

DATED

1st April 2020

(1) THE ENVIRONMENT AGENCY

- and -

(2) DIPTONE LIMITED

DEED OF PROFESSIONAL APPOINTMENT

relating to a project under the

**CABLEWAYS INSPECTION & SERVICE FRAMEWORK
AGREEMENT 2020 – 24 (Lot 1 Northern)**

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THIS DEED OF APPOINTMENT is made on

1st April 2020

BETWEEN:

- (1) **THE ENVIRONMENT AGENCY** is a Non Departmental Public Body, sponsored by the Department for Environment, Food & Rural Affairs, established in 1996 following the enactment of the Environment Act 1995, whose registered office is at Horizon House, Deanery Rd, Bristol BS1 5AH ("**Client**"); and

- (2) **DIPTONE IMITED** Company number SC93302 whose registered office is at 4 Markethill Road, East Kilbride, Glasgow, South Lanarkshire. G74 4AA ("**Service Provider**").

BACKGROUND:

- A The Client hereby appoints the Service Provider as Mechanical and Electrical Engineer in connection with the Project.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Appointment the following definitions apply, save where the context otherwise requires:

"**Appointment**" means this appointment together with all of its schedules (as the same may be updated or varied from time to time);

"**Beneficiary**" means a Funder, the Named Client, a purchaser, tenant or any other person with an interest in the Project;

"**Brief**" the document issued by the Client outlining the [Client's] requirements for the Project, as may be updated by the Client from time to time;

"**Building Contract**" means the contract under which the Building Contractor is appointed;

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2015 together with the recommendations contained in the most recent official guidance relating to such regulations or any amendment to or re-enactment of the same;

"**Confidential Information**" means all information obtained by, or disclosed, to the Service Provider by the Client or a Group Company of the Client which is labelled or otherwise stated to be confidential or can be reasonable assumed to be confidential;

"**Construction Act**" means the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Project and Construction Act 2009);

Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC);

"**Client**" means the person described above and such expression includes successors in title, transferees and any person who is a permitted assignee;

"**Fee**" means the fee stated in schedule SCHEDULE 5: (and any adjustments to such sum pursuant to clauses 6.4 and 6.5), which is inclusive of all expenses, disbursements, fees, costs, overheads and profits incurred by or through the Service Provider in respect of this Appointment, but exclusive of VAT and, if any, the expenses specified in schedule SCHEDULE 5; ;

"**Funder**" means any person, firm, company or bank (acting for itself, or if it leads a syndicate of persons, as agent and/or trustee for them, or otherwise) w providing finance in relation to the Project;

"Group Company" means in relation to a company, from time to time its subsidiary undertakings of any tier, its parent undertaking of any tier, and any other subsidiary undertaking of any such parent undertaking ("**subsidiary undertaking**" and "**parent undertaking**" having the meanings ascribed to them by section 1162 of the Companies Act 2006 (as amended));

"Key Person(s)" means the person(s) so named in schedule SCHEDULE 1: or any replacement appointed pursuant to clause 3.9;

"Named Client" means the party identified above as the Client at the time of execution of this Appointment;

"Other Service Providers" means the other Service Providers listed in schedule SCHEDULE 1: and any additional Service Providers appointed from time to time in connection with the Project;

"Practical Completion" means the date of practical completion of the whole of the Works as certified pursuant to the terms of the Building Contract;

"Programme" means the programme for the Project issued by the Client as updated from time to time;

"Prohibited Materials" means any materials, products, substances or equipment which at the time of specification, authorisation, approval or use:

- (a) are identified as potentially hazardous or deleterious and/or are not recommended for use in the BPF/BCO report "*Good practice in the selection of construction materials*" (current edition), other than in accordance with the recommendations as to good practice contained in that report; and/or
- (b) any other product, substance or material which does not comply with relevant British Standard specifications (or their European Union equivalents) or codes of practice or good building practice, or any applicable agreement certificate issued by the British Board of Agreement or are otherwise generally known to the building industry to be deleterious to health and safety, the performance or durability of buildings or structures or damaging to the environment in the particular circumstances in which they are specified to be used or are used.
- (c) any product supplied or placed on the market in breach of the Construction Products Regulations;

"Project" means the Works and/or the Site or any part of them;

"Proprietary Material" means all designs, drawings, programmes, models, specifications, reports, records, calculations, photographs, brochures, notes of meetings, CAD materials, bills of quantities, budgets and other work or documents (including any updates, additions, revisions and/or modifications to them and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Service Provider in connection with the Project (excluding the Service Provider's internal correspondence);

"Scheme" means the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 649) (as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment)(England) Regulations 2011 or any re-enactment of the same);

"Services" means the services to be performed by the Service Provider in connection with the Project as set out in schedule SCHEDULE 2: , including any additional services instructed by the Client pursuant to clause 6.5;

"Site" means the site described in schedule SCHEDULE 1: , as more particularly identified in the Building Contract, including any addition to or omission from it;

"Statutory Requirements" means the requirements of the Construction Act, the CDM Regulations, the Building Act 1984, the Building Regulations 1991 and all other acts of Parliament, statutory requirements, legislation, codes of practice, permissions, plans, bye-laws, instruments, judgments, rules, orders, regulations and permissions having the force of law and applicable to the Project;

"Sub-Contract" means an agreement entered into between the Building Contractor and a Sub-Contractor in connection with the Project or any part of it;

"Sub-Contractor" means a sub-contractor or supplier (of any tier) employed or engaged on or in connection with the Project or any part of it;

"Third Party Agreement" means any agreement entered into between the Client and any Beneficiary or other third party with an interest or appointed in connection with the Project;

"Third Party Rights" means the third party rights in the form set out in schedule SCHEDULE 6: with such amendments as the Client may reasonably require;

"Works" means the works to be carried out at the Site as described in schedule SCHEDULE 1: , and more particularly identified in the Building Contract, including any changes or variations made to them.

