**Dated 2015**

**(1) THE HALL FOR CORNWALL TRUST**

**and**

**(2) [CONSULTANT]**

**Appointment of Consultant**

**to provide cost consultancy services**

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



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**THIS APPOINTMENT** is dated 2015

**BETWEEN**

(1) **THE** **HALL FOR CORNWALL TRUST** (a company limited by guarantee registered number 03101443) of Hall for Cornwall, Back Quay, Truro, TR1 2LL (the “**Client**")

(2) **[CONSULTANT]** (registered in England and Wales under company number [ ]) whose registered office is at [ ] (the “**Consultant**")

**NOW IT IS AGREED** as follows:-

1. DEFINITIONS AND INTERPRETATION
   1. **Definitions**

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

**"Additional Fee"**

means any fee agreed to be payable to the Consultant in respect of the performance of any Additional Services in accordance with clause 4.3;

**"Additional Services"**

means any services, additional to the Services, that the Consultant is reqested to carry out in accordance with clause 11;

**"Building Contract"**

means the building contract entered into, or to be entered into, between the Contractor and the Client for the construction of the Works;

**"Business Day"**

means a day other than a Saturday, Sunday or a Bank Holiday in England;

**"Contractor"**

means the contractor appointed or to be appointed by the Client to design and construct the Works in accordance with the Building Contract;

**"CDM Regulations"**

means the Construction (Design and Management) Regulations 2015;

**"Documents"**

means any drawings, details, plans, reports, models, specifications, bills of quantities, calculations, and any other documents of any nature whatsoever which have been or are hereafter provided by the Consultant in the course of performing its obligations under this appointment;

**"Fee"**

means the sum or sums referred to in Part 1 of Appendix 1 subject to any adjustment in accordance with this appointment;

**"Key Personnel"**

means the persons listed in Appendix 2;

**"Professional Indemnity Insurance"**

means professional indemnity insurance with insurers of repute in an amount of not less than £10 million in respect of any occurrence or series of occurrences arising out of the same originating cause save in respect of claims arising from contamination or pollution in respect of which such insurance shall be the aggregate;

**"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 Appendix 3 and any services necessarily or reasonably incidental to such services;

**"Works"**

means the Works, services, goods, materials and equipment to be provided by the Contractor in accordance with the Building Contract.

* 1. **Successors**

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

* 1. **Joint liability**

Where the Consultant comprises more than one person, references to "Consultant" shall include all persons comprising the Consultant and all obligations on the part of the Consultant under this appointment shall be deemed to be made and undertaken by such persons jointly and severally.

* 1. **Headings**

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

* 1. **Notices**

All notices under this appointment shall be in writing and shall be delivered personally or addressed to the respective address of the parties set out in this appointment or to the registered office or principal business address of either party for the time being, and, if sent by post shall be deemed to have been received on the second Business Day after the same shall have been posted. Where the Consultant is a partnership (other than a limited liability partnership), any notice given under or in connection with this appointment to an individual partner shall be deemed to have been served on the partnership.

* 1. **References to statutes etc.**

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. WORKING TOGETHER
   1. The Client and the Consultant agree to work with each other in good faith and in a spirit of mutual trust and respect. To this end they will each give to, and welcome from, the other and from all others involved with the Project, feedback on performance and will draw each other’s attention to any difficulties and will share information openly, at the earliest practicable time.
   2. In the event of any dispute between the parties, any court or adjudicator or other forum to which the dispute is referred may take into account the parties’ compliance with clause 2.1.
   3. The Consultant shall communicate, co-ordinate and co-operate with all others involved in relation to the Project with the aims of providing the Client with:-
      1. a Project that meets its needs; and
      2. an up to date understanding of the progress being made with the Project and of any anticipated or actual problems and their proposed solutions.
2. DUTIES OF THE CONSULTANT
   1. The Consultant shall, in the performance of the Services (and any Additional Services), 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. supply the Contractor (and, through it, any relevant subcontractor) with such information as it may reasonably require;
      2. use the 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 and any Additional Services are suitably qualified, experienced and competent having regard to the tasks and functions expected from them and shall use reasonable endeavours to ensure that they liaise as necessary between themselves.
   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.
   3. The terms and conditions of this appointment and the warranties and undertakings which it contains are deemed to apply to all services performed and to be performed by the Consultant in relation to the Project both before and after the date of this appointment.
3. THE FEE AND EXPENSES
   1. On or before 5 Business Days prior to the end of each calendar month the Consultant may apply for payment in respect of the Services and any Additional Services properly carried out prior to the end of the previous payment period including any reasonable expenses incurred by the Consultant at the Client's specific request. For the avoidance of doubt the Consultant shall not be entitled to apply for payment in respect of:

