



Dated

Appointment Terms

in relation to a consultancy appointment under the ICN Framework

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Introduction

- (A) The Client intends to develop the Site by causing the Project to be carried out.
- (B) The Client has resolved to appoint the Consultant to act for the Project and to perform the Services on the terms and conditions set out in this Appointment and an Allocation Letter.

Agreed terms

1 Interpretation and definitions

1.1 In this Appointment unless the context otherwise requires the expressions shall have the following meanings:

Additional Services means the services which the Client requires the Consultant to perform at any time during the Project in accordance with clause 16 which do not form part of the Standard Services;

Adjudicator means such person as the Parties may agree or, failing such agreement within seven days following a request by either party, a person appointed on the application of either party by the President or a Vice-President for the time being of the Chartered Institute of Arbitrators;

Allocation Letter a letter issued by the Client to the Consultant in respect of a specific Project or Projects in the form of a letter contained in Schedule 1 of the Framework Agreement;

Associated Person a person (including without limitation an agent, subsidiary or sub-consultant) who performs services for or on the Consultant's behalf;

Bribery Act means the Bribery Act 2010;

Brief means the document detailing the Client's requirements in respect of the Project, a copy of which is set out in an Allocation Letter, as the same may be updated from time to time;

Building Contract means the contract(s) to be executed by the Client and the Contractor(s) for the carrying out and completion of the Works or part or parts of the Works which may include an enabling works contract and the Main Contract;

Building Safety Act means the Building Safety Act 2022 and any other associated legislation or regulations supplementing or implementing that Act (including for the avoidance of doubt the Building Act 1984), together with any guidance, regulations, codes of practice or directions issued by the Building Safety Regulator, the Health and Safety Executive, The Secretary of State for Levelling Up, Housing and Communities or any of their respective statutory successors carrying out a similar regulatory function;

Building Safety Regulator means the regulatory body established pursuant to Part 2 of the Building Safety Act who carries out regulatory functions under the Building Safety Act;

Client Due Date means the date of receipt by the Consultant of the Client's application for payment pursuant to clause 12.11;

Client's Representative means the person named as such in an Allocation Letter or such other person as the Client shall appoint to that position and whose appointment shall be notified to the Consultant in writing;

CDM Regulations means the Construction (Design and Management) Regulations 2015;

Competency Regulations means the Building Regulations etc. (Amendment) (England) 2023;

Competency Requirements means that the Consultant, any sub-consultants and any suppliers (including the individuals employed or appointed by them to carry out any services in relation to the Services) have the skills, knowledge, experience, behaviours and capabilities required to properly and competently perform the functions of a Dutyholder in relation to the Services in accordance with the Competency Regulations, together with any further competency standards published from time to time by any authorised body, including without limitation, the British Standards Institution;

Consents means the Planning Permission, listed building consents, building regulation approvals and all other permissions, consents, approvals, licences, permits (whether public or private) as may be necessary to commence, carry out and complete the Project and the Works lawfully;

Construction Act means Part II of the Housing Grants Construction and Regeneration Act 1996;

Construction Period means the period for the completion of the Project agreed by the Client and the Consultant to be expressed in the Building Contract or such extended or reduced period as may be agreed by the Contractor and Client from time to time according to the terms of the Building Contract;

Contractor means the contractor(s) named or stated still to be appointed in an Allocation Letter or such other contractor(s) as may be appointed by the Client from time to time to act in his/their place and includes, where the context so admits, the Contractor's employees, agents and sub-contractors;

Corrupt Activity extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity bribery and/or corruption including, without limitation, any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 Bribery Act whether in connection with the Project or otherwise;

Criminal Finances Act means the Criminal Finances Act 2017;

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including but not limited to the General Data Protection Regulation ((EU) 2016/679) (the GDPR); the UK GDPR (as such term is defined in the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019) (such legislation being referred to in this Agreement as the UK GDPR), the Data Protection Act 2018; the Privacy and Electronic Communications Directive

2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), along with any associated guidance and Codes of Practice, in each case as may be amended, updated or supplemented from time to time;

Data Subject's Rights means any rights of individuals under the Data Protection Legislation;

Data Controller, Data Subjects, Personal Data and Processing shall have the meaning as provided in the Data Protection Legislation;

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

Due Date means the date of receipt by the Client of the Consultant's proper and agreed accounts in accordance with clause 12.3;

Dutyholder means the function of a dutyholder as prescribed under the Competency Regulations;

Fee means the fee set out in an Allocation Letter payable to the Consultant for the proper performance of the Standard Services as varied from time to time pursuant to clause 16;

Final Date for Payment means the later of 28 (twenty eight) days after (a) the Due Date and (b) receipt of a valid tax invoice addressed to the Client in the amount stated in the Payment Notice;

Framework Agreement means a multi-party framework of consultants and contractors who are able to carry out professional services and undertaken works in connection with the delivery of the Client's development programmes [including (without limitation) development/remodelling/refurbishing/improving housing developments and related social infrastructure schemes (including a range of partial equity scenarios)] dated [];

Funder means a person (whether acting for himself or where leading a syndicate of persons as trustee and agents for such persons) who is providing or shall provide interim or other finance for the carrying out of the Project and/or the acquisition of the Site;

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

Insolvency Event means

in relation to a Consultant or Client which is a body corporate, any of the following events:

- (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act

1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
- (c) it applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed over it (being a company, partnership or limited liability partnership);
- (f) the holder of a qualifying floating charge over its assets (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets; or
- (h) being an individual, it is the subject of a bankruptcy petition, application or order;
- (i) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within ten Working Days;
- (j) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) in relation to a Consultant or Client which is a partnership, the dissolution thereof; or
- (l) any event analogous to any of the above occurs in any jurisdiction in which the Consultant or Client is incorporated, carries on business or has any assets;

Joint Fire Code means the Joint Code of Practice on the Protection from Fire on Construction Sites and Buildings Undergoing Renovation published by the Building Employer's Confederation (10th edition);

Key Personnel means the persons named in an Allocation Letter and/or any replacements appointed in accordance with this Appointment;

Main Contract means the Building Contract to be awarded to a Contractor for the Works or, if other contracts have been let prior to its award for enabling works, the remainder of the Works;

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

Notice means all notices, requests, demands, approvals, consents and other communications under this Appointment;

Other Consultants means collectively those consultants listed in an Allocation Letter and such other consultants as may be appointed by the Client from time to time in connection with the Project;

the **Parties** means together the Client and the Consultant;

Pay Less Notice means a Notice setting out the sum which the Client considers to be due to the Consultant on the date of the Notice and the basis on which that sum is calculated;

Payment Notice means a Notice setting out the sum which the Client considers to have been due to the Consultant on the Due Date and the basis on which that sum is calculated or, if clause 12.5.2 applies, the Consultant's application for payment pursuant to clause 12.3;

Payment Schedule means the payment schedule set out in an Allocation Letter as varied from time to time in accordance with the provisions of this Appointment;

Planning Permission means the planning permission for the Project as varied and/or amended from time to time and/or any further applications for the Project or any part or parts of the Project made prior to completion of the Services;

Pre-Construction Phase means any period of time during which design or preparatory work is carried out for the Works and may continue during the construction phase;

Preliminary Appointment means the agreement identified as such in an Allocation Letter (if any);

Principal Contractor means the contractor appointed under regulation 5(1)(b) of the CDM Regulations to perform the specified duties in regulations 12 to 14 of the CDM Regulations;

Principal Designer means the Principal Designer named in an Allocation Letter or such other Principal Designer as may be appointed by the Client from time to time to act in his/their place;

Programme means the master programme for the Project set out in an Allocation Letter as the same may be revised from time to time;

Project means the works to be carried out to the Site as briefly described in an Allocation Letter;

PCR means the Public Contract Regulations 2015 (as amended from time to time or any regulations replacing or succeeding those regulations);

Purchaser means a person who has acquired or has agreed to acquire or may later acquire or agree to acquire a freehold or long leasehold interest in the whole or any part or parts of the Site (and/or any premises constructed or to be constructed on the Site);

Questionnaire means the competency assessment questionnaire in accordance with the CDM Regulations and the associated Approved Code of Practice published by the Health and Safety Executive in relation to the CDM Regulations;

Services means the Standard Services, any Additional Services and any other services provided by the Consultant in connection with the Project;

Site means the site defined and described in an Allocation Letter;

Standard Services means those services set out in an Allocation Letter as may be amended from time to time in accordance with this Appointment (excluding any Additional Services);

Statutory Requirements means any act of parliament and any instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them any retained EU legislation enforceable in England and Wales and any rules, regulations, orders, bye-laws or codes of practice of any local or other competent authority;

Sub-Contractor means any sub-contractor or supplier (of whatsoever tier) from time to time employed or engaged upon or in connection with the Works or any part of the Works;

Team Director/Partner means the person named in an Allocation Letter and/or any replacement appointed in accordance with this Appointment;

Tenant means a person who has taken or has agreed to take or may later take or agree to take a lease (excluding a long lease) of the whole or any part or parts of the Site (and/or any premises constructed or to be constructed on the Site);

Third Party Agreements means all agreements relating to or affecting the Works or the completed Works or any part or parts of the Works which have been entered into or may be entered into by the Client and/or any Group Company from time to time and disclosed to the Consultant (whether on or before the date of this Appointment or after the date of this Appointment once the Client and/or any Group Company has entered into the same) including without limitation any agreement for lease, sale agreement and/or funding agreement;

Variation Instruction means a written notification varying the Services by way of addition, modification, omission of the Services and/or change of duration of the Services;

Warranty means a deed of warranty in the appropriate form set out in Schedule 1 or in such similar or varied form as the Client may agree;

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

Works means the design and construction of the Project.

- 1.2 The clause headings in this Appointment are for convenience only and do not affect its interpretation.
- 1.3 Words importing the singular meaning shall include where the context so allows the plural meaning and vice versa.
- 1.4 Words of one (1) gender include the feminine and neuter genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.5 Where the context so admits references in this Appointment to a clause or schedule are to a clause or schedule of this Appointment.
- 1.6 A reference to any statute or statutory instrument shall include a reference to any consolidation, extension, amendment or replacement of it for the time being in force.
- 1.7 References to specific standards, codes of practice, third party agreements shall include all amendments, supplements, re-drafts and substitutes to the same.
- 1.8 Where the context so requires the term **Consultant** shall be deemed to include any additional partner or partners who may be admitted into the partnership of the Consultant during the currency of this Appointment. This Appointment and the liabilities of the Consultant and the Client in this Appointment shall not automatically terminate upon the death, retirement or resignation of any one or more of the Partners or upon the admission of an addition partner or partners to the Consultant. The Consultant acknowledges that being a partnership the rights obligations and liabilities of the Partners under this Appointment are joint and several.