- 1.2 Any reference in this Appointment to any statutes, statutory instruments, or law shall include reference to it as amended, extended, consolidated or re-enacted.
- 1.3 In the event of any discrepancy, conflict or inconsistency between a clause of this Appointment and any schedules annexed to, or additional documentation referred to within this Appointment, the Client shall notify the Service Provider as to which provision shall prevail.
- 1.4 Any reference to this Appointment or any other document shall include (where the context so requires) any permitted variation, amendment or supplement to such document.
- 1.5 If the Service Provider is two or more persons, the expression "the Service Provider" includes the plural number and obligations in this Appointment expressed or implied to be made with or by the Service Provider are to be treated as made with or by such persons jointly and severally.
- 1.6 Any non-enforcement or delay in enforcement by the Client of any right shall not be construed as a waiver of such right and shall not affect the ability of the Client to subsequently exercise that right.

2. APPOINTMENT

- 2.1 This Appointment constitutes the entire agreement between the Client and the Service Provider and supersedes and extinguishes all previous agreements, promises, assurances,

warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Any communication, statement, representation, assurance or warranty made before this Appointment which is not expressly contained within it shall not be deemed to be incorporated into this Appointment.

- 2.2 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Appointment.
- 2.3 Notwithstanding the date of this Appointment, it shall have effect as if it had been executed on the actual commencement of the Services by the Service Provider.
- 2.4 The obligations, duties, and liabilities of the Service Provider under this Appointment shall not be released, diminished, prejudiced, or in any other way affected by:
 - 2.4.1 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Client; and/or
 - 2.4.2 any investigation, monitoring, examination, test, survey and/or inquiry into any relevant matter which the Client or those acting on its behalf may make or fail to make.
- 2.5 No variation or amendment to this Appointment shall be effective unless made in writing and signed by both parties, provided that this clause shall not prevent the Client and the Service Provider from administering and operating the terms of this Appointment, including (without limitation) the clauses relating to varying the Services and/or Fees.

3. SERVICE PROVIDER'S GENERAL OBLIGATIONS

- 3.1 The Service Provider shall perform the Services regularly and diligently in accordance with the terms of this Appointment, the Brief, and the Client's reasonable instructions from time to time, so as to enable the Project to proceed in accordance with the Programme.
- 3.2 The Service Provider shall keep the Client regularly and fully informed on the progress of the Services and the Project and shall provide the Client with all information in connection with the Project as the Client may reasonably require.
- 3.3 The Service Provider warrants to the Client that it has exercised and shall continue to exercise in the performance of the Services, all the reasonable skill, care and diligence which may be expected of a properly qualified and competent professional Service Provider of the same discipline as the Service Provider experienced in the provision of such services in respect of projects of a similar size, scope, nature, value and complexity to the Project.
- 3.4 Without limiting clause 3.3, the Service Provider warrants to the Client that it has not specified, approved or authorised for use, and shall not specify, approve or authorise for use nor within the scope of its inspection duties knowingly permit the use of any Prohibited Materials in the Project. The Service Provider shall notify the Client immediately if it becomes aware of any proposed or actual use of any Prohibited Materials. For the purposes of knowingly permitting, the Service Provider shall be deemed to know if it actually knew of the use of any Prohibited Materials or should have known having due regard to the level of skill, care and diligence pursuant to clause 3.3.

- 3.5 The Service Provider shall comply with the Statutory Requirements in performing its obligations under or arising from this Appointment and warrants that no act, omission or default of the Service Provider shall constitute, cause or contribute to a breach by the Client of its obligations under the Statutory Requirements.
- 3.6 If at any time the Service Provider is prevented or delayed in the performance of the Services for any reason, it shall promptly so notify the Client giving the specific reason for the delay or prevention, together with its best estimate of its effect on the Programme, and shall use all reasonable endeavours to resume and expedite the Services as soon as practicable. The Service Provider shall not be treated as being in breach of this Appointment to the extent that it is delayed in the performance of the Services for reasons beyond its reasonable control.
- 3.7 The Service Provider warrants that:
- 3.7.1 it has the skills, knowledge, experience and organisational capability, and has allocated the resources necessary, to perform its duties and fulfil its role pursuant to the CDM Regulations insofar as they apply to the Project;
 - 3.7.2 Exercising the standard of skill, care and diligence referred to in clause 3.3, it has advised and supported and will continue to advise, assist and provide support to the Client in performing the its duties as a "client" pursuant to the CDM Regulations. And
 - 3.7.3 Shall co-operate and liaise with and provide information to the Other Service Providers and the Building Contractor as necessary to enable them to comply with their respective obligations under the CDM Regulations.
- 3.8 In relation to the Works, if schedule SCHEDULE 1: states:
- 3.8.1 clause 3.8.1 applies, the Service Provider will perform and fulfil the duties imposed on a "*designer*" (as defined in the CDM Regulations) in accordance with the CDM Regulations; or
 - 3.8.2 clause 3.8.2 applies, the Service Provider will perform and fulfil the duties imposed on a "*principal designer*" (as defined in the CDM Regulations) in accordance with the CDM Regulations.
- 3.9 The Service Provider has nominated the Key Person(s) set out in schedule SCHEDULE 1: to direct and control the performance of the Services and otherwise to act on the Service Provider's behalf for the purposes of this Appointment. The Service Provider shall use its best endeavours to ensure that the Key Person(s) remains employed by the Service Provider for as long as necessary to ensure the proper performance of the Services. In the event that the Key Person(s) leaves the employment of the Service Provider or is unable to continue in the role as a result of illness or death, their replacement shall be subject to the prior written approval of the Client (such approval not to be unreasonably withheld or delayed).

- 3.10 Where it is stated in schedule SCHEDULE 1: that this clause 3.10 applies, the Service Provider shall act as lead design Service Provider for the Project, scheduling the activities and issuing such instructions as necessary to co-ordinate the design services and production of design information by the Other Service Providers, the Building Contractor and the Sub-contractors with the aim that:
- 3.10.1 the design of the Project is fully integrated;
 - 3.10.2 the Project is able to proceed with all reasonable speed and economy in accordance with the Programme; and
 - 3.10.3 the cost of executing each element of the Project shall not exceed the respective budgets set by the Client of the fixed fee agreed for the Works.
- 3.11 Where it is stated in schedule SCHEDULE 1: that clause 3.10 does not apply, the Service Provider shall liaise with and co-operate with the Other Service Providers, the Building Contractor and the Sub-contractors as necessary and follow the instructions of the lead design Service Provider to the intent described in clauses 3.10.1 to 3.10.3.
- 3.12 The Service Provider acknowledges that the Client has entered into or will enter into Third Party Agreements. The Service Provider shall:
- 3.12.1 perform its obligations under this Appointment in such a manner as not to constitute, cause or contribute to a breach by the Client of its obligations under each Third Party Agreement provided that the Client has, within a reasonable time prior to the applicable obligation(s) in the Third Party Agreement arising, supplied the Service Provider with a copy or relevant extracts of the same. The requirement of the Client to supply Third Party Agreements shall be deemed to be discharged in respect of Third Party Agreements that the Service Provider is a party to or has been involved in preparing;
 - 3.12.2 perform the duties ascribed to the Service Provider under each Third Party Agreement, including (without limitation):
 - 3.12.2.1 issue any certificates required pursuant to each Third Party Agreement;
 - 3.12.2.2 follow the procedures set out in each Third Party Agreement before issuing any certificate of Practical Completion or completion of making good defects pursuant to the Building Contract.

4. SERVICE PROVIDER'S AUTHORITY

- 4.1 Notwithstanding any other provision in this Appointment, other than in an emergency or with the prior written consent of the Client, the Service Provider shall not have authority to act on behalf of the Client in relation to any of the following matters:
- 4.1.1 the acceptance of any tender and/or appointment of any Service Provider or any contractor for the Project including the execution of any document or agreement; and
 - 4.1.2 the instruction or acceptance of any material variation to the design or specification of the Project or the Services as described in the Brief and the Building Contract; and

- 4.1.3 the acceptance or agreement of any liability and/or quantum for loss and/or expense entitlements of any other claim for any Service Provider or contractor engaged on the Project; and
- 4.1.4 the variation, termination, or waiver of compliance with the terms of the Building Contract, or Third Party Agreement, or any appointment related to the Project.
- 4.2 Notwithstanding clause 4.1, the Client may vary in writing the Service Provider's authority.

5. ANTI-CORRUPTION

- 5.1 The Service Provider shall and shall ensure that all of its sub-Service Providers shall:
 - 5.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 (and any amendment to, or re-enactment of, it);
 - 5.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010;
 - 5.1.3 maintain throughout the term of this Appointment its own policies and procedures which satisfy the requirement for "adequate procedures" referred to in section 7 (2) of the Bribery Act 2010 and shall at the reasonable request of the Client confirm in writing compliance with this clause 5 and/or provide any evidence of compliance that the Client may reasonably request; and
 - 5.1.4 comply with the Client's standards of corporate governance.
- 5.2 The Service Provider warrants and represents that neither the Service Provider nor any of its shareholders, members, directors, officers, employees, agents, sub-Service Providers, associates or affiliates has been convicted or any offence involving bribery or corruption.

5A. MODERN SLAVERY

- 5A.1 The Service Provider warrants and represents that it has complied with and will continue to comply with:
 - 5A.1.1 its obligation under Section 54 of the Modern Slavery Act 2015, if applicable, to produce for each financial year an annual slavery and human trafficking statement setting out the steps it has taken during that year to ensure that slavery or human trafficking is not taking place in any part of its own business and in any of its supply chains; and
 - 5A.1.2 any applicable policy of the Client in place from time to time relating to the prevention of slavery, servitude, forced or compulsory labour, human trafficking or to any human rights matters.

5B. NON-DISCRIMINATION AND EQUALITY

The Service Provider shall comply with and shall uses its reasonable endeavours to ensure that sub-contractors comply with all legal or statutory requirement, modification or re-enactment relating to discrimination in employment.

5C. PUBLICITY AND BRANDING

- 5C.1 The Service Provider shall not make any press announcements or publicise this agreement or its contents in any way without the Client's prior written consent.
- 5C.2 The Service Provider shall not do anything or cause anything to be done, which may damage the reputation of the Client or bring the Client into disrepute.

6. REMUNERATION

- 6.1 The Client shall pay the Service Provider the Fee in accordance with this Appointment.
- 6.2 The Fee shall be paid as provided in schedule SCHEDULE 5: , provided that the Client shall be entitled to make a fair and reasonable adjustment to the amount and/or timing of the payment of Fee instalments to reflect any significant delay to the Project or the performance of the Services.
- 6.3 The Client shall also pay to the Service Provider the amount of value added tax properly chargeable by the Service Provider (subject to receiving a valid VAT invoice).
- 6.4 If the nature and scope of the Project and/or the Services is materially altered in accordance with the Client's requirements, the Client and the Service Provider shall agree a fair and reasonable adjustment to the Fee (and a consequential adjustment to the instalments set out in schedule SCHEDULE 5:) to reflect any substantial increase or decrease in the work required of the Service Provider resulting from the alteration.
- 6.5 In addition to the Services, the Service Provider shall perform any other services in relation to the Project which the Client may reasonably instruct. Subject to clauses 6.6 and 6.7, the Client shall pay an additional fee to the Service Provider in respect of any services so instructed, the amount and timing of payment of which shall be agreed between the parties.
- 6.6 It shall be a condition precedent to the Service Provider's right to payment pursuant to clause 6.5 that, prior to commencing any additional services, the Service Provider shall notify the Client that it intends to seek additional fees and provide to the Client an estimate of such additional fee, and that the Client has agreed to this prior to the commencement of such additional services.
- 6.7 Notwithstanding clauses 6.4 and 6.5, the Service Provider shall not be entitled to any increase in the Fee nor to any additional fee, payment, expense, disbursement or profit owing to or arising from any negligence, breach of statutory duty, breach of contract, default, omission, or error on the part of the Service Provider (or those appointed by or on behalf of the Service Provider) in the performance of its obligations under this Appointment.
- 6.8 If any sum due under this Appointment is not paid in full by the final date for payment and no pay less notice has been given pursuant to schedule SCHEDULE 5: , the Service Provider may suspend performance of the Services and any other obligations under this Appointment by giving the Client not less than seven days' prior written notice of its intention to suspend, stating the sum due and the grounds for suspension. The Service Provider's right to suspend shall cease when the Client makes payment in full of the sum due.

7. INSURANCE

- 7.1 Without limiting its other obligations under this Appointment or otherwise at law, the Service Provider shall maintain with reputable insurers with a place of business within the United Kingdom professional indemnity insurance from the date of this Appointment until 12 years from practical completion of the Works (notwithstanding the earlier termination, expiry or suspension of the Service Provider's engagement under this Appointment) with a limit of indemnity of not less than the amount set out in schedule SCHEDULE 1: , provided that such insurance continues to be available on reasonable terms and at commercially reasonable rates to Service Providers performing services substantially similar to the Services.
- 7.2 The Service Provider shall, on request, produce documentary evidence to show compliance with clause 7.1 and promptly notify the Client if such insurance ceases to be available or there is a material reduction in the scope or level of cover.

8. PROPRIETARY MATERIAL

- 8.1 The Service Provider grants, with full title guarantee, to the Client an irrevocable royalty-free non-exclusive licence (which shall remain in force notwithstanding the earlier termination or expiry of this Appointment for any reason) to copy, reproduce and use the Proprietary Material for any purpose connected with the Project. Such licence shall carry the right to grant sub-licences on the same basis and shall be freely transferable to third parties without the Service Provider's consent.
- 8.2 The Service Provider shall provide to the Client on request (without charge) the originals and the number of paper copies of the Proprietary Material specified in schedule SCHEDULE 1: , and if requested by the Client, the Service Provider shall also provide (without charge) an electronic version of all the Proprietary Material. The Service Provider shall, on request, provide the Building Contractor and the Other Service Providers with copies of the Proprietary Material reasonably required in connection with the Project. The Service Provider shall provide further copies of any or all of the Proprietary Material (in hard copy or electronic form) as the Client may reasonably require upon payment by the Client of the Service Provider's reasonable copying charges.
- 8.3 The Client acknowledges that the Service Provider shall not be liable for the consequences of the use of any or all of the Proprietary Material for any purpose other than that for which it was prepared by or on behalf of the Service Provider.
- 8.4 The Service Provider waives or shall procure the waiver of any moral and or authorship rights which it might otherwise possess under the Copyright, Designs and Patents Act 1988 in respect of the Proprietary Material and/or those parts of the Project relating to the Proprietary Material.
- 8.5 The Service Provider shall procure for the Client a waiver corresponding to that in clause 8.4 from any sub-Service Provider employed or engaged by the Service Provider who is an author (as referred to in the Copyright, Designs and Patents Act 1988) of any part of the Proprietary Material and/or those parts of the Project relating to the Proprietary Material.
- 8.6 The Service Provider shall indemnify the Client against any liability which the Client may incur by reason of the Service Provider infringing or being held to have infringed any copyright or other intellectual property in connection with the Proprietary Material.

- 8.7 Insofar as ownership of any copyright in any Proprietary Material is vested in any person other than the Service Provider, the Service Provider shall procure for the Client the benefit of a licence (on the same terms as the licence granted pursuant to clause 8.1) in respect of such Proprietary Material.

9. ASSIGNMENT, SUB-CONTRACTING, THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

- 9.1 The Service Provider shall not, without the prior written consent of the Client, assign or transfer any right or obligation under this Appointment, or sub-contract the performance of any of the Services. The Service Provider shall remain fully responsible for any of the Services which are sub-contracted as if it had performed such Services itself.
- 9.2 The Client may at any time, without the consent of the Service Provider being required, assign the benefit of this Appointment and any rights arising under it by way of absolute legal assignment to any person on two occasions and in addition may assign or charge the benefit of this Appointment to a Funder, provided that assignments or charges to a Group Company of the Client and/or the Funder, shall not count towards the two permitted assignments.
- 9.3 The Service Provider shall not contend that any person to whom this Appointment is assigned or charged pursuant to clause 9.2 shall be precluded from recovering any loss resulting from any breach of this Appointment by reason of such person not being the Client and/or the loss suffered being different or greater to any loss that may have been suffered by the Client.
- 9.4 The Service Provider shall, within seven days of the Client's request, execute and deliver to the Client a Collateral Warranty in favour of the Beneficiaries identified in such request. If the Service Provider fails to comply with this clause 9.4 the Client shall not be obliged to make any further payment to the Service Provider unless and until all requested Collateral Warranties been duly executed and delivered to the Client.
- 9.5 By the giving of written notice to the Service Provider, the Client (or the Named Client following novation pursuant to clause [REDACTED] [REDACTED] may grant the Third Party Rights to each and every Beneficiary and the Service Provider hereby consents to such grant. Such notice shall take effect on the earlier of the date of receipt of the notice by the Service Provider or the date of deemed receipt by the Service Provider and may state (but shall not be invalid if it does not) the following information:
- 9.5.1 the name or class of the Beneficiary and the nature of its interest in the Project;
- 9.5.2 the required amendments to the Third Party Rights, in which case the Service Provider shall sign a copy of the notice acknowledging its agreement (not to be unreasonably withheld or delayed) to such amendments and forthwith deliver it to the Client.
- 9.6 The rights of the Client or the Service Provider to:
- 9.6.1 subject to clause 11.1 terminate this Appointment or rescind this Appointment; or
- 9.6.2 agree to amend or otherwise vary or to waive the terms of this Appointment (excluding amending, varying or waiving the terms of this Appointment set out in clauses 1 to 17 and schedule SCHEDULE 6: (inclusive)); or

9.6.3 agree to settle any dispute or other matters arising out of or in connection with this Appointment on such terms as they shall in their discretion think fit,

shall not be subject to the consent of any Beneficiary.

9.7 Where a Beneficiary has been granted step-in rights pursuant to a collateral warranty, termination or rescission by the Service Provider of this Appointment shall be subject to the terms of such collateral warranty.

9.8 In the event that a particular Beneficiary is granted Third Party Rights, then such Beneficiary shall not also be entitled to a Collateral Warranty and vice versa.

10. NOVATION (NOT USED)

11. TERMINATION AND SUSPENSION

11.1 The Client may at any time, by giving not less than twenty days' written notice to the Service Provider, terminate the Service Provider's engagement under this Appointment or the performance of any part of the Services.

11.1A The Client may terminate the Service Provider's appointment under this Appointment immediately if, in connection with the Services or the Project, the Service Provider or any person appointed or employed by it or acting on his behalf:

11.1A.1 accepts, solicits, agrees to receive, promises, offers or gives a bribe, a facilitation payment, a kickback or other improper payment; or

11.1A.2 commits an offence under the Bribery Act 2010 or any other applicable anti bribery and corruption laws or regulations.

11.2 The Client may at any time, by written notice to the Service Provider, require the Service Provider to suspend further performance of the whole or any part of the Services immediately. In the event of such suspension, the Client may at any time within a period of 12 months from the date of such notice require the Service Provider to immediately resume performance of the suspended Services by giving not less than seven days' written notice. If the Client has suspended the whole of the Services and has not required the Service Provider to resume performance of at least part of the Services within 12 months of the date of such suspension, either the Service Provider or the Client may, by giving not less than seven days' written notice to the other, terminate the Service Provider's engagement under this Appointment.

11.3 If the Client is materially in breach of its obligations under this Appointment and fails to remedy such breach within 28 days after receipt of a written notice from the Service Provider specifying the breach and requesting its remedy, the Service Provider may then (subject to clause 11.1) by a further seven days' prior written notice to the Client terminate the Service Provider's engagement under this Appointment.

11.4 Upon termination of the Service Provider's engagement under clause 11.1 or suspension of the whole of the Services under clause 11.2, the Service Provider shall immediately take steps to bring the Services to an end in an orderly manner (but with all reasonable speed and economy) and shall within 14 days deliver to the Client all the Proprietary Material (whether in the course of preparation or completed) provided that the Service Provider shall be entitled to retain copies.

- 11.5 If the Service Provider's engagement is terminated or the performance of the whole of the Services is suspended, the Client shall (subject to any withholdings, deductions or set-offs which the Client is entitled to make and to clauses 11.6, 11.7 and 11.8) pay to the Service Provider that part of the Fee and any other amounts arising under this Appointment which have accrued due prior to the date of termination or suspension, plus a fair and reasonable proportion of the next instalment of the Fee having regard to the extent of the Services performed up to the date of termination or suspension, less the sum of any payments previously made by the Client to the Service Provider under this Appointment.
- 11.6 The Client shall have no further liability to the Service Provider under this Appointment in respect of any termination or suspension pursuant to the terms of this Appointment. In particular, the Client shall not be liable for any direct, indirect or consequential losses, loss of profit, loss of contracts, loss of goodwill, loss of opportunity or other costs, losses and/or expenses incurred by the Service Provider.
- 11.7 Except as expressly set out in this Appointment, termination of the Service Provider's engagement (howsoever arising) shall not limit (subject to clause 11.6) any accrued rights and remedies of either party or any Beneficiary in relation to any breach, negligence, omission or default of the other party occurring prior to termination.
- 11.8 The provisions of this Appointment shall continue to bind the parties for as long as may be necessary to give effect to their respective rights and obligations under it.

12. CONFIDENTIALITY AND INFORMATION

- 12.1 Save as may be strictly necessary for the proper carrying out of any of its obligations under this Appointment, or as the Client may from time to time consent to in writing, the Service Provider shall treat as confidential and shall not disclose to any person any Confidential Information relating to the Client, the Project, this Appointment and any other confidential and/or proprietary information which is or maybe disclosed to and/or acquired by the Service Provider pursuant to this Appointment.
- 12.2 The Service Provider shall not, without the prior written consent of the Client, publish alone or in conjunction with any other person any articles, illustrations, photographs or videos relating to the Project and/or the Services.
- 12.3 Save as may be strictly necessary for the proper carrying out of any of its obligations under this Appointment or as required by law, including, for the avoidance of doubt, the Freedom of Information Act 2000 and similar legislation or equivalent codes with which the Client is bound to comply, the Client shall not disclose to any person any confidential or proprietary information provided to it by the Service Provider.
- 12.4 The Service Provider recognises that the Client is subject to legal duties which may require the release of information under the Freedom of Information Act 2000 ("FOIA") or similar legislation or equivalent codes and that the Client will be/is under an obligation to provide information on request. Such information may include matters relating to, arising under or out of the Appointment in any way.
- 12.5 The Service Provider shall and shall procure that its sub-Service Providers shall:
- 12.5.1 transfer to the Client all requests for information (being a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environment Information Regulations 2004)

("Requests for Information") that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

- 12.5.2 provide the Client with a copy of all Information, relevant to a Request for Information, in its possession or power, in the form that the Client requests within five (5) days (or such other period as the Client may specify) of the Client's request; and
- 12.5.3 provide all necessary assistance reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environment Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown body in relation to such regulations.
- 12.6 The Service Provider recognises that each request for information must be considered individually and that any decision to disclose information will be the decision of the Client.
- 12.7 In any event, the Client shall not be responsible to the Service Provider for any loss, damage, harm or other detriment, however caused arising from the disclosure of any information under the Act or other similar legislation or code.
- 12.8 The Service Provider will provide such assistance to the Client as the Client requires to enable it to comply with its obligations under the FOIA. In particular the Service Provider acknowledges that the Client is entitled to access any and all information relating to the performance of this Appointment or arising in the course of performing this Appointment and the Service Provider shall grant such access. The Service Provider will respond to any request for information about this agreement from the Client with all due expedition and at the latest within ten (10) days of receiving the request for information, at no additional cost to the Client.
- 12.9 The Service Provider shall comply with the Data Protection Act 2018 and any other applicable statutory obligations or guidelines, relating to the processing of personal data (as defined in the Data Protection Act 1998) which is supplied to the Service Provider by the Client or obtained by the Service Provider in the course of performing its obligations under this Appointment, as a data processor or data controller as appropriate.
- 12.10 The Service Provider shall ensure that no act, omission or default on the part of the Service Provider, its subcontractors and/or employees shall cause the Client to contravene any provisions of the Data Protection Act 2018.
- 12.11 For a period of two years thereafter, the Service Provider shall hold all Confidential Information in trust and confidence for the Client and shall neither use such Confidential Information other than for the benefit of the Client nor disclose by any means to any person any such Confidential Information except as may be authorised by the Client in writing.

13. ADJUDICATION

- 13.1 Either party may refer any dispute or difference arising under this Appointment to adjudication. Unless the adjudicator has been agreed between the parties, the adjudicator shall, upon the request of the party seeking adjudication, be nominated by the Chairman

for the time being of the Technology and Construction Solicitors Association ("TeCSA") or such other person within TeCSA with authority to make such nomination.

13.2 The adjudication shall be undertaken in accordance with the rules and provisions of the Scheme, subject to the amendments set out in this clause and the requirement for the adjudicator to give reasons for his decision.

13.3 The Client and the Service Provider shall maintain strict confidence in respect of any intention to refer a dispute or difference under this Appointment to adjudication, or any information relating to any adjudication.

14. GOVERNING LAW AND JURISDICTION

The interpretation of this Appointment shall in all respects be governed by English law, and subject to clause 13 any disputes or differences arising under or in respect of it shall be subject to the exclusive jurisdiction of the English courts.

15. LIMITATION

15.1 Notwithstanding any provision of the Limitation Act 1980, the Client shall be entitled to commence legal proceedings against the Service Provider in respect of its duties and/or liabilities arising out of or in connection with this Appointment at any time up to and including the date that is 12 years from Practical Completion but not thereafter. The Service Provider shall remain liable after that date for any breaches of such duty, or such liabilities where proceedings are commenced before such date, and shall remain liable until the matter is finally settled or determined.

15.2 The directors, partners and employees of the Service Provider shall not have any personal liability to the Client in respect of any and all obligations duties and liabilities (whether accrued or accruing) of the Service Provider arising out of or in connection with this Appointment.

15.3 This clause 15 shall not be affected by any termination or suspension of this Appointment and the provisions of this clause 15 shall continue in full force and effect notwithstanding any such termination or suspension.

15.4 This clause 15 shall not apply to any liability in respect of death, personal injury, fraud or any matter that cannot lawfully be limited or excluded.

16. NOTICES

A notice or other communication required under this Appointment shall be given in writing and shall be deemed properly given if it complies with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962). The addresses and numbers for service of the Client and of the Service Provider shall be those stated in schedule SCHEDULE 1: or such other address or number for service as a party notifies to the other.

17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Except as expressly stated in this Appointment, this Appointment shall not and shall not purport to confer on any third party any benefit or right to enforce any term of this Appointment whether by way of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

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EXECUTED and delivered as a deed on the date of this Appointment.

Signed for and on behalf of **THE CLIENT** :

)
)

Signature

[Redacted Signature]

Name (block

[Redacted Name]

[Redacted Name]

[Redacted Name]

[Redacted Name]

Signed for and on behalf of [**SERVICE PROVIDER**] by:

)
)

Signature

[Redacted Signature]

Name (block capitals)

[Redacted Name]

**Director/authorised
signatory**

SCHEDULE 1: APPOINTMENT PARTICULARS

[See Framework Instruction]

SCHEDULE 2: THE SERVICES

[*See Framework Instruction*]

SCHEDULE 3: BRIEF

[See Framework Instruction]

SCHEDULE 4: PROGRAMME

[*See Framework Instruction*]

SCHEDULE 5: THE FEE

Part 1:

[The Fee should not be inserted into this section. Fee details are to be inserted into each Framework Instruction]

1. The Fee is the [lump] sum of £ [See Framework Instruction] exclusive of VAT.
2. [The Fee shall be paid by instalments as set out below:] [Payment of the Fee is broken down by reference to the work stages as follows:] [See Framework Instruction]

Month end/Instalment date [If a specific date is not stated below, the Payment Due Date (see paragraph 3.1) shall be the last day of each month stated below.]	Work Stage	Monthly Fee (excluding VAT)	Interim (excluding VAT)	Total Work Fee
[See Framework Instruction]	[See Framework Instruction]	[See Framework Instruction]	[See Framework Instruction]	[See Framework Instruction]

3. In respect of each instalment:
 - 3.1 the payment due date ("**Payment Due Date**") is the date which is 30 days after instalment date stated in paragraph 2; and
 - 3.2 the final date for payment ("**Final Date for Payment**") is 15 days after the Payment Due Date.
4. Not later than three days after the Payment Due Date for each instalment, the Service Provider shall give to the Client a notice ("**Payment Notice**") specifying:
 - 4.1 the sum the Service Provider considers to be due at the Payment Due Date including the relevant instalment amount and (if any) the additional fees properly due, expenses or disbursements incurred by the Service Provider up to such date which are payable to the Service Provider pursuant to this Appointment ("**Notified Sum**"); and
 - 4.2 the basis on which the Notified Sum is calculated;
 - 4.3 and the parties agree the Payment Notice shall be deemed to be the payment notice required under s.110A of the Construction Act; and
 - 4.4 the Payment shall be in a form required by the Client and in duplicate and electronic form where so requested by the Client.

5. Together with the Payment Notice, the Service Provider shall provide a valid VAT invoice for the Notified Sum and such other details and supporting documentation as the Client may reasonably require.
6. Subject to paragraphs 7, 8 and 15, the Client shall pay the Service Provider the Notified Sum on or before the Final Date for Payment.
7. If the Client intends to pay less than the Notified Sum, the Client shall not later than two days before the Final Date for Payment ("**Prescribed Period**"), give the Service Provider a notice ("**Pay Less Notice**") specifying:
 - 7.1 the sum that the Client considers to be due to the Service Provider at the date the Pay Less Notice is served; and
 - 7.2 the basis on which that sum is calculated.
8. Subject to paragraph 15, where a Pay Less Notice is given, the Client shall pay the sum stated in the Pay Less Notice to the Service Provider on or before the Final Date for Payment.
9. Payment Notices and Pay Less Notices shall be given even if the amount considered to be due is zero.
10. If any sum payable pursuant to paragraphs 6 or 8 is not paid by the Final Date for Payment, the Client shall pay interest to the Service Provider on the sum that is overdue (calculated from the Final Date for Payment of the relevant sum) at a rate equivalent to two per cent above the Bank of England base lending rate accruing at a daily rate (based on a 365 day year) until payment of the overdue sum is received by the Service Provider. It is agreed that the provisions of this paragraph constitute a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
11. Any failure by the Client to give a Pay Less Notice shall not be deemed to be an acceptance that the relevant Payment Notice represents the value of the Services executed and, notwithstanding any such failure, the Service Provider's entitlement shall remain the amount properly due in accordance with the terms of this Appointment.
12. If the Client believes that the aggregate of:
 - 12.1 amounts paid in relation to previous instalments; and
 - 12.2 any further amounts due to the Service Provider (but not yet paid),exceeds the amount to which the Service Provider is entitled, the Client may issue a Payment Notice in a negative value reflecting the amount the Service Provider has been overpaid, and such sum shall become due from the Service Provider to the Client.
13. In relation to any such Payment Notice in a negative value:
 - 13.1 the Payment Due Date shall be the date the Payment Notice is received by the Service Provider;
 - 13.2 the Final Date for Payment shall be 28 days from the Payment Due Date; and .

