**Dated 2016**

1. **THE HALL FOR CORNWALL PROPERTY TRUST**

**and**

1. **xxxxxxxxxxxxxxxxxxxxx**

**Appointment of Consultant to carry out a building survey**

**in relation to the Hall for Cornwall, Capital Redevelopment Project**

**KEYSTOnE LAW**

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*Appointment of consultant to carry out a building survey* *for Hall for Cornwall capital redevelopment project*

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**DEED OF APPOINTMENT** is dated

**BETWEEN**

1. **THE HALL FOR CORNWALL PROPERTY TRUST** LTD (a company limited by guarantee registered number 03101443) of Hall for Cornwall, Back Quay, Truro, TR1 2LL (the **"Client")**
2. **xxxxxx** (registered in England and Wales under company number xxxxx) whose registered office is at xxxxxxxxxxxxx

(the **"Consultant").**

**NOW THIS DEED WITNESSETH** as follows :-

* 1. **BACKGROUND**
     1. The Client has entered or is contemplating entering into a Building Contract for the proposed development of the "Project" (as defined in clause 2.1).
     2. The Client is applying or has applied to Cornwall Council, Arts Council England, Heritage Lottery Fund and the European Regional Development to contribute funding for the Project.
     3. The Client wishes to engage the Consultant to carry out building surveys of the existing hall building at Back Quay, Truro Cornwall to provide an accurate survey of the building to be used and relied upon in its subsequent development.
  2. **DEFINITIONS AND INTERPRETATION**
     1. **Definitions**

In this appointment unless the context otherwise requires, the following expressions shall have the following meanings:

**"Business Day(s)"**

means a day other than a Saturday, Sunday or a bank holiday in England;

**"Fee"**

means the sum or sums referred to in Part I of Schedule 1 subject to any adjustment in accordance with clause 5;

**"Funder"**

means any persons providing funding (in whole or part) in respect of the Project;

**"Key Personnel"**

means the persons listed in Schedule 2;

**"Professional Indemnity Insurance"**

means professional indemnity insurance with insurers of repute in an amount of not less than

£2 million for each and every claim or series of claims arising out of the same originating cause;

**"Project"**

means the Client's project in relation to which the Services are to be provided, namely, the refurbishment and expansion of the theatre facilities in the existing Grade II\* listed building at

Back Quay, Truro Cornwall. The project will include creating a new front of house, back of house and auditorium with new culture sector facilities;

**"Services"**

means the services to be provided by the Consultant as set out, or referred to, in Schedule 3, any services necessary or reasonably incidental to such services and any additional services agreed to be carried out by the Consultant from time to time in accordance with this appointment;

**"Site"**

means the existing Grade II\* listed hall building at Back Quay, Truro, Cornwall;

**"Works"**

means the design and construction of the Project.

* + 1. **Documents comprising the appointment and priority of documents**

This appointment comprises the exclusive terms and conditions of the appointment of the Consultant by the Client. The Consultant acknowledges and agrees that the terms and conditions of this appointment will prevail over all other terms and conditions whatsoever put forward by the Consultant. No variation of the terms and/or conditions of this appointment shall be made except by agreement in writing between the parties.

* + 1. **Successors**

References to "the Client" shall include the person or persons for the time being entitled to the benefit of this appointment.

2.4 **Joint liability**

Where two or more persons are included in the expression "Consultant", the term "Consultant" shall include the plural numbers and any obligation expressed to be made by or with such party shall be deemed to be made and undertaken by such persons jointly and severally.

2.5 **Headings**

The headings in this appointment are inserted for convenience only and shall not affect the interpretation of this appointment.