2 **Appointment and duty of care**

- 2.1 The Client appoints the Consultant and the Consultant accepts the appointment and agrees to carry out the Services in accordance with the terms and conditions of this Appointment.
- 2.2 The Consultant warrants to the Client that it has exercised and shall continue to exercise, in the performance of the Services, all the reasonable skill and care to be expected of a properly qualified and competent consultant of their discipline experienced in the provision of professional services for projects of a similar size, scope, value, character and complexity to the Project.

3 **Consultant's general obligations**

3.1 The Consultant shall:

3.1.1 proceed with the Services regularly and diligently having regard to the Programme and the Construction Period and shall perform its obligations whenever necessary in compliance with any timing requirements contained in the Programme and any procedure for the approval of drawings, documents and other information by the Other Consultants;

3.1.2 when carrying out the Services comply with the:

(a) Statutory Requirements;

(b) requirements of the Joint Fire Code;

(c) Consents;

(d) requirements of the Brief and in particular (but without limitation) shall ensure that the design of those elements of the Brief falling within the Consultant's discipline conform in all respects with the Brief;

3.1.3 operate a quality management system at least consistent with British Standards ISO 9001 or equivalent;

3.1.4 subject to clause 3.4.1 comply with all reasonable instructions from the Client given in writing under or in connection with this Appointment;

3.1.5 ensure (so far as it is reasonably able to do so in performing the Services) that all precautions are taken to avoid causing any inconvenience nuisance or danger to any person or party that renders or might render the Client liable to any such person or party for any costs, damages and/or expenses; and

3.1.6 to the extent relevant, the requirements of clause 3.7 and Schedule 2.

3.2 The Consultant warrants that where copies of any reports and/or findings produced as a result of any investigations carried out in respect of the Project and/or details of any preliminary works carried out in respect of the Project have been given to the Consultant the Consultant shall have full regard to such reports, findings and preliminary works when carrying out the Services.

3.3 If at any time the Consultant is prevented or delayed in the performance of the whole or any part or parts of the Services for any reason (whether arising out of delay on the part of the Contractor, any Sub-contractor, any of the Other Consultants or by reason of force majeure or otherwise) the Consultant shall:

3.3.1 forthwith notify the Client giving the specific reason for such delay or prevention together with his best estimate of its effect on the Programme and the Construction Period and the remedial action(s) the Consultant believes are necessary;

- 3.3.2 use his best endeavours as soon as practicable to resume and expedite the performance of the Services so as to complete the same with all reasonable speed.
- 3.4 Where in the performance of the Services the Consultant:
- 3.4.1 has to exercise his discretion as between the Client and the Contractor, the Consultant shall do so properly and fairly;
- 3.4.2 seeks or is obliged to seek the Client's approval or agreement to any matter or thing, the giving or confirming of the same by the Client shall not in any way derogate from the Consultant's obligations under this Appointment nor diminish extinguish exclude limit or modify any liability on the Consultant's part in respect of this Appointment.
- 3.5 The liability of the Consultant under this Appointment shall not be released diminished or in any other way affected by an independent enquiry test or survey into any relevant matter which may be made or carried out by or on behalf of the Client or by the appointment by the Client of any independent person firm or company to review and report to the Client in respect of the Project (including without limitation the Services) or by any act or omission which might give rise to an independent liability of such person firm or company to the Client.
- 3.6 The parties will each act in the capacity of Data Controller in respect of the Personal Data processed under this appointment and each will Process the Personal Data as independent Data Controllers.
- 3.6.1 The parties (including their employees agents or officers) shall at all times during the period of this appointment comply with the provisions and obligations imposed by this clause 3.6 and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this appointment.
- 3.6.2 The parties warrant and represent that they each have in place appropriate technical and organisational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- 3.6.3 Each party shall notify the other without undue delay on becoming aware of any breach of the Data Protection Legislation in relation to the Personal Data Processed under this appointment.
- 3.6.4 Whilst each party shall be responsible for responding to any complaint in relation to the Personal Data Processed pursuant to this appointment, or any request by individuals to exercise the Data Subject's Rights, the parties will co-operate with each other and provide reasonable assistance with any request, proceedings or inquiry by any affected Data Subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with data processed under this appointment.

- 3.6.5 The provisions of this clause 3.6 shall apply during the continuance of the appointment and indefinitely after its termination.
- 3.7 When so required by the Client, the Consultant shall forthwith execute a copy of the Allocation Letter as a deed.
- 3.8 Without prejudice to the generality of clause 3.1 and insofar as relevant to the Services, the Consultant shall observe and comply with:
- 3.8.1 the provisions of the Building Safety Act in force as at the date of this Agreement;
- 3.8.2 the provisions of Schedule 2 to the extent relevant to clause 3.8.1.
- 3.9 Insofar as relevant to the Services, to the extent that any provision of the Building Safety Act comes into force after the date of this Agreement, the Consultant shall observe and comply with any such provision, together with any additional provision of Schedule 2 relevant thereto.
- 3.10 The Consultant shall not be entitled to any additional Fee with respect to its compliance with clause 3.9, save to the extent that the Consultant is able to demonstrate a divergence between the provisions of the Building Safety Act as at the date of this Agreement and the relevant provisions of the Building Safety Act coming into force after the date of this Agreement, which have the consequence of a material increase in the Consultant's duties and responsibilities in connection with the Services.

4 **Limitations on Consultant's authority and approvals required**

The Consultant shall not without the Client's prior written approval:

- 4.1 make any alteration to or omission from the Services;
- 4.2 make or permit any change in the designs and/or specification for the Project after they have been approved by the Client;
- 4.3 consent or agree to any waiver or release of any obligation of any or all of the Other Consultants and/or Contractors and/or Sub-Contractors;
- 4.4 issue any instruction or variation under a Building Contract which will or is likely to result in a material increase in the total cost of carrying out and completing the Project above the Contract Sum (as defined under a Building Contract) and/or is likely to delay the completion of the Project beyond the Construction Period except in the case of an emergency when the Consultant may issue instructions under a Building Contract as may reasonably be required in order to prevent danger to life or limb or material damage to the Works **provided that** the Consultant notifies the Client of any instruction so issued forthwith after it has been issued.

5 **Third Party Agreements**

- 5.1 The Consultant shall:
- 5.1.1 perform its duties under this Appointment so that no act, omission or default shall constitute, cause or contribute towards a breach of duties and obligations

of the Client and/or a Group Company under any or all of the Third Party Agreements and/or any Building Contract; and

- 5.1.2 comply with procedures laid down in any or all of the Third Party Agreements for drawdown of funding and for the approval of or changes in design, specifications or materials and for the inspection of the Works prior to the issue of any certificates of practical completion or certificate of making good defects under any Building Contract.

6 Prohibited materials

6.1 Without prejudice to the generality of clause 2 the Consultant warrants to the Client that it has exercised and shall continue to exercise the standard of skill and care required by clause 2.2 to ensure that it has not and shall not specify/ authorise cause or allow to be used in the Project any products or materials which:

6.1.1 do not conform with UK Designated Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or

6.1.2 are generally known to members of the Consultant's profession to be deleterious in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or

6.1.3 do not comply with the guidance set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council of Offices; and/or

6.1.4 are listed in an Allocation Letter (if any).

6.2 The Consultant shall as soon as reasonably practicable notify the Client if it becomes aware of any proposed or actual specification and/or use in the Project of any materials which do not comply with clause 6.1.

7 Provision of information and liaison with others

7.1 The Consultant shall at all times keep the Client properly informed on all aspects of the progress and performance of the Services and shall provide the Client with such information in connection with the Project as the Client may reasonably require.

7.2 Without prejudice to the Consultant's duties to the Client the Consultant undertakes to liaise and co-operate at all times with the Other Consultants and the Contractor and to have regard to the designs and services provided by and to be provided by them and/or any opinion or comments they may have.

7.3 The Consultant shall, if required by the Client, liaise and co-operate with any third party (including without limitation any Funder and/or Purchaser and/or Tenant) who has or may at any time prior to the end of the defects liability period under the Main Contract an interest in the Project or any part of it (and their respective representatives) and provide such persons with all such information in connection with the Project as they may, from time to time, reasonably require.

7.4 The Consultant shall attend such meetings as may be required by the Client.

7.5 The Consultant shall, at no additional cost to the Client, supply the Client with the number of copies specified in an Allocation Letter of all such documents and drawings as are required for the execution of the Project and/or the Works (including without limitation the Documents) as and when requested by the Client. If requested by the Client and subject to the payment of the Consultant's reasonable costs in complying with such a request the Consultant shall supply further copies of the said documents and drawings to the Client.

8 **Health and safety**

8.1 The Consultant shall comply with its obligations under the CDM Regulations and the Approved Code of Practice published by the Health and Safety Executive in relation to the CDM Regulations insofar as the same apply to the Project and shall co-operate with the Other Consultants, the Contractor and Sub-Contractors so far as necessary to enable them to comply with their respective obligations under the CDM Regulations in relation to the Project.

8.2 The Consultant warrants that it has sufficient knowledge, experience and, if any organisation, organisational capability to carry out its role (if any) under the CDM Regulations.

8.3 The Consultant has completed the Questionnaire which the Consultant warrants is an accurate and complete representation of its skills, knowledge, experience and, if any organisation, organisational capability to fulfil its role under the CDM Regulations in a manner that secures the health and safety of any person affected by the Project.

8.4 The Consultant acknowledges that the Client has relied and will continue to rely on the Questionnaire for the purpose of the Client's compliance with its obligations as "client" as defined in the CDM Regulations.

8.5 The Consultant shall:

8.5.1 inform the Client immediately in writing should any information contained in the Questionnaire change or cease to be an accurate and complete representation of its skills, knowledge, experience and, if an organisation, organisational capability; and

8.5.2 supply such additional information in relation to such skills, knowledge, experience and, if an organisation, organisational capability as may be requested from time to time by the Client.

9 **Consultant's personnel**

9.1 The Consultant shall forthwith appoint the Team Director/Partner to direct and control the overall performance by the Consultant of the Services. Such person or any replacement approved by the Client pursuant to clauses 9.3 or 9.4 shall have full authority to act on behalf of the Consultant for all purposes in connection with this Appointment.

