

Plaistow Hub

Request for Proposal

Clerk of Works Services

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Rev. 01

May 2021

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Rev	Date	Document	Prepared By	Checked By	Comments
01	24/05/21	RFP	RS		Issued for Comment

1.0 Making Newham Home

Populo Living is a private BTR (Built to Rent) developer based in Stratford, Newham. Populo Living is wholly owned by the London Borough of Newham (LBN). The name 'Populo' is taken from the Borough of Newham's motto "*Progress with the People*", from East Ham's historic Latin motto "*Progressio cum Populo*".

Our vision is to Make Newham Home for everyone, meeting the London Borough of Newham's housing targets with 50 per cent of homes we deliver let at affordable London Affordable Rent (LAR) and 50 per cent as PRS residential units. We are designing and building better homes, and places people want to call home. Our high-quality, spacious, and environmentally friendly developments will become communities and strengthen existing ones. Whether for private or social rent, residents will enjoy excellent standards of design and attention to detail. Together with Newham Council, we are focused on the need to deliver for Newham's people. This long-term commitment means that our exceptional customer service and commitment to the resident, and Newham, is here to stay.

Central to our vision is a commitment to holistic sustainable development – providing social, economic, and environmental benefits to Newham and its residents:

- Social Integration: building more places and homes for all that embrace diversity, foster social inclusion, raise standards of living and support long-term health and happiness of our residents.
- Economic Growth: delivering a long-term income to the Council to support future service delivery and promoting local business growth opportunities and jobs.
- Environmental Protection: minimising resource use and reduce carbon emissions to address the impact of climate change.

Community Wealth Building context – we will explore opportunities for us and our partners to make a distinct contribution to these in support of wider Community Wealth Building aspirations. Qualitative and quantitative ways to measure the impact on neighbours, residents and local businesses will be established on each project.

We will work with our partners throughout the development lifecycle to embed these principles of sustainable, high-quality design in all our developments, as well as committing to exploring opportunities that support the wider business ambition of achieving carbon neutrality by 2030.

2.0 The Site

Plaistow Hub is a combined residential and commercial project across two separate sites, London Road and Valetta Grove. The scheme comprises of two residential blocks, a supermarket, a gym, cafes, neighbourhood centre/ library, under croft car/cycle parking: including all mains services, site wide plant, landscaping and all associated external works.

The London Road site is located immediately south of Plaistow underground station. It is a high-rise development of 100 residential dwellings across 23 floors: LG, G, 1 – 21.



FIGURE 1: London Road from Station Square

The Valetta Grove site is located off Plaistow Road, opposite Plaistow station to the north and adjacent to the park. It is a high-rise development of 82 residential dwellings across 15 floors: LG, G, 1 – 13.



FIGURE 2: Valetta Grove View from Station Square

The project is logistically challenging due to its tight footprint and location within a built-up residential area. There are extremely close receptors being the London Underground and C2C rail lines bisecting the scheme. Plaistow Road also bisects the site essentially making the scheme two independent sites.

Project Team

Client – Populo Design and Build Limited
 Principal Contractor – Vistry Partnerships
 Employers Agent & Cost Consultant - Tower Eight
 CDMA – Robinson Low Francis
 Building Control Officer – London Borough of Newham

Novated Team

Architect – Pitman Tozer
 Civil/Structural – Tully De'Ath Consultants
 Landscaping – Gillespie's
 MEP – EDC

Client Monitoring Team

MEP – PSH Consulting
 Architect – Pitman Tozer
 Landscaping – Gillespie's

3.0 Scope of Contract

Scope of Works is Attached as Appendix A.

The Proposed Form of Contract is Populo Living Short Form Consultant Appointment.

4.0 Procurement Timetable

The outline procurement timeline is as follows:

ACTION	PLANNED DATE	PROGRESS
Issue ITT	01/06/2021	
Tender Returns	15/06/2021	
Tender Evaluation period	16/06/2021 – 20/06/2021	
Tender approval contractual review	21/06/2021 – 27/06/2021	
Award/mobilisation period	28/06/2021 ~	

5.0 Quality Assessment

All proposal submissions will be evaluated as follows:

Quality: 60%

Price: 40%

Quality (40%)		
Quality Area	Evaluation Criteria	(%) Weighting
Overview of the Company Services	<ul style="list-style-type: none"> Please provide an overview of your company and the services you deliver. 	25%
Evidence of Delivery Similar Projects	<ul style="list-style-type: none"> Please provide at least two relevant case studies that provide evidence of delivering similar projects Please provide the names of 2 reference that can provide assurance of your capability to deliver the requirement 	10%
Understanding the Tasks	<ul style="list-style-type: none"> Please provide your understanding of the Customer requirement 	10%
Ability to Meet the Requirements	<ul style="list-style-type: none"> Please confirm that you can meet all requirements within the required timescales Please provide a project plan that details how you would deliver the required outcome 	20%
Delivery Methodology for the Overall Project	<ul style="list-style-type: none"> Please detail your proposed approach to deliver this project Please provide details of your delivery assurance processes 	20%
Delivery Team	<ul style="list-style-type: none"> Please provide CVs for your proposed delivery team 	15%

6.0 Scoring Descriptors

Scoring Grade	Descriptor	Numeric Score	% Score
Unacceptable	Unanswered or failed to adequately address the requirement	0	0
Poor	The information submitted is very limited, inconsistent with the rest of the submission, and/or no supporting documentation has been provided	1	20
Fair	The information submitted is limited, has some inconsistencies with the rest of the submission and/or insufficient supporting documentation has been provided.	2	40
Satisfactory	Satisfactory response to the requirements which provides adequate evidence but contains inconsistencies.	3	60
Good	Good response to the requirements which provides evidence which is clear but 'has minor inconsistencies.	4	80
Excellent	Excellent response to the requirements which provides detailed evidence which 'is clear, complete and consistent.	5	100

7.0 Evaluation Criteria

General

This Section 6 sets out the evaluation criteria against which the ITT responses will be assessed.

Bidders are required to respond to each of the questions set out in Appendix 7: Quality Questions and complete in full the requirements in Appendix 8: Financial Submissions.

Evaluation Criteria and Weightings

The contract award decision will be made based on the application of the detailed evaluation criteria (and sub-criteria) shown in Appendix 6: Award Criteria.

Evaluation Methodology

Prior to carrying out the detailed scoring of Bids, the Authority will conduct compliance checks. Bids which are substantially incomplete or which are non-compliant with the requirements set out in this ITT may be rejected.

Following compliance checks, each Bid will be evaluated and scored against the evaluation criteria and weightings and Bidders will be ranked in line with their scores.

The evaluators will allocate scores in accordance with the scoring scale at paragraph 6.11, and the award criteria published in this document (Appendix 6: Award Criteria).

Prices contained in Bids will be evaluated after the quality evaluation has been completed.

The Authority reserves the right to update and refine the evaluation approach (set out in this Section 6, the quality questions and sub-criteria as well as the financial submission (Appendix 8: Financial Submissions) prior to the ITT response deadline.

Once the quality and price scores have been allocated and moderated the weightings are applied and the resulting quality and price scores are combined for each Bidder to produce a final overall score for that Bidder. The successful Bidder will be the one that submit the highest scoring overall Bid.

Quality Evaluation

Scoring Scale

In relation to the Quality criteria and sub-criteria (as indicated in Appendix 6: Award Criteria), each sub-question will be scored in application of the following scoring scale:

In applying the scoring scale, each Bid will be evaluated according to its quality and deliverability. The term 'quality' in this context refers to performance and fitness for purpose of the proposal and therefore covers any aspect of a submission that affects the performance of the contract. 'Deliverability' refers to the likelihood that all aspects of a particular submission could in fact be delivered by the Bidder concerned.

Evaluation Panel

Each member of the evaluation panel will assess each Bid separately. Questions may be divided between evaluation panel members so that an evaluator may not read the entirety of a Bid

The evaluation panel members will, on an individual basis for each Bidder's response to a question, decide which commentary most accurately describes the response. The evaluation panel members will record the corresponding score and the strengths and weaknesses of the response.

Only the score corresponding to the commentary detailed in the scoring matrix may be awarded to a response (i.e.: 0 - 5). No other scores may be used and decimal scores are not permitted (e.g. 3.6).

Moderation

A moderation process will then be undertaken with the evaluation panel to discuss and agree an overall single consensus score for each response where individual evaluator scores differed in relation to a Bidder's response to a question.

Each sub-question will be awarded a consensus score in accordance with the scoring scale at 6.11 (i.e. 0-5). This consensus score will be divided by the highest score available for that question (i.e. 5) to give a percentage score. The percentage score will then be multiplied by the question weighting to provide a weighted score for each question.

All weighted scores from each award criterion will then be added together to give a final quality score total for each Bid.

At each stage of the process all mathematical results will be rounded to two decimal places.