* 1. **Legislation and Regulations**

Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consultation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

* 1. **Genders and numbers**

Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

1. **DUTIES OF THE CONSULTANT**
   1. The Consultant shall, in the performance of the Services (and any additional services requested by the Client), exercise the degree of skill, care and diligence reasonably to be expected from an appropriately qualified and competent professional person holding himself out as competent to perform those services in relation to projects of a similar size, scope and nature to the Project and shall:
      1. carry out the Services expeditiously and complete them as soon as is reasonably practicable;
      2. use Key Personnel in the performance of the Services and shall not make any changes to the Key Personnel without the prior written consent of the Client (which shall not be unreasonably withheld, provided that any replacements for any Key Personnel shall be no less qualified to perform the relevant role than the person replaced);
      3. ensure that all persons concerned in the performance of the Services are suitably qualified, experienced and competent having regard to the tasks and functions expected from them.
   2. Without prejudice to the generality of clause 3.1, the Consultant shall keep the Client regularly and reliably informed of the progress of the Services.

# FEE

* 1. On or before 5 Business Days prior to the end of the calendar month during which the Consultant completes all of the Services and provides all deliverables required in accordance with this appointment, the Consultant may apply for payment of the Fee set out in Schedule 1 (subject to any agreed amendments to this Fee in accordance with this appointment).
  2. The Consultant shall provide such evidence as the Client may reasonably request to demonstrate that the amount claimed in accordance with clause 4.1 represents payment for Services and/or additional services properly carried out.
  3. Payment of the Consultant's applications for payment in accordance with clause 4.1 shall become due for payment 14 days after the later of, the first day of the calendar month after the month in respect of which the application for payment is made or the date of the Client's receipt of a valid Value Added Tax invoice in respect of the payment due (the **"payment due date").** The final date for payment of such instalments shall be 14 days after the payment due date (the **"final date for payment").**
  4. Not later than 5 days after the payment due date the Client shall give notice to the Consultant setting out the sum that the Client considers to be, or have been, due at the payment due date and the basis on which that sum is calculated. For the avoidance of doubt, a notice shall be served in accordance with this clause even if the sum due is zero but if the Consultant has not made any application for payment within the period set out in clause 4.1, subject to the Consultant serving a default payment notice in accordance with clause 4.5, no payment will be due to the Consultant.
  5. Where notice is not given in accordance with clause 4.4, the Consultant's application for payment will be treated as the relevant notice, otherwise, the Consultant may give notice (a **"default payment notice")** specifying the sum the Consultant considers to be, or have been, due at the payment due date and the basis on which the sum is calculated in accordance with this clause 4.5 at any time after the date on which the Client was to give notice under clause

4.4. Where the Consultant has given a default payment notice, the final date for payment shall be postponed by the same number of days as the number of days after the date referred to in clause 4.4 that the default payment notice is given.

* 1. The Client shall pay simple interest on any payments that have not been made to the Consultant by the final date for their payment at the rate at the rate of 4% above the base rate for lending of Barclays Bank pie from time to time in force for the period from the final date for their payment until the date of actual payment.

4.7 The Client shall pay the sum notified in accordance with clause 4.4 or the sum notified in accordance with clause 4.5, if applicable, by the relevant final date for payment unless the Client has given notice to the Consultant of its intention to pay a lesser sum complying with the following requirements:

4.7.1 the notice is given not less than 5 days before the final date for payment, provided that where a default payment notice has been given, notice under this clause 4.7 may not be given before the default payment notice; and

4.7.2 it specifies the sum that the Client considers to be due on the date the notice is served under this clause 4.7 and the basis on which that sum is calculated;

in which case the Client shall pay the lesser sum referred to above.

4.8 All costs fees and disbursements expressed to be payable or reimbursable by the Client are exclusive of Value Added Tax unless otherwise stated. Value Added Tax shall be payable by the Client on the submission by the Consultant of a valid Value Added Tax invoice.

# ADDITIONAL SERVICES

* 1. In addition to the Services, the Consultant shall perform such other additional services in relation to the Project as the Client may from time to time instruct in writing. The Client shall pay to the Consultant in respect of such additional services such additional fee as may be agreed between the Client and the Consultant (both parties exercising reasonable endeavours to reach such agreement) or failing agreement , such additional fee or fees as calculated in accordance with Part II of Schedule 1.
  2. The Consultant shall immediately comply with all instructions issued by the Client unless any such instructions conflict with any statutory requirements or are outside the Consultant's area of competence. If the Consultant fails to comply within 7 days of any such instructions, the Client may (without prejudice to its rights under clause 9 (Assignment and Subcontracting by the Consultant)) employ others to give effect to such instructions and the additional cost to the Client shall be recoverable from the Consultant or deducted from any amount otherwise due to the Consultant.