9.2 The Consultant shall, subject to clauses 9.3 and 9.4, use the Key Personnel in connection with the performance of the Services and such person(s) services shall, subject to clauses 9.3 and 9.4, be available for so long as may be necessary for the proper performance by the Consultant of the Services.

- 9.3 The Consultant shall not remove any of the Key Personnel and/or Team Director/Partner nor any person approved by the Client pursuant to this clause 9.3 or clause 9.4 without the prior approval of the Client (such approval not to be unreasonably withheld or delayed) and, if such approval is given, the Consultant shall be responsible for replacing such person with a person who shall previously have been approved by the Client.
- 9.4 The Client shall have the right, after consultation with the Consultant, to request the removal of any person engaged in the performance of the Services if, in the Client's reasonable opinion, his performance or conduct is or has been unsatisfactory and the Consultant shall promptly remove such person and replace him with a person who shall previously have been approved by the Client.
- 9.5 Save in the case of emergency in the event of substitution of any of the Team Director/Partner and/or Key Personnel there will be a handover period between such person being removed and such replacement of not less than two weeks.
- 9.6 Entry upon and occupation of the Site by any of the Consultant's personnel shall be by way of licence only and in the event that the Consultant's engagement under this Appointment is terminated or suspended pursuant to clauses 19.1, 21 or 22 the licence shall automatically determine and the Consultant shall procure that its personnel immediately vacate the Site.

10 **Client's obligations**

- 10.1 The Client shall, if requested by the Consultant, supply to the Consultant in such time as may be reasonable having regard to the time and nature of any such request any necessary and relevant data and information in the possession of the Client or which may only be obtained by the Client **provided that** the Client shall not be liable for any inaccuracy or discrepancy in any data or information supplied to the Consultant by the Client.
- 10.2 The Client shall give or shall request that the Other Consultants or any of them and/or the Contractor give such assistance to the Consultant as may reasonably be required by the Consultant in the performance of the Services.
- 10.3 The obligation of the Client in clause 10.1 shall be without prejudice to the Consultant's obligation to liaise directly with the Other Consultants, the Contractor and Sub-contractors in order to procure the production of any information properly to be supplied by such persons.

11 **Client's Representative**

- 11.1 Subject to clause 11.2 all instructions to the Consultant under or in connection with this Appointment shall be given by the Client's Representative.
- 11.2 The Client's Representative may from time to time appoint another person to act as his deputy in connection with this Appointment. In that event the Client's Representative shall notify the Consultant in writing of the deputy's appointment and the scope of his authority and such deputy may give instructions to the Consultant under or in connection with the Appointment within the scope of his authority so notified.

11.3 No person other than the Client's Representative or any deputy appointed under clause 11.2 shall have any authority to bind the Client under or in connection with this Appointment.

12 **Remuneration**

12.1 The Client shall pay the Consultant the Fee as full remuneration for the proper performance of the Standard Services (credit being given for any part of the Fee already paid to the Consultant prior to the date of this Appointment). The Fee shall be paid in instalments as specified in the Payment Schedule.

12.2 The Fee shall (unless stated otherwise in an Allocation Letter) be deemed to be inclusive payment for the Standard Services and all other matters relating to this Appointment and for all costs, disbursements, expenses and overheads of every kind incurred by the Consultant in connection with this Appointment.

12.3 The Consultant shall submit to the Client accounts:

12.3.1 in accordance with the Payment Schedule; and

12.3.2 (if applicable) pursuant to clauses 7.5, 12.10, 23.4.2 or 23.5;

for sums due to the Consultant setting out what the Consultant considers will be due to it on the relevant Due Date and the basis on which that sum is calculated, in such form and with such supporting documentation as may be required or agreed by the Client.

12.4 The Fee shall only be adjusted in the event of:

12.4.1 Additional Services being required and agreed by the Consultant and the Client in accordance with clause 16;

12.4.2 there being a reduction in the scope of works comprising the Project.

12.5 For the purposes of the Construction Act:

12.5.1 within five (5) days of the Due Date the Client shall give a Payment Notice to the Consultant;

12.5.2 if a Payment Notice is not issued in accordance with clause 12.5.1 the Consultant's application for payment shall be treated as the Payment Notice;

12.5.3 if the Client wishes to pay less than the amount stated in the Payment Notice the Client shall issue a Pay Less Notice to the Consultant not less than seven (7) days before the Final Date for Payment;

12.5.4 subject to clause 23.3, the Client shall pay to the Consultant the amount stated in the Payment Notice or, if issued, the Pay Less Notice by the Final Date for Payment.

12.6 In the event that a Pay Less Notice is issued in accordance with clause 12.5.3 the Consultant shall reissue any required VAT invoice to reflect the sum stated in such Pay Less Notice.

- 12.7 In the event that the Consultant has not performed the level or extent of services anticipated by any instalment date whether due to delay in the Project or any default of the Consultant or otherwise the fee anticipated for payment on the relevant instalment date shall be adjusted as shall the remaining fees and instalment dates.
- 12.8 In the event of any adjustment to the Fee pursuant to clause 16.5 the Client and the Consultant shall agree in writing any necessary adjustments to the Payment Schedule.
- 12.9 Subject to receipt of a duly completed value added tax invoice the Client shall pay to the Consultant the total amount of value added tax properly chargeable on the Consultant on the supply to the Client of any goods or services under this Appointment **provided that** the Client shall only be liable to pay value added tax to the Consultant on the VAT exclusive amount of any disbursement or expense which is reimbursable to the Consultant under this Appointment.
- 12.10 If any amount due is wrongfully withheld after the Final Date for Payment that amount shall bear simple interest at the rate of three percent (3%) over the Bank of England bank rate for the time being from the Final Date for Payment to and including the date on which such amount is paid or discharged. The Parties acknowledge that such interest is a substantial remedy for late payment in compliance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 12.11 Any sum due to the Client from the Consultant which the Client does not deduct and/or withhold from sums due or to become due to the Consultant shall be due for payment on the Client Due Date. In any application the Client shall specify the sum it considers to be due on the Client Due Date and the basis on which that sum is calculated. Within 5 (five) days of the Client Due Date the Consultant shall issue a notice confirming the sum that it considers to have been due on the Client Due Date and the basis on which that sum is calculated. If the Consultant fails to serve such notice the Client's application shall be treated as the payment notice. The final date for payment for any such sum applied for by the Client shall be 28 (twenty-eight) days from the Client Due Date.

13 **Insurance**

- 13.1 The Consultant shall be liable for and shall indemnify the Client, its agents, servants and employees against all and any loss, damage, cost, expense, liability, claims and proceedings whatsoever in respect of any personal injury to or death of any person whomsoever and any loss of or damage to any property whatsoever arising out of or in the course of the performance of the Services and due to any neglect, error, act or omission of the Consultant and/or any of its employees, agents or representatives.
- 13.2 Without prejudice to the Consultant's liability under clause 13.1 the Consultant shall effect and maintain and shall ensure that each of its sub-consultants (if any) shall maintain:
- 13.2.1 public liability insurance cover in the sum stated in an Allocation Letter for any one occurrence or series of occurrences arising out of any one event to cover any liability damage loss expense cost claim or proceedings in respect of personal injury or death to any person or injury or damage to any property arising out of or in connection with the Services and caused or contributed to by any negligence omission or default of the Consultant his employees agents or sub consultants; and

- 13.2.2 cover in compliance with the Employer's Liability (Compulsory Insurance) Act 1969 with effect from the date of commencement of the Services for the Project until completion of the Services.
- 13.3 The Consultant shall effect and maintain professional indemnity insurance conforming to the requirements in an Allocation Letter without unusual or onerous conditions or excesses with effect from the date of commencement of the Services and for a period equivalent to the period for which the Consultant is liable under this Appointment pursuant to clause 29.3 (notwithstanding the termination for any reason of the Consultant's engagement under this Appointment) **provided that** such insurance remains available to organisations of equivalent size and type to the Consultant's practice/organisation at commercially reasonable rates and on commercially reasonable terms.
- 13.4 The Consultant shall inform the Client if the insurance required by clause 13.3 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Client the best means of protecting the Consultant and the Client's respective interests and carry out such actions as shall be necessary to implement any agreed actions.
- 13.5 The Consultant's insurances referred to in clauses 13.2 and 13.3 shall be placed with such reputable insurers carrying on business in the UK and upon such terms and conditions as shall have been approved by the Client (such approval not to be unreasonably withheld or delayed). For the avoidance of doubt the terms and conditions of the insurance required under clause 13.3 shall not include any term or condition to the effect that the Consultant must discharge any liability before being entitled to recover from insurers or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010.
- 13.6 The Consultant shall pay promptly all premiums in respect of all insurance required to be taken out by it and shall, when required to do so, produce to the Client sufficient documentary evidence that each such insurance is being maintained.
- 13.7 The Consultant shall not compromise settle or waive any insurance claim it may have relating to any liability under this Appointment without the Client's prior consent **provided that** nothing in this clause shall prevent the Consultant's insurers from taking over (in the Consultant's name) the defence of any claim made by the Client under this Appointment and (in that capacity) from conducting and settling it as they see fit.
- 13.8 The obligations in clauses 13.1 and 13.3 to 13.7 inclusive shall continue notwithstanding termination of this appointment or determination of the Consultant's employment under this appointment in either case for any reason whatsoever.

14 **Copyright and Moral Rights**

- 14.1 The Consultant grants to the Client an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Project and/or the property comprising the Project including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project and/or the property comprising the Project **provided always** that the Consultant shall not be liable for any such use by the Client of the Documents for any purpose other than that for which the same were prepared and provided by the Consultant.

- 14.2 The licence referred to in clause 14.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding any termination of this Appointment and/or the Services of the Consultant under it.
- 14.3 The Consultant warrants that the use of the Documents for the purposes of the Project and/or pursuant to the licence granted pursuant to clause 14.1 shall not infringe the rights of any third party.
- 14.4 The Consultant waives absolutely all Moral Rights the Consultant may have in the Documents and where it is not the author the Consultant warrants that the author has not asserted its Moral Rights and that the author has waived any Moral Rights they may have in respect of the Documents.
- 14.5 Subject to clause 14.1 ownership in the Documents shall transfer from the Consultant to the Client immediately prior to the Consultant suffering an Insolvency Event.