For illustration purposes, a worked example to demonstrate the scoring process is provided below. Please note that the weightings and marks available in the example relate only to the example and not to this Procurement Process.

Example:

Figure 1, below, shows the overall Quality and Price weightings for this example procurement process:

Figure 1: Example Evaluation Criteria and Weightings

Criteria	Criteria weighting
Quality	60%
Price	40%
TOTAL	100%

Figure 2, below, shows the detailed criteria and weightings for this example procurement process:

Figure 2 Example Detailed Criteria and Weightings

Criteria	Criteria Weighting	Level 1 - Sub-Criteria	Sub-Criteria Weighting	Level 2 – Sub-Criteria	Level 2 – Sub-Criteria Weighting
Quality	60%	Technical Merit	40%	Question 1	20%
				Question 2	10%
				Question 3	10%
		After Sales Service	20%	Question 4	15%
				Question 5	5%
Price	40%		40%		40%
TOTAL	100%		100%		100%

In This example, the overall Quality criterion of 60% is made up of two sets of Level 1 sub-criteria:

- (1) Technical Merit (40% of the overall score); and
- (2) After Sales Service (20% of the overall score).

Each Level 1 sub-criterion is made up of Level 2 sub-criteria which are the individual questions (Question 1, Question 2 etc). Each Level 2 sub-criterion weighting is shown next to the Level 2 sub-criterion.

Worked Example

The quality scores awarded for 'Bidder 1' for this example procurement process are detailed in Figure 3 below:

Figure 3 Example Bidder 1 Quality Score

Level 2 – Sub-Criteria	Level 2 – Sub-Criteria Weighting	Consensus Score Awarded	Score Calculation	Score Awarded
Question 1	20%	3	$(3/5) \times 20$	12.00
Question 2	10%	5	$(5/5) \times 10$	10.00
Question 3	10%	4	$(4/5) \times 10$	8.00
Question 4	15%	4	$(4/5) \times 15$	12.00
Question 5	5%	2	$(2/5) \times 5$	2.00
Total Weighted Quality Score for <u>Bidder 1</u>				44.00

For each question, the consensus score awarded (which will range from 0-5) will be divided by 5 and then multiplied by the Level 2 sub-criteria weighting to arrive at the score awarded. Each of the scores awarded is then added together to calculate the Bidder's total weighted Quality score.

For example, for Question 1, Bidder 1's consensus score awarded was '3'. 3 is divided by 5 ($3/5$) and then multiplied by the Level 2 sub-criteria weighting for Question 1, which is 20, to arrive at the score awarded for Question 1. $(3/5) \times 20 = 12$.

This process is repeated for Questions 2 through 5 and then the five scores awarded to Bidder 1 are added together to produce Bidder 1's total quality score. In this example, Bidder 1 has achieved a total weighted Quality score of 44 out of a maximum possible score of 60.

Price Evaluation

The price evaluation will be based on the total price for the Services as submitted by each Bidder.

Price will be evaluated by applying the methodology set out below to the response provided by Bidders in their Financial Submissions in the format set out in Appendix 8: Financial Submissions. The Authority retains the right to seek clarifications in relation to the resources set out in this schedule and, where these are considered deficient in any area, to challenge their adequacy.

The lowest compliant bid1 price will score 100 marks. The other offers will then receive scores expressed as an inverse proportion of the lowest compliant bid price. All results will be rounded to two decimal places. The formula used will be:

$$(\text{Lowest compliant bid price} / \text{Bidder's price}) \times 100 = \text{Bidder's price score}$$

Example: Lowest compliant Bid price = £1000. Bidder 1's Bid price = £1300. Bidder 1's price would attract a score of 76.92 calculated as follows:
 $1000/1300 = 0.7692 \times 100 = 76.92$

Price scores will then be multiplied by the price weighting to give a final price score.

Example: In this example the price score of 76.92 is then multiplied by the overall price weighting of 40%, to give a final price score for evaluation purposes of 30.77 calculated as follows: $76.92 \times 0.40 = 30.77$

Final Evaluation Score

The final overall quality + price score for each Bidder is obtained by adding the final weighted quality score for that Bidder to the final weighted price score for that Bidder to give an overall combined quality + price score out of 100.

Example: For Bidder 1 the final weighted quality score is 44 and the final weighted price score is 30.77. This gives an overall quality + price score of 74.77.

Each Bidder's overall quality + price score will be compared with the other Bidders' overall quality + price scores to identify the successful Bid.

Appendix A: Scope of Services

Appendix B: Pricing Document

Appendix C: Certificates

Appendix D: Populo Living Short Form Consultant
Appointment

Clerk of Works Scope of Services

Document Reference: XXX-POP-XX-XX-SCO-00001

Rev. 02

March 2021

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- 1.0 Introduction
- 2.0 Definitions & Interpretations
- 3.0 General Services
- 4.0 Specific Services

Rev	Date	Document	Prepared By	Checked By	Comments
01	24/05/21	Revised format and updated content	RS		

1.0 Introduction

1.1	This Schedule provides a list of the Services to be provided by the Consultant.
1.2	The services have been considered in conjunction with the RIBA Plan of Work 2020, and structured accordingly where relevant. Such division is not intended to, and shall not, limit or affect the Consultant's obligation generally to provide the services as and when may from time to time be necessary or appropriate for the proper and timely completion of the Project.
1.3	<p>The scope is aligned to the stages of project delivery and includes the following:</p> <ul style="list-style-type: none"> • Workstage 4b – 5 (post-contract novation services): Provision of consultancy services to the Principal Contractor and/or nominated Sub Contractors up to and inclusive of Practical Completion; • Workstage 6 (post-contract novation services): Provision of consultancy services to the Principal Contractor and/or nominated Sub Contractors to assist with completion of all requisite commissioning and certification activity;
1.5	Services for the Client during Workstages 4b – 6 for compliance monitoring.
1.6	The scope is applicable for the entire works as defined in the Project Brief.
1.7	An instruction to provide Services for any of the individual Work Stages does not imply intent to proceed with the full scope of services.
1.8	This scope should be read in conjunction with any documentation identified in the consultant tendering documents

2.0 Definitions & Interpretations

Client	Populo Design & Build
Project Manager (and Employers Agent)	the consultant designated as such by the Client. Unless defined otherwise in the project specific information this party is appointed to act on behalf of the Client for all purposes;
Lead Consultant	the Project Manager for the purposes of this scope
Lead Designer	the consultant designated as such by the Client to lead the design team and be responsible for coordinating the inputs and information required from each team member;
Principal Designer	the party appointed to undertake the statutory role and responsibilities for the purposes of the Construction (Design and Management) Regulations 2015 (CDM 2015) and responsible for coordinating health and safety in the design process.
Designer	any party or individual undertaking design activities as defined under CDM 2015.
Other Consultants	the other consultants appointed by the Client in connection with the Works;
Contractor	the party who the Client appoints to deliver the Works and named in the Building Contract.
Novation	the procedure where a consultant appointment is transferred from the Client to the Contractor / New Client, following which the consultant carries out duties and is paid by them;
Contractor / New Client	the party that the consultant is contracting with following any novation agreement
Project Brief	a description of the works and the Client's statement of requirements for the Project for which the services are being provided.
Employers Requirements	the set of drawings, details, plans, specifications and other documents and information that constitute or will constitute the employer's requirements under the Building Contract;

3.0 General Services

The Services listed in this Section are to be provided at each Stage of the Works where and to the extent that the same are applicable.

3.1	Principal Role
3.1.1	The clerk of works will form part of the client monitoring team alongside the Building Insurances team who are providing structural warranty cover services.
3.1.2	<p>Review relevant drawings on site and View/inspect/report on quality, progress and H&S during the following stages:</p> <ul style="list-style-type: none"> - Excavation depths, Foundations, substructure and provide a drainage report - DPM / waterproofing / DPC and ground floor - Superstructure frame with all floors and roof. - Superstructure report - Flat roofing (incl. Davit arm requirements and anchor points) /balconies/terraces - Windows / doors - Roof Report - Pre plaster and Fire stopping works - First & Second Fix Reports (excluding MEP as being monitored/inspected by others) whilst ensuring pre-close-up procedures are in place on site before services become concealed - Common areas (more towards PC stage) – particularly fire related items incl. fire stopping as-built drawings, use of products in accordance with specification, sign-off by FIRAS accreditation, etc. - Surface finishes and external works report - Ensure specification compliance is confirmed <p>The Consultant is encouraged to identify any gaps in the above list.</p>
3.1.3	The role will not be approving contractors design drawings but inspecting workmanship quality against the ER's and ensuring works under construction are being built/installed within agreed details. The contractor EDMS is View4Projects, access will be provided to download drawing information.
3.1.4	At all times exercise the reasonable skill, care and diligence to be expected of a consultant experienced in the provision of such services for projects of a similar size, nature and complexity to the Project.
3.1.5	Perform the services with due regard to the Project Brief.
3.1.6	Perform the Services seeking to ensure, as far as it is within the Consultant's reasonable control, that all work is provided in a timely manner to the team in order to meet the overarching milestones throughout the project, within budget and to the performance and quality standards as set out in the Project Brief or otherwise agreed in writing with the Client and project team.
3.1.7	All services carried out by the Consultant for the Client in relation to the Site to date are deemed to be included.