# OBLIGATIONS OF THE CLIENT

Throughout the period of this appointment during normal business hours the Consultant shall be entitled to reasonable access to the Site for the purpose of carrying out the Services and the Client shall supply any relevant information and other written material in the possession of the Client as the Consultant shall reasonable require to perform the Services.

# TERMINATION

* 1. Upon the happening of one or more of the following events, namely if the Consultant:

7.1.1 without reasonable cause fails to proceed regularly and diligently with the performance of the Services;

* + 1. without reasonable cause suspends the performance of the whole or part of the Services before completion of the same;
    2. without reasonable cause refuses or neglects to comply with any instruction which the Client is empowered by this appointment to give; or

7.1.4 is otherwise in breach of this appointment;

the Client may serve notice in writing on the Consultant specifying the event and requiring its remedy and if the Consultant fails to remedy the same within 10 Business Days of service of such notice or commits any further similar breach of this appointment, the Client may by further notice in writing immediately terminate the employment of the Consultant under this appointment.

7.2 Upon the happening of one or more of the following events, namely if the Client:

7.2.1 fails to pay to the Consultant any amount properly due and payable under this appointment (subject to any deductions which the Client may be entitled to make); or

7.2.2 is otherwise in breach of this appointment and such breach has prevented the Consultant from carrying out its obligations for a continuous period of one month or more;

the Consultant may, without prejudice to any other right or remedy, serve notice in writing on the Client specifying the event and requiring its remedy and, if the Client fails to remedy the same within 10 Business Days of service of such notice, the Consultant may by further notice in writing immediately terminate this appointment.

* 1. Either party may immediately terminate this appointment by notice in writing to the other if the other ceases for any reason to carry on its business or is unable to pay its debts or if any distress or execution shall be levied upon such other party's property or assets or if such other party shall make or offer to make any arrangement or composition with its creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against it or (if it is a limited company) any resolution or petition to wind up such company's business (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) shall be passed or presented or if a receiver or administrator of such company's undertaking property or assets or any part of them shall be appointed.
  2. If the Consultant's employment under this appointment is terminated by the Client under clause 7.1, the Client shall not be bound to make any further payment to the Consultant until the amount of all loss and/or expense suffered or incurred by the Client by reason of the grounds for termination and any breaches of this appointment by the Consultant (including the full and final cost of completion of the Services by others) has been ascertained and notified in writing by the Client. If such amount, when added to the monies paid to the Consultant before the date of termination, exceeds the total value of work properly executed together with any adjustments to the Fee ascertained in accordance with this appointment up to the date of termination, the difference shall be a debt payable to the Client by the Consultant.
  3. If this appointment is terminated by the Consultant under clause 7.2 or 7.3, as soon as is reasonably practical the Client shall ascertain and pay to the Consultant the total amount properly due to the Consultant up to the date of termination.
  4. Termination of this appointment or the Consultant's employment under it shall not prejudice the accrued rights and remedies or either party at the date of termination.