15 **Confidentiality**

- 15.1 The Consultant shall not without the prior agreement of the Client be entitled to use the Documents so as to design any building or structure similar in overall design, appearance or features to the Project nor shall the Consultant be entitled to use the Documents for any purpose whatsoever connected with the Site other than for the purposes of this Appointment and the completion of the Project notwithstanding the termination of his engagement under this Appointment or the abandonment by the Client of the Project.
- 15.2 The Consultant shall not, without the prior approval of the Client, take or authorise the taking of any photographs of the Project for use in any publicity or advertising or publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Project or any part of the Project nor shall he impart to any publication, journal or newspaper or any radio or television programme any information regarding the Project.
- 15.3 The Consultant shall not, either during the period of his engagement under this Appointment (save in the proper course of his duties) or at any time after its expiry or termination of the Consultant's employment under it in either case for any reason whatsoever:
- 15.3.1 disclose to any person (save for his insurance or other professional advisers) nor otherwise make use of any confidential information (including, but without limitation, information relating to methods and techniques of construction for the Project proposed by the Client, all financial information relating to the Project and the contents of any documents, including the Brief and any legal agreements, prepared by or on behalf of the Client) of which he has or may in the course of his engagement under this Appointment become possessed relating to the Client, the Project or otherwise:
- 15.3.2 disclose to any person whatsoever (save his insurance or other professional advisers) anything contained in this Appointment, without the prior authority of the Client.

The above restriction shall continue to apply, without limitation in point of time, unless and until such information comes properly into the public domain through no fault of the Consultant.

15.4 The Consultant shall procure that any sub consultants agree to be bound by a restriction in the same form as clauses 15.1, 15.2 and 15.3.

16 **Additional Services and variations to the Services**

16.1 Immediately upon it becoming apparent that any modifications, additions and/or variations to the Services are or are likely to be required, the Consultant shall give written notice to the Client specifying the circumstance(s) and, as soon as possible thereafter, shall submit full and detailed particulars of such to the Client.

16.2 The Client may at any time issue a Variation Instruction.

16.3 Before the Client issues a Variation Instruction pursuant to clause 16.2 the Client may give the Consultant a preliminary notice which indicates that any Variation Instruction to which the preliminary notice relates is to be valued and the consequences of the Variation Instruction quantified.

16.4 Upon receipt of any preliminary notice (as referred to in clause 16.3) the Consultant shall consider the same and shall, within five (5) Working Days:

16.4.1 inform the Client in writing if the proposed Variation Instruction will in its opinion prevent it from fulfilling any of its obligations under this Appointment;

16.4.2 provide full details of the anticipated effect of the proposed Variation Instruction;

16.4.3 notify the Client in writing if it considers that an addition or reduction should be made to or from the Fee as a result of the proposed Variation Instruction and if so what that addition or deduction should be. Additional fees shall be calculated using the hourly rates set out in an Allocation Letter unless the Client requests that the Consultant provides a fixed quotation or a lump sum fee.

16.5 The Client and the Consultant shall seek to agree (both acting reasonably) the amount to be paid to the Consultant or deducted from the Fee in respect of the proposed Variation Instruction within ten (10) Working Days of receipt of the information provided in accordance with clause 16.4 and the Client shall advise the Consultant:

16.5.1 whether it will be issuing a Variation Instruction; and

16.5.2 of the changes to the Fee either by way of addition or reduction (if any).

16.6 If the Client does not issue a Variation instruction pursuant to clause 16.2 the Consultant shall have no claim arising out of or in connection with the proposed Variation Instruction.

16.7 Following receipt of the preliminary notice pursuant to clause 16.3 the Consultant shall not implement the Variation Instruction until it receives written instructions to do so from the Client.

16.8 No addition to the Fee under this clause 16 shall be made in respect of any Variation Instruction issued by the Client to repeat modify or revise the Services where the

repetition, modification or revision required by the Client has arisen through any act omission default or breach of the Consultant in carrying out the Services.

17 **Assignment and sub-letting**

17.1 The Consultant shall not assign or purport to assign its interest in this Appointment or any part of this Appointment nor any right arising under this Appointment to any person without the prior written consent of the Client.

17.2 The Consultant shall not without the prior written consent of the Client:

17.2.1 sub-contract to any person the performance of any or all of the Services;

17.2.2 authorise the appointment of any third party to design any element of the Project falling within the Consultant's discipline.

17.3 Notwithstanding any sub-letting or delegation pursuant to clause 17.2 the Consultant shall be responsible for:

17.3.1 checking the work carried out by any sub-consultant or third party to ensure that it complies with the overall design intent; and

17.3.2 the co-ordination and integration of such work into the design of the Project.

17.4 The appointment of any third party to carry out any design work on behalf of the Consultant shall not in any way relieve the Consultant of its obligations under this Appointment.

17.5 The Client may at any time charge or assign all or any of its rights arising under this Appointment to any third party upon notice to the Consultant without the consent of the Consultant being required.

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

18 **Anti-corruption**

18.1 The Consultant undertakes to the Client that:

18.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;

18.1.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Client in breach of section 7(1) Bribery Act or sections 45(1) or 46(1) Criminal Finances Act;

18.1.3 it has and shall maintain and implement:

- (a) procedures to ensure compliance with clauses 18.1.1 and 18.1.2; and
 - (b) (in the case of section 7 Bribery Act) adequate procedures and (in the case of sections 45 and 46 Criminal Finances Act) reasonable procedures designed to prevent any Associated Person from undertaking any Corrupt Activity and/or conduct that would give rise to an offence under section 7 Bribery Act or sections 45(1) or 46(1) Criminal Finances Act;;
- 18.1.4 it shall include undertakings similar to those contained in this clause 18.1 in any contract it may enter into with sub consultants and provisions similar to those contained in clause 18.2 which shall be capable of enforcement directly by the Client pursuant to the Contracts (Rights of Third Parties) Act 1999;
- 18.1.5 from time to time, at the reasonable request of the Client, it will confirm in writing that it has complied with its undertakings under clauses 18.1.1 to 18.1.4 inclusive and will provide any information reasonably requested by the Client in support of such compliance.
- 18.2 The Consultant shall maintain adequate records to assist in verifying its compliance with the provisions of this clause 18 (including without limitation books of account showing all payments made by the Consultant in connection with this Appointment and shall permit the Client and its third party representatives, on reasonable notice during normal business hours, but without notice in the case of any reasonably suspected breach of clauses 18.1.1 to 18.1.3 inclusive, to access and take copies of such records and to meet with the Consultant's personnel to audit the Consultant's compliance with its obligations under this clause 18. The Consultant shall give all necessary assistance to the conduct of such audits.
- 18.3 Audit access by any third party representative of the Client in accordance with clause 18.2 shall be subject to such representative agreeing to be bound by confidentiality obligations equivalent to those in clause 15.2 in respect of the information obtained **provided that** all information obtained may be disclosed to the Client.
- 18.4 The Consultant shall indemnify the Client against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Client as a result of any breach of this clause 18 by the Consultant or any breach of provisions equivalent to clauses 18.1 and 18.2 in any contract with a sub consultant.
- 19 **Warranties and the Contracts (Rights of Third Parties) Act 1999**
- 19.1 The Consultant shall within ten (10) Working Days of a request by the Client Representative to do so execute a Warranty in favour of a third party and deliver an original copy of the same to the Client's Representative.
- 19.2 If pursuant to clause 17.2 the Consultant sub contracts any of its obligations under this Appointment the Consultant shall within ten (10) Working Days, if required to do so by the Client, procure the execution by any such sub consultant of Warranties in favour of the Client and or any third party and deliver an original copy of the same to the Client's Representative.

19.3 If the Consultant fails to deliver or procure the delivery (where applicable) of any Warranty in accordance with clause 19.1 or 19.2, the Client shall be entitled to withhold any further payment due or falling due to the Consultant under this Agreement until such time as the relevant Warranty has been provided.

19.4 Subject to the provisions of this clause nothing in this Appointment confers or purports to confer on any person any rights pursuant to the Contracts (Rights of Third Parties) Act 1999.

20 **Termination of Consultant's engagement by Consultant**

20.1 The Consultant may at any time upon at least five (5) Working Days prior notice in writing terminate its engagement under this Appointment in the event that the Client:

20.1.1 suffers an Insolvency Event; and/or

20.1.2 commits a material breach of his obligations under this Appointment which the Client shall fail to remedy after receiving a 28 (twenty eight) day written notice from the Consultant specifying the breach and requiring its remedy.

21 **Termination of Consultant's engagement by Client**

21.1 The Client may at any time by at least five (5) Working Days prior notice in writing to the Consultant terminate the Consultant's engagement under this Appointment in the event that the Consultant:

21.1.1 without reasonable cause wholly suspends all or any part of the Services; and/or

21.1.2 fails to proceed with all or any part or parts of the Services with reasonable due diligence; and/or

21.1.3 fails to comply with reasonable instructions or reasonable requests; and/or

21.1.4 refuses or persistently neglects, after notice in writing from the Client, to correct defective or unacceptable work/design and/or remove unsuitable personnel in contravention of the requirements of this Appointment; and/or

21.1.5 fails to comply with clause 8; and/or

21.1.6 suffers an Insolvency Event.

21.2 The Client may at any time by at least ten (10) Working Days prior notice in writing to the Consultant terminate the Consultant's engagement under this Appointment without cause.

21.3 The Client may at any time (by the issue of a Variation Instruction in accordance with clause 16.2) bring to an end the Consultant's performance and involvement in the Services or any part or parts of the Services.