3.2	Client Interface
3.2.1	Acknowledge the role of the Project Manager for the overall co-ordination and management of the Project on behalf of the Client.
3.2.2	Initiate and maintain communication with the Client as appropriate to ensure the required services are completed.
3.2.3	Provide information as required by the Client, to the Client and/or any other member of the Project Team as may be necessary in a timely manner
3.2.4	Refer all project-related communications from consultants and organisations outside of the project team to the Client.
3.3	Governance / Reporting
3.3.1	Contribute to the delivery of the Project Execution Plan (PEP) as necessary.
3.3.2	Provide a summary update to the Project Manager and the Client weekly progress against programme over the previous reporting period, and include a review of current issues and work to be completed in the coming month. Format template to be advised by the Project Manager.
3.3.3	Inform the Client of any issue that may materially affect the Project Brief, Project Programme, Construction Cost or quality of the Project and any information, decision or action required in mitigation.
3.3.4	<ul style="list-style-type: none"> ▪ In conjunction with the Project Manager, advise on the need for quality assurance schemes, defects insurance and product guarantees. This is to include adherence to quality assurance processes/procedures as required.
3.3.5	Undertake regular internal (monthly) quality audits and provide evidence of ISO 9001:2015 certification.
3.3.6	Assist the Project Manager in preparing and maintaining a Project risk register. Alert the Project Manager of any change to risk levels or addition of new risk, and ensure that risk mitigation actions are progressed.
3.3.7	Allow for all printing and reproduction of documents, drawings, maps models, photographs and other records necessary for the proper performance of the services.
3.3.8	Coordinate the issue of all appropriate information to the Project Manager and Client at all stages of the Project. Notify the Project Manager and Client of decisions required from them in a timely manner as necessary.
3.3.9	Examine the Contractor's proposals and, if any variations to the "Employer's Requirements" for the Building Contract are agreed as part of the agreement of its tender sum/contract sum, coordinate the amendments with the other consultants accordingly.

3.3.10	Assist in reviewing the Contractor's programme for the Works as against the Programme and to ensure that it is achievable and meets the requirements
3.4	Statutory Approvals & Consents
3.4.1	Liaise with all external bodies as necessary throughout the Project to ensure that statutory and any regulatory requirements are met. Advise on any consents required.
3.4.2	Obtain authority from the Client prior to initiating contact with / submissions to external bodies.
3.5	Health & Safety
3.5.1	Ensure the Client is aware of the duties under CDM 2015.
3.5.2	Co-operate with Principal Designer at all stages of the project.
3.6	Digital Technology
3.6.1	Maintain records and copies of all documents received and issued in connection with the Project.

4.0 Specific Services

The services listed in the following section apply to the specific workstage, and will be delivered in conjunction with all general services listed in Section 3.0.

4.1	Workstage 5 – Manufacturing & Construction
4.1.1	To visit the sites as required to inspect the progress and quality of the work and compliance with the Contract Documents. Attendance will vary depending on the stage of construction and will be appropriate to ensure the quality is maintained. It is anticipated this be on a fortnightly basis, ramping up as the internal fit out programme commences.
4.1.2	To monitor that all elements of construction are in accordance with the relevant regulations, Codes of Practice, British Standards and the Contract documents.
4.1.3	Inspect the works in progress, including those of Sub-contractors, throughout the execution of the Contract for compliance with the Contract Documents.
4.1.4	Prepare and submit a report on the general progress of the works, labour force and weather to the Employer and the Employer's Agent / Council's representative after each inspection; prepare and submit reports of any incidents, variations, unusual circumstances and information required as necessary. This can also be in the form of workmanship tracker document.
4.1.5	Inform the Employer, Employer's Agent and Contractor in writing of any workmanship and materials found not to comply.
4.1.6	To report any contravention of the Health & Safety Regulations to the Client.
4.1.7	Attend all project meetings as reasonably required by the Contractor
4.1.8	Attend the site whenever reasonably requested to progress the construction of the works
4.2	Workstage 6 – Handover
4.2.1	Participate in snagging and defects schedule preparation in conjunction with the Contractor
4.2.2	Participate in preparing and executing plan for handover of the building at completion of any relevant phases
4.2.3	Participate in a post completion review of the project with the Client to enable future improvements to design, procurement and construction

Pricing Schedule				
Services (Weekly Inspection Rate)		x	Duration	
*120 Project Weeks				
				Total
	£ -	x	120	

Bidders are to supply a weekly rate for inspection
 Inspection reports will be included within this figure
 *Based on current construction programme

Populo Design and Build Limited
(Company No. 09643224)
373 High Street
London
E15 4QZ
("the **Employer**")

[ConsultantName]
(Company No. [])
[ConsultantAddress]
("the **Consultant**")

Date: _____

Dear Sirs,

[DEVELOPMENT NAME] ("THE DEVELOPMENT")

We are writing to set out the terms of your appointment ("**the Appointment**") as [] in connection with the Works relating to the Development as detailed in the Particulars. This letter and your acceptance will constitute the entire agreement between us which will replace any previous agreement between us (whether written or oral) in respect of the Services as detailed in the Particulars. Any or all services provided by you relating to the Development shall be treated as having been provided under the terms of this Appointment.

1 SCOPE OF THIS APPOINTMENT

- 1.1 This Appointment relates to the Site as detailed in the Particulars and to any roadworks, services, installations and other enabling works adjacent to or near to the Site which we may be required to provide for the purposes of the Development.
- 1.2 You will provide the Services detailed in the Particulars together with such other services that may reasonably be implied as necessary for the due and proper performance of the same, (including for the avoidance of doubt attendance at Site and/or design/project/progress meetings as reasonably necessary) all in accordance with this Appointment.
- 1.3 You shall comply with all reasonable instructions given by us in writing under or in connection with this Appointment.
- 1.4 In accordance with but not limited to your duties under the Construction (Design and Management) Regulations 2015 (and any other regulations amending supplementing or replacing the same) ("**the CDM Regulations**"), you will in addition to the performance of the Services, and in conjunction with any other consultants appointed by us, co-operate and assist the Principal Designer and the Principal Contractor (as defined under the CDM Regulations), in the preparation of the construction phase plan (and the health and safety file (to be prepared pursuant to the CDM Regulations).

- 1.5 You warrant to us that you are fully aware of the provisions of the CDM Regulations and that you possess the requisite degree of competence skill, knowledge, qualification, experience and level of resources and organisational capability to meet (and shall meet) the requirements of the CDM Regulations.

2 DUTY OF CARE

- 2.1 You warrant that you have exercised and will exercise in the performance of the Services all the reasonable skill care and diligence to be expected of a properly qualified and competent member of your profession providing professional services in connection with works of equivalent type size and complexity to the Works and the Development.

- 2.2 [You will exercise the degree of skill, care and diligence required by clause 2.1 not to specify for use, and not to approve for use, in the Development any products or materials which

(a) do not conform with British Standards or Codes of Practice or good building practice or

(b) are generally known to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or to the durability of buildings or structures.]

- 2.3 No enquiry, inspection, approval, sanction, comment, consent, decision, review or instruction at any time made or given by us or on our behalf shall operate to exclude or limit any duty or liability on your part under or in connection with this Appointment.

3 PROFESSIONAL INDEMNITY INSURANCE

- 3.1 You warrant that from the date hereof you will take out and/or maintain for a period expiring no earlier than twelve years from the date of practical completion of the Works with reputable insurers carrying on business in the United Kingdom professional indemnity insurance as detailed in the Particulars ("**the Insurance**") **PROVIDED ALWAYS** that the Insurance is generally available in the market to the your profession at commercially reasonable rates.

- 3.2 Any increased or additional premium required by insurers for the Insurance because of your claims record or other acts, omissions, matters or things particular to you shall be deemed to be within commercially reasonable rates.

- 3.3 When reasonably requested by us you will provide (but not in any way which would breach any term of the insurance policy then in force) documentary evidence that the Insurance is being maintained.

4 REMUNERATION

- 4.1 Your fee inclusive of expenses and all disbursements will be the Basic Fee (exclusive of VAT) as detailed in the Particulars which shall be paid in instalments on application by you to us in accordance with the payment profile set out in the Particulars ("**the Payment Profile**") and the provisions of this clause.