# DOCUMENTS

* 1. In relation to all reports, drawings, details, plans and other documents of any nature whatsoever and any designs and inventions contained in them which have been or are hereafter provided by the Consultant in the course of performing its obligations under this appointment (the **"Documents") ,** the Consultant hereby grants to the Client with effect from the date of this appointment (or in the case of Documents not yet in existence with effect from the creation thereof) a royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding completion of the Consultant's obligations under this appointment, the termination of this appointment or the determination of the Consultant's engagement under it) to use and to reproduce all Documents for any purpose whatsoever connected with the Works and such other purposes as are reasonably incidental including, but without limitation, the execution, completion, maintenance , letting, advertisement, modification, extension, reinstatement and repair of the Works, and such licence will carry the right to grant sub­ licences and will be transferable to third parties. The Client will not hold the Consultant liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it. The Consultant will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under this appointment or hereunder or as otherwise required to enable it to fulfil its obligations under this appointment.
  2. The Consultant agrees on reasonable request at any time and following reasonable written prior notice to give the Client or those authorised by it access to the Documents and to provide copies (including electronic copies) thereof at the Client's expense.
  3. The Consultant warrants to the Client that he has used the standard of skill,care and diligence as set out in clause 3.1 to see that the Documents (save to the extent duly appointed sub­ consultants have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

# ASSIGNMENT AND SUBCONTRACTING BY THE CONSULTANT

The Consultant shall not assign, or charge any right or obligation under this appointment to any other person or subcontract the whole of the Services. The Consultant shall not subcontract any part or parts of the Services without the prior written consent of the Client. Any consent to subcontract any part or parts of the Services shall not affect or reduce the scope of the Consultant's obligations under this appointment.

# ASSIGNMENT BY THE CLIENT

The Client may assign by way of absolute legal assignment its rights and obligations under this appointment on two occasions only provided that it gives notice in writing of such assignment or transfer as soon as possible thereafter.

# PROFESSIONAL INDEMNITY INSURANCE

* 1. The Consultant shall take out and maintain for a period of not less than 12 years from the date of completion of the Services, Professional Indemnity Insurance provided that such insurance is and remains available at reasonable commercial rates.
  2. Any increased or additional premium required by insurers by reason of the Consultant's own claim record or other act or omissions particular to the Consultant shall be deemed to be within reasonable commercial rates.
  3. The Consultant shall produce documentary evidence to the Client upon reasonable request that such Professional Indemnity Insurance is being maintained.
  4. The Consultant shall immediately inform the Client if the Professional Indemnity Insurance ceases to be available at reasonable commercial rates in order that the Consultant and the Client can discuss means of best protecting their respective positions in the absence of such Insurance.
  5. The Consultant shall procure that any sub-contractors of the Consultant maintain like insurance cover to that required to be maintained by the Consultant under this appointment.

1. **PUBLIC LIABILITY AND EMPLOYER'S LIABILITY INSURANCE**
   1. The Consultant shall maintain, and shall ensure that its sub-consultants or contractors carrying out any works in connection with the provision of the Services maintain, public liability insurance in a sum not less than £2 million in respect of damage to any property of the Client or any property of any third party and any death or personal injury to any person caused by the carrying out of such works and the Consultant shall make good any damage or loss so caused or suffered.
   2. The Consultant shall maintain, and shall ensure that its sub-consultants or contractors carrying out any works in connection with the provision of the Services maintain, employer's liability insurance in a sum not less than £2 million for any occurrence or series of occurrences arising out of the any one event.
   3. The Consultant shall produce documentary evidence to the Client upon reasonable request that the public and employer's liability insurance is being maintained in accordance with clauses 12.1 and 12.2.

# WARRANTIES

Within 10 Business Days of receipt of a written request from time to time from the Client, the Consultant shall execute as a deed one or more deeds of warranty in the form set out in Schedule 4

in favour of any beneficiary having a bona fide actual or prospective legal or commercial interest in the Project (including any Funder, contractor or designer).

# PERIOD OF LIABILITY

No action or proceedings under or in respect of this appointment, whether in contract or in tort, in negligence or for the breach of statutory duty or otherwise shall be commenced against the Consultant after the expiry of 12 years from the date of completion of the Services or such earlier date as may be prescribed by law.

# CONFIDENTIALITY

The Consultant, his employees and agents at all times shall keep confidential and secret and shall not disclose to any person (other than a person authorised by the Client) all information and other matters acquired by the Consultant in connection with this appointment.

# PUBLICITY

The Consultant shall not advertise or publicly announce that it is supplying services or carrying out work for the Client without the prior written consent of the Client, (such consent not to be unreasonably withheld).