21.4 The Client may at any time by notice in writing to the Consultant with immediate effect terminate the Consultant's engagement under this Appointment in the event that:

21.4.1 the Consultant breaches clauses 18.1.1 to 18.1.3 inclusive;

- 21.4.2 an Associated Person (or anyone employed by or acting on behalf of an Associated Person) engages or has engaged in Corrupt Activity or any activity, practice, or conduct which could or would place the Client in breach of section 7(1) Bribery Act or sections 45(1) or 46(1) Criminal Finances Act;
 - 21.4.3 the circumstances set out in regulation 73(1)(b) of the PCR apply; and/or
 - 21.4.4 the circumstances set out in regulation 73(1)(a) of the PCR apply.
- 21.5 The Consultant shall ensure that:
- 21.5.1 every sub-consultant agreement or sub-contract pertaining to the Services contains provisions requiring that payment due to the relevant sub-consultant or supplier of the Consultant is made no later than 30 days after receipt of a valid and undisputed invoice, unless the relevant sub-consultant agreement or sub-contract requires the Consultant to make earlier payment; and
 - 21.5.2 every sub-consultant agreement or sub-contract includes a requirement for the sub-consultant or supplier to include a clause equivalent to the obligations in clause 21.5.1 and this clause 21.5.2 as between the relevant sub-consultant or supplier and its own sub-consultant or supplier so that the conditions of Regulation 113 of the PCR are satisfied.
- 21.6 In the event of any termination under clause 21.4 the Client shall be entitled by notice in writing to the Consultant to terminate the Consultant's employment under any other contract between the Parties (whether in relation to the Project or otherwise) and any such termination shall be deemed to be termination for Consultant default.
- 22 Suspension of Consultant's engagement**
- 22.1 The Client may at any time after commencement of the Services require the Consultant by at least five (5) Working Days' notice to suspend performance of the Services or any part or parts of the Services.
- 22.2 If the Client at any time exercises its rights to suspend pursuant to clause 22.1:
- 22.2.1 if the Client has not required the Consultant to resume performance within a period of six (6) months from the date of such notice either party may terminate the Consultant's engagement under this Appointment;
 - 22.2.2 the Client may, at any time prior to service of a termination notice pursuant to clause 22.2.1, require the Consultant in writing to resume performance;
 - 22.2.3 if the Client issues an instruction pursuant to clause 22.2.2 the Consultant shall as soon as reasonably practicable resume performance in accordance with this Appointment and any payment made pursuant to clause 23.2 shall rank as payment on account towards the payments to be made to the Consultant pursuant to this Appointment.
- 22.3 Without prejudice to any other remedy or right it may have the Consultant may suspend performance of any or all of its obligations under this Appointment if any amount due under this Appointment is wrongfully withheld after the Final Date for Payment **provided**

that the Consultant has given the Client at least seven (7) days' notice of its intention to do so stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when the Client makes payment in full of the relevant amount.

23 **Consequences of termination or suspension**

23.1 Upon any termination of the Consultant's engagement under clause 19.1, 21.1, 21.2, 21.3, 21.4 or 21.5 or upon suspension of the Services under clause 22.1:

23.1.1 the Consultant shall:

- (a) take immediate steps to bring to an end the Services or the relevant part or parts of the Services in an orderly manner but with all reasonable speed and economy; and
- (b) within ten (10) Working Days deliver to the Client originals of all the Documents relating to the relevant part or parts of the Services terminated or suspended (whether in the course of preparation or completed) **provided that** the Consultant shall be entitled to retain copies of the same.

23.1.2 the Client may employ and pay other people to carry out and complete the Services.

23.2 If the Consultant's engagement is terminated in whole or part pursuant to clause 21.1, 21.2 or 21.3 or suspended pursuant to clause 22.1 by reason of non-performance of and/or breach by the Consultant or is terminated pursuant to clause 21.4 or 21.5 or is terminated as a result of the Consultant suffering an Insolvency Event:

23.2.1 the Client need not pay any sum that has become due to the extent that the Client has given or gives a Pay Less Notice in accordance with clause 12.5.3;

23.2.2 no further sums shall become due under this Appointment until the final cost of completing the Services by others has been calculated;

23.2.3 upon completion of the Services the Client shall ascertain and notify the Consultant of the cost of completing the Services (including without limitation any loss and/or damages incurred by the Client as a result of the termination or suspension);

23.2.4 if the amounts calculated under clause 23.2.3, when added to the monies paid to the Consultant prior to the date of suspension or termination:

- (a) exceed the total amount of the Fee which would have been paid to the Consultant on completion of the Services the amount of such excess shall be a debt payable to the Client by the Consultant;
- (b) are less than the total amount of the Fee which would have been paid to the Consultant on completion of the Services no further sums shall be due to the Consultant.

- 23.3 In addition to the rights set out in clause 23.2 the Client need not pay any sum that has become due if the Consultant became insolvent as set out in section 113 Construction Act after the last date on which a Pay Less Notice could have been issued in relation to that sum in accordance with clause 12.5.3.
- 23.4 If the Consultant's engagement is terminated in whole or part pursuant to clause 20, 21.1, 21.2, 21.3 or 22.2.2 or suspended pursuant to clause 22.1 for reasons other than non-performance and/or breach of its obligations under this Appointment including termination under regulation 73(1)(b) of the PCR and/or the Consultant suffering an Insolvency Event:
- 23.4.1 the Client shall, subject to any Pay Less Notice, pay to the Consultant that part of the Fee which is due (but unpaid) as at the date of such termination or suspension; and
- 23.4.2 the Consultant shall be entitled to a fair and reasonable proportion of that part of the Fee which has not become due such proportion to be commensurate with the Services performed by the Consultant during the period from the last application for payment and the date of termination or suspension less the amounts of any payments in respect of the Fee previously made by the Client to the Consultant under this Appointment.
- 23.5 If the Consultant's engagement is suspended pursuant to clause 22.3 the Consultant shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by the Consultant as a result of such suspension.
- 23.6 Upon any termination and/or suspension of the Consultant's engagement howsoever arising the Client shall not be liable save as is set out in clauses 23.2 or 23.4 to the Consultant for any loss of profit, loss of contracts or other costs, losses and/or expenses arising out of or in connection with such termination and/or suspension.
- 23.7 Termination and/or suspension of the Consultant's engagement howsoever arising shall, subject to clause 23.6, be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other prior to such termination and/or suspension.
- 24 **Prior agreements and alterations**
- 24.1 This Appointment represents the entire agreement between the Client and the Consultant and supersedes any previous agreement or understanding between them in relation to the Services (whether oral or written) including without limitation the Preliminary Appointment (if any) (a **Prior Agreement**).
- 24.2 This Appointment subsumes and extinguishes any Prior Agreement in its entirety and payment for services undertaken pursuant to any Prior Agreement shall be deemed to be payment under the terms of this Contract which the parties shall give due credit for.
- 24.3 The provisions of this Appointment shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations under this Appointment.

24.4 All additions, amendments and variations to this Appointment shall be binding only if in writing and signed by the duly authorised representatives of each person constituting the Client and the Consultant.

25 **Severability**

If any provision of this Appointment is declared to be invalid or unenforceable it shall not affect the validity or enforceability of the remaining provisions of this Appointment.

26 **Waiver**

No failure or delay by any party to exercise any right power or remedy shall operate as a waiver of it [or operate an election to affirm this Appointment] nor will any partial exercise preclude any further exercise of the same or some other right power or remedy.

27 **Notices**

27.1 Any Notice to be given under this Appointment shall be in writing and shall be deemed to be duly given if delivered to the parties' address and number for service as set out in an Allocation Letter.

27.2 Notices shall be delivered by:

27.2.1 hand delivery; or

27.2.2 pre-paid registered or recorded delivery mail; or

27.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.

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

27.3.1 hand delivery on the date of delivery;

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

27.3.3 facsimile transmission sent in accordance with clause 27.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

28 **Adjudication**

28.1 Any dispute or difference of whatever nature arising under this Appointment and which cannot be resolved by mutual agreement or if one of the Parties requires the dispute to be referred to adjudication shall be referred to the Adjudicator (acting as expert and not as arbitrator) for determination.

28.2 The Adjudicator shall be appointed and the dispute or difference referred to him within seven days following the issue of a notice by either party to the other requiring a dispute or difference to be so referred.

- 28.3 The Adjudicator shall act impartially as between the parties and may adopt such procedure as he considers appropriate for the determination of such dispute or difference in particular (but without limitation) the Adjudicator may:
- 28.3.1 take the initiative in ascertaining the facts and the law, including examining witnesses and conducting inspections of the Works or any other property;
 - 28.3.2 decide whether to conduct an oral hearing or to proceed on a "documents only" basis;
 - 28.3.3 impose rules governing the conduct of any oral hearing;
 - 28.3.4 fix time limits for the submission of any documents or other evidence, and continue with the reference in default if such time limits are not met; and
 - 28.3.5 open up, review and revise any decision or opinion of any person.
- 28.4 The Adjudicator shall make his decision as soon as possible but within 28 days of the date of the reference or within such longer period as the Parties may agree or such longer period (but in any event within 42 days of the date of the reference) as the Adjudicator with the consent of the party making the reference shall determine.
- 28.5 The Adjudicator shall be required to give reasons for his decision and shall deliver his decision to the Parties within two days from the date of making such decision.
- 28.6 The Adjudicator may correct his decision so as to remove a clerical or typographical error arising by accident or omission within five days of communicating his decision to the Parties.
- 28.7 The Adjudicator in his decision shall state how payment of his fee and reasonable expenses is to be apportioned as between the Parties.
- 28.8 The decision of the Adjudicator shall be final and binding on the Parties (and the Parties shall forthwith give effect to its terms) unless and until the Parties agree otherwise or the dispute or difference to which it relates has been referred by either party to the High Court in accordance with clause 29 or to arbitration if the Parties agree to arbitration and those proceedings have been concluded or formally settled.
- 28.9 Any concessions made by either party in the course of any reference under this clause 28 shall be deemed to have been made "without prejudice" and shall not be raised by the other party in any subsequent proceedings under clause 29.
- 28.10 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions under this clause 28 unless such act or omission is in bad faith.
- 28.11 If any dispute or difference arising under this Appointment raises the same or parallel issues as a related dispute or difference under any other agreement between the Client and another party in relation to the Project, and if the related dispute or difference has already been referred to adjudication under the terms of that agreement, the parties shall (wherever practicable and if the adjudicator agrees) refer the matter to the same Adjudicator for decision with a view to the two references being consolidated.

29 **Law**

29.1 The Parties agree that this Appointment and any dispute or claim arising out of or in connection with this Appointment, its negotiation or subject matter or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English law.

29.2 Each of the Parties' irrevocably agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Appointment, its negotiation or subject matter, or any non-contractual obligation arising in connection with the foregoing.

29.3 Without prejudice to any action or proceedings that arise from a breach of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings shall be commenced under this warranty after 12 years from Practical Completion, and any adjudicator's decision under clause 28 shall be finally binding on them unless either Party has referred that dispute for final determination by legal proceedings, or has commenced any action or proceedings to recover any overpayment to which the decision has led, before that date.

30 **Electronic data interchange**

The Consultant shall use electronic means for circulating all documents and information for the Project except Notices (where the provisions of clause 27 shall apply). The Consultant shall enter into any necessary project licences and shall comply with any protocols, instructions and security procedures relating to the use of any document management system set up for the Project.

