



**Agreement for Minor Works and, if applicable,
Services**

(Minor Works Contract)

Contract Reference: NU xxxxxxxx

Contract Title: xxxxxxxxxxxxxxxx

Contract Date: *[insert the agreed date following execution by both the University and
the Contractor]*

MINOR WORKS CONTRACT

Background

1. The University wishes to have the Works, and where the Contract Details specify, the Services carried out in accordance with the Contract.
2. The Contractor agrees to carry out the Works and, where applicable, the Services for the Contract Sum, in accordance with the Contract.
3. The University's Representative has authority to act on behalf of the University for the purposes of the Contract.
4. The terms and expressions in the Contract shall have the meanings defined in the Contract Details and the Conditions.

CONTRACT DETAILS

CDM Regulations (condition 1.1.4)	For the purposes of the CDM Regulations, the Works [are/are not] notifiable .
CDP Works (condition 1.1.5)	[insert details] OR [Not Applicable]
Collateral Warranties (conditions 1.1.6 and 3.15)	[Collateral Warranties are not required] or [Collateral Warranties are required in the form attached in Schedule 6 in favour of: <ol style="list-style-type: none"> (a) The University from sub-consultants and sub-contractors in relation to the Services and the CDP Works; (b) Purchasers, Tenants and Funders[./; (c) [others e.g freehold owner, if any]]. <p>[Note: if there are others then the University will need to consider if they have step in rights and who has priority and amend the collateral warranties accordingly]</p>
“Contract Administrator” (condition 1.1.9)	[insert details] or, if it ceases to be the Contract Administrator, such other person as the University nominates.

Contract Sum (condition 1.1.11)	£[<i>insert Contract Sum</i>] plus VAT, as set out in the Contractor's priced document in Schedule 2 Part 1
Conditions	The Conditions of Contract that follow the signatures of the parties
Contractor (condition 1.1.12)	[<i>insert full company name</i>] incorporated and registered in [England and Wales] with company number [<i>number</i>] whose registered office is at [<i>registered office address</i>]
Contractor's Designed Portion (condition 1.1.13)	[<i>insert details of any design that the Contractor is to carry out</i>] or [Not Applicable]
Date for Practical Completion (condition 1.1.15)	[<i>insert date for the proposed date for Practical Completion of the Works and the Services</i>]
Interim Valuation Dates (condition 1.1.23)	The first Interim Valuation Date is [<i>one month</i>] after the Works Commencement Date OR The first Interim Valuation Date is [] and thereafter at [<i>monthly</i>] intervals OR thereafter at []
Practical Completion Deliverables (conditions 1.1.29)	[<i>insert details</i>] OR [Not Applicable]
Programme (condition 1.1.31)	The programme included or referred to in Schedule 3
Rectification Period (condition 1.1.33)	[3/6/9/12/24] months from Practical Completion
Services (condition 1.1.34)	[<i>the design of the Contractor's Designed Portion</i>] OR [Not Applicable]
Site	[<i>insert details</i>]

(condition 1.1.35)	
Special Terms (condition 1.1.38)	The special terms and conditions (if any) set out below, which will take precedence over the Conditions, and the Conditions will be construed accordingly: <ul style="list-style-type: none"> • [Insert] [Note: if the Works/Services relate to a Higher Risk Building as defined in Building Safety legislation, special terms will be required]
Specification (condition 1.1.39)	The University's specification, drawings and/or work schedules, and any University requirements for any design and the construction of the CDP Works, attached and/or referred to in Schedule 1
Longstop Date (condition 1.1.40 (d))	[[] [weeks/months] after the Date for Practical Completion (as extended, if at all, under Condition 7.5)] OR [Not Applicable]
Tests for Practical Completion (conditions 1.1.48 and 8.1)	The passing of the following tests is a pre-condition to Practical Completion: [Details of the Tests for Practical Completion are set out in the Specification] or [insert details of tests] or [Not Applicable]
Third Party Agreements (condition 1.1.49)	[insert details] OR [Not Applicable]
University's Representative (condition 1.1.52)	[insert details] OR [The Contract Administrator]
Works (condition 1.1.55)	[insert details of the Works or describe by reference to the Specification]
Works Commencement Date (condition 1.1.56)	[insert details]
Design (condition 4.1.3 and 5.4)	Where the Contractor is providing the Services, the Contractor [is/is not] fully responsible in all respects for any designs proposed by or on behalf of the University (whether

	or not that design was undertaken on or before or after the Effective Date)
Performance Bond (condition 3.14.1)	[A Performance Bond is not required] or [A Performance Bond is required on the date on which the Contract comes into existence in the form in Schedule 7 for a minimum value of [10] % of the Contract Sum, from a reputable bondsman to be approved by the University]
Parent Company Guarantee (condition 3.14.2)	[A Parent Company Guarantee is not required] OR [A Parent Company Guarantee is required on the date on which the Contract comes into existence in the form in Schedule 8, from [insert guarantor]
Advance Payment Bond (condition 3.14.3)	[An Advance Payment Bond is not required] or [An Advance Payment Bond is required on the date on which the Contract comes into existence in the form in Schedule 9 for [insert figure] from a reputable bondsman to be approved by the University]
Novation (condition 4.2)	[insert detail of design consultants to be novated on the terms of the deed in Schedule 10] OR [Not Applicable]
Variation rates (condition 6.4 and 6.5)	[The Contractor's rates included in Schedule 2 Part 2] OR [insert details]
Provisional Sums (condition 6.5)	[insert details] OR [Not Applicable]
Liquidated Damages (condition 7.6)	[Do not apply] OR [Apply at a rate of £[x] per [day] of delay
Utilities (condition 12.6.5))	[The University is to provide the following utilities [insert details] and the Contractor makes suitable arrangements

	<p>with the relevant authorities for the supply of other utilities to enable the carrying out of the Works and the Services]</p> <p>OR</p> <p>[The Contractor shall make suitable arrangements with the relevant authorities for the supply of all utilities to enable the carrying out of the Works and the Services]</p>
<p>Third party agreements (condition 12.7)</p>	<p>[insert details]</p> <p>OR</p> <p>[Not Applicable]</p> <p>[Note: if there are matters e.g. on title, in leases, with which the Contractor should comply list them here]</p>
<p>Contractor's insurances (condition 14)</p>	<p>[Note: if the Site is not owned freehold by the University or the Works are £2.5m or over, condition 14 will need discussing with the University's insurance team and legal advisers and a special condition will need to be added here to amend condition 14]</p>
<p>All Risks Insurance percentage for professional fees (condition 14.1.2)</p>	<p>[insert] %</p>
<p>Contractor's Insurance (condition 14.6)</p>	<p>Employer's liability insurance: not less than [£5,000,000] for each and every claim</p> <p>Public liability insurance: not less than [£10,000,000] for each and every claim</p> <p>[Professional indemnity insurance: not less than £ [] for each and every claim] from the date of commencement of the Works and the Services for [6/12] years from Practical Completion and, for such longer period in which claims and/or proceedings may be commenced under sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or sections 148 to 149 of the Building Safety Act or under the Civil Liability (Contribution) Act 1978</p>

	<p>[Product Liability insurance: not less than £ [] for each and every claim]</p> <p>[Any other insurances]</p> <p>In each case such insurances shall be on terms approved by the University before commencement of the Works.</p> <p>[Note: Consider risks on a project specific basis and check the levels of insurances are appropriate with the NU insurance team. Professional Indemnity and Product Liability insurances will only be needed if the Contractor is providing Services. It is unlikely other insurances will be needed but check with the NU insurance team on a project specific basis]</p>
<p>Percentage (conditions 18.4 and 18.23)</p>	<p>Payments due prior to Practical Completion — percentage of the total value of work etc. [95%]</p> <p>Payments becoming due on or after Practical Completion — percentage of the total amount to be paid to the Contractor [97.5%]</p>
<p>Interest rate (condition 18.13)</p>	<p>[4%] per annum above the official bank rate of [the Bank of England] current at the date that a payment due under the Contract becomes overdue.</p>
<p>Documentation reasonably required for computation of the final payment (condition 18.18)</p>	<p>[insert details]</p>
<p>Construction Industry Scheme (condition 18.22)</p>	<p>The University at [the date of the Minor Works Contract/[]] [is a 'contractor'/is not a 'contractor'] for the purposes of the Construction Industry Scheme under the Finance Act 2004</p>

<p>Principal Designer and Principal Contractor (condition 20.2.1)</p>	<p>The Contractor [is/is not] appointed by the University as Principal Designer under the CDM Regulations. [The Principal Designer under the CDM Regulations is [] of [] or such replacement as the University at any time appoints to fulfil that role]</p> <p>The Contractor [is/is not] appointed by the University as Principal Contractor under the CDM Regulations. [The Principal Contractor under the CDM Regulations is [] of [] or such replacement as the University at any time appoints to fulfil that role]</p> <p>The Contractor [is/is not] appointed by the University as Principal Designer under the Building Regulations 2010. [The Principal Designer under the Building Regulations 2010 is [] of [] or such replacement as the University at any time appoints to fulfil that role]</p> <p>The Contractor [is/is not] appointed by the University as Principal Contractor under Building Regulations 2010. [The Principal Contractor under the Building Regulations 2010 is [] of [] or such replacement as the University at any time appoints to fulfil that role]</p>
<p>University's policies (condition 21.1)</p>	<p>[the University's mandatory policies that are available at the website notified to the Contractor by the University or the policies provided by the University to the Contractor from time to time]</p> <p>OR</p> <p>[Not applicable]</p>
<p>Contractor's Liability Cap (condition 22.5)</p>	<p>[insert details]</p>
<p>Liability Period (condition 22.8)</p>	<p>[6/12 years]</p>

	<p><i>[Note: If the Contract is signed under hand there is a 6-year limitation period or if executed as deed, there is a 12-year limitation period]</i></p>
<p>Notices for termination of the Contractor's employment (condition 30.2)</p>	<p>Notices to the University</p> <p>For the attention of [.....] Address [.....] [.....]</p> <p>Notices to the Contractor</p> <p>For the attention of [.....] Address [.....] [.....]</p>
<p>Notices and Points of Escalation (condition 34.1)</p>	<p>For the University:</p> <p>First Point of Escalation</p> <p>For the attention of [.....] Address [.....] [.....]</p> <p>Second Point of Escalation</p> <p>For the attention of [.....] Address [.....] [.....]</p> <p>For the Contractor:</p> <p>First Point of Escalation</p> <p>For the attention of [.....] Address [.....] [.....]</p> <p>Second Point of Escalation</p> <p>For the attention of [.....] Address [.....] [.....]</p>
<p>Nominating Body (condition 34.3)</p>	<p><i>[Delete all but one of the asterisked choices]</i></p> <p>* Royal Institute of British Architects</p>

	<p>* The Royal Institution of Chartered Surveyors * constructionadjudicators.com * Chartered Institute of Arbitrators</p>
<p>Notices (NOT for notices of termination of the Contractor's employment under condition 30.2) (condition 35.1)</p>	<p>Notices to the University</p> <p>For the attention of [.....] Address [.....] [.....] [.....] Email [.....]</p> <p>Notices to the Contractor</p> <p>For the attention of [.....] Address [.....] [.....] [.....] Email [.....]</p>

The Contract

1. The Contract incorporates the following documents (which, to the extent that there is any inconsistency, conflict or ambiguity between any of them, will be resolved in the following descending order of priority):

- (a) The Contract Details (highest priority);
- (b) The Special Terms;
- (c) The Conditions;
- (d) The Schedules specified in the Contract Details; and
- (e) The University Policies (lowest priority).

2. In the event of inconsistency, conflict or ambiguity between the matters listed below, they shall have precedence in the following order:

- (a) Schedule 1 (the Specification);
- (b) to the extent that the Contract Details specify they are applicable, Schedules 6 (Collateral Warranties), 7 (Performance Bond), 8 (Parent Company Guarantee), 9 (Advance Payment Bond) and 10 (Novation);
- (c) Schedule 4 (Change Control Procedure);
- (d) Schedule 5 (Forms of Notices);

- (e) the Contractor's Designed Portion;
- (f) Schedule 2 Part 1 (Contractor's priced document);
- (g) Schedule 2 Part 2 (Variation rates); and
- (h) Schedule 3 (Programme).

The Contract has been entered into on the date stated at the beginning of this Minor Work Contract

[Note: If the Contract is signed under hand there is a 6-year limitation period or use the execution blocks below for as deed, for a 12-year limitation period]

As witness the hands of the University and the Contractor or their duly authorised representatives

Signed by **[insert name of signatory]**
 for and on behalf of the Contractor **Authorised signatory**

Signed by **[insert name of signatory]**
 for and on behalf of the University **Authorised signatory**

OR

Executed as a deed but not delivered until the date
 stated at the beginning of the Minor Work Contract
 by
 affixing the Common Seal of
The University of Newcastle upon Tyne
 (an exempt charity) in the presence of:

.....

Authorised signatory

.....

Authorised signatory

**Executed as a deed but not delivered until the
date stated at the beginning of the Minor Work
Contract by [insert name of Contractor company]**

*[Note: The Contractor should confirm if 2 Directors or
a Director and Secretary need to sign, in which case
this will need to be amended to add the extra
signatories]*

**acting by
a director in the presence of**

.....

(signature of director)

.....

Signature of witness

.....

Name of witness

.....

Address

.....

Occupation

CONDITIONS OF CONTRACT

Schedule 1
Specification

[attach]

Schedule 2

Part 1

Contractor's priced document

(Condition 2.5.7)

Schedule 2
Part 2
Variation rates
(Condition 3.3)

[insert or if the details have been included in the Contract Details put "The Variation rates set out in the Contract Details"]

**Schedule 3
Programme**

[attach]

Schedule 4
Change Control Procedure

1. Principles

- 1.1 Where a Variation is proposed, the change control procedure set out in paragraph 2 of this Schedule 4 shall be followed.
- 1.2 Until such time as a Variation is made in accordance with this change control procedure, the University and the Contractor shall, unless otherwise agreed in writing, continue to perform the Contract in compliance with its terms before such Variation.
- 1.3 Any discussions which may take place between the University and the Contractor in connection with a request or recommendation before the authorisation of a resultant Variation shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken in relation to a Variation by the Contractor and the Contractor's Persons which has not been authorised in advance, and which has not been otherwise agreed in accordance with the provisions of this change control procedure, shall be undertaken entirely at the expense and liability of the Contractor.
- 1.5 Save as expressly provided for under the Contract, no increase in the Contract Sum may be made without the prior written approval of the University.

2. Change Control Procedure

- 2.1 Where a written request for a Variation is received from the University, the Contractor shall, submit two copies of the completed Form of Change Control Notice set out in paragraph 3 of this change control schedule (**completed Form of Change Control Notice**) signed by the Contractor within **[two weeks]** of the date of the request **[DN: note this timeframe and amend if necessary.]**
- 2.2 Any proposal by the Contractor under condition 6.6 of the Contract to make changes to the design of the Works and/or the Specification and/or to the Programme shall be submitted directly to the University in the form of two copies of a completed Form of Change Control Notice signed by the Contractor at the time of such proposal.
- 2.3 For each completed Form of Change Control Notice submitted by the Contractor the University shall, within the period of the validity set out in the completed Form of Change Control Notice:
 - 2.3.1 allocate a sequential number to the completed Form of Change Control Notice; and

- 2.3.2 evaluate the completed Form of Change Control Notice and, as appropriate:
 - 2.3.2.1 request further information from the Contractor (in which case the Contractor shall respond to such request for further information within **[5 Business Days]** of the date of the request); or **[DN: note this timeframe and amend if necessary.]**
 - 2.3.2.2 arrange for two copies of the completed Form of Change Control Notice to be signed by or on behalf of the University and return one of the copies to the Contractor; or
 - 2.3.2.3 notify the Contractor of the rejection of the completed Form of Change Control Notice.
- 2.3.3 A completed Form of Change Control Notice signed by the University and by the Contractor shall constitute a Variation.
- 2.4 If the parties are unable to agree the contents of a completed Form of Change Control Notice:
 - 2.4.1 where the disagreement relates to the cost of the Variation or any direct loss and/or expense incurred by the Contractor due to the regular progress of the Works being affected by the any instruction for a Variation, the Variation and any such loss and/or expense shall be valued by the Contract Administrator on a fair and reasonable basis using any relevant prices in the Variation rates set out or referred to in the Contract Details; and
 - 2.4.2 where the disagreement relates to any other matter relating to the completed Form of Change Control Notice, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in condition 34 of the Contract.
- 3. **Form of Change Control Note**
 - 3.1 Each Form of Change Control Notice shall be in the form below:

Form of Change Control Notice

Title of the Variation:	
The originator and date of the request or recommendation for the Variation:	
Reason for the Variation:	
Full details of the Variation, including any specifications:	
Price, if any, of the Variation:	
Timetable for implementation, together with any proposals for acceptance of the Variation:	
Schedule of payments if appropriate:	
<p>Details of the likely impact, if any, of the Variation on other aspects of the Contract including:</p> <ul style="list-style-type: none"> • Timetable for the provision of the Variation; • Personnel to be provided; • The Contract Sum; • Documentation to be provided; • Training to be provided; • Working arrangements; and • Other contractual issues. 	
Date of expiry of validity of the Change Control Note:	
<p>Signed by [insert name of signatory] for and on behalf of the Contractor</p>	<p>..... Authorised signatory</p>
<p>Signed by [insert name of signatory] for and on behalf of the University</p>	<p>..... Authorised signatory</p>

Schedule 5
Forms of Notices

Dispute Notice (for use in accordance with condition 34.1.1 of the Contract)	
Date:	
Full details of the Dispute (including, its nature and full particulars):	
Supporting Documents:	
Signed by [insert name of signatory] for and on behalf of the University Authorised signatory

Suspension Notice (for use in accordance with condition 24 of the Contract)	
Date:	
Works and/ or Services affected by the Suspension Notice:	
Date when suspension of the Works and/or Services occurs:	
Duration of the suspension:	
Signed by [insert name of signatory] for and on behalf of the University Authorised signatory

Schedule 6
Collateral Warranties

Dated

202[]

[Contractor]

and

[Beneficiary]

[and]

[The University of Newcastle upon Tyne]

Contractor's collateral warranty to Funder/Purchaser/ Tenant/other
in relation to works at

[]

[Note: Step-in rights are only relevant where the Beneficiary is the Funder/owner during construction and the Rectification Period. The University will only need to be a party to the collateral warranty where there are step-in rights]

muckle^{LLP}

Muckle LLP
Time Central
32 Gallowgate
Newcastle upon Tyne
NE1 4BF

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Dated

202[]

Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Contractor); [and]
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Beneficiary) [./; and]
- (3) The University of Newcastle upon Tyne of King's Gate, Newcastle Upon Tyne, United Kingdom, NE1 7RU (Employer).]

Background

- (A) The Employer has engaged the Contractor to carry out the Works.
- (B) The Beneficiary has 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 [each of] the Contractor [and the Employer] as consideration for entering into this agreement.

It is agreed

1. Interpretation

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

1.1 Definitions:

Building Contract	an agreement in writing dated [DATE] between the Employer and the Contractor.
Business Day	a day (other than a Saturday or Sunday, Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday).

Construction Products
Regulations
Deleterious

UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (SI 2013/1387). any goods, materials, equipment, products or kits that are generally known, accepted, or generally suspected, in the construction and engineering industry at the relevant time as:

- (a) posing a threat to the health and safety of any person; or
- (b) posing a threat to the structural stability, durability, performance or physical integrity of the Works or any part or component of the Works; or
- (c) reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or
- (d) reducing, or possibly reducing, the normal life expectancy of the Works, any part or component of the Works or any project, structure, machinery or development of which the Works form part;
- (e) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
- (f) having been supplied or placed on the market in breach of the Construction Products Regulations.

Material

all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and

- any other materials provided in connection with the Works (and completed Works) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works (and completed Works).
- Permitted Uses for all purposes connected with the Works including but not limited to the design, funding, marketing, reinstatement, sale, letting, repair, maintenance of the Works.
- Property the Site as defined in the Building Contract.
- Third Party Agreement any agreement relating to the Property and of which a copy, or relevant extract, has been provided to the Contractor before the date of this agreement.
- UK Construction Products Regulation 2011 the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018.
- Works the design (where relevant), construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Contractor under the Building 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, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.9 A reference to a statute or statutory provision shall include any 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 email.
- 1.12 A reference to a document is a reference to that document as varied or novated from time to time.
- 1.13 References to clauses are to the clauses of this agreement.
- 1.14 Unless expressly provided otherwise, the obligations and liabilities of the persons forming the parties under this agreement are joint and several.
- 1.15 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 to the Beneficiary that:
- 2.1.1 it has complied, and shall continue to comply, with its obligations under the Building Contract, including its obligations to:
- 2.1.1.1 carry out and complete the Works properly; and
- 2.1.1.2 use workmanship and materials of the quality and standard specified in the Building Contract;
- 2.1.2 without affecting clause **Error! Reference source not found.**, and to the extent that it takes responsibility for the same under the Building Contract, it:
- 2.1.2.1 has designed, or will design, the Works; and

- 2.1.2.2 has selected, or will select, goods, materials, plant and equipment for incorporation in the Works,
with all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Works; and
 - 2.1.3 it has used all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Works to not specify or use anything in the Works, which, at the time of specification or use, is Deleterious; and
 - 2.1.4 it has not caused or contributed to and will not cause or contribute to any breach of any Third Party Agreement.
- 2.2 In complying with clause 2.1, the Contractor shall owe no greater obligations to the Beneficiary under this agreement than it owes to the Employer under the Building Contract. In proceedings for breach of clause 2.1, the Contractor may:
 - 2.2.1 rely on any limit of liability or other term of the Building Contract; and
 - 2.2.2 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 Building Contract (for this purpose not taking into account any set-off or counterclaim against the Employer under the Building Contract).
- 2.3 The Contractor's duties or liabilities under this agreement shall not be negated, diminished or otherwise affected by:
 - 2.3.1 any approval or inspection of:
 - 2.3.1.1 the Property; or
 - 2.3.1.2 the Works; or
 - 2.3.1.3 any designs or specifications for the Property or the Works; or
 - 2.3.2 any testing of any work, goods, materials, plant or equipment; or
 - 2.3.3 any omission to approve, inspect or test,
by or on behalf of the Beneficiary or the Employer.
- 2.4 Nothing in this agreement shall in any way limit or affect any other rights or remedies (whether under contract, at law, in equity or otherwise) which the Beneficiary would have against the Contractor in the absence of this agreement.

3. **[Step-in rights: Contractor may not terminate [Note: for funders/owner during construction and the Rectification Period only]**

3.1 The Contractor shall not exercise, or seek to exercise, any right to terminate its employment under the Building Contract for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Contractor shall specify the grounds for the Contractor's proposed termination.

3.2 If the Building Contract allows the Contractor a shorter notice period for the exercise of a right referred to in clause **Error! Reference source not found.**, the notice period in the Building Contract shall be extended to take account of the notice period required under clause **Error! Reference source not found.**

3.3 The Contractor's right to terminate its employment under the Building Contract shall cease if, within the period referred to in clause **Error! Reference source not found.**, the Beneficiary gives notice to the Contractor, copied to the Employer:

3.3.1 requiring the Contractor not to terminate its employment under the Building Contract;

3.3.2 acknowledging that the Beneficiary (or its nominee) will assume all the Employer's obligations under the Building Contract; and

3.3.3 undertaking that the Beneficiary or its nominee will pay to the Contractor:

3.3.3.1 any sums that may subsequently become due and payable to the Contractor under the Building Contract; and

3.3.3.2 any sums then due and payable to the Contractor under the Building Contract that are unpaid.

3.4 If the Beneficiary (or its nominee) serves notice on the Contractor under clause **Error! Reference source not found.**, then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if the Contractor's rights to terminate had not arisen and as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).

3.5 In complying with this clause 3, the Contractor:

3.5.1 does not waive any breach of the Building Contract or default under the Building Contract by the Employer; and

3.5.2 may exercise its right to terminate its employment under the Building Contract, after the expiry of the notice period referred to in clause **Error! Reference source not found.**, unless the Contractor's right to terminate has ceased under clause **Error! Reference source not found.**]

3.6 [If:

3.6.1 the Contractor enters into an agreement with another third party or grants rights to a third party concerning the Works Project at the request of the Employer; and

3.6.2 that agreement or those third party rights include similar step-in rights to those in clause **Error! Reference source not found.** or clause **Error! Reference source not found.**, then, on that third party's (or that third party's nominee's) exercise of those step-in rights:

3.6.3 the Contractor shall no longer be bound by clause **Error! Reference source not found.** and clause **Error! Reference source not found.**; and

3.6.4 the Beneficiary may no longer exercise its rights under clause **Error! Reference source not found.** or clause **Error! Reference source not found.**] *[Note: order of priority to be agreed where step in rights are given to more than one person and amend this clause accordingly.]*

4. **[Step-in rights: Beneficiary may step-in [Note: for funders/owner during construction and the Rectification Period only]**

4.1 Without affecting clause **Error! Reference source not found.**, if the Beneficiary serves a notice on the Contractor, copied to the Employer, that:

4.1.1 confirms that the Beneficiary wishes to step-in to the Building Contract; and

4.1.2 complies with the requirements for a Beneficiary's notice under clause **Error! Reference source not found.**,

then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).

4.2 The Contractor shall assume that, between the Employer and the Beneficiary, the Beneficiary may give a notice under clause **Error! Reference source not found.**. The Contractor shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause **Error! Reference source not found.**, the Contractor does not waive any breach of the Building Contract or default under the Building Contract by the Employer.]

5. **[Step-in rights: Contractor's position and Employer's consent [Note: for funders/owner during construction and the Rectification Period only]**

5.1 The Contractor shall not incur any liability to the Employer by acting in accordance with clause 3 or clause **Error! Reference source not found.**

5.2 The Employer has executed this agreement to confirm its consent to the agreement.]

6. **[Step-in rights: Beneficiary's guarantee [Note: for funders/owner during construction and the Rectification Period only]**

If a Beneficiary's notice under clause 3 or clause **Error! Reference source not found.** refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Contractor from the Beneficiary's nominee.]

7. **No instructions to Contractor by Beneficiary**

[Unless the Beneficiary has stepped-in under clause 3 or clause Error! Reference source not found.,] [The/the] Beneficiary may not give instructions to the Contractor under this agreement.

8. **Copyright**

8.1 The Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Contractor for any purpose relating to the Works and the Property, including any of the Permitted Uses.

8.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Works, but not to reproduce the designs contained in the Material in any such extension.

8.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Contractor.

8.4 The Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

8.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Contractor. On the Beneficiary's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Beneficiary.

9. Professional indemnity insurance

9.1 The Contractor shall maintain professional indemnity insurance for at least the amount set out in the Contract on the basis and for the period set out in the Contract, provided that such insurance is available at commercially reasonable rates. The Contractor shall maintain that professional indemnity insurance:

9.1.1 with reputable insurers lawfully carrying on insurance business in the UK;

9.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and

9.1.3 on terms that:

9.1.3.1 do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and

9.1.3.2 would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

9.2 Any increased or additional premium required by insurers because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

9.3 The Contractor shall immediately inform the Beneficiary if the Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Contractor regarding the Works and the Property, without that insurance.

9.4 The Contractor shall fully co-operate with any measures reasonably required by the Beneficiary, including:

9.4.1 completing any proposals for insurance and associated documents; or

9.4.2 maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Contractor for the net cost of that insurance above commercially reasonable rates.

9.5 Whenever the Beneficiary reasonably requests, the Contractor shall send the Beneficiary evidence that the Contractor's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Contractor's insurers or brokers confirming:

9.5.1 the Consultant's then current professional indemnity insurance;

9.5.2 that the premiums for that insurance have been paid in full at the date of that letter; and

9.5.3 the excesses attaching to the Consultant's professional indemnity insurance policy.

10. **Liability period**

10.1 Subject to clause 10.2, the Beneficiary may not commence any legal action against the Contractor under this agreement after the period of **[6/12] years** from Practical Completion under the Building Contract.

10.2 The Beneficiary may commence legal action against the Contractor under this agreement:

10.2.1 in accordance with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; and/or

10.2.2 for a breach of this agreement that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or that gives rise to a failure to comply with that legislation in relation to the Works or any part thereof, provided that any such action or proceedings are subject to the limitation periods that would apply if they were commenced under that legislation and/or the Civil Liability (Contribution) Act 1978 and is not subject to any shorter limitation period applicable to a claim for breach of contract under the Limitation Act 1980 nor any shorter limitation period specified under condition 10.1.