- 4.2 Any sums paid to you before the date of the Appointment shall be deemed to have been paid on account of the Basic Fee.
- 4.3 Every application for a payment instalment ("**Payment Application**") must be accompanied by a valid VAT invoice and such details as we may reasonably require. Payment shall be due on the date of receipt by us of a valid Payment Application ("**the Due Date for Payment**"). Every Payment Application must state the sum that you consider will become due to you on the Due Date for Payment and the basis upon which that sum has been calculated. The final date for payment of each payment instalment shall be 30 days from the Due Date for Payment ("**the Final Date for Payment**").
- 4.4 We shall, not later than 5 days after the Due Date for Payment, give notice to you ("**Payment Notice**") specifying the sum that we consider became due to you on the Due Date for Payment and the basis upon which such sum has been calculated. In respect of each payment instalment we shall pay to you by the Final Date for Payment (subject always to any Pay Less Notice), the sum detailed in the Payment Notice ("**Notified Sum**"), or where a Payment Notice is not served the sum stated in the Payment Application ("**Notified Sum**"). If we intend to pay less than the applicable Notified Sum we shall, not later than 1 day before the Final Date for Payment give notice to you ("**Pay Less Notice**") of the sum that we consider is due to you on the date such Pay Less Notice is served and the basis upon which such sum has been calculated, in which case we shall pay the sum stated in the Pay Less Notice to you by the Final Date for Payment. In relation to giving notices under this clause 4 it is immaterial that the amount then considered to be due may be zero.
- 4.5 Notwithstanding clauses 4.3 and 4.4, and without prejudice to clause 8, if you become insolvent (as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996 as amended) after the last day upon which a Pay Less notice could have been given, we shall not be required to pay you the Notified Sum or any other sum.
- 4.6 You shall be entitled to claim interest at the rate of 5% per annum above the current Bank of England base rate, on any sum that remains unpaid at the Final Date for Payment. Such interest shall accrue on a daily basis from the Final Date for Payment until actual payment of the overdue amount.
- 4.7 Nothing contained in this Appointment shall oust or limit any of our rights (whether arising under any term of this Appointment or under any statute or rule of law or of equity) in the nature of set-off or abatement of price and in particular any failure by us to serve a notice required under clause 4.4 shall not prevent us from subsequently challenging the amount claimed by you in your Payment Application.
- 4.8 If at our request you undertake any services additional to the Services or if by reason of any design changes authorised by us or any other circumstances beyond your control you are required to undertake significant extra work, then provided you notify us before undertaking that work that you may require an additional fee, a fair and reasonable additional fee shall be payable. Any such additional fee and the amount attributable to each stage/instalment set out in this clause 4 shall be agreed in writing between us prior to you undertaking any additional services or extra work. Such additional fee shall be paid in accordance with the provisions of this clause 4.

5 THIRD PARTY RIGHTS

5.1 Unless the context requires otherwise, "Third Party Rights" means the relevant rights in favour of a Third Party set out in Appendix 1 and "Third Party" means:

- (a) each and every party providing finance in connection with the Development or for the purchase or letting of the Development or any part ("a Funder"); and
- (b) each and every person who will first purchase (whether freehold or on a long leasehold interest) the Development or any part whether before or after completion of the Works/Development ("a Purchaser"); and
- (c) each and every person who will first take a lease of the Development or any part whether before or after completion of the Works/Development ("a Tenant"); and
- (d) each and every party with responsibility for management of the whole or part of the Works/Development or of an estate of which the Works/Development forms the whole or part ;and
- (e) any other third party detailed in the Particulars.¹

and in the case of Third Party Rights shall include their permitted assignees.

5.2 You shall at our written request and upon receipt of the necessary engrossment or engrossments enter into and execute collateral warranties in favour of a Third Party (or in favour of us for onward assignment to a Third Party) in the relevant form set out in Appendix 2 (but without prejudice to the beneficiary of the warranty being able to make reasonable changes thereto which do not result in the warranty being more onerous for the Consultant). Where such warranty or warranties has not or have not been provided within 14 days of receipt of the necessary engrossment or engrossments we may, notwithstanding any other provisions of this Appointment, withhold any payment due to you under this Appointment until such time as the warranties requested have been satisfactorily executed and delivered to us or our nominated representative.

5.3 Where, instead of requesting a collateral warranty under clause 5.2, we choose to vest Third Party Rights in a Third Party, these Third Party Rights shall vest in that Third Party (who shall have the benefit of them) on the date of receipt by you of a notice from us to that effect, stating the name of the Third Party.

5.4 Any notice given by us under clause 5.3 specifying as a Third Party a Funder or a Purchaser, may, if we so require, specify that such Third Party shall:

- (a) itself be entitled to give you notice under clause 5.3 conferring the benefit of the Third Party Rights upon any other Third Party and any such notice shall have effect; and/or

¹ insert details of any other third party that requires the benefit of third party rights e.g. the current freehold owner of the Site; the Contractor where consultant carrying out ground/site investigation services and not being novated to the Contractor

- (b) be entitled to the benefit of paragraph 9 of Appendix 1 (Step-in), and such notice shall have effect.

5.5 Where Third Party Rights have vested in any Third Party then:

- (a) the parties to this Appointment shall not be entitled without the consent of such Third Party to amend or vary the express provisions of this clauses 5 or of Appendix 1 (Third Party Rights);
- (b) the respective rights of the parties to this Appointment to terminate your employment under this Appointment (whether under clause 8 or otherwise), or to agree to rescind this Appointment shall not be subject to the consent of any Third Party save where Third Party rights have vested in the Specified Third Party (if any) and/or where applicable a Funder and/or Purchaser in which case neither of the parties to this Appointment shall agree to rescind this Appointment without the consent of the Specified Third Party (if any) and/or where applicable such Funder and/or Purchaser, and your rights to terminate your employment under this Appointment or to treat it as repudiated shall in all respects be subject to the provisions of paragraph 9 of Appendix 1.

6 ASSIGNMENT/NOVATION

- 6.1 We may assign, charge or otherwise transfer all or any of our rights and/or benefits arising under this Appointment without your consent. You shall not contend that any person to whom the benefit of this Appointment is assigned may not recover any sum under this Appointment because that person is an assignee and not a named party to this Appointment.
- 6.2 You shall not assign charge or otherwise transfer all or any of your rights and/or benefits arising under this Appointment without our prior written consent.
- 6.3 You shall not nominate any specialist contractors, sub-contractors or suppliers or sub-let the whole or any part of the Services without our prior written consent. In the event that such consent is given, the sub-letting of such Services shall not absolve you from your duties, obligations and liabilities under this Appointment.
- 6.4 [We may novate this Appointment to a party who shall accept responsibility for the payments becoming due to you and you shall accept the instructions of the party to whom this Appointment is novated to the exclusion of ourselves and you shall continue to perform and discharge the Services and shall at our written request and upon receipt of the engrossment or engrossments enter into and execute a deed of novation in the form set out in Appendix 3.]

7 COPYRIGHT AND CONFIDENTIALITY

- 7.1 The copyright in all documents produced pursuant to the Appointment ("the Documents") shall remain vested in you but you hereby grant to us and our duly appointed agents an irrevocable, non-exclusive and royalty free licence to copy and use the Documents and reproduce the designs and information contained in them for any purpose relating to the Development, its development and use but you shall not be liable for any use other than that

for which the Documents were originally prepared. Such licence shall be capable of sub-licence and assignment.

- 7.2 You agree to supply to us on request copies of the Documents and such other information in relation to the Development as you can reasonably supply.
- 7.3 You warrant that the use of the Documents for the purposes of the Development will not infringe the rights of any third party.
- 7.4 All of the Documents and other materials relating to the Development whether produced by you or not shall be treated with confidentiality save where you have obtained the express written consent of us to pass such information to a third party.
- 7.5 You will not without our prior written approval take or permit to be taken any photographs of the Development 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 Development nor impart to any publication journal or newspaper or any radio or television programme any information regarding the Development.

8 TERMINATION/SUSPENSION

- 8.1 We may terminate your employment under this Appointment by giving 14 days written notice to you.
- 8.2 If you breach your obligations under this Appointment or if you become insolvent (as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996 as amended) we may terminate your Appointment forthwith by giving written notice to you.
- 8.3 If your employment under the Appointment is terminated by us in accordance with the provisions of clause 8.1 or 8.2 (or is deemed to have been terminated under the provisions of clause 8.5) we shall (unless the termination was due to your breach) be liable to pay you that part of the fee payable under clause 4 which shall have accrued prior to the date of such termination less the amount of any payments previously made by us to you but we shall not be otherwise liable to you for any loss of profit, loss of contract or other costs, fees, loss and/or expenses arising out of or in connection with such termination, regardless of whether or not we appoint a third party to complete the Services.
- 8.4 We shall be entitled at any time by giving 7 days written notice to you to suspend all or any part or parts of the Services. In the event that we suspend all or any part or parts of the Services, we shall be liable to pay you that part of the Basic Fee payable under clause 4 which shall have accrued prior to the date of such suspension less the amount of any payments previously made by us to you but we shall not be otherwise liable to you for any fees applicable to such part or parts of the Services as are not carried out by you nor shall we otherwise be liable to you for any loss of profit, loss of contract or other costs, fees, loss and/or expenses arising out of or in connection with such suspension.
- 8.5 In the event of a suspension in accordance with the provisions of clause 8.4 for a period exceeding 12 months you may request in writing that the suspended Services be resumed and unless written instructions to resume are given by us within 28 days of your request your

employment in respect of the suspended Services shall be deemed to have been terminated upon the expiry of the said period of 28 days and the provisions of clause 8.4 shall apply in respect of payment of your fees.

- 8.6 Any termination deemed termination or suspension of your employment under this Appointment under the provisions of this clause 8 shall not determine the operation of clauses 3,5 and 7 which shall continue to apply but only insofar as they relate to duties falling due for performance prior to the date of termination.
- 8.7 Termination or deemed termination of your employment under the Appointment howsoever arising shall be without prejudice to the rights or remedies of either party in relation to any negligence omission or default of the other prior to such termination.

9 NOTICES

- 9.1 Any notice provided for in this Appointment shall be duly given if delivered by hand or sent by first class pre-paid special delivery or recorded delivery post to the party named therein at the address of such party shown above in this Appointment or at such other address as such party may specify from time to time by written notice to the other party hereto. If the notice is sent by first class pre-paid special delivery or recorded delivery post it shall be deemed to have been received on the second working day after the date of posting. If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered.

10 ADJUDICATION

- 10.1 The provisions of Part I of the Schedule to the Scheme for Construction Contracts (England & Wales) Regulations 1998 (as amended) shall apply to this Appointment.
- 10.2 The body responsible for selecting a person to act as an adjudicator shall be The Chartered Institute of Arbitrators.

11 LITIGATION

- 11.1 This Appointment and any dispute or claim arising out of, relating to or in connection with it is governed by, and construed in accordance with, the laws of England. All disputes or claims arising out of, relating to or in connection with this Appointment shall be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.

12 OTHER AGREEMENTS

- 12.1 You shall be supplied with copies of any agreement now or hereafter made between us and a Third Party which relates to the Works and/or Development including (but not limited to) any building contract, development agreement or lease or sale or funding agreements ("Third Party Agreement") (or such parts of the same as shall be relevant to the provision of the Services) and subject to you receiving copies of such Third Party Agreements (or of such parts of the same as shall be relevant) at the date hereof you shall so perform and discharge the Services so far as to comply with and so as not by any action or omission to cause or contribute towards a breach of our duties and obligations under such Third Party Agreements. If any Third Party Agreements (or relevant parts of the same) are provided to you after the

date hereof you shall (subject to you having a reasonable opportunity to review such Third Party Agreements or relevant parts thereof) so perform and discharge the Services so far as to comply with and so as not by any action or omission to cause or contribute towards a breach of our duties and obligations under such Third Party Agreements.

13 LIMITATION

- 13.1 Neither party shall commence any legal action against the other under the Appointment after the expiry of 12 years from [the date of practical completion of the Works] and any adjudicator's decision under clause 10 of the Appointment shall be finally binding on them unless either party has referred that dispute for final determination by legal proceedings, or has commenced any legal action to recover any overpayment to which the decision has led, before that date.

14 BRIBERY ACT 2010

- 14.1 You undertake and warrant to us without qualification or limitation:
- (a) that at the date of signature of this Appointment you (and your employees, agents and all other persons employed or engaged on or in connection with any work you have previously or are currently or may be undertaking ("the Consultant's Persons") (to the extent you could, did and/or ought to have been able to ascertain the same)) have not committed and/or permitted an offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 or committed one of the common law offences of bribery and/or embracery; and
 - (b) that after the date of signature of this Appointment you (on behalf of yourself and the Consultant's Persons) will not commit and/or permit an offence under the Bribery Act 2010.
- 14.2 You shall be responsible for and shall indemnify us from and against any and all liabilities, fines, losses, claims, proceedings and expenses resulting from any failure or default by you in performing your obligations and/or breaching any undertaking or warranty under clause 14.1.

IN WITNESS WHEREOF this Appointment has been executed as a Deed by or on behalf of the parties and delivered the day and year first above written

EXECUTED as a DEED by POPULO DESIGN)
AND BUILD LIMITED acting by (or where the)
Common Seal of **POPULO DESIGN AND BUILD**)
LIMITED was hereunto affixed, in the presence of:)

Director :

.....
Signature

.....
Print Name

Director/Secretary:

.....
Signature

.....
Print Name

EXECUTED as a DEED by [CONSULTANT])
acting by (or where the Common Seal of)
[CONSULTANT] was hereunto affixed, in the)
presence of):)

Director :

.....
Signature

.....
Print Name

Director/Secretary:

.....
Signature

.....
Print Name

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PARTICULARS

Services ("the Services")

Insert details of the services to be provided: "the Services" which expression shall include any additional services under clause 4.9:

[INSERT]

Basic Fee ("the Basic Fee")

Basic Fee: [] pounds (excluding VAT)

Payment Profile ("the Payment Profile")

Invoice Submission Date: [First] working day after end of period to which the payment instalment relates

Due Date for Payment: [The date of] receipt by the Client of a valid application for payment to which the payment instalment relates

Final Date for Payment: [28] days after the relevant Due Date for Payment

<u>Period to which Payment Instalment Relates</u>	<u>Amount of Payment Instalment</u>

Development ("the Development")

The construction of:

- []
- at [] ("the Site") [SiteName]
- of which the Works from [a part] [the whole]. [delete as required]

Works ("the Works")

The works briefly described as follows:]

Insurance ("the Insurance")

Professional indemnity insurance to cover your obligations and liabilities under or in connection with the Works of not less than [] million pounds (£[],000,000) for [each and every claim arising out of any

one event] [any one occurrence or series of occurrences arising out of any one event] [save for claims in relation to pollution or contamination or date recognition which shall be in the aggregate for each one year of insurance].

Third Party Rights – clause 5

Clause 5.1 (e) – [insert details of any other relevant third party]

Specified Third Party

Clause 5.5

Name of Specified Third Party:

Or

No Specified Third Party

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APPENDIX 1

THIRD PARTY RIGHTS SCHEDULE ("THE TPR SCHEDULE")

1 DUTY OF CARE WARRANTY

- 1.1 The Consultant (which expression shall include its successors in title and assigns) warrants to and undertakes to the Third Party that:
- (a) it has complied with and/or shall comply with all the Consultant's obligations under the Appointment and that in the performance of its duties under the Appointment (and under any supplemental deeds entered into after the date of the Appointment varying such duties under the Appointment) the Consultant has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of a properly qualified and competent consultant of the Consultant's discipline experienced in providing professional services in connection with works of equivalent type size and complexity to the Development.
 - (b) it has exercised and will continue to exercise the degree of skill, care and diligence required by paragraph 2.2(a) not specify for use, and not to approve for use, in the Development any products or materials which (a) do not conform with British Standards or Codes of Practice or good building practice or (b) are generally known to be deleterious, in the particular circumstances in which they specified for use, to health and safety and/or to the durability of buildings or structures.

2 COPYRIGHT

- 2.1 The copyright in all documents produced pursuant to the Appointment ("the Documents") shall remain vested in the Consultant but the Consultant hereby grants to the Third Party and its duly appointed agents an irrevocable, non-exclusive and royalty free licence to copy and use the Documents and reproduce the designs and information contained in them for any purpose relating to the Development, its development and use but the Consultant shall not be liable for any use other than that for which the Documents were originally prepared. Such licence shall be capable of sub-licence and assignment.
- 2.2 The Consultant agrees to supply to the Third Party on request (but subject to reimbursement of its reasonable photocopying charges) copies of the Documents and such other information in relation to the Development as the Consultant can reasonably supply.
- 2.3 The Consultant warrants that the use of the Documents for the purposes of the Development will not infringe the rights of any third party.

3 PROFESSIONAL INDEMNITY INSURANCE

- 3.1 The Consultant warrants that from the date hereof it will take out and/or maintain professional indemnity insurance covering its liabilities for negligence under the Appointment as detailed in the Particulars to the Appointment until the expiry of 12 years from the date of practical completion of the Works (or, if sooner until twelve years after the termination of its employment under the Appointment) ("the Insurance") provided such insurance is available to

the Consultant's profession at commercially reasonable rates and terms. If for any period the Insurance ceases to be available to the Consultant's profession at commercially reasonable rates and terms the Consultant shall forthwith inform the Third Party and shall obtain in respect of that period such reduced cover (if any) as is available to the Consultant at commercially reasonable rates and terms as it would be prudent and reasonable for the Consultant to accept.

- 3.2 When reasonably requested by the Third Party, the Consultant will provide (but not in any way which would breach any term of the insurance policy then in force) documentary evidence that the Insurance is being maintained.

4 ASSIGNMENT

- 4.1 The benefit of these Third Party Rights may be assigned on two occasions only without the consent of the Consultant.

- 4.2 The limitations on assignment contained in paragraph 4.1 shall not apply:

- (a) to assignments between, and the benefit of this Deed shall be freely assignable between, the Third Party and its direct or indirect holding companies and its direct or indirect subsidiaries (within the meaning of s736 Companies Act 1985 as amended)
- (b) to assignments to any party having or acquiring a mortgage or charge over the Development or any part of it and by way of re-assignment on redemption.

- 4.3 The Consultant shall not be entitled to contend that any person to whom these Third Party Rights are assigned in accordance with paragraph 4.2 is precluded from recovering for breach of such rights any loss incurred by such assignee resulting from the breach of these Third Party Rights (whenever happening) by reason that such person is an assignee and not the original beneficiary of such rights.

5 INDEPENDENT INSPECTION AND DELEGATION

- 5.1 The liability of the Consultant under these Third Party Rights shall not be modified released or diminished or in any way affected by any independent inspection investigation review or enquiry into any relevant matter which may be made or carried out by or for the Third Party nor by any failure or omission to carry out any such inspection investigation or enquiry nor by the appointment by the Third Party of any independent firm company or party whatsoever to review the progress of or otherwise report to the Third Party in respect of the Consultant's duties under the Appointment nor by any action or omission of such firm company or party whether or not such action or omission might give rise to any independent liability of such firm company or party to the Third Party provided always that nothing in this clause shall modify or affect any rights which the Consultant might have but for the existence of this clause to claim a contribution from any third party whether under statute or at common law.

- 5.2 It is hereby agreed and declared that the duties obligations responsibilities and liabilities of the Consultant under these Third Party Rights shall not be modified released or in any way affected by the fact that the Consultant may delegate or may have delegated all or any part of the services under the Appointment to a sub-consultant or sub-contractor.

6 LIMITATION

- 6.1 No action or proceedings for any breach of these Third Party Rights shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Development.
- 6.2 The Consultant shall be entitled in any action or proceedings by the Third Party to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as it would have against the employer under the Appointment provided always that the Consultant shall not be entitled to raise any defence made on the basis that any loss incurred by the Third Party is not a loss to such employer nor shall it be entitled to raise a defence to a claim under this Deed any contributory negligence defence, counterclaim or set-off that it may have against the employer under the Appointment.

7 NOTICES

- 7.1 Any notice provided for in this Deed shall be duly given if delivered by hand or sent by first class pre-paid special delivery or recorded delivery post to the party named therein at the address of such party shown above in this Deed or at such other address as such party may specify from time to time by written notice to the other party hereto. If the notice is sent by first class pre-paid special delivery or recorded delivery post it shall be deemed to have been received on the second working day after the date of posting. If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered.

8 LAW

- 8.1 This Schedule and any dispute or claim arising out of, relating to or in connection with these Third Party Rights is governed by, and construed in accordance with, the laws of England and shall be subject to the jurisdiction of the English courts to which the parties irrevocably submit.

9 STEP-IN RIGHTS

- 9.1 This paragraph 9 shall apply in favour of any other Third Party that is granted a right to enforce this paragraph 9 pursuant to a notice under clause 5.3 of the Appointment (clause 5.4 refers).
- 9.2 The Consultant will if so required at any time by notice in writing given to it by the Third Party accept the instructions of the Third Party or its appointee to the exclusion of the employer under the appointment to continue to perform its duties and responsibilities under the Appointment and the Appointment shall continue in full force and effect as if the Third Party or its appointee had been named as employer ab initio under the Appointment.
- 9.3 The Consultant will not in any circumstances exercise any right it may have to terminate the Appointment or treat the same as having been repudiated or to discontinue the performance of its duties and responsibilities thereunder until it shall first have given the Third Party not less than 21 days written notice of such matters provided that after the service of such notice the Consultant shall not be in breach of any obligations to the employer under the appointment by reason of the Consultant complying with instructions given to it by the Third

Party and the Consultant shall not be obliged to consult or act on the instructions of the employer under the appointment.

- 9.4 If within such period of notice the Third Party shall give notice in writing to the Consultant that it is not content that the Appointment shall be determined repudiated or discontinued as aforesaid and requiring the Consultant to accept the instructions of the Third Party or its appointee to the exclusion of the employer under the appointment to carry out and complete its obligations under the Appointment then the Appointment shall continue in full force and effect as if the Third Party or its appointee had been named as employer ab initio under the Appointment and as if no right of termination on the part of the Consultant had arisen.
- 9.5 Provided always that any notice given by the Third Party under paragraphs 9.1 or 9.3 must be executed as a Deed and must contain an undertaking by the Third Party to comply with its obligations under this paragraph including an undertaking that in the event of the Third Party's right to be substituted for the employer under the appointment being exercised the Third Party or its appointee accepts liability for payment of the monies payable to the Consultant under the Appointment including payment of any monies properly due to the Consultant under the terms of the Appointment and outstanding at the date of such notice.

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APPENDIX 2

FORM OF COLLATERAL WARRANTY

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THIS DEED OF WARRANTY is made on

BETWEEN:

- (1) **CONSULTANT** as detailed in the Warranty Particulars ("**the Consultant**" which expression shall include its successors in title and assigns and those deriving title under it or them)
- (2) **BENEFICIARY** as detailed in the Warranty Particulars ("**the Beneficiary**" which expression shall include its successors in title and assigns and those deriving title under it or them)
- [(3) **EMPLOYER/CONTRACTOR** as detailed in the Warranty Particulars ("**the Employer**"/"**the Contractor**")]

WHEREAS:

- (A) the EMPLOYER as detailed in the Warranty Particulars ("**the Employer**") [The Beneficiary has appointed the Consultant by an appointment made between the [Employer/Beneficiary] of the one part and the Consultant of the other part as detailed in the Warranty Particulars ("**the Appointment**") in connection with the design construction and completion of works (more particularly described in the Building Contract) ("**the Works**") which form part of the construction of the development as detailed in the Warranty Particulars ("**the Development**").

OR

- (A) The Employer as detailed in the Warranty Particulars ("**the Employer**") [The Beneficiary] has appointed the CONTRACTOR as detailed in the Warranty Particulars ("**the Contractor**") by a contract made between the [Employer/Beneficiary] of the one part and the Contractor of the other part as detailed in the Warranty Particulars ("**the Building Contract**") in relation to works (more particularly described in the Building Contract) ("**the Works**") and the construction of the development as detailed in the Warranty Particulars ("**the Development**").
- (B) By a contract ("**the Appointment**") dated [] the [Employer/Beneficiary] appointed the Consultant in connection with the Development as detailed in the Warranty Particulars and by a Novation Agreement the Contractor was substituted as the employer of the Consultant under the Appointment as detailed in the Warranty Particulars.
- (B)/(C) The Beneficiary has agreed to enter into and/or entered into an agreement with the Employer as detailed in the Warranty Particulars ("**the Agreement**").

OR

- (B)/(C) The Consultant has agreed to enter into this Deed in order for the Beneficiary to be able to assign the benefit of this Deed to a party acquiring an interest in the Development.
- [(C) The Employer/Contractor is a party to this Deed for the purpose of confirming its agreement to clause 13 of this Deed (Step-in rights).]
- [(D)(E)] The Beneficiary has paid (and the Consultant acknowledges that the Beneficiary has paid) £1 to the Consultant [and the Employer/Contractor] as consideration under this Deed.

NOW THIS DEED WITNESSETH as follows:

11 DUTY OF CARE WARRANTY

11.1 The Consultant warrants to and undertakes to the Beneficiary that it has complied with and/or shall comply with all the Consultant's obligations under the Appointment (and under any supplemental deeds entered into after the date of the Appointment varying such duties under the Appointment) and that in the performance of its duties under the Appointment the Consultant has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of a properly qualified and competent member of the Consultant's profession experienced in providing professional services in connection with works of equivalent type size and complexity to the Works and the Development.

11.2 The Consultant further warrants that it owes a duty of care to the Beneficiary and the Consultant acknowledges that the Beneficiary will be relying upon the Consultant complying with its obligations under the Appointment.

Provided that the Consultant shall have no greater liability to the Beneficiary by virtue of this Deed than it would have had if the Beneficiary had been named as Employer under the Appointment provided always that the Consultant shall not be entitled to raise any defence made on the basis that loss incurred by the Beneficiary is not a loss to (or is not the same loss suffered by) the Contractor nor shall it be entitled to raise as a defence to a claim under this Deed any counterclaim or set-off that it may have against the Contractor under the Appointment.

12 MATERIALS

The Consultant warrants to and undertakes with the Beneficiary that, unless authorised by the Contractor in writing (and confirmed by the Employer), or, where such authorisation is given orally, confirmed by the Consultant to the Contractor and the Employer in writing, it has exercised and will continue to exercise the degree of reasonable skill, care and diligence required by clause 1.1 to see that it has not and will not specify for use in the development any products or materials which:

- (a) at the time of specification do not conform to British standards or EU equivalent or codes of practice or good building practice; and/or
- (b) at the time of specification are generally known 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.