# THIRD PARTY RIGHTS

Save in accordance with clauses 10 (Assignment by the Client) or 13 (Warranties), nothing in this appointment confers or purports to confer on any third party any benefit or any right to enforce any term of this appointment pursuant to the Contracts (Right of Third Parties) Act 1999.

# DISPUTE RESOLUTION

* 1. Both parties shall endeavour to notify each other of any anticipated dispute so that any potential dispute can be avoided by negotiation between them.
  2. Both parties shall endeavour to resolve any disputes which arise by direct negotiations in good faith between senior executives of their respective organisations and shall give serious consideration to any request by either of them to refer the dispute to mediation.
  3. Any disputes arising under or in connection with this appointment may be referred by either party to adjudication in accordance with the Scheme for Construction Contracts. In the absence of agreement between the parties as to the choice of adjudicator, the adjudicator shall be appointed by the Chairman for the time being of the Technology and the Construction Solicitors Association or his nominated representative.
  4. The decision of any adjudicator shall be binding on, and implemented by, both parties pending final determination of the relevant dispute by the English courts.

# INDEMNITY

The Consultant shall indemnify and keep indemnified the Client against all actions, claims, demands , proceedings, damages, costs, charges and expenses arising in respect of, or in any way arising out of:

* 1. the provision of the Services;
  2. any breach of the Data Protection Act 1998; or
  3. any injury to, or death of, any person, and the loss of, or damage to, any property including property belonging to the Client

except and to the extent that it may arise out of the act, default or negligence of the Client, its employees or agents.

**IN WITNESS** whereof this appointment has been executed as a deed and delivered on the date stated above.

**EXECUTED AS A DEED** by

**THE HALL FOR CORNWALL PROPERTY TRUST** by

the signatures of:

Director: Director/Company Secretary:

**EXECUTED AS A DEED**

acting by a Director and the Company Secretary

or by two Directors whose signatures appear below:

Director:

Director/ Company Secretary:

**IN WITNESS** whereof this appointment has been executed as a deed and delivered on the date stated above.

**EXECUTED AS A DEED** by

**THE HALL FOR CORNWALL PROPERTY TRUST** by

the signatures of:

Director:

Director/Company Secretary:

**EXECUTED AS A DEED by**

acting by a Director and the Company Secretary

or by two Directors whose signatures appear below:

Director:

Director/ Company Secretary:

**SCHEDULE 1- FEE**

**Details to be inserted here**

**SCHEDULE 2 - KEY PERSONNEL**

**Details to be inserted here**

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# SCHEDULE 3- SERVICES TO BE PROVIDED BY THE CONSULTANT

**Details to be included here**

**SCHEDULE 4 - DRAFT FORM OF COLLATERAL WARRANTY**

|  |
| --- |
| **Date of Agreement:** |
| **Project:** means the Appointor's proposed project in relation to which the Services are to be provided, comprising the refurbishment and expansion of the theatre facilities in the existing Grade II\* listed building at Back Quay, Truro Cornwall. The project will include creating a new front of house, back of house and auditorium with new culture sector facilities; |
| **Beneficiary:**  *(name)*  of:  *(address/registered office)* |
| **Consultant:** |
| **Services:** The carrying out of an accurate building survey of the existing hall building at Back Quay, Truro Cornwall, and the provision of accurate measurements for the Project. |
| **Appointment:**  Deed of Appointment dated 2016 between the Appointor and the Consultant:  **Appointor: THE HALL FOR CORNWALL PROPERTY TRUST LTD** (a company limited by guarantee registered number 03101443) of Hall for Cornwall, Back Quay, Truro, TR1 2LL |
| **Professional Indemnity Insurance:** £2 million (minimum cover) |

1. **BACKGROUND**
   1. The Beneficiary [has an actual or prospective interest in the Project] [is providing funding in connection with the Project].
   2. The Consultant has been, appointed by the Appointor under the terms of the Appointment to provide the services briefly described above and more particularly described in the Appointment.

