails to observe or perform any of its duties or obligations under or in connection with the Contract or if the employment of the Contractor under the Contract shall determine by operation of or notice given under clause 6 of the Contract, the Guarantor shall (subject to the remaining clauses of this Guarantee) be responsible for and hereby indemnifies the Employer against all losses, damages, costs and expenses which the Employer may incur by reason of such failure to observe or perform or such termination. The Guarantor shall itself pay to the Employer without any deduction or set-off the amount of such debt, damages, interest or costs as the case shall require.
2. The Contract may be modified, amended or supplemented in any manner whatsoever without the consent of the Guarantor, and no such modification, amendment or supplement shall release or impair the liability of the Guarantor under this Guarantee, which shall extend to the duties, obligations and liabilities of the Contractor under the Contract as so modified, amended or supplemented. No invalidity in the Contract or its avoidance or termination shall affect or impair the liability of the Guarantor under this Guarantee. No waiver, concession, allowance of time, compromise or forbearance given to or made with the Contractor shall release, affect or impair the liability of the Guarantor under this Guarantee, and the terms of this Guarantee shall apply to the terms of such compromise as they apply to the Contract.
3. This guarantee shall not be affected and the Guarantor shall not be exonerated in any way by:
 - 3.1. the insolvency, bankruptcy, winding-up, dissolution, administration, incapacity, amalgamation, reconstruction, re-organisation or any analogous proceeding relating to the Contractor;
 - 3.2. any time, indulgence or concession being granted to the Contractor;
 - 3.3. the Employer compounding or entering into any compromise, settlement or arrangement with the Contractor or any other person; or

- 3.4. any other matter or thing which would but for this provision affect or exonerate the Guarantor's liability hereunder.
4. The Employer shall not be required to pursue any remedy against the Contractor before proceeding against the Guarantor under this Guarantee.
5. So long as the obligations of the Guarantor under this Guarantee and those of the Contractor under the Contract remain outstanding and unperformed the Guarantor will not claim any set-off or counterclaim against the Contractor, prove in competition with the Employer or have the benefit of any security which the Employer holds or may hold for any money or liabilities due from or incurred by the Contractor.
6. The Employer shall be entitled to recover no more under this Guarantee in respect of any matter than the Employer would be entitled to recover from the Contractor in respect of that matter and the Employer shall not be entitled to commence proceedings against the Guarantor under this Guarantee in respect of any claim once any proceedings against the Contractor in respect of such claim would be statute-barred.
7. The Employer is entitled to assign the benefit of and its rights under this Guarantee to any party without the Guarantor's consent.
8. The parties to this Guarantee do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
9. Any notice or other document to be given by a party under this Guarantee shall be in writing and shall be considered to have been given if hand delivered to the other party or sent by registered post to the other party at the address above (or such other address as one party may from time to time designate by written notice to the other). Any notice or other document shall be considered to have been received by the addressee 2 business days following the date of despatch of the notice or other document by registered post or on the next business day where delivery is by hand.
10. Each provision of this Guarantee is severable and distinct from the others. If a provision of this Guarantee is or becomes to any extent illegal, invalid or unenforceable in any jurisdiction, it shall not affect the legality, validity or enforceability of any other term of this Guarantee.
11. This Guarantee is subject to English law and the English courts shall have jurisdiction with regard to all matters arising out of or in connection with it.

In Witness whereof the parties have executed this Deed on the date before written.

EXECUTED as a **DEED** by)

[] acting by:)

.....
Director

.....
Director/Secretary

THE COMMON SEAL of THE)
MAYOR AND BURGESSES OF)
THE LONDON BOROUGH OF LEWISHAM)
was hereunto affixed by order:)
)

.....
[Head of Legal Services]

Schedule 6: Performance Bond

BOND

DATE

20[]

PARTIES

1. **THE CONTRACTOR** named in the Schedule as principal.
2. **THE GUARANTOR** named in the Schedule as guarantor.
3. **THE EMPLOYER** named in the Schedule.

RECITALS

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

NOW THIS DEED WITNESSES as follows:

1. The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor or determination of the Contract by the Employer under clause 6 of the Contract, the Guarantor shall subject to the provisions of this Bond satisfy and discharge the damages and expenses sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract.
2. The maximum aggregate liability of the Guarantor and the Contractor under this Bond shall not exceed the sum set out in the Schedule (the "Bond Amount") but subject to such limitation and to clause 4 the liability of the Guarantor shall be no less than the liability of the Contractor under the Contract.
3. The Guarantor shall not be discharged or released by any alteration of any of the terms, conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Bond.
4. Whether or not this Bond shall be returned to the Guarantor the obligations of the Guarantor under this Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract or determination of the Contractor's employment which has occurred and in respect of which a claim in writing containing particulars of such breach or determination has been made upon the Guarantor before Expiry.
5. The Contractor having requested the execution of this Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.
6. This Bond and the benefits thereof may be assigned with the prior written consent of the Guarantor (such consent not to be unreasonably withheld or delayed).