Schedule 1

Forms of Warranty

(referred to in clause 19)

- 1 Part 1 – Consultant Warranty in favour of third party.
- 2 Part 2 – Sub-Consultant Warranty in favour of Client.
- 3 Part 3 – Sub-Consultant Warranty in favour of a third party.

Part 1 - Consultant warranty in favour of third party

Consultant warranty

dated []

Parties

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

OR

[] of [] and [] of [] (the **Partners**) carrying on business together in partnership as [] [of] [whose principal place of business is at] [] (the **Consultant**)¹

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

Introduction

- (A) The Client has procured or proposes to procure the carrying out of the Project at the Property (as defined below).
- (B) The Consultant has been appointed by the Client to act for the Client in the capacity of [] in connection with the Project and to undertake the Services upon the terms and conditions contained in the Appointment (as defined below).
- (C) The Beneficiary has an interest/will have an interest in the Property or a part or parts of the Property and/or the Project or a part or parts of the Project and has entered into the Agreement (as defined below) in respect of the Property.
- (D) The Consultant has agreed to enter into this warranty in favour of the Beneficiary.

Agreed terms

1 Interpretation and definitions

1.1 In this warranty unless the context otherwise requires the following expressions shall have the following meanings:

Agreement means the [] between the Beneficiary and the Client dated [] whereby the Beneficiary has agreed to [];

Appointment means the terms of appointment entered into between the Consultant and the Client dated [] 20[] (and any further agreement(s) varying or supplementing it) under which the Consultant has agreed to provide the Services for the Project;

Building Contract means the JCT [Design and Build Contract] [Intermediate Building Contract] (2011 edition) as amended dated [] entered into between the Client and [] (and any further agreement(s) varying or supplementing it) for the Project;

¹

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

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

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

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

Practical Completion means the date of practical completion of the whole of the works being carried out pursuant to the Building Contract;

Project means [] at the Property;

Property means [];

Services means the services which the Consultant has been retained to carry out under the Appointment;

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

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

2 **Consideration**

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

3 **Duty of care**

The Consultant warrants and undertakes to the Beneficiary that:

- 3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Appointment; and
- 3.2 it has exercised and shall continue to exercise in the performance of the Services all the reasonable skill and care to be expected of a properly qualified and competent consultant of the relevant discipline experienced in the provision of professional services for projects of a similar size scope value character and complexity to the Project; and
- 3.3 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Consultant's professional responsibilities in relation to the Project **provided that** the Consultant shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named as client instead of the Client in the Appointment; and
- 3.4 the Beneficiary shall be deemed to have relied upon the Consultant's professional skill and judgement in respect of all matters which lie within the scope of the Consultant's professional responsibilities in relation to the Project.

4 **Prohibited materials**

- 4.1 Without prejudice to the generality of clause 0 the Consultant warrants that it has exercised and shall continue to exercise the standard of skill and care required by clause 3.2 to ensure that it has not and shall not specify authorise cause or allow to be used in the Project any products or materials which:
 - 4.1.1 do not conform with UK Designated Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
 - 4.1.2 are generally known to members of the Consultant's profession to be deleterious in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
 - 4.1.3 do not comply with the guidance set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council of Offices; and/or
 - 4.1.4 are specifically prohibited under the Appointment.
- 4.2 The Consultant shall as soon as reasonably practicable notify the Beneficiary if it becomes aware of any proposed or actual specification and/or use in the Project of any materials which do not comply with clause 4.1.

5 **Step-in**

- 5.1 [Subject to clause 5.6 the] [The] Consultant covenants with the Beneficiary that if any event of default shall occur under the Appointment at any time the Consultant will, if so required by notice in writing given by the Beneficiary in accordance with clauses 5.4.1 to 5.4.3 inclusive, accept the instructions of the Beneficiary or the Beneficiary's appointee to the exclusion of the Client upon the terms and conditions of the Appointment and the

Client acknowledges that the Consultant shall be entitled to rely on the notice given to the Consultant by the Beneficiary as conclusive evidence for the purpose of this warranty that the circumstances have occurred permitting the Beneficiary to give such notice.

- 5.2 [Subject to clause 5.6 the] [The] Consultant hereby covenants that the Consultant will not exercise nor seek to exercise any right to terminate or treat as terminated the Appointment and/or the Consultant's employment or discontinue or suspend the performance of any of the Consultant's obligations under the Appointment without first giving to the Beneficiary prior written notice specifying the Consultant's ground for terminating or treating as terminated the Appointment and/or the Consultant's employment and/or discontinuing or suspending the Consultant's performance under the Appointment. If the grounds are that fees which are due have not been paid by the final payment date and no effective pay less notice has been given the Consultant shall give 7 days' notice otherwise the Consultant shall give 15 Working Days' notice.
- 5.3 Compliance by the Consultant with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Client giving rise to the right of determination nor otherwise prevent the Consultant from exercising the Consultant's rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provisions of clause 5.5.
- 5.4 [Subject to clause 5.6, within] [Within] the relevant notice period referred to in clause 5.2 the Beneficiary or the Beneficiary's appointee may give written notice to the Consultant:
- 5.4.1 acknowledging that the Beneficiary assumes all the obligations of the Contractor;
- 5.4.2 requiring the Consultant to continue with the performance of the Consultant's duties and obligations under the Appointment;
- 5.4.3 undertaking unconditionally to the Consultant to pay to the Consultant within 15 Working Days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Consultant under the Appointment but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Consultant from the appointee.
- 5.5 In the event of the Beneficiary or the Beneficiary's appointee giving notice to the Consultant in accordance with clause 5.4 the Appointment shall continue in full force and effect and in all respects as if the Appointment had been made between the Consultant and the Beneficiary or the Beneficiary's appointee (as applicable) to the exclusion of the Client (but without prejudice to any rights of recovery as between the Consultant and the Client) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.
- 5.6 [The Consultant and the Beneficiary acknowledge that:
- 5.6.1 the Consultant has entered into or will enter into a warranty with [insert name of other third party with step-in rights] concerning the Project;
- 5.6.2 that warranty includes similar step-in rights to those in this clause 5; and

5.6.3 the rights of [insert name of other third party with step-in rights] referred to in clause 5.6.2 shall have priority over the rights of the Beneficiary under this clause 5 such that on the exercise by [insert name of other third party with step-in rights] (or their appointee) of those step-in rights the Consultant shall no longer be bound by, and the Beneficiary may no longer exercise its rights under, this clause 5]

5.7 The Client confirms the Client's agreement to the terms and conditions of this warranty and the Clients's concurrence with the arrangements made and contemplated by this warranty.]

6 **Copyright and Moral Rights**

6.1 The Consultant hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Project and/or the property comprising the Project including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project and/or the property comprising the Project **provided always** that the Consultant shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Consultant.

6.2 The licence referred to in clause 6.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue notwithstanding any termination of the Appointment and/or the Consultant's employment under the Appointment.

6.3 The Consultant warrants that the use of the Documents for the purposes of the Project and/or pursuant to the licence granted pursuant to clause 6.1 shall not infringe the rights of any third party.

6.4 The Consultant waives absolutely all Moral Rights the Consultant may have in the Documents and/or the Project and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents and/or the Project.

6.5 When requested to do so by the Beneficiary the Consultant shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Consultant's reasonable copying charges in connection with complying with such request.

7 **Insurance²**

7.1 The Consultant shall effect and maintain professional indemnity insurance in the sum of [] pounds (£ []) [for each and every claim] [for each occurrence or series of occurrences arising out of each and every event] [**provided that** such limit of indemnity may be [in the aggregate for each year of insurance] [[] pounds (£ [])] in respect of claims for pollution and contamination] without unusual or onerous conditions or excesses with reputable insurers carrying on business in the UK with effect from the date of commencement of the Services and for a period equivalent to the period for which the Consultant is liable under this warranty pursuant to clause 15 **provided that** such insurance remains available to organisations of equivalent size and type to the

² The insurance obligations should mirror those in the Appointment so amend as necessary.

Consultant's practice/organisation at commercially reasonable rates and on commercially reasonable terms.

7.2 The Consultant undertakes to provide to the Beneficiary on demand from time to time such evidence as the Beneficiary may reasonably require to satisfy himself that the insurance required by clause 7.1 is being maintained.

7.3 The Consultant shall inform the Beneficiary if the insurance required by clause 7.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Consultant and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

7.4 The Consultant shall not compromise settle or waive any insurance claim it may have relating to any liability under this warranty without the Beneficiary's prior consent **provided that** nothing in this clause shall prevent the Consultant's insurers from taking over (in the Consultant's name) the defence of any claim made by the Beneficiary under this warranty and (in that capacity) from conducting and settling it as they see fit.

8 **Assignment**

8.1 The Consultant shall not without the consent of the Beneficiary assign its rights under this warranty.

8.2 The Beneficiary may (without the consent of the Consultant) assign its rights under this warranty to:

8.2.1 ³[any mortgagee and by way of re-assignment on redemption; and/or]

8.2.2 any Group Company; and/or

8.2.3 on two other occasions only.

8.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 8.2.3.

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

9 **Notices**

9.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if delivered in the case of a corporation to the receiving party's registered office for the time being or in any other case to the receiving party's principal place of business for the time being.

³ To be deleted if in favour of a Funder.

- 9.2 Notices may be served by:
- 9.2.1 personal delivery; or
 - 9.2.2 pre-paid registered or recorded delivery mail; or
 - 9.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre paid post.
- 9.3 Notices and communications shall be deemed to have been served or received in the case of:
- 9.3.1 personal delivery on the date of delivery;
 - 9.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted;
 - 9.3.3 facsimile transmission sent in accordance with clause 9.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

10 **Continuing effect**

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

11 **[⁴Partnership**

- 11.1 Where the context so requires the term **Consultant** shall be deemed to include any additional partner or partners who may be admitted into the partnership of the Consultant during the currency of this warranty.
- 11.2 The Consultant acknowledges that being a partnership the rights obligations and liabilities of the Partners under this warranty as joint and several.
- 11.3 The warranty and the liabilities of the Consultant the Client and the Beneficiary in this warranty shall not automatically terminate upon the death, retirement or resignation of any one or more of the Partners or upon the admission of an additional partner or partners to the Consultant.]

12 **Miscellaneous**

- 12.1 Nothing in this warranty shall limit or affect any other rights or remedies (whether under any contract, at law, at equity or otherwise) which the Beneficiary would have against the Consultant in the absence of this warranty.
- 12.2 The Consultant's liability under this warranty shall not be released, diminished or in any other way affected by:
- 12.2.1 the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Project or to inspect any documents relating to

⁴ Delete if consultant is not a partnership.

the Property and/or the Project on behalf of the Beneficiary or the failure to appoint such a person; or

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

13 **Contracts (Rights of Third Parties) Act 1999**

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

14 **Law**

This warranty 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 laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

15 **Liability period**

15.1 Without prejudice to any action or proceedings that arise from a breach of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings shall be commenced under this warranty after 12 years from Practical Completion.

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

Part 2 - Sub-consultant warranty in favour of Client

Sub-consultant warranty

dated []

Parties

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

OR

[] of [] and [] of [] (the **Partners**) carrying on business together in partnership as [] [of] [whose principal place of business is at] [] (the **Sub-Consultant**)⁵

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

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

Introduction

- (A) The Beneficiary has procured or proposes to procure the carrying out of the Project at the Property (as defined below).
- (B) The Consultant has been appointed by the Beneficiary to act for the Beneficiary in the capacity of [] in connection with the Project and to undertake the Services upon the terms and conditions contained in the Appointment (as defined below).
- (C) The Consultant has appointed the Sub-Consultant to undertake the Sub-Let Services upon the terms and conditions contained in the Sub-Consultancy Agreement (as defined below).
- (D) The Sub-Consultant has agreed to enter into this warranty in favour of the Beneficiary.

Agreed terms

1 Definitions and interpretation

1.1 In this warranty unless the context otherwise requires the following expressions shall have the following meanings:

Appointment means the terms of appointment entered into between the Consultant and the Beneficiary dated [] 20[] (and any further agreement(s) varying or supplementing it) under which the Consultant has agreed to provide the Services for the Project;

Building Contract means the JCT [Design and Build Contract] [Intermediate Building Contract] (2011 edition) as amended dated [] entered into between the Beneficiary and [] (and any further agreement(s) varying or supplementing it) for the Project;

⁵ This option should be used where the Sub-Consultant is a partnership.

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

Group Company means any subsidiary or holding company of the Beneficiary or another intra group company of the Beneficiary;

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

Practical Completion means the date of practical completion of the whole of the works being carried out pursuant to the Building Contract;

Project means [] at the Property;

Property means [];

Services means the services which the Consultant has been retained to carry out under the Appointment;

Sub-Consultancy Agreement means the terms of appointment entered into between the Consultant and the Sub-Consultant dated [] 20[] (and any further agreement(s) varying or supplementing it) under which the Sub-Consultant has agreed to provide the Sub-Let Services;

Sub-Let Services means the services which the Sub-Consultant has been retained to carry out under the Sub-Consultancy Agreement;

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

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

2 **Consideration**

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

3 **Duty of care**

The Sub-Consultant warrants and undertakes to the Beneficiary that:

- 3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Sub-Consultancy Agreement; and
- 3.2 it has exercised and shall continue to exercise in the performance of the Sub-Let Services all the reasonable skill and care to be expected of a properly qualified and competent consultant of the relevant discipline experienced in the provision of professional services for projects of a similar size scope value character and complexity to the Project; and
- 3.3 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Sub-Consultant's professional responsibilities in relation to the Project **provided that** the Sub-Consultant shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named as client instead of the Consultant in the Sub-Consultancy Agreement; and
- 3.4 the Beneficiary shall be deemed to have relied upon the Sub-Consultant's professional skill and judgement in respect of all matters which lie within the scope of the Sub-Consultant's professional responsibilities in relation to the Project.

4 **Prohibited materials**

- 4.1 Without prejudice to the generality of clause 0 the Sub-Consultant warrants that it has exercised and shall continue to exercise the standard of skill and care required by clause 3.2 to ensure that it has not and shall not specify authorise cause or allow to be used in the Project any products or materials which:
 - 4.1.1 do not conform with UK Designated Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
 - 4.1.2 are generally known to members of the Sub-Consultant's profession to be deleterious in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
 - 4.1.3 do not comply with the guidance set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council of Offices; and/or
 - 4.1.4 are specifically prohibited under the Sub-Consultancy Agreement.
- 4.2 The Sub-Consultant will as soon as reasonably practicable notify the Beneficiary if it becomes aware of any proposed or actual specification and/or use in the Project of any materials which do not comply with clause 4.1.

5 Step-in

- 5.1 The Sub-Consultant covenants with the Beneficiary that if any event of default shall occur under the Appointment at any time the Sub-Consultant will, if so required by notice in writing given by the Beneficiary mutatis mutandis in accordance with clauses 5.4.1 to 5.4.3 inclusive, accept the instructions of the Beneficiary or its appointee to the exclusion of the Consultant upon the terms and conditions of the Sub-Consultancy Agreement and the Consultant acknowledges that the Sub-Consultant shall be entitled to rely on the notice given to the Sub-Consultant by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.
- 5.2 The Sub-Consultant hereby covenants that it will not exercise nor seek to exercise any right to terminate or treat as terminated the Sub-Consultancy Agreement and/or its employment or discontinue or suspend the performance of any of its obligations under the Sub-Consultancy Agreement without first giving to the Beneficiary prior written notice specifying the Sub-Consultant's ground for terminating or treating as terminated the Sub-Consultancy Agreement and/or its employment and/or discontinuing or suspending its performance under the Sub-Consultancy Agreement. If the grounds are that fees which are due have not been paid by the final payment date and no effective pay less notice has been given the Sub-Consultant shall give seven (7) days notice otherwise the Sub-Consultant shall give 15 Working Days notice.
- 5.3 Compliance by the Sub-Consultant with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Consultant giving rise to the right of determination nor otherwise prevent the Sub-Consultant from exercising its rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provision of clause 5.4.
- 5.4 Within the relevant notice period referred to in clause 5.2 the Beneficiary or its appointee may give written notice to the Sub-Consultant:
- 5.4.1 acknowledging that it assumes all the obligations of the Consultant;
 - 5.4.2 requiring the Sub-Consultant to continue with the performance of its duties and obligations under the Sub-Consultancy Agreement;
 - 5.4.3 undertaking unconditionally to the Sub-Consultant to pay to the Sub-Consultant within 15 Working Days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Sub-Consultant under the Sub-Consultancy Agreement but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Sub-Consultant from the appointee.
- 5.5 In the event of the Beneficiary giving notice to the Sub-Consultant in accordance with clause 5.4 the Sub-Consultancy Agreement shall continue in full force and effect and in all respects as if the Sub-Consultancy Agreement had been made between the Sub-Consultant and the Beneficiary or its appointee (as applicable) to the exclusion of the Consultant (but without prejudice to any rights of recovery as between the Sub-Consultant and the Consultant) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.

5.6 The Consultant confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.

6 **Copyright and Moral Rights**

6.1 The Sub-Consultant hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Project and/or the property comprising the Project including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project and/or the property comprising the Project **provided always** that the Sub-Consultant shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Sub-Consultant.

6.2 The licence referred to in clause 6.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding any termination of the Sub-Consultancy Agreement and/or the Sub-Consultant's employment under the Sub-Consultancy Agreement.

6.3 The Sub-Consultant warrants that the use of the Documents for the purposes of the Project and/or pursuant to the licence granted pursuant to clause 6.1 shall not infringe the rights of any third party.

6.4 The Sub-Consultant waives absolutely all Moral Rights the Sub-Consultant may have in the Documents and/or the Project and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents and/or the Project.

6.5 When requested to do so by the Beneficiary the Sub-Consultant shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Sub-Consultant's reasonable copying charges in connection with complying with such request.

7 **Insurance**

7.1 The Sub-Consultant shall effect and maintain professional indemnity insurance in the sum of [] pounds (£ []) [for each and every claim] [for each occurrence or series of occurrences arising out of each and every event]⁶ [provided that such limit of indemnity may be [in the aggregate for each year of insurance] [[] pounds (£ [])] in respect of claims for pollution and contamination] without unusual or onerous conditions or excesses with reputable insurers carrying on business in the UK with effect from the date of commencement of the Sub-Let Services and for a period equivalent to the period for which the Sub-Consultant is liable under this warranty pursuant to clause 14 **provided that** such insurance remains available to organisations of equivalent size and type to the Sub-Consultant's practice/organisation at commercially reasonable rates and on commercially reasonable terms.

7.2 The Sub-Consultant undertakes to provide to the Beneficiary on demand from time to time such evidence as the Beneficiary may reasonably require to satisfy himself that the insurance required by clause 7.1 is being maintained.

⁶ The insurance obligations should mirror those in the Appointment so amend as necessary.

7.3 The Sub-Consultant shall inform the Beneficiary if the insurance required by clause 7.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Sub-Consultant and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

7.4 The Sub-Consultant shall not compromise settle or waive any insurance claim it may have relating to any liability under this warranty without the Beneficiary's prior consent **provided that** nothing in this clause shall prevent the Sub-Consultant's insurers from taking over (in the Sub-Consultant's name) the defence of any claim made by the Beneficiary under this warranty and (in that capacity) from conducting and settling it as they see fit.

8 **Assignment**

8.1 The Sub-Consultant may not without the consent of the Beneficiary assign its rights under this warranty.

8.2 The Beneficiary may (without the consent of the Sub-Consultant and/or the Consultant) assign its rights under this warranty to:

8.2.1 any mortgagee and by way of re-assignment on redemption; and/or

8.2.2 any Group Company; and/or

8.2.3 on two other occasions only.

8.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but save in respect of any Group Company (to which the number of assignments shall be unlimited notwithstanding clause 8.2.3) so as to otherwise permit more than two assignments under clause 8.2.1 and 8.2.3.

8.4 The Sub-Consultant undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

9 **Notices**

9.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if delivered in the case of a corporation to the parties' registered office for the time being or in any other case to the parties' principal place of business for the time being.

9.2 Notices may be served by:

9.2.1 personal delivery; or

9.2.2 pre-paid registered or recorded delivery mail; or

9.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre paid post.

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

9.3.1 personal delivery on the date of delivery;

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

9.3.3 facsimile transmission sent in accordance with clause 9.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

10 **Continuing effect**

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

11 **[⁷Partnership**

11.1 Where the context so requires the term **Sub-Consultant** shall be deemed to include any additional partner or partners who may be admitted into the partnership of the Sub-Consultant during the currency of this warranty.

11.2 The Sub-Consultant acknowledges that being a partnership the rights obligations and liabilities of the Partners under this warranty as joint and several.