**2 AGREEMENT**

This deed is made on the above date between the Beneficiary and the Consultant and incorporates the definitions and details stated above.

3 **WARRANTY**

The Consultant warrants on behalf of itself and its sub-consultants that it has exercised and will continue to exercise the degree of skill, care and diligence reasonably to be expected from an appropriately qualified and competent professional person holding himself out as competent to perform those services in relation to projects of a similar size, scope and nature as the Project in carrying out the Services and that it has carried out the Services in accordance with the terms of the Appo intment.

1. **INSURANCE**
   1. The Consultant covenants:
      1. to take out and maintain professional indemnity insurance with insurers of repute in an amount of not less than that stated above for any occurrence or series of occurrences arising out of any one event save for claims arising for pollution and contam ination for which the amount shall apply in the aggregate for a period of 12 years from the date of practical completion of the Services provided that such insurance is available in the market at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts or omissions particular to the Consultant shall be deemed to be within commercially reasonable rates;
      2. to inform the Beneficiary or its assignees in writing immediately if such professional indemnity insurance cover ceases to be available at commercially reasonable rates; and
      3. when reasonably requested by the Beneficiary to produce for inspection documentary evidence that its professional indemnity insurance cover is being maintained.
   2. The Consultant shall immediately inform the Beneficiary if the professional indemnity insurance referred to in clause 4.1 ceases to be available at reasonably commercial rates in order that the Consultant and the Beneficiary can discuss means of best protecting their respective positions in the absence of such insurance.
2. **DOCUMENTS**

In relation to all reports, drawings, details, plans and other documents of any nature whatsoever and any designs and inventions contained in them which have been or are hereafter provided by the Consultant in the course of performing its obligations under the Appointment (the **" Documents")** the Consultant hereby grants to the Beneficiary a royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstandi ng completion of the Consultant's obligations under the Appointment, the termination of the Appointment or the determination of the Consultant's engagement under it) to use and to reproduce all Documents for any purpose whatsoever connected with the Project and such other purposes as are reasonably incidental including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Project, and such licence will carry the right to grant sub-licences and will be transferable to third parties. The Beneficiary will not hold the Consultant liable for any use it may make

of the Documents for any purpose other than that for which they were originally provided in accordance with the Appointment.

1. **ASSIGNMENT**

The benefit of this deed may be assigned by way of absolute legal assignment by the Beneficiary to any beneficiary having a bona fide actual or prospective legal or commercial interest in the Property or any part, once only without the consent of the Consultant provided that the Consultant shall be entitled to receive notice of such an assignment in writing within a reasonable period of the assignment taking place.

1. **NOTICES**
   1. Any notice given under or in connection with this deed must be given in writing.
   2. Any such notice must be served on a party by hand or by registered post or recorded delivery to its address stated in this deed or its principal business address for the time being, and in the case of a recipient party which is a corporation must be served at its registered office for the time being.
   3. If posted in Great Britain to an address in Great Britain by first class pre-paid post or recorded delivery such notice will be deemed to have been received at 10:00 am on the second business day after the next collection of letters to follow its posting unless there is a national or local disruption of postal services such that the notice cannot reasonably be expected to be collected and delivered within two business days.
2. **LIMITATION PERIOD**

No action or proceedings for any breach of this deed shall be commenced against the Consultant after the expiry of twelve years from the date of the Consultant's completion of the Services.

1. **SUCCESSORS**

References to the Beneficiary shall include the person or persons from time to time entitled to the benefit of this deed.

1. **APPLICABLE LAW**

The laws of England govern this deed and the parties will submit to the jurisdicti on of the courts of England.

1. **THIRD PARTY RIGHTS**

Save as provided in clause 7 above, nothing in this deed confers or purports to confer on any third party any benefit or any right to enforce any term of this deed.

**IN WITNESS WHEREOF** this deed has been executed as a deed the date and year first before written.

**EXECUTED AS A DEED by xxxx**

acting by a Director and the Company Secretary

or by two Directors whose signatures appear below:

Director:

Director/ Company Secretary: