Date:

(1) Tidebank UK Ltd

(2) Mildren Construction Ltd

Schedule of Amendments

JCT Design and Build Contract 2011 Edition

relating to

Daedalus Site

Blake Morgan LLP
New Kings Court
Tollgate
Eastleigh
SO53 3LG
www.blakemorgan.co.uk
Ref: 562671.23

SCHEDULE OF AMENDMENTS TO

JCT DESIGN AND BUILD CONTRACT 2011 EDITION

ARTICLES OF AGREEMENT

Delete Article 5 and replace with:

> "The Principal Designer for the purposes of the CDM Regulations is the Contractor or, if he ceases to be the Principal Designer, such other person as the Employer appoints at any time to fulfil that role."

Add new Article 10: Amendment 1: CDM Regulations – Incorporation

> "This Agreement and the Conditions shall have effect as modified by the amendments set out in the attached Amendment 1: CDM Regulations."

Add new Article 11:

> "The Employer and the Contractor agree that the Schedule of Amendments attached hereto are hereby incorporated into this Contract and the provisions of the Articles of Agreement, the Conditions and the Schedules shall have effect as so amended. In the event of any discrepancy the Schedule of Amendments shall prevail."

CONDITIONS

Section 1 – Definitions and Interpretation

Definitions

Clause 1.1

Add the following definitions:

> "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)."
>
> "Deleterious: materials equipment product or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time to be hazardous as posing a threat to the health and safety of any person; or posing a threat to the durability, structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or not being in accordance with any relevant British or European standards or codes of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or having been supplied or placed on the market in breach of the Construction Products Regulations; and/or do not comply with the guidance set out in the publication entitled "Good practice in the Selection of Materials 2011" published by the British Property Federation and the British Council of Offices; and/or are specifically prohibited under this Agreement."
>
> "Landlord" means the Homes and Communities Agency or such other person, firm, company or entity having legal capacity as may own the freehold or hold a long leasehold interest in the Site.
>
> "Principal Designer: the person named in Article 5 or any successor appointed by the Employer."
>
> "Professional Consultant: a professional consultant named or identified in Appendix 1 originally appointed by the Employer or appointed by the Contractor on terms approved by the Employer, such approval not to be unreasonably withheld or delayed, and any replacement of a Professional Consultant."

"Standard of Care: 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 of a similar nature, size, value, scope, timescale and complexity to the Works."

Contracts (Rights of Third Parties) Act 1999

Delete clause 1.6 and replace with:

"Other than any rights as take effect pursuant to section 7 of these Conditions, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it."

Section 2 – Carrying out the Works

Contractor's Obligations
General Obligations

Clause 2.1.2 **delete** sub-clause 2.1.2 and replace with:

"Number not used."

Add new Clause 2.1.5:

"The Contractor shall ensure that (in addition to the sub-contractor(s) named in Part 2 of the Contract Particulars) any professional designer that the Contractor employs (which employment shall be strictly in accordance with the provisions in clauses 3.3 – 3.4 and section 7) shall execute and deliver to the Employer collateral warranties in accordance with the provisions of Section 7 in substantially the form as appended hereto, with such reasonable amendments as the beneficiary of the Warranty shall require or agree, in favour of the Employer (and/or each Funder, Tenant and Purchaser, as the Employer may specify).

Each collateral warranty shall include specific details of the design responsibilities related to the professional designer or specialist sub-contractor providing the warranty. The Contractor shall include within the terms of appointment of all professional designers the requirement for maintaining Professional Indemnity Insurance in an amount to be agreed by the Employer for any one occurrence or series of occurrences arising out of any one event for a period of twelve (12) years from the date of Practical Completion of the Works. As and when reasonably requested to do so by the Employer, the Contractor shall produce for inspection documentary evidence that such insurance is being maintained."

Add new clause 2.1.6:

"The above obligations for the provision of deeds and guarantees shall continue notwithstanding termination of this Contract, or termination of the Contractor's employment hereunder, in either case for any reason whatsoever, including (without limitation) breach by the Employer. However any such deed given after such termination shall be amended by the Employer so as to refer to the fact and date of such termination, to omit any obligation to continue to exercise skill, care or diligence or fulfil obligations pursuant to this Contract after such termination and to omit any provision enabling a third party to assume the position of employer of the Contractor."

Materials, goods and workmanship

Add new clause 2.2.6:

"The Contractor warrants to the Employer that unless otherwise authorised or instructed by or on behalf of the Employer there shall not be specified or used in the Works any material, substance or building practice or technique which is Deleterious."

Add new clause 2.2.7:

"The Contractor shall inform the Employer immediately if the Contractor becomes aware whilst carrying out the Works that any of the items referred to in clause 2.2.6 above have been specified for use or used in the Works."

Practical Completion, Lateness and Liquidated Damages

Practical Completion – Clause 2.27

Add at the beginning:

> "For the purposes of this clause "Practical Completion" means that the Works are suitable for beneficial use and occupation in accordance (if appropriate) with the Employer's Requirements. Without prejudice to the generality of the above definition, Practical Completion may not occur if the Works are not ready to be occupied and used by the Employer."'"

Clause 2.27.1 D**elete** "Employer" and insert:

> "Architect identified in Appendix 1 or such other person as the Employer shall nominate in his place and is notified to the Contractor,"

Defects

Schedules of defects and instructions

In Clause 2.35.1 and Clause 2.35.2 **Delete** "Employer" and insert:

> "Architect identified in Appendix 1 or such other person as the Employer shall nominate in his place and is notified to the Contractor,"

Clause 2.36 **Delete "**Employer" and insert:

> "Architect identified in Appendix 1 or such other person as the Employer shall nominate in his place and is notified to the Contractor,"

Section 3 – Control of the Works

Access and Representatives

Access for Employer's Agent – Clause 3.1

Insert in line one after "Employer": "(including any funder, purchaser, tenant and/or their representatives)"

Clauses 7A to 7E – Preliminary / Collateral Warranties

Delete clauses 7.3 to 7E (inclusive) and **replace** clause 7.3 with:

> "**Contractor's collateral warranty**
>
> Within 15 Business Days of a request from the Employer, the Contractor shall execute and deliver a deed or deeds of collateral warranty in favour of any Funder, any Purchaser and any Tenant in the form of the contractor's deed of collateral warranty contained in Appendix 2 of this Schedule of Amendments.

Add new clause 7.4:

> "**Sub-contractor collateral warranties**
>
> 7.4 The Contractor shall use best endeavours to ensure within 15 Business Days of the date of this Contract (or, if later, within 15 Business Days of the appointment of a Sub-contractor), that each Sub-contractor with design responsibilities has executed and delivered a deed of collateral warranty in favour of the Employer in the form set out in Schedule 13 of this Schedule of Amendments with such reasonable amendments as the beneficiary of the Warranty shall require or agree.
>
> Within 15 Business Days of a request from the Employer, the Contractor shall procure a deed of collateral warranty in favour of any Purchaser, Tenant or Funder from any Sub-contractor with design responsibilities then appointed, in the form set out in Appendix 3 of this Schedule of Amendments with such reasonable amendments as the beneficiary of the Warranty shall require or agree.. If any deed of collateral warranty provided by a Sub-contractor requires execution by the Contractor, the Contractor shall execute and deliver the collateral warranty to the Employer within the time limits set out in this clause."

Add new clause 7.5:

"**Professional consultants - appointment**

7.5 Within 15 Business Days of the date of this Contract, the Contractor shall appoint the Professional Consultants."

Add new clause 7.6:

"**Professional Consultants - collateral warranties**

7.6 The Contractor shall ensure, within 15Business Days of the date of this Contract (or, if later, within 15 Business Days of the appointment of a Professional Consultant), that each Professional Consultant has executed and delivered a deed of collateral warranty in favour of the Employer in the form set out in Appendix 4 of this Schedule of Amendments with such reasonable amendments as the beneficiary of the Warranty shall require or agree. Within 15 Business Days of a request from the Employer, the Contractor shall procure a deed of collateral warranty in favour of any Purchaser, Tenant or Funder from any Professional Consultant then appointed, in the form set out in Appendix 4 of this Schedule of Amendments with such reasonable amendments as the beneficiary of the Warranty shall require or agree. If any deed of collateral warranty provided by a Professional Consultant requires execution by the Contractor, the Contractor shall execute and deliver the collateral warranty to the Employer within the time limits set out in this clause."

Add new clause 7.7:

"**Professional consultants - Contractor's duty not to terminate or vary appointments**

7.7 The Contractor shall not terminate or vary the appointment of any Professional Consultant without the Employer's prior consent, which shall not be unreasonably withheld or delayed."

Insert new clause 7.8:

"Execution of Collateral Warranties

7.8 The Contractor's obligations under clauses 7.3, 7.4 and 7.6 shall continue notwithstanding the termination of this Contract, or the termination of the Contractor's employment thereunder, and the Contractor shall ensure that the obligation of any sub-contractor under clause 7.4 shall also continue notwithstanding the termination of their sub-contract, or the termination of their employment thereunder, in either case for any reason whatsoever, including (without limitation) breach by the Employer."

Appendices

Appendix 1 **Professional Consultants**

Appendix 2 **Form of Contractor's Deed of Collateral Warranty**

(Clause 7.3) Insert template Contractor's Deed of Collateral Warranty in favour of Purchaser/Tenant/Funder

Appendix 3 **Form of Sub-Contractor's Deed of Collateral Warranty**

(Clause 7.4) Insert template Sub-Contractor's Deed of Collateral Warranty in favour of Employer or Purchaser/Tenant/Funder

Appendix 4 **Form of Professional Consultant's Deed of Collateral Warranty**

(Clause 7.6) Insert template Professional Consultant's Deed of Collateral Warranty in favour of Employer or Purchaser/Tenant/Funder/Landlord

Appendix 1
Professional Consultants

Forum Architects	(Architect)
JPP Consulting Limited	(Structural Engineer)

Appendix 2
Form of Contractor Collateral Warranty to Purchaser/Tenant/Funder/Landlord

---

Appendix 3
Form of Sub-Contractor Collateral Warranty to Purchaser/Tenant/Funder

---

Appendix 4
Form of Consultant Collateral Warranty to Purchaser/Tenant/Funder/Landlord

---