* work covered in previous applications;
* any Services which the Consultant has been requested to omit in accordance with clause 11;
* the correction of errors or defects in Services previously carried out; or
* payment in excess of the Fee and any agreed Additional Fee (subject to any agreed amendments to the Fee and/or Additional Fee in accordance with this appointment).
  1. 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 together with any order number provided by the Client.
  2. If the Client, by express written request, requires the Consultant to perform any Additional Services in accordance with clause 11, the Client shall pay to the Consultant an Additional Fee as agreed between the Client and the Consultant or (in the absence of agreement to the contrary) calculated by reference to the hourly rates set out Part II of Appendix 1.
  3. Payment of the Consultant's applications for payment in accordance with clause 4.1 shall become due for payment 30 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 30 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 4.6, no payment will be due to the Consultant.
  5. Where notice is not given in accordance with clause 4.5, 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 4.6 at any time after the date on which the Client was to give notice under clause 4.5. 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 4.5 that the default payment notice is given.
  6. The Client shall pay the sum notified in accordance with clause 4.5 or the sum notified in accordance with clause 4.6, 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:
     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 4.8 may not be given before the default payment notice; and
     2. it specifies the sum that the Client considers to be due on the date the notice is served under this clause 4.8 and the basis on which that sum is calculated;

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

* 1. 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.

1. OBLIGATIONS OF THE CLIENT

Throughout the period of this appointment during normal business hours the Consultant shall be entitled to reasonable access to the proposed site of the Works and the Client shall supply any relevant information and other written material in the possession of the Client as the Consultant shall reasonably require to perform the Services.

1. TERMINATION
   1. The Client may terminate the Consultant’s Services under this appointment at any time by serving not less than 20 Business Days’ written notice to this effect.
   2. Upon the happening of one or more of the following events, namely if the Consultant:-
      1. without reasonable cause fails to proceed regularly and diligently with the performance of the Services and/or any Additional Services;
      2. without reasonable cause suspends the performance of the whole or part of the Services and/or any Additional Services before completion of the same;
      3. without reasonable cause refuses or neglects to comply with any instruction which the Client is empowered by this appointment to give; or
      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 forthwith terminate the employment of the Consultant under this appointment.

* 1. Upon the happening of one or more of the following events, namely if the Client:
     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
     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 forthwith terminate this appointment.

* 1. Either party may forthwith 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 6.2, 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 Client pursuant to clause 6.1 or by the Consultant pursuant to clauses 6.3 or 6.4 (by reason of the Client suffering any of the events set out), 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, but shall not under any circumstances be responsible for any loss of profit suffered by the Consultant as a result of such termination.
  4. Termination or suspension of this appointment or the Consultant’s employment under it shall not prejudice the accrued rights and remedies of either party at the date of termination.
  5. The Client shall not be liable to the Consultant or any of its employees, agents, or subcontractors as a result of the termination or suspension by the Client of this appointment, and shall not otherwise have any obligation (statutory or otherwise) to compensate or reimburse the Consultant or any of its employees, agents, or subcontractors for any claims or damages whatsoever (including but not limited to termination indemnities, loss of revenues or profits, expenditure, investments, or other obligations or commitments of any of them).

1. LICENCE TO USE DOCUMENTS
   1. In relation to any Documents the Consultant hereby grants or agrees to grant to the Client a royalty-free non-exclusive licence to use and to reproduce all Documents for any purpose whatsoever connected with the Project and such other purposes as are reasonably foreseeable including, but without limitation, the carrying out, completion, maintenance, letting, advertisement, modification, extension, reinstatement, reconstruction and repair of the Project. Such licence will carry the right to grant sub-licences and will be transferable to third parties but will not entitle the owner of such licence or any sub-licences to reproduce the designs contained in the Documents. Such licence shall take effect from the date of this appointment or (in relation to Documents not yet in existence) from the date of the creation of the relevant Document and shall continue notwithstanding any termination of this appointment. Neither the Client nor any recipient of any sub-licence under this clause shall 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.
   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) at the Client’s expense.
   3. The Consultant warrants to the Client that it 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 Project will not infringe the rights of any third party.
2. 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 or any Additional Services. The Consultant shall not subcontract any part or parts of the Services or any Additional Services without the prior written consent of the Client. Any consent to subcontract any part or parts of the Services or any Additional Services shall not affect or reduce the scope of the Consultant’s obligations under this appointment.

1. ASSIGNMENT OR NOVATION BY THE CLIENT
   1. The Client may assign by way of absolute legal assignment any of its rights under this appointment on one occasion without the Consultant’s consent provided that it gives notice in writing of such assignment within a reasonable period thereafter. Any further assignment shall require the prior written consent of the Consultant (such consent not to be unreasonably withheld).
   2. The Consultant acknowledges that the assignee may rely upon the Consultant's performance of its obligations under this appointment prior to and following the date of any permitted assignment of this appointment in accordance with clause 9.1. The Consultant further acknowledges that it may be liable to the assignee for all losses suffered by the assignee as a result of any breaches of such obligations irrespective of whether any such breach occurred or any such losses were suffered prior to or following the date of such assignment and provided that the Client's appointments with the other consultants are similarly and contemporaneously assigned.
   3. If requested at any time by the Client, the Consultant shall enter into a Deed of Novation with the Client and Cornwall Council in the form of the Deed of Novation attached at Appendix 5 within 10 Business Days of such request. The Consultant shall at the same time enter into the form of collateral warranty set out in the Deed of Novation in favour of the Client.
2. 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 Works in accordance with the Building Contract, 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. Upon reasonable request, the Consultant shall produce written confirmation from its insurers or insurance brokers to the Client 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 Professional Indemnity Insurance.
3. 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 £5 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 £5 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.
4. CHANGES TO THE SERVICES
   1. In addition to the Services the Consultant shall perform such other reasonable Additional Services in relation to the Project as the Client may from time to time request in writing. The Client shall pay to the Consultant in respect of such Additional Services an Additional Fee in accordance with clause 4.3.
   2. If requested by the Client in writing the Consultant will omit or reduce the Services, and the parties will use their respective reasonable endeavours to agree a reasonable reduction in the Fee to reflect the reduced scope of the Services. The reduction in the Fee shall be calculated by reference to the estimated cost of the omitted or reduced Services relative to the Fee for the performance of the original Services.
   3. Any failure to reach agreement on any matters in clauses 12.1 or 12.2 shall be resolved in accordance with clause 16.
5. WARRANTIES
   1. Within 14 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 Appendix 4 in favour of any beneficiary having a bona fide actual or prospective legal or commercial interest in the Project.
   2. Within 14 days of receipt of a written request from the Client the Consultant shall use all reasonable endeavours to procure that any sub-consultants shall execute as a deed one or more deeds of warranty in the form set out in Appendix 4 in favour of any beneficiary having a bona fide actual or prospective legal or commercial interest in the Project.
6. CONFIDENTIALITY
   1. The Consultant shall not disclose any information in relation to this appointment or this Project to any person (other than to employees in the proper course of their employment) other than where disclosure is approved in writing by the Client or where such information is:
      1. required to be disclosed by law or by a competent regulatory authority;
      2. required to be disclosed to the Consultant's professional advisers;
      3. already in the public domain otherwise than as a result of a breach of this clause 14 by the Consultant.
   2. The Consultant shall not use, or authorise the use of, any information relating to the Project for any publicity or marketing materials and shall not take photographs, or allow photographs to be taken by others, for the purposes of publicity or marketing materials without the express prior written consent of the Client.
   3. The Consultant shall ensure that all of its personnel and any subconsultants or subcontractors shall comply with the provisions of this clause 14.
   4. The obligations on the Consultant pursuant to this clause 14 shall survive termination.
7. ENTIRE AGREEMENT
   1. This appointment sets out the entire agreement and understanding of the parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of this appointment. Neither party shall be entitled to rely on anything which is not stated in this appointment or which cannot be implied as being reasonably required to give it business efficacy and is not otherwise inconsistent herewith provided that the rights and remedies provided in this appointment are cumulative and are not exclusive of any rights and remedies provided at common law.
   2. This appointment shall not be amended, modified, varied or supplemented except in writing by duly authorised representatives of both parties.
   3. Neither any failure or delay on the part of either party to exercise any right or remedy under this appointment nor any single or partial exercise of any right or remedy shall be construed or operate as a waiver of any such right or remedy.
   4. In the event that any term, condition, or provision contained in this appointment shall be held to be invalid, unlawful or unenforceable, such term, clause, or provision shall to that extent be omitted from this appointment and the rest of this appointment shall stand, without affecting the remaining clauses.
8. 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.
9. THIRD PARTY RIGHTS

Save in accordance with clauses 9 (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.

1. LIMITATION OF LIABILITY
   1. No action or proceedings under or in respect of this appointment, whether in contract or in tort, in negligence or for breach of statutory duty or otherwise shall be commenced against the Consultant after the expiry of 12 years from the date of the performance by the Consultant of the last professional service to be carried out under the terms of this appointment.
   2. The Consultant's total liability to the Client for all matters arising under or in connection with this appointment is limited to the minimum amount of the professional indemnity insurance to be maintained by the Consultant in accordance with clause 10.
2. 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, the provision of the Services, in relation to the 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.

1. GOVERNING LAW

This appointment shall be governed by and shall be construed in accordance with English Law.

**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 TRUST** by

the signatures of:

Director:

Director/Company Secretary:

**EXECUTED AS A DEED** by the **CONSULTANT**

acting by a Director and the Company Secretary

or by two Directors whose signatures appear below:

Director:

Director/Secretary:

1. - Fee
   1. – The Fee

The Fee for the Services is £[ ].

* 1. - Payment for Additional Services

[*Insert time charge rates for the performance of Services for any Additional Services under clause 4.3 in table below*]

|  |  |
| --- | --- |
| Grade | Rate (£/hour) |
| [Director] [Partner] |  |
| [Associate] |  |
| [Senior Grade] |  |
| [Project Grade] |  |
| [Assistant Grade] |  |

1. - Key Personnel

|  |  |
| --- | --- |
| **Relevant Key Personnel** | **Job title** |
|  |  |
|  |  |
|  |  |
|  |  |

1. - Services to be provided by the Consultant

The Consultant will provide all necessary cost consultancy services in relation to the Project including the following:

1. **Inception and feasibility**
   1. Liaise with Client and other consultants to determine the Client's initial requirements and subsequent development of the full brief for the Project.
   2. Advise on the selection of other consultants if not already appointed.
   3. Advise on the implications of proposed Project and liaise with other experts in developing such advice.
   4. Advise on the feasibility of procurement options.
   5. Establish the Client's order of priorities for quality, time and cost.
   6. Prepare initial budget estimate from feasibility proposals.
   7. Prepare overall Project cost calculation and cash flow projections
2. **Pre-contract cost control**
   1. Prepare and develop preliminary cost plan.
   2. Advise on the cost of the design team's proposals, including the effects of site usage, shape of buildings, alternative forms of design and construction as design develops.
   3. Monitor cost implications during detailed design stages.
   4. Maintain and develop cost plan, and prepare periodic reports and updated cash flow forecasts.
3. **Tender and contractual documentation**
   1. In conjunction with the Client’s advisers, advise on tendering and contractual arrangements taking into account the Client's priorities and information available from designers.
   2. Liaise with the Client's insurance adviser with regard to general insurance responsibilities for the Project.
   3. In conjunction with the Client’s advisers, advise on the need for collateral warranties.
   4. In conjunction with the Client’s advisers, advise on bonds for performance and other purposes.
   5. Prepare tender and building contract documentation in conjunction with the Client and members of the design team.
   6. Provide copies of documentation as agreed with the Client.
   7. In conjunction with the Client's legal advisers, advise on the use and/or amendment of the standard forms of building contract and contribute to drafting of particular Client requirements.
   8. In conjunction with the Client's legal advisers, draw up forms of building contract, obtain contract drawings from members of design team and prepare and deliver to both parties copies of such building contract with its associated documents
4. **Tender selection and appraisal**
   1. Where appropriate, advise on shortlisting prospective tenderers.
   2. Appraise prospective tenderers and advise the Client on their experience based on information received from such tenderers.
   3. Attend interviews with selected tenderers.
   4. Arrange delivery of documents to selected tenderers.
   5. Check tender submissions for accuracy, level of pricing, pricing policy etc..
   6. Advise on errors and qualifications in the tenders and, if necessary, negotiate thereon.
   7. Advise on submission of programme of work and method statement.
   8. Prepare appropriate documentation, if required, to adjust the tender received to an acceptable contract sum.
   9. Review the financial budget in view of tenders received and prepare revised cash flow.
   10. Prepare report on tenders with appropriate recommendations.
5. **Interim valuations**