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

THE SCHEDULE

The Contractor: [] (Registered No. []) whose registered office it at []

The Guarantor: [] (Registered No. []) whose registered office it at []

The Employer: **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LEWISHAM** of **Old Town Hall, Catford Road, London, SE6 4RU** (including its permitted successors and assigns);

The Contract: A contract dated [] 201[] between the Employer and the Contractor in the form known as JCT Minor Works Contract 2016 (subject to certain amendments) for the construction and part of the design of works at [] for the original contract sum of [] pounds (£[])

The Bond Amount: The sum of [] pounds sterling (£[]) [10%]

Expiry: The date of issue of the last Certificate of Making Good pursuant to the Contract which shall be conclusive for the purposes of this Bond

In Witness whereof the parties have executed this Deed on the date before written.

THE COMMON SEAL of THE)
MAYOR AND BURGESSES OF)
THE LONDON BOROUGH OF LEWISHAM)
was hereunto affixed by order:)
)

.....
[Head of Legal Services]

SIGNED AS A DEED by [])
LIMITED acting by a director and)
its secretary or two directors)

.....
Director

.....
Director/Secretary

EXECUTED as a **DEED** by)
GUARANTOR acting by:)

.....
Director

.....
Director/Secretary

indemnity of not less than £[] in respect of each and every claim, provided always that such insurance is available at reasonable commercial rates.

- 2.2. The Contractor shall, whenever it is requested to do so, produce for inspection documentary evidence which confirms that the insurance referred to in Clause 2.1 is being maintained and that the current year's premiums have been paid.
- 2.3. The Contractor shall immediately inform the Beneficiary if the insurance referred to in Clause 2.1 ceases to be available at reasonable commercial rates so that the parties can discuss the best means of protecting each other's interests.

3. **COPYRIGHT**

- 3.1. Copyright in the Contractor's plans, drawings, specifications, schedules, reports, calculations, correspondence and other documents (including the designs contained in them) prepared or provided in relation to the Project (the "Documents") shall remain vested in the Contractor. The Contractor hereby grants to the Beneficiary an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Documents and to reproduce the designs contained in them for any purpose whatsoever relating to the Project. Such licence shall entitle the Beneficiary to copy and use the Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained in them for any extension of the Project. The Beneficiary shall be entitled to grant sub-licences in relation to the Documents.
- 3.2. To the extent that the copyright in any of the Documents is not vested in the Contractor, it shall procure in favour of the Beneficiary a licence in terms equivalent to Clause 3.1 from the owner of such copyright.
- 3.3. The Contractor warrants that the Documents are the Contractor's original work and the use and reproduction of the Documents will not infringe the rights of any third party. The Contractor will indemnify the Beneficiary for any losses that the Beneficiary may suffer as a result of the Contractor's breach of its obligations under this clause.
- 3.4. The Contractor hereby undertakes upon payment of its reasonable copying and incidental charges to provide to the Beneficiary copies of the Documents as the Beneficiary may reasonably require.

[Clause 4 only applies to beneficiaries with step-in rights]

4. **STEP IN RIGHTS**

- 4.1. The Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate, or treat as terminated, the Building Contract or its engagement under it without first giving to the Beneficiary not less than 21 days' prior written notice specifying the Contractor's ground for terminating or treating as terminated the Building Contract or its engagement under it, and stating the amount (if any) of monies outstanding under the Building Contract.
- 4.2. Within such period of notice, the Beneficiary may give written notice to the Contractor that the Beneficiary will thenceforth become the employer under the Building Contract to the exclusion of the Employer and thereupon the Contractor will admit that the Beneficiary is its employer under the Building Contract and the Building Contract will be and remain in full force and effect notwithstanding any of the said grounds.

- 4.3. The Beneficiary may by notice in writing to the Contractor appoint another person to exercise its rights under this clause 4, subject to the Beneficiary remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 4.4. If the Beneficiary has given notice under clause 4.2 or clause 4.3, the Beneficiary will, from the service of such notice, become responsible for all sums properly payable to the Contractor under the Building Contract after the service of such notice.
- 4.5. The Beneficiary will not be under any obligation to the Contractor, nor will the Contractor have any claim or cause of action against the Beneficiary, unless and until the Beneficiary has given written notice to the Contractor pursuant to clause 4.2 or clause 4.3.

5. **ASSIGNMENT**

- 5.1. The Beneficiary may assign all or any of its rights under this Deed to any party without the consent of the Contractor.
- 5.2. The Contractor shall not be entitled to contend that any person to whom this Deed is assigned is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of the Building Contract or this Deed by reason that such person is an assignee and not the named beneficiary hereunder.

6. **GENERAL**

- 6.1. This Deed is subject to English law and the English courts shall have jurisdiction with regard to all matters arising out of or in connection with it.
- 6.2. For the avoidance of doubt, no act or omission by the Beneficiary shall mitigate, affect, diminish or reduce the responsibilities or liabilities of the Contractor under the Building Contract or this Deed.
- 6.3. No action or proceedings for any breach of this Deed shall be commenced against the Contractor after the expiry of 12 years from the date of practical completion of the Project under the Building Contract.
- 6.4. Any notices to be given by either party hereunder will be sufficiently served if sent by hand or recorded or registered post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting.

In Witness whereof the parties have executed this Deed on the date before written.

THE COMMON SEAL OF THE)
MAYOR AND BURGESSES OF)
THE LONDON BOROUGH OF LEWISHAM)
was hereunto affixed by order:)
)

.....
[Head of Legal Services]

EXECUTED AS A DEED BY)
[CONTRACTOR])
acting by:)

.....
Director
.....
Director/Company Secretary

EXECUTED AS A DEED BY)
[BENEFICIARY])
acting by:)

.....
Director
.....
Director/Company Secretary

Schedule 8: Sub-Contractor Warranty

THIS DEED is made on the _____ day of _____ 20[]

BETWEEN

- 1 [] whose registered office is at [] (the "Sub-Contractor");
- 2 [] whose registered office is at [] (the "Contractor"); and
- 3 [] whose registered office is at [] (the "Beneficiary") which expression shall where the context so admits include its permitted successors and assigns.

RECITALS

- (1) By a contract entered into between []/[the Beneficiary] and the Contractor (the "Building Contract"), the Contractor was appointed as building contractor to carry out the construction of [] (the "Project").
- (2) By a sub-contract entered into between the Contractor and the Sub-Contractor (the "Sub-Contract"), the Sub-Contractor was appointed to carry out the construction of certain works in relation to the Project.
- (3) The Sub-Contractor has agreed to enter into this warranty deed (the "Deed") in favour of the Beneficiary on the terms set out below.

NOW IT IS AGREED as follows:-

sub-contractor's obligations

- 6.5. In consideration of the sum of ten pounds (receipt of which is hereby acknowledged), the Sub-Contractor warrants that it has:
 - 6.5.1. been engaged by the Contractor to carry out sub-contract works in relation to the Project;
 - 6.5.2. complied and will continue to comply with the terms of the Sub-Contract; and
 - 6.5.3. exercised and will continue to exercise all the reasonable skill and care expected of a qualified and competent sub-contractor who is experienced in carrying out work of a similar size, scope and complexity to the sub-contract works, in the performance of his duties under the Sub-Contract.
- 6.6. The Sub-Contractor warrants that it has used and shall continue to use the standard of skill, care and diligence required under the Sub-Contract to see that there are not used or specified in the Project any materials which by their nature or application contravene any British Standard or EU equivalent or which are considered to be deleterious in the UK building industry at the time of use or specification or which contravene the recommendations contained in the publication "Good Practice in Selection of Construction Materials" (2011: British Council for Offices).
- 6.7. The Sub-Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Sub-Contract and to raise the equivalent rights in defence of liability

(excluding set-offs or counterclaims) as it would have had if the Beneficiary had been named as the employer under the Sub-Contract, save that it shall not be a defence to any action brought against the Sub-Contractor by the Beneficiary that the Contractor has suffered no loss under the Sub-Contract.

7. PROFESSIONAL INDEMNITY INSURANCE

- 7.1. The Sub-Contractor warrants that it has in effect and shall maintain for a period of 12 years from the date of practical completion of the Project professional indemnity insurance with a limit of indemnity of not less than £[] in respect of each and every claim, provided always that such insurance is available at reasonable commercial rates.
- 7.2. The Sub-Contractor shall, whenever it is requested to do so, produce for inspection documentary evidence which confirms that the insurance referred to in Clause 2.1 is being maintained and that the current year's premiums have been paid.
- 7.3. The Sub-Contractor shall immediately inform the Beneficiary if the insurance referred to in Clause 2.1 ceases to be available at reasonable commercial rates so that the parties can discuss the best means of protecting each other's interests.