11. **Assignment**

11.1 The Beneficiary may assign the benefit of this agreement:

11.1.1 on three occasions to any person; and

11.1.2 without counting as an assignment under clause **Error! Reference source not found.:**

11.1.2.1 by way of security (including any reassignment on redemption of security);

or

11.1.2.2 to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.

11.2 The Beneficiary shall notify the Contractor and the Employer of any assignment.

11.3 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under clause **Error! Reference source not found.** may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

12. **Notices**

12.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, or recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:

12.1.1 if delivered personally, when left at the address and for the contact referred to in this clause; or

12.1.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting;

12.1.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

12.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.3 A notice given under this agreement is not valid if sent by email.

13. **Third party rights**

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

14. **Governing law**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

15. **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

Executed on the date that appears on the front of this document.

[Note: If the Building Contract is signed under hand so should this collateral warranty. If it is executed as a Deed so should this be. The method of execution should be checked with the parties]

As witness the hands of the parties or their duly authorised representatives

Signed by **[insert name of signatory]**
for and on behalf of the Contractor **Authorised signatory**

Signed by **[insert name of signatory]**
for and on behalf of the Beneficiary **Authorised signatory**

Signed by **[insert name of signatory]**
for and on behalf of the University **Authorised signatory**

OR

Executed as a deed but not delivered until the date on the front of this document by

[name of executing company] Limited

acting by

.....
(signature of director)

a director in the presence of

I confirm that the witness named below was physically present when I signed this deed

Signature of witness

.....

Name of witness

.....

Address of witness

.....

Occupation of witness

.....

I confirm that I was physically present when the above signatory signed this deed

Executed as a deed but not delivered until the date on the front of this document by

[name of executing company] Limited

acting by

.....
(signature of director)

a director in the presence of

I confirm that the witness named below was physically present when I signed this deed

Signature of witness

.....

Name of witness

.....

Address of witness

.....

Occupation of witness

.....

I confirm that I was physically present when the above signatory signed this deed

Executed as a deed but not delivered until the date

hereof by

Affixing the Common Seal of

The University of Newcastle upon Tyne

(an exempt charity) in the presence of:

.....

Authorised signatory

.....

Authorised signatory

Dated

202[]

[Consultant]

and

[Beneficiary]

and

[Client (Contractor)]

Consultant's Collateral Warranty
in relation to works at
[]

muckle^{LLP}

Muckle LLP
Time Central
32 Gallowgate
Newcastle upon Tyne
NE1 4BF

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Dated

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Parties

- (1) **[Insert Consultant details]** incorporated and registered in England and Wales with company number **[insert company number]** whose registered office is at **[insert registered office address]**
(Consultant);
- (2) **[Insert Beneficiary details]** incorporated and registered in England and Wales with company number **[insert company number]** whose registered office is at **[insert registered office address]**
(Beneficiary);
- (3) **[Insert Client details]** incorporated and registered in England and Wales with company number **[insert company number]** whose registered office is at **[insert registered office address]**
(Client).

Background

- (A) The Client requires the Consultant to enter into a collateral warranty in favour of the Beneficiary.
- (B) The Consultant has agreed to enter into this agreement with the Client and the Beneficiary, for the benefit of the Beneficiary.
- (C) The Beneficiary has paid £1.00 to the Consultant and the Client as consideration under this agreement.

It is agreed

1. Interpretation

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

1.1 Definitions:

Building Regulations	the Building Regulations 2010 incorporating the amendments introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023;
Business Day	a day (other than a Saturday or Sunday, Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday);

CDM Regulations	the Construction (Design and Management) Regulations 2015 (SI 2015/51);
Construction Products Regulations	the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC);
Contract	the minor works contract between [the University of Newcastle upon Tyne/the Beneficiary] dated [].
Deleterious	any goods, materials, equipment, products or kits that are generally known, accepted, or generally suspected, in the construction and engineering industry at the relevant time as: <ul style="list-style-type: none"> (a) posing a threat to the health and safety of any person; or (b) posing a threat to the structural stability, durability, performance or physical integrity of the Project or any part or component of the Project; or (c) reasonably reducing the life expectancy of the Project; or (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or (e) having been supplied or placed on the market in breach of the Construction Products Regulations.

Funder	a person that has provided, or is to provide, finance in connection with: <ul style="list-style-type: none"> (a) the whole or any part of the Project or the completed Project; or (b) the Property, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise;
Material	all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project (and the completed Project) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project (and the completed Project);
Permitted Uses	for all purposes connected with the Project and the Property including but not limited to the design, funding, marketing, reinstatement, sale, letting, repair, maintenance of the Property and the Project;
Professional Appointment	an agreement in writing dated [redacted] between the Client and the Consultant ;
Programme	the programme, as defined in the Professional Appointment;
Project	[redacted];
Property	[redacted] [shown [edged red] on the plan annexed hereto];
Required Standard	all the reasonable skill, care and diligence to be expected of a qualified, competent and experienced member of the

Services	Consultant's profession undertaking the Services on works similar in scope and character to the Project; the services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment;
Third Party Agreement	any agreement relating to the Property and of which a copy, or relevant extract, has been provided to the Consultant before the date of this agreement.

- 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) and that person's personal representatives and permitted assigns.
- 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 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** does not include fax and e-mail.
- 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 Professional Appointment**

2.1 The Consultant warrants to the Beneficiary that:

2.1.1 it has complied, and shall continue to comply, with its obligations under the Professional Appointment, including its obligations to:

2.1.1.1 carry out and fulfil, in all respects, the duties of a designer **[and principal designer]** under the CDM Regulations and the Building Regulations; **[and]**

2.1.1.2 not, without the Client's written consent, make any material change to the designs or specifications for the Project after they have been settled or approved **[./; and]**

2.1.1.3 **act fairly and impartially when exercising any power to issue certificates and award extensions of time under any building contract relating to the Project.]**

2.1.2 it has exercised and shall continue to exercise the Required Standard:

2.1.2.1 when performing the Services;

2.1.2.2 not to specify for use anything in the Project, which is Deleterious at the time of specification or use;

2.1.2.3 to comply with any applicable laws relating to the Project;

2.1.2.4 to perform the Services and prepare all Material for those elements of the Project for which the Consultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;

2.1.2.5 to ensure that the Project complies with all planning agreements, permissions and conditions; and

2.1.2.6 not to cause or contribute to any breach by the Client of any Third Party Agreement provided that, where the Client notifies the Consultant of a Third Party Agreement after the date of the Professional Appointment, the

Consultant is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the date of the Professional Appointment.

- 2.2 In proceedings for breach of this clause 2, the Consultant may:
- 2.2.1 rely on any limit of liability or other term of the Professional Appointment; and
 - 2.2.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).
- 2.3 The Consultant's duties or liabilities under this agreement shall not be negated or diminished by:
- 2.3.1 any approval or inspection of:
 - 2.3.1.1 the Property; or
 - 2.3.1.2 the Project; or
 - 2.3.1.3 any designs or specifications for the Property or the Project; or
 - 2.3.2 any testing of any work, goods, materials, plant or equipment; or
 - 2.3.3 any omission to approve, inspect or test,
- by or on behalf of the Beneficiary or the Client.
- 2.4 This agreement shall not negate or diminish any other duty or liability otherwise owed to the Beneficiary by the Consultant.
3. **Step-in Rights: Consultant May Not Terminate or Discontinue [Note: for The University of Newcastle upon Tyne and funders/owner only]**
- 3.1 The Consultant shall not exercise, or seek to exercise, any right to:
- 3.1.1 terminate its employment under the Professional Appointment; or
 - 3.1.2 discontinue performance of the Services,
- for any reason (including any breach on the part of the Client) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Consultant shall specify the grounds for the Consultant's proposed termination or discontinuance.

- 3.2 If the Professional Appointment allows the Consultant a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Professional Appointment shall be extended to take account of the notice period required under clause 3.1.
- 3.3 The Consultant's right to terminate its employment under the Professional Appointment, or to discontinue performance of the Services, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Consultant, copied to the Client:
- 3.3.1 requiring the Consultant not to terminate its employment or not to discontinue performance of the Services under the Professional Appointment;
- 3.3.2 acknowledging that the Beneficiary (or its nominee) will assume all the Client's obligations under the Professional Appointment; and
- 3.3.3 undertaking that the Beneficiary or its nominee will pay to the Consultant:
- 3.3.3.1 any sums due and payable to the Consultant under the Professional Appointment in future; and
- 3.3.3.2 any sums then due and payable to the Consultant under the Professional Appointment that are unpaid.
- 3.4 If the Beneficiary (or its nominee) serves notice on the Consultant under clause 3.3, then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (to the exclusion of the Client).
- 3.5 In complying with this clause 3, the Consultant:
- 3.5.1 does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client; and
- 3.5.2 may exercise its right to terminate its employment under the Professional Appointment, or discontinue performance of the Services, after the expiry of the notice period referred to in clause 3.1, unless the Consultant's right to terminate or discontinue has ceased under clause 3.3.
4. **Step-in Rights: Beneficiary May Step-in [Note: for the University of Newcastle upon Tyne and funders/owner only]**
- 4.1 Without affecting clause 3.1, if the Beneficiary serves a notice on the Consultant, copied to the Client, that:

4.1.1 confirms that the Beneficiary wishes to step-in to the Professional Appointment; and
4.1.2 complies with the requirements for a Beneficiary's notice under clause 3.3,
then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (or its nominee), to the exclusion of the Client.

4.2 The Consultant shall assume that, between the Client and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Consultant shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4 the Consultant does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client.