Prepare recommendations for interim payments to contractors, sub-contractors and suppliers in accordance with building contract requirements

1. **Post-contract cost control**
   1. Value designers' draft instructions for varying the Project before issue.
   2. Prepare periodic cost reports in agreed format at specified intervals including any allocations of cost and/or copies as requested by third parties.
2. **Final account**

Prepare the final account in accordance with the Building Contract.

1. **Attendance at meetings**

Attend meetings as provided for in this agreement

1. **Provision of printing/reproduction/copying of documents**

Provide a reasonable number of copies of documentation as provided for under this agreement.

1. - Draft form of collateral warranty

|  |
| --- |
| **Date**: |
| **Project:** |
| **Client: THE** **HALL FOR CORNWALL TRUST** (a company limited by guarantee registered number 03101443) of Hall for Cornwall, Back Quay, Truro, TR1 2LL |
| **Consultant:**  Company Registration Number:  of/whose registered office is at: |
| **Beneficiary:**  Company Registration Number:  of/whose registered office is at: |
| **Services**  (as more particularly described in the Appointment) |
| **Appointment** dated: |
| Professional Indemnity Insurance: £10 million (minimum cover) |

* + 1. **INFORMATION**

The information contained on page 1 of this agreement forms part of this agreement.

* + 1. **BACKGROUND**
       1. The Beneficiary has an actual or prospective interest in the Project.
       2. The Consultant is or has been appointed by the Client under the terms of the Appointment to provide the services briefly described on page 1 of this agreement and more particularly described in the Appointment.
    2. **CONSIDERATION**

This agreement is made on the above date between the Beneficiary and the Consultant and is made in consideration of the payment of £1 by the Beneficiary to the Consultant receipt of which the Consultant acknowledges.