8. COPYRIGHT

- 8.1. Copyright in the Sub-Contractor's plans, drawings, specifications, schedules, reports, calculations, correspondence and other documents (including the designs contained in them) prepared or provided in relation to the Project ("the Documents") shall remain vested in the Sub-Contractor. The Sub-Contractor hereby grants to the Beneficiary an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Documents and to reproduce the designs contained in them for any purpose whatsoever relating to the Project. Such licence shall entitle the Beneficiary to copy and use the Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained in them for any extension of the Project. The Beneficiary shall be entitled to grant sub-licences in relation to the Documents.
- 8.2. To the extent that the copyright in any of the Documents is not vested in the Sub-Contractor, it shall procure in favour of the Beneficiary a licence in terms equivalent to Clause 3.1 from the owner of such copyright.
- 8.3. The Sub-Contractor warrants that the Documents are the Sub-Contractor's original work and the use and reproduction of the Documents will not infringe the rights of any third party. The Sub-Contractor will indemnify the Beneficiary for any losses that the Beneficiary may suffer as a result of the Sub-Contractor's breach of its obligations under this clause.
- 8.4. The Sub-Contractor hereby undertakes upon payment of its reasonable copying and incidental charges to provide to the Beneficiary copies of the Documents as the Beneficiary may reasonably require.

[Clause 4 only applies to beneficiaries with step-in rights]

9. STEP IN RIGHTS

- 9.1. The Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate, or treat as terminated, the Sub-Contract or its engagement under it without first giving to the Beneficiary not less than 21 days' prior written notice specifying

the Sub-Contractor's ground for terminating or treating as terminated the Sub-Contract or its engagement under it, and stating the amount (if any) of monies outstanding under the Sub-Contract.

- 9.2. Within such period of notice, the Beneficiary may give written notice to the Sub-Contractor that the Beneficiary will thenceforth become the employer under the Sub-Contract to the exclusion of the Contractor and thereupon the Sub-Contractor will admit that the Beneficiary is its employer under the Sub-Contract and the Sub-Contract will be and remain in full force and effect notwithstanding any of the said grounds.
- 9.3. The Beneficiary may by notice in writing to the Sub-Contractor appoint another person to exercise its rights under this clause 4, subject to the Beneficiary remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this deed.
- 9.4. If the Beneficiary has given notice under clause 4.2 or clause 4.3, the Beneficiary will, from the service of such notice, become responsible for all sums properly payable to the Sub-Contractor under the Sub-Contract after the service of such notice.
- 9.5. The Beneficiary will not be under any obligation to the Sub-Contractor, nor will the Sub-Contractor have any claim or cause of action against the Beneficiary, unless and until the Beneficiary has given written notice to the Sub-Contractor pursuant to clause 4.2 or clause 4.3.

10. **ASSIGNMENT**

- 10.1. The Beneficiary may assign all or any of its rights under this Deed to any party without the consent of the Sub-Contractor.
- 10.2. The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of the Sub-Contract or this Deed by reason that such person is an assignee and not the named beneficiary hereunder.

11. **GENERAL**

- 11.1. This Deed is subject to English law and the English courts shall have jurisdiction with regard to all matters arising out of or in connection with it.
- 11.2. For the avoidance of doubt, no act or omission by the Beneficiary shall mitigate, affect, diminish or reduce the responsibilities or liabilities of the Sub-Contractor under the Sub-Contract or this Deed.
- 11.3. No action or proceedings for any breach of this Deed shall be commenced against the Sub-Contractor after the expiry of 12 years from the date of practical completion of the Project under the Building Contract.
- 11.4. Any notices to be given by either party hereunder will be sufficiently served if sent by hand or recorded or registered post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting.

In Witness whereof the parties have executed this Deed on the date before written.

EXECUTED AS A DEED BY)
[SUB-CONTRACTOR])
acting by:)

.....
Director
.....
Director/Company Secretary

EXECUTED AS A DEED BY)
[CONTRACTOR])
acting by:)

.....
Director
.....
Director/Company Secretary

EXECUTED AS A DEED BY)
[BENEFICIARY])
acting by:)

.....
Director
.....
Director/Company Secretary

Schedule 9: Employer's Policies

- <https://www.lewisham.gov.uk/myservices/business/tendersandcontracts/Pages/Code-and-guides.aspx>
- <https://www.lewisham.gov.uk/myservices/business/tendersandcontracts/Documents/CodeofPracticeContractors.pdf>

Schedule 10: Specification/Work Schedules

Schedule 11: Priced Specification/Work Schedules/Schedule of Rates

Schedule 12: Contract Drawings

Schedule 13: Log of Post Tender correspondence