5. **Step-in Rights: Consultant's Position and Client's Consent [Note: for the University of Newcastle upon Tyne and funders/owner only]**

5.1 The Consultant shall not incur any liability to the Client by acting in accordance with clause 3 or clause 4.

5.2 The Client has entered into this agreement to confirm its consent to the agreement.

6. **[Note: order of priority to be agreed where step in rights are given to more than one person. If the University has collateral warranties from Consultants, its step rights will prevail. Amend this clause accordingly]**

Where the Consultant has granted step in rights similar to those granted to the Beneficiary under clause 3 and/or 4 to any other person, any notice served by the Beneficiary under clause 3 or 4 shall take priority over any step in notice served by any other person.

7. **Step-in Rights: Beneficiary's Guarantee [Note: for the University of Newcastle upon Tyne and funders only]** If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's

nominee, the Beneficiary shall be liable to the Consultant, as guarantor, for the payment of any sums due and payable from time to time to the Consultant from the Beneficiary's nominee.

8. **No Instructions to Consultant By Beneficiary** [**Note: for the University of Newcastle upon Tyne and funders/owners only**] Unless the Beneficiary has stepped-in under clause 3 or clause 4, the Beneficiary may not give instructions to the Consultant under this agreement.

9. **Copyright**

- 9.1 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.

- 9.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

- 9.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.

- 9.4 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

- 9.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

10. **Professional Indemnity Insurance**

- 10.1 The Consultant shall maintain professional indemnity insurance for an amount of at least £ [] ([] million pounds) for each and every claim for a period beginning on from the date of commencement of the Services for [6/12] years from Practical Completion under the Contract and, for such longer period in which claims and/or proceedings may be commenced under sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or sections 148 to 149 of the Building Safety Act or under the Civil Liability (Contribution) Act 1978 the date of this agreement and ending 12 years after the date of practical completion of the Project, provided that such insurance is available at commercially reasonable rates. The Consultant shall maintain that professional indemnity insurance:

10.1.1 with reputable insurers lawfully carrying on insurance business in the UK;

- 10.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- 10.1.3 on terms that:
- 10.1.3.1 do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and
 - 10.1.3.2 would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.
- 10.2 Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 10.3 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project and the Property, without that insurance.
- 10.4 The Consultant shall fully co-operate with any measures reasonably required by the Beneficiary, including:
- 10.4.1 completing any proposals for insurance and associated documents; or
 - 10.4.2 maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Consultant for the net cost of that insurance above commercially reasonable rates.
- 10.5 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Consultant's insurers or brokers confirming:
- 10.5.1 the Consultant's then current professional indemnity insurance; and
 - 10.5.2 that the premiums for that insurance have been paid in full at the date of that letter.
11. **Assignment**
- 11.1 The Beneficiary may assign the benefit of this agreement:
- 11.1.1 on three occasions to any person; and
 - 11.1.2 without counting as an assignment under clause 11.1.1:

11.1.2.1 by way of security to a Funder (including any reassignment on redemption of security); or

11.1.2.2 to and from subsidiary or other associated companies within the same group of companies as the Beneficiary.

11.2 The Beneficiary shall notify the Consultant of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.

11.3 The Consultant shall not contend that any person to whom the benefit of this agreement is assigned under clause 11.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

12. Notices

12.1 Any notice or other communication required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication, as set out below:

12.1.1 Client: [insert Client notice details];

12.1.2 Beneficiary: [insert Beneficiary details];

12.1.3 Consultant: For the attention of: [insert Consultant notice details]

or as otherwise specified by the relevant party by notice in writing to each other party.

12.2 Any notice or other communication shall be deemed to have been duly received:

12.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;

12.2.2 if sent by pre-paid first class post or recorded deliver, at 9.00 am on the second Business Day after posting; or

12.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

12.3 A notice or other communication required to be given under this agreement shall not be validly given if sent by e-mail.

12.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action, including adjudication.

13. Third Party Rights

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

14. Governing Law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

15. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

16. Liability period

16.1 Subject to clause 16.2, the Beneficiary may not commence any legal action against the Consultant under this agreement after the period of [6/12] years from Practical Completion under the Contract

16.2 The Beneficiary may commence legal action against the Consultant under this agreement:

16.2.1 in accordance with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; and/or

16.2.2 for a breach of this agreement that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or that gives rise to a failure to comply with that legislation in relation to the Services or any part thereof, provided that any such action or proceedings are subject to the limitation periods that would apply if they were commenced under that legislation and/or the Civil Liability (Contribution) Act 1978 and is not subject to any shorter limitation period applicable to a claim for breach of contract under the Limitation Act 1980 nor any shorter limitation period specified under condition 16.1.

Executed on the date that appears on the front of this document

[Note: If the Appointment is signed under hand so should this collateral warranty. If it is executed as a Deed so should this be. The method of execution should be checked with the parties]

As witness the hands of the parties or their duly authorised representatives

Signed by **[insert name of signatory]**
for and on behalf of the Consultant **Authorised signatory**

Signed by **[insert name of signatory]**
for and on behalf of the Beneficiary **Authorised signatory**

Signed by [insert name of signatory]
for and on behalf of the University **Authorised signatory**

OR

Executed as a deed but not delivered until the date on the front of this document by

[Consultant]

acting by

.....
(signature of member/director)

a member/director in the presence of

.....
Signature of witness

.....
Name of witness

.....
Address

.....
Occupation

Executed as a deed on behalf of

[Beneficiary]

acting by

.....
(signature)

A director in the presence of

.....

Signature of witness

.....
Name of witness

.....
Address

.....
Occupation

Executed as a deed but not delivered until the date on the front of this document by

[Client]

acting by

.....
(signature of director)

a director in the presence of

.....
Signature of witness

.....
Name of witness

.....
Address

.....
Occupation

Dated

202[]

[Sub-Contractor]

and

[Beneficiary]

and

[Contractor]

**Sub-Contractor Warranty
in relation to works at
[]**

[Note: for the University of Newcastle upon Tyne and funders/owner only]

Dated

202[]

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] (**Beneficiary**); and
- (3) [full company name] incorporated and registered in England and Wales with company number [number] whose registered office is at [registered office address] (**Contractor**).

Background

- (A) By a contract dated [date] (**Contract**) [the Beneficiary/ the University of Newcastle upon Tyne] has appointed the Contractor for the carrying out design and the construction of works (**Works**) at [] (**Site**).
- (B) The Sub-Contractor has been appointed by the Contractor under a sub-contract dated [date] (**Sub-Contract**) to carry out and complete the part of the design and the Works specified in the Sub-Contract (**Sub-Contract Works**).
- (C) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Beneficiary.

Operative Provisions

1. Consideration

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Sub-Contractor receipt of which the Sub-Contractor acknowledges.

2. Sub-Contractor's Warranties

2.1 The Sub-Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Sub-Contract in accordance with the Sub-Contract.

2.2 The Sub-Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (except where the Sub-Contract imposes a higher standard in which case such higher standard will apply) in relation to the following (so far as the Sub-Contractor is responsible for them):

2.2.1 the design of the Sub-Contract Works;

2.2.2 the selection of goods, materials, equipment or plant for the Sub-Contract Works; and

2.2.3 the satisfaction of any performance requirement or specification of or for the Sub-Contract Works.

2.3 The Sub-Contractor further warrants that

2.3.1 it has complied, and shall continue to comply, with its obligations under the Building Safety Act 2022 and the Building Regulations 2010 (incorporating the amendments introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023) (**Building Regulations**), and, in particular, without limitation, in relation to its duties as designer and contractor;

2.3.2 it is competent to carry and comply with the Sub-Contractor's duties under sub-clause 2.3.1;

2.3.3 it shall provide to the Beneficiary satisfactory written evidence of such competence as and when requested by the Beneficiary;

2.3.4 it shall inform the Beneficiary in writing of any changes in the Sub-Contractor's competency to carry and comply with its duties under sub-clause 2.3.1; and

2.3.5 it shall provide all such co-operation as is required by the Beneficiary in relation to the compliance by the Sub-Contractor with the Building Safety Act 2022 and the Building Regulations.

3. **Intellectual Property Rights**

3.1 The Sub-Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of the Sub-Contractor for any purpose relating to the Works and the Site, including any of the Permitted Uses.

3.1.1 References to 'Material' in this clause 3 means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works.

3.1.2 References to 'Permitted Uses' in this clause 3 means the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance,

facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of the Site and the Works

3.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Works, but not to reproduce the designs contained in the Material in any such extension.

3.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Sub-Contractor.

3.4 The Sub-Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

4. **Insurance**

4.1 The Sub-Contractor shall maintain professional indemnity insurance of £[] ([] million pounds) for each and every claim, in relation to the Sub-Contract Works provided always that such insurance is available to the Sub-Contractor at commercially reasonable rates. Any increased or additional premium required by insurers because of the Sub-contractor's claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.

4.2 The Sub-Contractor shall maintain such professional indemnity insurance from the date of commencement of their works for [6/12] years from Practical Completion under the Contract and, for such longer period in which claims and/or proceedings may be commenced under sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or sections 148 to 149 of the Building Safety Act or under the Civil Liability (Contribution) Act 1978.

4.3 Within 15 days of the date of this Deed and thereafter on request, the Sub-Contractor shall provide to the Beneficiary evidence that the Sub-Contractor's insurance referred to in this clause is in force, including, if required by the Beneficiary, an original letter from the Sub-Contractor's insurers or brokers confirming:

4.3.1 the Sub-Contractor's then current insurance, as referred to in this clause; and

4.3.2 that the premiums for that insurance have been paid in full at the date of that letter.

5. **Notices**

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by 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 facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. **Assignment**

Without prejudice to the provisions of **clause 10**, the benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Sub- Contractor on three occasions only. The Beneficiary will give the Sub-Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. If the Beneficiary fails to do this, the assignment shall still be valid. The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7. **Other Rights and Remedies**

7.1 The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including, without limitation, any remedies in negligence.

8. **No Approval**

8.1 The Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Works or Material or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

9. **Step-in Rights**

9.1 Subject to **clause 9.7**, 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 or repudiated the Sub-Contract or its employment under it or discontinue or suspend the performance of any duties

or obligations under the Sub-Contract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Sub-Contractor's grounds for terminating or treating as terminated or repudiated the Sub-Contract or its employment under it or discontinuing or suspending its performance of the Sub-Contract and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:

9.1.1 the Beneficiary may give written notice to the Sub-Contractor expressly confirming its intention to comply with **clause 9.1.3** and that the Beneficiary shall become the employer under the Sub-Contract to the exclusion of the Contractor and, upon giving such notice, that will be the case and the Sub-Contract will be and remain in full force and effect notwithstanding any of the grounds in the Sub-Contractor's notice under **clause 9.1**; and

9.1.2 if the Beneficiary has given notice under **clause 9.1.1** or under **clause 9.3**, the Beneficiary will then as soon as practicable remedy any outstanding breach by the Contractor; and

9.1.3 if:

9.1.3.1 the Beneficiary has given notice under **clause 9.1.1** then from the date of the Sub-Contractor's notice; or

9.1.3.2 the Beneficiary has given notice under **clause 9.3** then from the date of the Beneficiary's notice,

the Beneficiary will, by **clause 9.1.1**, become responsible for all sums properly payable to the Sub-Contractor under the Sub-Contract and for the observance and performance of all of the other duties and obligations on the part of the contractor to be observed and performed under the Sub-Contract accruing due after the service of such Sub-Contractor's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Sub-Contract.

9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Sub-Contractor 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 under either **clause 9.1.1** or **clause 9.3**.

9.3 The Sub-Contractor further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with **clause 9.1.3** and subject to **clause 9.1.2** and **clause 9.1.3**, it will accept the instructions of the Beneficiary to the exclusion of the Contractor in respect of the Sub-Contract Works upon the terms and conditions of the Sub-Contract. The Beneficiary shall then become the employer under the Sub-Contract to the exclusion of the Contractor and the Sub-Contractor will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Contractor under the Sub-Contract.

9.4 **[Note: order of priority to be agreed where step in rights are given to more than one person. If the University has collateral warranties from Sub-Contractors, its step rights will prevail. Amend this clause accordingly]**

Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this **clause 9** to any other person then if both the Beneficiary and any such other person serve notice under **clause 9.1** or **clause 9.3** or its equivalent the notice served by the Beneficiary shall prevail over any notice served by any other person.

9.5 The Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under **clause 9.3** as conclusive evidence that the Beneficiary is entitled to serve such notice.

9.6 The Beneficiary may by written notice to the Sub-Contractor appoint another person to exercise its rights under this **clause 9** subject to the Beneficiary remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.

9.7 Where the Sub-Contractor is seeking to exercise a right to suspend the performance of any duties or obligations under the Sub-Contract as a result of non-payment or in accordance with s112 of the Housing Grants, Construction and Regeneration Act 1996, the Sub-Contractor will give to the Beneficiary written notice of its intention so to do not less than seven days before it serves notice on the Contractor.

9.8 Notwithstanding the other provisions of this **clause 9**, if the Sub-Contract has for any reason been terminated prior to receipt by the Sub-Contractor of a notice from the Beneficiary served

under **clause 9.1.1** or **clause 9.1.3**, the Sub-Contractor shall on receipt of any such notice from the Beneficiary enter into a new sub-contract with the Beneficiary on the same terms as the Sub-Contract to continue the Sub-Contract Works in all respects as if the Sub-Contract had been transferred to the Beneficiary in accordance with the provisions of this **clause 9**.

10. **Limitation**

10.1 The Sub-Contractor has no liability under this Deed which is greater or of longer duration than it would have had if, in lieu of this Deed, the Beneficiary had been a party to the Sub-Contract as joint employer, provided that the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.

10.2 The Sub-Contractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Sub-Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Sub-Contract as joint employer.

10.3 Subject to clause 10.3, the Beneficiary may not commence any legal action against the Sub-Contractor under this agreement after the period of **[6/12] years** from Practical Completion under the Contract.

10.4 The Beneficiary may commence legal action against the Sub-Contractor under this agreement:

10.4.1 in accordance with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; and/or

10.4.2 for a breach of this agreement that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or that gives rise to a failure to comply with that legislation in relation to the Sub-Contract Works or any part thereof, provided that any such action or proceedings are subject to the limitation periods that would apply if they were commenced under that legislation and/or the Civil Liability (Contribution) Act 1978 and is not subject to any shorter limitation period applicable to a claim for breach of contract under the Limitation Act 1980 nor any shorter limitation period specified under condition 10.3.

11. Partnership

Where the Sub-Contractor is a partnership references in this Deed to “the Sub- Contractor” will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

12. Governing Law and Jurisdiction

This Deed any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

13. Third Party Rights

The parties to this Deed 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.

Executed in the manner set out below on the date hereof

[Note: If the Sub-Contract is signed under hand so should this collateral warranty. If it is executed as a Deed so should this be. The method of execution should be checked with the parties]

As witness the hands of the parties or their duly authorised representatives

Signed by **[insert name of signatory]**
for and on behalf of the Sub-Contractor **Authorised signatory**

Signed by **[insert name of signatory]**
for and on behalf of the Beneficiary **Authorised signatory**

Signed by **[insert name of signatory]**
for and on behalf of the Contractor **Authorised signatory**

OR

EXECUTED as a **DEED**

(but not delivered until the date hereof) by

[Sub-Contractor]

acting by....., a director
[print name of director above] in the presence of:

Director.....
[signature of director]

witness signature:

name:

address:

occupation:

EXECUTED as a DEED

(but not delivered until the date hereof) by

[Beneficiary]

acting by....., a director
[print name of director above] in the presence of:

Director.....
[signature of director]

witness signature:

name:

address:

occupation:

EXECUTED as a DEED

(but not delivered until the date hereof) by

[Contractor]

acting by....., a director
[print name of director above] in the presence of:

Director.....
[signature of director]

witness signature:

name:

address:

occupation:

Dated

202[]

Sub-Contractor

and

[Third Party]

**Sub-Contractor Warranty
in relation to works at**

[]

Muckle LLP
Time Central
32 Gallowgate
Newcastle upon Tyne
NE1 4BF

Dated

20[]

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**); and
- (2) [full company name] incorporated and registered in England and Wales with company number [number] whose registered office is at [registered office address] (**Beneficiary**).

Background

By a contract dated [date] (**Contract**), The University of Newcastle upon Tyne (**Employer**) has appointed [] (**Contractor**) as the contractor for the carrying out design and the construction of works (**Works**) at [] (**Site**).

- (A) The Sub-Contractor has been appointed by the Contractor under a sub-contract dated [date] (**Sub-Contract**) to carry out and complete the part of design and the Works specified in the Sub-Contract (**Sub-Contract Works**).
- (B) The Beneficiary is [the/a] [purchaser][tenant][provider of finance] in connection with the [purchase][lease] of [the Site][description of part of the Site].
- (C) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Beneficiary.

Operative Provisions

1. Consideration

- 1.1 This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Sub-Contractor receipt of which the Sub-Contractor acknowledges.

2. Sub-Contractor's Warranties

- 2.1 The Sub-Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Sub-Contract in accordance with the Sub-Contract.
- 2.2 The Sub-Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (except where the Sub-Contract imposes a higher standard in which case such higher standard will apply) in relation to the following (so far as the Sub-Contractor is responsible for them):
 - 2.2.1 the design of the Sub-Contract Works;
 - 2.2.2 the selection of goods, materials, equipment or plant for the Sub-Contract Works; and

2.2.3 the satisfaction of any performance requirement or specification of or for the Sub-Contract Works.

2.3 The Sub-Contractor further warrants that

2.3.1 it has complied, and shall continue to comply, with its obligations under the Building Safety Act 2022 and the Building Regulations 2010 (incorporating the amendments introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023) (**Building Regulations**), and, in particular, without limitation, in relation to its duties as designer and contractor;

2.3.2 it is competent to carry and comply with the Sub-Contractor's duties under sub-clause 2.3.1;

2.3.3 it shall provide to the Beneficiary satisfactory written evidence of such competence as and when requested by the Beneficiary;

2.3.4 it shall inform the Beneficiary in writing of any changes in the Sub-Contractor's competency to carry and comply with its duties under sub-clause 2.3.1; and

2.3.5 it shall provide all such co-operation as is required by the Beneficiary in relation to the compliance by the Sub-Contractor with the Building Safety Act 2022 and the Building Regulations.

3. **Intellectual Property Rights**

3.1 The Sub-Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of the Sub-Contractor for any purpose relating to the Works and the Site, including any of the Permitted Uses.

3.1.1 References to 'Material' in this clause 3 means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works.

3.1.2 References to 'Permitted Uses' in this clause 3 means the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance,

facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of the Site and the Works

3.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Works, but not to reproduce the designs contained in the Material in any such extension.

3.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Sub-Contractor.

3.4 The Sub-Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

4. **Insurance**

4.1 The Sub-Contractor shall maintain professional indemnity insurance of £ [] ([] million pounds) for each and every claim, in relation to the Sub-Contract Works provided always that such insurance is available to the Sub-Contractor at commercially reasonable rates. Any increased or additional premium required by insurers because of the Sub-contractor's claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.