13 DELEGATION

It is hereby agreed and declared that the duties obligations responsibilities and liabilities of the Consultant under this Deed shall not be modified released or in any way affected by the fact that the Consultant may delegate or may have delegated all or any part of the design of the works to a sub-consultant or sub-contractor.

14 COPYRIGHT

14.1 All design rights and copyright in all technical information drawings models bills of quantities specifications schedules details plans calculations or other materials provided or to be provided by the Consultant in respect of the Works/Development and all amendments and additions thereto (whether in existence or yet to be made) and any works designs or inventions of the Consultant incorporated or referred to therein ("the Documents") shall

remain vested in the Consultant but the Consultant hereby grants to the Beneficiary an irrevocable non-exclusive and royalty-free licence to use, reproduce and modify the Documents for all purposes relating to the Works/Development including (without limitation) the construction completion reconstruction modification alteration maintenance reinstatement repair use letting sale promotion and advertisement thereof. Such licence shall include a licence to use the Documents for the extension of the Works/Development but such use shall not include a licence to reproduce the designs contained in the Documents for any extension of the Works/Development. The licence shall include the right without the consent of the Consultant to assign the licence or grant a sub-licence to any person whatsoever provided that the Consultant shall not be liable for any such use by the Beneficiary or any licensee for any purpose other than that for which the same were provided by the Consultant.

- 14.2 The Consultant shall upon the written request of the Beneficiary (but subject to reimbursement of the Consultant's reasonable photocopying charges) provide to the Beneficiary copies of the Documents and such other information in relation to the Works as the Consultant can reasonably supply.

15 BENEFICIARY'S RIGHTS AND LIABILITIES

- 15.1 Save as hereinafter mentioned the Beneficiary has no authority to issue any direction or instruction to the Consultant in relation to the performance of the Consultant's duties and responsibilities under the Appointment.
- 15.2 The Consultant acknowledges that the Beneficiary has no liability to the Consultant in respect of fees and expenses under the Appointment unless and until the Beneficiary exercises its rights under clause 13 (if applicable) to be substituted for the Contractor.

16 INSURANCE

- 16.1 The Consultant currently has, or shall take out from the date hereof, and will maintain for a period expiring no earlier than twelve years from the date of practical completion of the Works with reputable insurers carrying on business in the United Kingdom professional indemnity insurance as detailed in the Warranty Particulars ("**the Insurance**") **PROVIDED ALWAYS** that the insurance is generally available in the market to the Consultant's profession at commercially reasonable rates.
- 16.2 Any increased or additional premium required by insurers for the Insurance referred to in clause 6.1 because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 16.3 The Consultant shall when required so to do supply to the Beneficiary satisfactory documentary evidence of the Insurance and shall immediately inform the Beneficiary if the Consultant fails to renew the Insurance or fails to renew the Insurance at the level required by clause 6.1.

17 ASSIGNMENT

- 17.1 The benefit of this Deed may only be assigned as detailed in the Particulars and as detailed in this clause 7.
- 17.2 The limitations on assignment contained in clause 7.1 shall not apply:
- (a) to and from subsidiaries or other associated companies within the same group of

companies as the Beneficiary (within the meaning of section 1159 of the Companies Act 2006 (as amended or re-enacted) so long as that assignee remains within the same group of companies as the Beneficiary); or

- (b) to assignments to any party having or acquiring a mortgage or charge over the Development or any part of it and by way of re-assignment on redemption.

17.3 The Consultant shall not be entitled to contend that any person to whom this Deed to assigned in accordance with clause 7.1 or 7.2 is precluded from recovering under this Deed any loss incurred by such assignee resulting from the breach of this Deed (whenever happening) by reason that such person is an assignee or has suffered a different loss from that of the Beneficiary.

17.4 The Consultant shall not be entitled to assign transfer charge or otherwise dispose of all or any of its rights or liabilities arising under this Deed to any other party.

18 INDEPENDENT INSPECTION

The liability of the Consultant under this Deed shall not be modified released or diminished or in any way affected by any independent inspection investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection investigation or enquiry nor by the appointment by the Beneficiary of any independent firm company or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Consultant's duties under the Appointment nor by any action or omission of such firm company or party whether or not such action or omission might give rise to any independent liability of such firm company or party to the Beneficiary provided always that nothing in this clause shall modify or affect any rights which the Consultant might have but for the existence of this clause to claim a contribution from any third party whether under statute or at common law.

19 LIMITATION

No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Works under the Building Contract.

20 NOTICES

Any notice provided for in this Deed shall be duly given if delivered by hand or sent by first class pre-paid special delivery or recorded delivery post to the party named therein at the address of such party shown above in this Deed or at such other address as such party may specify from time to time by written notice to the other parties hereto. If the notice is sent by first class pre-paid special delivery or recorded delivery post it shall be deemed to have been received on the second working day after the date of posting. If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered.

21 LAW

Any and all disputes and claims between the parties (and their successors in title and assigns) to this Deed as to the construction interpretation validity and application of this Deed and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed by English law and the jurisdiction of the English Courts and shall be and are hereby referred to the English Courts.

22 CONTRACTS (RIGHTS OF THIRD PARTIES ACT) 1999

Notwithstanding any other provision of this Appointment nothing in this Appointment confers or purports to confer any right to enforce any of its terms on any person who is not a party to it where that right would not exist but for the Contracts (Rights of Third Parties) Act 1999.

23 STEP-IN RIGHTS [STEPINRIGHTS]² (IF APPLICABLE – SEE PARTICULARS)

- 23.1 The Consultant will if so required at any time by notice in writing given to it by the Beneficiary accept the instructions of the Beneficiary or its appointee to the exclusion of the original employer under the Appointment to continue to perform its duties and responsibilities under the Appointment and the Appointment shall continue in full force and effect as if the Beneficiary or its appointee had been named as employer ab initio under the Appointment.
- 23.2 The Consultant will not in any circumstances exercise any right it may have to terminate the Appointment or treat the same as having been repudiated by the original employer under the Appointment or to discontinue the performance of its duties and responsibilities thereunder until it shall first have given the Beneficiary not less than 21 days written notice of such matters provided that after the service of such notice the Consultant shall not be in breach of any obligations to the original employer under the Appointment by reason of the Consultant complying with instructions given to it by the Beneficiary and the Consultant shall not be obliged to consult or act on the instructions of the original employer under the Appointment.
- 23.3 If within such period of notice the Beneficiary shall give notice in writing to the Consultant that it is not content that the Appointment shall be determined repudiated or discontinued as aforesaid and requiring the Consultant to accept the instructions of the Beneficiary or its appointee to the exclusion of the original employer under the Appointment to carry out and complete its obligations under the Appointment then the Appointment shall continue in full force and effect as if the Beneficiary or its appointee had been named as employer ab initio under the Appointment and as if no right of termination on the part of the Consultant had arisen.
- 23.4 Provided always that any notice given by the Beneficiary under clauses 10.1 or 10.3 shall state that in the event of the Beneficiary's right to be substituted for the original employer under the appointment being exercised the Beneficiary or its appointee accepts liability for payment of the monies payable to the Consultant under the Appointment including payment of any monies properly due to the Consultant under the terms of the Appointment and outstanding at the date of such notice.

IN WITNESS whereof this Deed has been executed by or on behalf of the parties and delivered the day and year first above written

[insert appropriate attestation clauses]

² only to be included in warranties in favour of a fund/forward purchaser and reverse warranties in favour of employer (with employer to have priority) and employer/contractor to be added as party to the warranty as necessary and amend recitals accordingly

WARRANTY PARTICULARS

Contractor ("the Contractor")

Company Name []

Company Number []

Address of Registered Office []

Consultant ("the Consultant")

Company Name []

Company Number []

Address of Registered Office []

Employer ("the Employer")

Company Name []

Company Number []

Address of Registered Office []

Beneficiary ("the Beneficiary")

Company Name []

Company Number []

Address of Registered Office []

Building Contract ("the Building Contract")

Contract between the Contractor and the Employer dated [].

Appointment ("the Appointment")

Contract between the Consultant and the Employer dated [].

Works ("the Works")

[the works briefly described as follows:.....]

Development ("the Development")

The construction of:

- []

- at [] ("the Site")
- of which the Works form [a part] [the whole]. [delete as required]

Insurance ("the Insurance")

Professional indemnity insurance to cover the Consultant's obligations and liabilities under or in connection with the Works of not less than [] million pounds (£[],000,000) for [each and every claim arising out of any one event] [any one occurrence or series of occurrences arising out of any one event] [save for claims in relation to pollution or contamination or date recognition which shall be in the aggregate for each one year of insurance].