11.3 The warranty and the liabilities of the Sub-Consultant the Client and the Beneficiary in this warranty shall not automatically terminate upon the death, retirement or resignation of any one or more of the Partners or upon the admission of an additional partner or partners to the Sub-Consultant.]

12 **Miscellaneous**

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

12.2 The Sub-Consultant's liability under this warranty shall not be released, diminished or in any other way affected by:

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

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

⁷ Delete if Sub-Consultant is not a partnership.

13 **Contracts (Rights of Third Parties) Act 1999**

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

14 **Liability period**

14.1 Without prejudice to any action or proceedings that arise from a breach of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings shall be commenced under this warranty after 12 years from Practical Completion.

15 **Law**

This warranty 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 laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

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

Part 3 - Sub-consultant warranty in favour of third party

Sub-consultant warranty

dated []

Parties

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

OR

[] of [] and [] of [] (the **Partners**) carrying on business together in partnership as [] [of] [whose principal place of business is at] [] (the **Sub-Consultant**)⁸

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

Introduction

- (A) The Client has procured or proposes to procure the carrying out of the Project at the Property (as defined below).
- (B) The Consultant has been appointed by the Client to act for the Client in the capacity of [] in connection with the Project and to undertake the Services upon the terms and conditions contained in the Appointment (as defined below).
- (C) The Consultant has appointed the Sub-Consultant to undertake the Sub-Let Services upon the terms and conditions contained in the Sub-Consultancy Agreement (as defined below).
- (D) The Beneficiary has an interest/will have an interest in the Property or a part or parts of the Property and/or the Project or part or parts of the Project and has entered into the Agreement (as defined below) in respect of the Property.
- (E) The Sub-Consultant has agreed to enter into this warranty in favour of the Beneficiary.

Agreed terms

1 Definitions and interpretation

1.1 In this warranty unless the context otherwise requires the following expressions shall have the following meanings:

Agreement means the [] between the Beneficiary and the Client dated [] whereby the Beneficiary has agreed to [];

Appointment means the terms of appointment entered into between the Consultant and the Client dated [] 20[] (and any further agreement(s) varying or supplementing it) under which the Consultant has agreed to provide the Services for the Project;

⁸ This option should be used where the Sub-Consultant is a partnership.

Building Contract means the JCT [Design and Build Contract] [Intermediate Building Contract] (2011 edition) as amended dated [] entered into between the Client and [] (and any further agreement(s) varying or supplementing it) for the Project;

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

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

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

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

Practical Completion means the date of practical completion of the whole of the works being carried out pursuant to the Building Contract;

Project means [] at the Property;

Property means [];

Services means the services which the Consultant has been retained to carry out under the Appointment;

Sub-Consultancy Agreement means the terms of appointment entered into between the Consultant and the Sub-Consultant dated [] 20[] (and any further agreement(s) varying or supplementing it) under which the Sub-Consultant has agreed to provide the Sub-Let Services;

Sub-Let Services means the services which the Sub-Consultant has been retained to carry out under the Sub-Consultancy Agreement;

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

- 1.2 The clause headings in this warranty are for convenience only and do not affect its interpretation.
- 1.3 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.4 Words of one gender include the feminine and neuter genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.

1.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

1.6 References in this warranty to numbered clauses are references to the relevant clause in this warranty.

2 **Consideration**

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

3 **Duty of care**

The Sub-Consultant warrants and undertakes to the Beneficiary that:

3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Sub-Consultancy Agreement; and

3.2 it has exercised and shall continue to exercise in the performance of the Sub-Let Services all the reasonable skill and care to be expected of a properly qualified and competent consultant of the relevant discipline experienced in the provision of professional services for projects of a similar size scope value character and complexity to the Project; and

3.3 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Sub-Consultant's professional responsibilities in relation to the Project **provided that** the Sub-Consultant shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named as client instead of the Consultant in the Sub-Consultancy Agreement; and

3.4 the Beneficiary shall be deemed to have relied upon the Sub-Consultant's professional skill and judgement in respect of all matters which lie within the scope of the Sub-Consultant's professional responsibilities in relation to the Project.

4 **Prohibited materials**

4.1 Without prejudice to the generality of clause 0 the Sub-Consultant warrants that it has exercised and shall continue to exercise the standard of skill and care required by clause 3.2 to ensure that it has not and shall not specify authorise cause or allow to be used in the Project any products or materials which:

4.1.1 do not conform with UK Designated Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or

4.1.2 are generally known to members of the Sub-Consultant's profession to be deleterious in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or

4.1.3 do not comply with the guidance set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council of Offices; and/or

4.1.4 are specifically prohibited under the Sub-Consultancy Agreement.

4.2 The Sub-Consultant will as soon as reasonably practicable notify the Beneficiary if it becomes aware of any proposed or actual specification and/or use in the Project of any materials which do not comply with clause 4.1.

5 **Copyright and Moral Rights**

5.1 The Sub-Consultant hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Project and/or the property comprising the Project including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project and/or the property comprising the Project **provided always** that the Sub-Consultant shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Sub-Consultant.

5.2 The licence referred to in clause 6.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding any termination of the Appointment and/or the Consultant's employment under the Appointment.

5.3 The Sub-Consultant warrants that the use of the Documents for the purposes of the Project and/or pursuant to the licence granted pursuant to clause 6.1 shall not infringe the rights of any third party.

5.4 The Sub-Consultant waives absolutely all Moral Rights the Sub-Consultant may have in the Documents and/or the Project and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents and/or the Project.

5.5 When requested to do so by the Beneficiary the Sub-Consultant shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Sub-Consultant's reasonable copying charges in connection with complying with such request.

6 **Insurance**

6.1 The Sub-Consultant shall effect and maintain professional indemnity insurance in the sum of [] pounds (£ []) [for each and every claim] [for each occurrence or series of occurrences arising out of each and every event]⁹ **provided that** such limit of indemnity may be [in the aggregate for each year of insurance] [[] pounds (£ [])] in respect of claims for pollution and contamination] without unusual or onerous conditions or excesses with reputable insurers carrying on business in the UK with effect from the date of commencement of the Sub-Let Services and for a period equivalent to the period for which the Sub-Consultant is liable under this warranty pursuant to clause 14 **provided that** such insurance remains available to organisations of equivalent size and type to the Sub-Consultant's practice/organisation at commercially reasonable rates and on commercially reasonable terms.

6.2 The Sub-Consultant undertakes to provide to the Beneficiary on demand from time to time such evidence as the Beneficiary may reasonably require to satisfy himself that the insurance required by clause 7.1 is being maintained.

⁹ The insurance obligations should mirror those in the Appointment so amend as necessary.

6.3 The Sub-Consultant shall inform the Beneficiary if the insurance required by clause 7.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Sub-Consultant and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

6.4 The Sub-Consultant shall not compromise settle or waive any insurance claim it may have relating to any liability under this warranty without the Beneficiary's prior consent **provided that** nothing in this clause shall prevent the Sub-Consultant's insurers from taking over (in the Sub-Consultant's name) the defence of any claim made by the Beneficiary under this warranty and (in that capacity) from conducting and settling it as they see fit.

7 **Assignment**

7.1 The Sub-Consultant may not without the consent of the Beneficiary assign its rights under this warranty.

7.2 The Beneficiary may (without the consent of the Sub-Consultant) assign its rights under this warranty to:

7.2.1 ¹⁰[any mortgagee and by way of re-assignment on redemption; and/or]

7.2.2 any Group Company; and/or

7.2.3 on two other occasions only.

7.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 8.2.3.

7.4 The Sub-Consultant undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

8 **Notices**

8.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if delivered in the case of a corporation to the parties' registered office for the time being or in any other case to the parties' principal place of business for the time being.

8.2 Notices may be served by:

8.2.1 personal delivery; or

8.2.2 pre-paid registered or recorded delivery mail; or

¹⁰ To be deleted if in favour of a Funder.

8.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre paid post.

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

8.3.1 personal delivery on the date of delivery;

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

8.3.3 facsimile transmission sent in accordance with clause 9.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

9 **Continuing effect**

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

10 **[¹¹Partnership**

10.1 Where the context so requires the term **Sub-Consultant** shall be deemed to include any additional partner or partners who may be admitted into the partnership of the Sub-Consultant during the currency of this warranty.

10.2 The Sub-Consultant acknowledges that being a partnership the rights obligations and liabilities of the Partners under this warranty as joint and several.

10.3 The warranty and the liabilities of the Sub-Consultant the Client and the Beneficiary in this warranty shall not automatically terminate upon the death, retirement or resignation of any one or more of the Partners or upon the admission of an additional partner or partners to the Sub-Consultant.]

11 **Miscellaneous**

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

11.2 The Sub-Consultant's liability under this warranty shall not be released, diminished or in any other way affected by:

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

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

¹¹ Delete if Sub-Consultant is not a partnership.

12 **Contracts (Rights of Third Parties) Act 1999**

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

13 **Law**

This warranty 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 laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

14 **Liability period**

14.1 Without prejudice to any action or proceedings that arise from a breach of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings shall be commenced under this warranty after 12 years from Practical Completion.

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

Schedule 2

(referred to in clause 3.9)

1 Competency Regulations

- 1.1 The Consultant warrants to the Client that it meets and shall continue to meet for the duration of the Works and/or Services the Competency Requirements.
- 1.2 The Consultant shall include in each appointment of a sub-consultant a warranty equivalent to that set out in paragraph 1.1 of this Schedule 2.
- 1.3 The Client may at any point during the term of this Agreement require the Consultant to provide details and evidence of the professional qualifications of any persons employed on or appointed to carry out services in relation to the Services to ensure that the Consultant and any such persons comply with and continue to meet the Competency Requirements, and the Consultant agrees to provide all reasonable assistance to the Client or its authorised inspectors as may be required from time to time to ensure compliance with this paragraph 1.3.
- 1.4 The Consultant shall notify the Client as soon as reasonably practicable when there is any change in the organisational status or performance or professional accreditation of its employees or any individual or organisation performing services in relation to the Services that affects or could reasonably affect the Consultant's ability, or the ability of those persons or organisations, to meet the Competency Requirements.
- 1.5 If the Client considers that any individual employed or appointed by the Consultant or any sub-consultant or sub-contractor does not meet the Competency Requirements then the Consultant shall at the Client's direction replace or procure the replacement of such individual within a reasonable period.
- 1.6 The Consultant shall not and shall procure that any sub-consultant shall not sub-contract any Dutyholder responsibilities to any third party.