4.2 The Sub-Contractor shall maintain such professional indemnity insurance from the date of commencement of their works for [6/12] years from Practical Completion under the Contract and, for such longer period in which claims and/or proceedings may be commenced under sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or sections 148 to 149 of the Building Safety Act or under the Civil Liability (Contribution) Act 1978.

4.3 Within 15 days of the date of this Deed and thereafter on request, the Sub-Contractor shall provide to the Beneficiary evidence that the Sub-Contractor's insurance referred to in this clause is in force, including, if required by the Beneficiary, an original letter from the Sub-Contractor's insurers or brokers confirming:

4.3.1 the Sub-Contractor's then current insurance, as referred to in this clause; and

4.3.2 that the premiums for that insurance have been paid in full at the date of that letter.

5. **Notices**

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by 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 facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. Assignment

The benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Sub-Contractor on three occasions only. The Beneficiary will give the Sub-Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. If the Beneficiary fails to do this, the assignment shall still be valid. The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7. Other Rights and Remedies

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including, without limitation, any remedies in negligence.

8. No Approval

The Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Material and/or Works or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

9. Limitation

9.1 The Sub-Contractor has no liability under this Deed which is greater or of longer duration than it would have had if, in lieu of this Deed, the Beneficiary had been a party to the Sub-Contract as joint employer, provided that the Sub-Contractor shall not be entitled to set-off or deduct

from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.

9.2 The Sub-Contractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Sub-Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Sub-Contract as joint employer.

9.3 Subject to clause 9.4, the Beneficiary may not commence any legal action against the Sub-Contractor under this agreement after the period of [6/12] years from Practical Completion under the Contract.

9.4 The Beneficiary may commence legal action against the Sub-Contractor under this agreement:

9.4.1 in accordance with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; and/or

9.4.2 for a breach of this agreement that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or that gives rise to a failure to comply with that legislation in relation to the Sub-Contract Works or any part thereof, provided that any such action or proceedings are subject to the limitation periods that would apply if they were commenced under that legislation and/or the Civil Liability (Contribution) Act 1978 and is not subject to any shorter limitation period applicable to a claim for breach of contract under the Limitation Act 1980 nor any shorter limitation period specified under condition 9.3.

10. **Partnership**

Where the Sub-Contractor is a partnership references in this Deed to "the Sub-Contractor" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

11. **Governing Law and Jurisdiction**

This Deed any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

12. **Third Party Rights**

12.1 The parties to this Deed 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.

Executed in the manner set out below on the date hereof.

As witness the hands of the parties or their duly authorised representatives

[Note: If the Sub-Contract is signed under hand so should this collateral warranty. If it is executed as a Deed so should this be. The method of execution should be checked with the parties]

As witness the hands of the parties or their duly authorised representatives

Signed by **[insert name of signatory]**
for and on behalf of the Sub-Contractor **Authorised signatory**

Signed by **[insert name of signatory]**
for and on behalf of the Beneficiary **Authorised signatory**

OR

EXECUTED as a **DEED**

(but not delivered until the date hereof) by

[Sub-Contractor]

acting by....., a director Director.....
[print name of director above] in the presence of: [signature of director]

witness signature:

name:

address:

occupation:

EXECUTED as a DEED

(but not delivered until the date hereof) by

[Third Party]

acting by....., a director
[print name of director above] in the presence of:

Director.....
[signature of director]

witness signature:

name:

address:

occupation:

Schedule 7
Performance Bond

Dated

202[]

[Contractor]

and

[Guarantor]

and

The University of Newcastle upon Tyne

**Performance Bond
relating to a
Minor Works Contract
in relation to works at
[]**

Muckle LLP
Time Central
32 Gallowgate
Newcastle upon Tyne
NE1 4BF

Dated

202[]

Parties

- (1) [FULL COMPANY NAME OF CONTRACTOR] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**); and
- (2) [FULL COMPANY NAME OF CONTRACTOR] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Guarantor**); and
- (3) **The University of Newcastle upon Tyne** of King's Gate, Newcastle Upon Tyne, United Kingdom, NE1 7RU (**Employer**).

Background

- (A) By a contract (**Contract**) 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 (and, where relevant, services) (**Works**) upon and subject to the terms and conditions set out within the Contract.
- (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 limitation set out in clause 2.

It is agreed as follows:

1. Guarantee

The Guarantor guarantees to the Employer that in the event of a breach of the Contract (including without limitation in this Bond the occurrence of any events of insolvency listed in the Contract in relation to the Contractor) the Guarantor shall subject to the provisions of this Bond satisfy and discharge the damages sustained or debts incurred by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract taking into account all sums due or to become due to the Contractor.

2. Bond Amount

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 co-extensive with the liability of the Contractor under the Contract.

3. No Discharge of Liability

3.1 The Guarantor shall not be discharged or released by:

3.1.1 any act, omission, matter, thing, fact, event or rule of law which, but for this **clause 3** might operate to release in whole or in part the Guarantor from its obligations under this Bond including (without limitation) any alteration, variation or waiver 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 on the part of the Employer shall in any way release, reduce or affect the liability of the Guarantor under this Bond;

3.1.2 the giving by the Employer or the Contractor of any consent to an assignment or any transfer or novation or the making of any assignment, transfer or novation of the Contract (or any part thereof) or this Guarantee (or any part thereof);

3.1.3 any fact event or rule of law which results in any total or partial invalidity, illegality or unenforceability of the Contract which the Contractor could have avoided by the use of its reasonable endeavours or could by using its reasonable endeavours have drawn to the attention of the Employer prior to the date of the Contract (in which case for the purposes of this Bond the Contract will be deemed valid, legal and enforceable as if such reasonable endeavours had been exercised and appropriate steps been taken to avoid or mitigate the invalidity, illegality or unenforceability); or

3.1.4 a legal limitation, disability or incapacity of the Contractor.

4. Expiry

4.1 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:

4.1.1 breach of the Contract which has occurred and in respect of which a claim in writing has been made upon the Guarantor before Expiry; and

4.1.2 events which occurred prior to Expiry and in respect of which a claim in writing has been made upon the Guarantor by Expiry and which are reasonably expected to give rise to a breach of the Contract by the Contractor.

5. Contractor's Undertaking

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. Third Party Rights

The Parties to this Bond do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person not a party to it.

7. Assignment

This Bond and the benefits thereof may be assigned at any time by the Employer to any person to whom the benefit of the Contract is assigned or novated by the Employer to any person providing finance in connection with the Contract subject to the Employer giving prior written notice of such assignment to the Contractor and the Guarantor.

8. Governing Law and Jurisdiction

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

The Schedule

The Contractor: [redacted] incorporated and registered in England and Wales with company number [redacted] whose registered office is at [redacted]

The Guarantor: [redacted] incorporated and registered in England and Wales with company number [redacted] whose registered office is at [redacted]

The Employer: The University of Newcastle upon Tyne of King's Gate, Newcastle Upon Tyne, United Kingdom, NE1 7RU

The Contract: A minor works contract dated [redacted] between the Employer and the Contractor for works at [redacted] for the original contract sum of £ [redacted] ([redacted] pounds)

The Bond Amount: The sum of £ [10% of the Contract Sum] ([redacted] pounds)

Expiry: The date that the Contract Administrator certifies under condition 10.3 of the Contract

Executed as a deed but not delivered until the date on the front of this document by

[Guarantor]

acting as an attorney

.....
(signature of attorney)

In the presence
of.....

witness signature:
.....

name:

address:

occupation:

Executed as a deed but not delivered until the date on the front of this document by

[Contractor]

acting by a director

.....
(signature of director)

in the presence of

witness signature:

name:

address:

occupation:

Executed as a deed but not delivered until the date

hereof by

Affixing the Common Seal of

The University of Newcastle upon Tyne

(an exempt charity) in the presence of:

.....

Authorised signatory

.....

Authorised signatory

Schedule 8
Parent Company Guarantee

Dated

202[]

[Parent Company]

and

The University of Newcastle upon Tyne

Parent Company Guarantee
relating to a
relating to a
Minor Works Contract
in relation to works at
[]

muckle^{LLP}

Muckle LLP
Time Central
32 Gallowgate
Newcastle upon Tyne
NE1 4BF

Dated

202[]

Parties

- (1) **[full company name]** incorporated and registered in England and Wales with company number **[number]** whose registered office is at **[registered office address]** (**Guarantor**); and
- (2) **The University of Newcastle upon Tyne** whose registered office is King's Gate, Newcastle Upon Tyne, United Kingdom, NE1 7RU (**Employer**).

Background

- (A) The Employer has entered into a contract (**Contract**) with **[Contractor]** (**Contractor**) dated [**202[]**] for the works (and, where relevant, services) referred to in the Contract (**Works**).
- (B) The Employer has requested and the Guarantor has agreed to provide a guarantee of the Contractor's obligations under the Contract.

It is now agreed:

1. Guarantee

- 1.1 In consideration of the Employer (at the request of the Guarantor) entering into the Contract, the Guarantor by this Deed irrevocably and unconditionally guarantees to the Employer as surety the full and due performance of all the obligations of the Contractor contained within the Contract provided always that the Guarantor shall have no greater liability by virtue of this Deed than it would have had if the Guarantor had been named as 'the Contractor' under the Contract in substitution for the Contractor.
- 1.2 If the Contractor fails to observe or perform any of its duties or obligations under the Contract, or if the Contractor fails to pay any sum, loss, debt, damage, interest, cost or expense due from the Contractor to the Employer under or in connection with the Contract, the Guarantor (as a separate and independent obligation and liability from its obligations and liabilities under clause 1.1) shall indemnify the Employer against all loss, debt, damage, interest, payments, charges, cost and expense incurred by the Employer by reason of such failure or non-payment.