* + 1. **WARRANTY AND LIABILITY**
       1. The Consultant warrants to the Beneficiary that it has complied and will at all times comply with the terms of the Appointment and any specifications or requirements included or referred to in the Appointment, and that, in the performance of the Services, 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 member of its profession experienced in carrying out duties such as those under the Appointment in relation to works of a similar size, scope, nature and complexity as the Project;
       2. The Consultant shall have no liability under this agreement which is greater or of longer duration than it would have had if the Beneficiary had been a party to the Appointment as joint employer and the Consultant shall be entitled in any action or proceedings by the Beneficiary under this agreement to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (but excluding set-offs or counterclaims) as it would have had if the Beneficiary had been named as joint employer under the Appointment. However, it shall not be a defence to any action brought against the Consultant under this agreement that the Appointer has suffered no loss under the Appointment. Upon the expiration of 12 years from the date of completion of the Project in accordance with the Building Contract the liability of the Consultant under this agreement shall cease save in relation to any claims made by the Beneficiary against the Consultant and notified in writing by the Beneficiary to the Consultant before the expiration of this 12 year period.
    2. **INSURANCE**
       1. The Consultant covenants:-
          1. to take out and maintain professional indemnity insurance in an amount of not less than that stated on page 1 in respect of any occurrence or series of occurrences arising out of the same originating cause for a period of 12 years from the date of completion of the Project in accordance with the Building Contract, provided that such insurance is available in the UK insurance market to members of the Consultant’s profession 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, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates;
          2. to inform the Beneficiary or its assignees in writing immediately of any failure or inability to maintain such professional indemnity insurance cover in accordance with clause 6.1.1 in order that the Consultant and the Beneficiary can discuss means of best protecting their respective positions in the absence of such insurance; and
          3. when reasonably requested by the Beneficiary to produce for inspection documentary evidence that its professional indemnity insurance cover is being properly maintained and that payment has been made in respect of the last preceding premium.
    3. **USE OF DOCUMENTS**
       1. In relation to all drawings, details, plans, reports, models, specifications, bills of quantities, calculations, and other documents of any nature whatsoever which have been or are hereafter provided by the Consultant in the course of performing its obligations under the Appointment (“**Documents**”) the Consultant hereby grants or agrees to grant to the Beneficiary a royalty-free non-exclusive licence to use and reproduce all Documents for any purpose whatsoever connected with the Project and such other purposes as are reasonably foreseeable including, but without limitation, the carrying out, completion, maintenance, letting, advertisement, modification, extension, reinstatement, reconstruction and repair of the Project. Such licence will carry the right to grant sub-licences and will be transferable to third parties but shall not entitle the owner of such licence or any sub-licences to reproduce the designs contained in the Documents. Such licence shall take effect from the date of this agreement or (in relation to Documents not yet in existence) from the date of the creation of the relevant Document and shall continue notwithstanding any termination of this agreement. Neither the Beneficiary nor any recipient of any sub-licence under this clause, shall 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.
       2. The Consultant agrees on reasonable request at any time and following reasonable written prior notice to give the Beneficiary or those authorised by it access to the Documents and to provide copies (including electronic copies) thereof at the Beneficiary’s expense.
       3. The Consultant warrants to the Beneficiary that it has used the standard of skill, care and diligence as set out in clause 4.1 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 Project will not infringe the rights of any third party.
    4. **ASSIGNMENT**
       1. The benefit of this agreement may be assigned by the Beneficiary to any beneficiary having a bona fide actual or prospective legal or commercial interest in the Project or any part twice 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. Such notice will specify the name and address of the assignee and the date of the assignment. The Consultant will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this agreement (whatever the date of such breach) by reason only that the person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediary beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the property or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.
       2. Notwithstanding clause 7.1, the Beneficiary may assign the benefit of this agreement without restriction to any company within the same “group” as the Beneficiary (as defined by Section 42 of the Landlord and Tenant Act 1954).
    5. **INSPECTION OF DOCUMENTS**

The Consultant’s liabilities under this agreement will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for its benefit or on its behalf.

* + 1. **SUCCESSORS**

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

* + 1. **SUB-CONSULTANTS**

Following a written request from the Beneficiary, the Consultant will (unless it has already done so) use all reasonable endeavours to procure that its sub-consultants (if any) execute deeds of warranty in the same or equivalent terms as are set out in this agreement in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such warranties.

* + 1. **NOTICES**

Any notice, request, demand, consent or approval given under or in connection with this agreement must be given or confirmed in writing. Any such notice, request, demand, consent or approval shall be delivered personally or addressed to the respective address of the parties set out in this agreement or to the registered office or the principal business address of either party for the time being and, if sent by post, shall be sent by first class pre-paid post or recorded delivery and shall be deemed to have been received on the second working day after the same shall have been posted.

* + 1. **APPLICABLE LAW AND JURISDICTION**

This agreement will be construed in accordance with English law and be in all respects subject to the jurisdiction of the English courts.

* + 1. **THIRD PARTY RIGHTS**

This agreement is enforceable by the original parties to it and their successors in title and permitted assignees. Any rights of any person to enforce the terms of this agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

**IN WITNESS WHEREOF** this agreement has been executed as a deed on the date and year stated above.

**EXECUTED AS A DEED** by the **CONSULTANT**

acting by a Director and the Company Secretary

or by two Directors whose signatures appear below:

Director:

Director/Secretary:

1. – deed of novation