Novation Agreement

The Contractor and the Consultant and the Employer have entered into an agreement dated etc.....

Assignment – Clause 7.1

Number of assignments permitted without the requirement for the consent of the Consultant:

- two
- three
- other [complete]

STEP-IN RIGHTS [STEPINRIGHTS]

Step in rights in clause 13 are/are not included.³

³ Only to be included in warranties in favour of a fund/forward purchaser and reverse warranties in favour of employer (with employer to have priority) and employer/contractor to be added as party to the warranty as necessary and amend recitals accordingly

[APPENDIX 3]

DEED OF NOVATION

Private and Confidential

Draft

DATED 20

[EMPLOYER] (1)

and

[CONTRACTOR] (2)

and

[CONSULTANT] (3)

DRAFT

NOVATION OF CONSULTANT'S

APPOINTMENT

Employer to Contractor relating to a development

at

[]

THIS DEED is made on

BETWEEN:

- (1) **THE EMPLOYER;**
- (2) **THE CONTRACTOR; and**
- (3) **THE CONSULTANT**

WHEREAS:

- (A) The Consultant has been appointed in connection with the Project at the Site by way of an Appointment issued pursuant to the Framework Agreement to undertake the Consultant's Discipline in connection with the Project.
- (B) The Employer and the Contractor have entered into the Building Contract.
- (C) The parties have agreed to novate the Appointment to the Contractor on the terms set out below.
- (D) It is intended by the parties hereto that the Contractor shall be entitled to recover damages from the Consultant in respect of any losses suffered by the Contractor arising by reason of any breaches by the Consultant of the Appointment prior to, and following, the date hereof.

NOW THIS DEED WITNESSES and the parties agree as follows:

- 1. The words and phrases in this Deed shall have the meanings ascribed to them in Schedule 1.
- 2. The Appointment is hereby novated from the Employer and the Consultant to the Contractor and the Consultant. The Employer shall no longer owe any duty or obligation to the Consultant under or in respect of the Appointment.
- 3. The Consultant shall no longer owe any duty or obligation to the Employer under the Appointment whether by virtue of its terms or by virtue of any breach or otherwise.
- 4. The Consultant warrants to the Contractor that it has complied with and will continue to comply with the Consultant's obligations under the Appointment. The Consultant acknowledges that the Contractor has relied upon, and will rely upon, the Consultant's performance of such obligations prior to and following the date hereof. It is agreed that the Consultant shall be liable for all losses suffered by the Contractor as a result of any breaches of such obligations, whether or not such losses were suffered by the Employer (whether solely, or jointly with the Contractor, or otherwise) and whether or not such losses were suffered prior to the date hereof.
- 5. The Consultant binds himself to the Contractor in the terms of the Appointment as if the Contractor were and always had been named in the Appointment in place of the Employer.
- 6. The Contractor binds itself to the Consultant in the terms of the Appointment as if the Contractor were and always had been named in the Appointment in place of the Employer.
- 7. All rights of action and remedies vested in the Employer against the Consultant under the Appointment shall from the date of this Deed vest in the Contractor.
- 8. All rights of action and remedies vested in the Consultant against the Employer under and in respect of the Appointment shall from the date of this Deed lie against the Contractor.

9. The Consultant acknowledges that [all fees and disbursements earned by the Consultant in respect of services performed to date under the Appointment have been paid in full/the Consultant has been paid at least [£] to date under the Appointment].
10. [The Consultant and the Contractor agree that the terms of the Appointment shall be and are varied in the manner set out in Schedule 2.]
11. Subject to the terms of this Deed the Appointment shall remain in full force and effect.
12. Nothing in this Deed shall affect or derogate from any collateral warranty given or to be given by the Consultant to the Employer respecting the Project.
13. Any notice to be given under this Deed shall be in writing and shall be deemed to be given properly if it is delivered by hand, or sent by registered post or recorded delivery to the address of the relevant party set out above (or such other address as that party may have nominated for service). If the notice is sent by registered post or recorded delivery, it shall be deemed to be received two working days after the day it was posted. If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered.
14. This Deed and any dispute or claim arising out of, relating to or in connection with it is governed by, and construed in accordance with, the laws of England. All disputes or claims arising out of, relating to or in connection with this Deed shall be subject to the jurisdiction of the English courts to which the parties irrevocably submit.
15. This Deed is not intended to confer any rights on any third party pursuant to The Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this deed has been executed by or on behalf of the parties and delivered the day and year first above written

SCHEDULE 1

DEFINITIONS

Appointment	:	the contract [order/orders] dated [] issued by the Employer to the Consultant pursuant to clause [4.1] of the Framework Agreement and incorporating the documents referred to in clause [4.3] of the Framework Agreement.
Building Contract	:	a building contract made between the Employer and the Contractor dated [] based upon the [] (as amended) for the Project at the Site.
Consultant	:	[] [(Company Number []) whose registered office is at][of] []
Consultant's Discipline	:	[]
Contractor	:	[] (Company Number []) whose registered office is at [].
Employer	:	[] (Company Number []) whose registered office is at []
Framework Agreement	:	the framework agreement made between [] of the one part and the Consultant of the other part dated [] to provide the provision of [] services as and when required by [] and its group companies in connection with, amongst other things, planning, design, remediation and/or construction projects.
Project	:	[the design, construction and completion of []].
Site	:	[]

SCHEDULE 2

Variations to the terms of the Appointment

[insert appropriate attestation clauses]

DRAFT

TENDER FOR [INSERT WORKS/SERVICES/CONSULTANT]

CERTIFICATE OF NON-CANVASSING

In the case of a Consortium, each Consortium Member must complete and return this Certificate.

To Populo Design and Build Ltd (“the Authority”)

I/We hereby certify that I/we have not in connection with the award of the contract for The Procurement or any other proposed contract for service provision

- canvassed any member, employee, agent of the Authority
- undertaken to unduly influence the decision-making process of the Authority
- undertaken to obtain confidential information that could confer upon me/us an undue advantage in the award of the contract

and that no person employed by me/us or acting on my/our behalf has done any such act.

I/We further hereby undertake that I/we will not in the future do or seek to do the prohibited acts referred to above and that no person employed by me/us or acting on my/our behalf will do any such act.

1 SIGNED
 POSITION

2 SIGNED
 POSITION

On behalf of

Date

Contractual Undertaking

TENDER FOR [INSERT WORKS/SERVICES/CONSULTANT]

CONTRACTUAL UNDERTAKING

To Populo Design and Build Ltd ("the Authority ")

I / We the undersigned DO HEREBY UNDERTAKE on the acceptance by the Authority of my / our Bid either in whole or in part, to supply (or perform the services), on such terms and conditions and in accordance with such Specifications (if any), as are contained or incorporated in the Authority's ITT. I / We agree and declare that the acceptance of this Bid by letter on behalf of the Authority, whether for the whole or part of the items included therein, will constitute a contract for the supply of such items, and, I / We, if requested by the Authority, will enter into a further agreement for the due performance of the contract.

*Signed: Date:

Name: (in block capitals):
.....

In the capacity of: on behalf of:
(State official position, i.e. Director, Manager, Secretary etc.).

Company Name and postal address:.....
.....

Telephone No:

Fax No:.....

E-mail:

*Company Registration Number and legal form:.....

*(It must be clearly shown whether the Bidder is a limited company, statutory corporation, partnership or single individual, trading under his own or another name, and also if the signatory is not the actual Bidder, the capacity in which he/she signs or is employed).

TENDER FOR **[INSERT WORKS/SERVICE/CONSULTANT]**

CERTIFICATE OF NON- COLLUSION

In the case of a Consortium, each Consortium Member must complete and return this Certificate.

To Populo Design & Build Ltd (“the Authority”)

The essence of the public procurement process is that the Authority shall receive bona fide competitive Bids from all Bidders. In recognition of this principle I/We certify that this is a bona fide Bid, intended to be competitive and that I/we have not fixed or adjusted the amount of the Bid or the rates and prices quoted by or under or in accordance with any agreement or arrangement with any other party.

I/We also certify that I/we have not done and undertake that I/we will not do at any time any of the following acts:

- a) communicate to a party other than the Authority the amount or approximate amount of my/our proposed Bid (other than in confidence in order to obtain quotations necessary for the preparation of the Bid);
- b) enter into any agreement or arrangement with any other party that he shall refrain from submitting a Bid or as to the amount of any Bid to be submitted;
- c) offer or agree to pay or give or pay or give any sum of money inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused any act or omission to be done in relation to any other Bid or the proposed Bid; or
- d) enters into any type of agreement or arrangement with any other party aimed at distorting the outcome of the competition

In this Certificate:

- the word “person” includes any person, body or association, corporate or incorporate
- the phrase “any agreement or arrangement” includes any transaction, formal or informal whether legally binding or not.
- the word “Bid” includes all ITT submissions

1 SIGNED
 POSITION

2 SIGNED
 POSITION

On behalf of

Date