2. Reimbursement

Subject to the provisions of clause 1 and clause 8 of this Deed, the Guarantor by this Deed will be liable to the Employer on receipt of its first written notice for all losses, damages, costs and expenses (including legal costs and expenses incurred in enforcing the provisions of the Contract or this Deed), or otherwise which may be incurred by the Employer by reason of any breach on the part of the

Contractor (which for the avoidance of doubt but without limitation, will include the occurrence of any of the events of insolvency listed in clause 8.1 of the Contract) in fully and duly performing and observing the terms and conditions on its part contained in the Contract.

3. No Discharge of Liability

The Contract may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this Deed (which includes the Contractor's duties, obligations and liabilities under the Contract as modified, amended or supplemented) shall not be affected by:

- 3.1 any such modification, amendment or supplement;
- 3.2 any invalidity, avoidance or termination of the Contract; or
- 3.3 any waiver, concession, allowance, compromise or forbearance whether as to payment, time, performance or otherwise given to, or made with, the Contractor. The terms of this Deed shall apply to the terms of any such compromise as they apply to the Contract.

4. Guarantor Intent

Without prejudice to the generality of clause 3, the Guarantor expressly confirms that the Guarantor intends that the guarantee constituted by this Guarantee shall extend from time to time to any (however fundamental) variations, increase, extension, or addition of or to the Contract including, without limitation:

- 4.1 any modification or changes to the Contract or referred to in the Contract so that any such modification or change whatsoever nature shall be binding upon the Guarantor in all circumstances notwithstanding that it may increase or otherwise affect the liability or obligations of the Guarantor under this Guarantee;
- 4.2 the giving by the Employer or the Contractor of any consent to an assignment or any transfer or novation or the making of any assignment, transfer or novation of the Contract (or any part thereof) or this Guarantee (or any part thereof); and
- 4.3 the granting of extensions of time or other indulgences to the Contractor under the Contract.

5. Continuing Guarantee and Employer does not have to pursue Contractor

- 5.1 This Deed creates a continuing guarantee and will remain in force until Completion as defined under the Contract.
- 5.2 The Employer does not have to pursue any remedy against the Contractor before proceeding against the Guarantor under this Deed.

6. Guarantor's Waiver

The Guarantor waives any right it may have of first requiring the Employer to proceed against or enforce any claims against any of the parties to the Contract or any other person.

7. Priority of Claims

As long as any liability incurred by the Contractor to the Employer guaranteed under this Deed remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability arising under this Deed, effect (or try to effect) any recovery from the Contractor, whether by receipt of money, set-off, proof of debt, enforcement of security or otherwise. Notwithstanding this clause 7, in the event that the Guarantor receives any sums from the Contractor in respect of any payment of the Guarantor hereunder, the Guarantor shall hold such monies on trust for the Employer so long as any sums are payable (contingently or otherwise) under this Guarantee.

8. Guarantor's Defences

The Guarantor will be entitled in any proceedings brought by the Employer under this Deed to take advantage of any defences set-offs, counterclaims, estoppels and the like which would be available to the Contractor in any proceedings brought by the Employer under the Contract.

9. Assignment

The Employer is entitled to assign the benefit of and its rights under this Deed (as a whole only and not in parts) at any time without the Guarantor's consent to any company, bank or institution providing finance in connection with the Works or to anyone who has or acquires the freehold of or a leasehold interest in the site of the Works or a substantial part of it subject to the Employer giving prior written notice of such assignment to the Contractor and the Guarantor.

10. Governing Law and Jurisdiction

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

11. Third Party Rights

The parties to this Deed 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.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

Executed as a deed but not delivered until the date on the front of this document by

[Guarantor]

acting by two directors or

.....
(signature of director)

by a director and its secretary

.....
(signature of director/secretary)

Executed as a deed but not delivered until the date hereof by

Affixing the Common Seal of

The University of Newcastle upon Tyne

(an exempt charity) in the presence of:

.....

Authorised signatory

.....

Authorised signatory

Schedule 9
Advance Payment Bond

[The Advance Payment Bond shall be in the form set out in Part 1 of Schedule 6 of the JCT Design and Build Contract 2024]

OR

[Not Applicable]

Schedule 10

Novation

Dated

202[]

The University of Newcastle upon Tyne

and

[Contractor]

and

[Consultant]

**Novation of professional appointment: The University of Newcastle
upon Tyne to Contractor
relating to a project at []**

muckle^{LLP}

Muckle LLP
Time Central
32 Gallowgate
Newcastle upon Tyne
NE1 4BF

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Dated

202[]

Parties

- (1) **The University of Newcastle upon Tyne (trading as Newcastle University** of King's Gate. Newcastle upon Tyne, United Kingdom, NE1 7RU (**Employer**);
- (2) [FULL COMPANY OR LLP NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**); and
- (3) [FULL COMPANY OR LLP NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Consultant**).

Background

- (A) The Consultant is in practice as [CONSULTANT'S ROLE].
- (B) By an agreement in writing dated [DATE] (**Appointment**), the Employer appointed the Consultant to provide [CONSULTANT'S SERVICES] services in connection with the [DESCRIPTION OF PROJECT] (**Project**).
- (C) The Employer and the Contractor have entered into a building contract, under which the Contractor has been appointed to carry out and complete the design and construction of the Project.
- (D) The parties have agreed to novate the Appointment from the Employer and the Consultant to the Contractor and the Consultant on the terms of this Deed.

It is agreed

1. Interpretation

The following rules of interpretation apply in this Deed.

- 1.1 Clause, schedule and paragraph headings shall not affect the interpretation of this Deed.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the schedules.

- 1.4 A reference to a **company** shall include 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 Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective personal representatives, successors and permitted assigns and references to any party shall include that party's personal representatives, successors or permitted assigns.
- 1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative 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** excludes fax but not email.
- 1.12 A reference to **this Deed** or to any other agreement or document is a reference to this Deed or such other agreement or document, in each case as varied from time to time.
- 1.13 References to clauses and schedules are to the clauses and schedules of this Deed; references to paragraphs are to paragraphs of the relevant schedule.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. **Novation of Appointment**

This Deed novates the Appointment from the Employer and the Consultant to the Contractor and the Consultant.

3. **Release of Consultant**

The Consultant shall no longer owe any duty or obligation to the Employer in respect of the Appointment.

4. **Release of Employer**

The Employer shall no longer owe any duty or obligation to the Consultant in respect of the Appointment.

5. Binding of Consultant to Contractor

5.1 The Consultant binds itself to the Contractor under the Appointment as if the Contractor was, and always had been, named in the Appointment in place of the Employer.

5.2 The Consultant undertakes and warrants to the Contractor that it has carried out, and will carry out, its duties and obligations under the Appointment. In performing its services under the Appointment, the Consultant has exercised, and will continue to exercise, all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking such services on works similar in scope and character to the Project unless any of the Statutory Requirements impose a higher standard in which case that higher standard will apply notwithstanding any provision of the Appointment to the contrary.

5.3 The Contractor shall not be prevented from recovering any losses incurred by the Contractor that result from any breach of this clause 5 because:

5.3.1 the acts or omissions causing that breach occurred before this Deed took effect; or

5.3.2 the Employer will not incur, has not incurred or would not have incurred those losses.

6. Binding of Contractor to Consultant

The Contractor binds itself to the Consultant under the Appointment as if the Contractor were, and always had been, named in the Appointment in place of the Employer.

7. Vesting of remedies in Contractor

All rights of action and remedies vested in the Employer against the Consultant in respect of the Appointment shall vest in the Contractor from the date of this Deed.

8. Vesting of remedies against Contractor

All rights of action and remedies vested in the Consultant against the Employer in respect of the Appointment shall lie against the Contractor from the date of this Deed.

9. Fees and disbursements

The Consultant acknowledges that all fees, disbursements and expenses due to the Consultant under the Appointment to [the date of this Deed OR [DATE]] have been paid in full.

10. [Amendment of Appointment]

The parties agree that the terms of the Appointment are varied as set out in 0.]

11. Affirmation of Appointment

Subject to the terms of this Deed, the Appointment shall remain in full force and effect.

12. Collateral warranties and third party rights

Nothing in this Deed shall affect any collateral warranty given, or to be given, by the Consultant to the Employer (or to any third party) in respect of the Project. Nothing in this Deed shall affect any third party rights in favour of the Employer (or in favour of any third party) under the Appointment.

13. Third party rights

13.1 This deed does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed

13.2 A third party given a collateral warranty by the Consultant may enforce the benefit of clause 12.
A third party benefiting from third party rights under the Appointment may enforce the benefit of clause 12.

14. Governing law

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

15. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

Executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

[Variations to the terms of the Appointment]

[Insert details of variations, if any or if none, delete this schedule]

Executed as a deed but not delivered until the date

stated on the front of this document by

affixing the Common Seal of

The University of Newcastle upon Tyne

(an exempt charity) in the presence of:

.....
Authorised signatory

.....
Authorised signatory

Executed as a deed but not delivered until the date
on the front of this document by

[Contractor]

acting by

a director in the presence of

.....
(signature of director)

I confirm that the witness named below was physically present when I signed this deed

Signature of witness

.....

Name of witness

.....

Address of witness

.....

Occupation of witness

.....

I confirm that I was physically present when the above signatory signed this deed

Executed as a deed but not delivered until the date
on the front of this document by

[Consultant]

acting by

.....
(signature of director)

a director in the presence of

I confirm that the witness named below was physically present when I signed this deed

Signature of witness

.....

Name of witness

.....

Address of witness

.....

Occupation of witness

.....

I confirm that I was physically present when the above signatory signed this deed