- 13.3 such Payment Notice shall be without prejudice to:
- 13.3.1 the Client's obligation to pay, by the Final Date for Payment, a sum due under paragraphs 6, 8 and/or 10; and
 - 13.3.2 the Service Provider's rights under section 111(3) of the Housing Grants, Construction and Regeneration Act 1996.
14. If any sum payable pursuant to paragraph 12 is not paid by the Final Date for Payment referred to in paragraph 13.2, the Service Provider shall pay interest to the Client on the amount that is overdue (calculated from the final date for payment of the relevant sum) at a rate equivalent to two per cent above the Bank of England base lending rate accruing at a daily rate (based on a 365 day year) until payment of the overdue sum is received by the Client. It is agreed that the provisions of this paragraph constitute a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
15. If the Service Provider is adjudged bankrupt or makes a composition or arrangement with its creditors or has a winding up petition or a petition for an administration order presented against it or has a receiver or manager or administrative receiver or provisional liquidator appointed or on the happening of any other event of insolvency ("**Insolvency Event**"), the Client shall not be required to make any further payments to the Service Provider if the Insolvency Event occurred after the date that the Prescribed Period began.
16. Where the Service Provider issues a VAT invoice in respect of any instalment and subsequently the amount of that instalment is altered in accordance with this schedule, the Client may require the Service Provider to provide a credit note for the original VAT invoice and a new VAT invoice reflecting the alteration.

SCHEDULE 6: THIRD PARTY RIGHTS

1. Definitions and interpretation

- 1.1 In this schedule all terms shall have the respective meanings ascribed to them in this Appointment unless otherwise stated.
- 1.2 The rules of interpretation set out in this Appointment shall apply to this schedule.
- 1.3 Paragraph references in this schedule are to paragraphs in this schedule.
- 1.4 The expression "**Beneficiary**" in this schedule shall include the person identified in the notice by which they are granted rights and such expression also includes successors in title, transferees, and any person who is a permitted assignee.

2. Service Provider's warranties

- 2.1 The Service Provider warrants and undertakes to the Beneficiary that it has observed and performed and shall continue to observe and perform each and all of its obligations and duties under or arising out of this Appointment in accordance with its terms, provided always that:
 - 2.1.1 the Service Provider shall owe no greater obligations to the Beneficiary under this schedule than it would owe if the Beneficiary had been named as a joint Client with the Client under this Appointment;
 - 2.1.2 the Service Provider shall be entitled in any proceedings under this schedule to rely on any limitation in this Appointment and to raise the equivalent rights in defence of liability as it would have (but excluding set-offs or counterclaims) if the Beneficiary had been named as a joint Client with the Client under this Appointment; and
 - 2.1.3 termination of this Appointment shall not affect the accrued rights of the Beneficiary under or arising out of this schedule and the provisions of this schedule shall continue to bind the parties for as long as necessary to give effect to such rights.
- 2.2 Without limiting paragraph 2.1, the Service Provider warrants to the Beneficiary that:
 - 2.2.1 it has exercised and shall continue to exercise in the performance of the Services all the reasonable skill, care and diligence which may be expected of a properly qualified and competent professional Service Provider of the same discipline as the Service Provider experienced in the provision of such services in respect of projects of a similar size, scope, nature, value, and complexity to the Project;
 - 2.2.2 the Services as completed shall comply (subject to paragraph 2.2.1) with any performance specification or requirement included or referred to in this Appointment; and
 - 2.2.3 it has not specified, approved or authorised for use, and shall not specify, approve or authorise for use and that it shall not knowingly permit the use of any Prohibited Materials in the Project.
- 2.3 The Service Provider acknowledges that the Beneficiary has relied and shall continue to rely upon the warranties given by the Service Provider under this paragraph 2.

3. Use of Proprietary Material

- 3.1 The Service Provider grants, with full title guarantee, to the Beneficiary an irrevocable royalty-free non-exclusive licence (which shall remain in force notwithstanding the earlier termination or expiry of this Appointment for any reason) to copy, reproduce and use the Proprietary Material for any purpose connected with the Project. The licence shall carry the right to grant sub-licences on the same basis and shall be freely transferable to third parties without the Service Provider's consent.
- 3.2 The Beneficiary acknowledges that the Service Provider shall not be liable for the consequences of use of any or all of the Proprietary Material for any purpose other than that for which it was prepared by or on behalf of the Service Provider.
- 3.3 The Service Provider waives or shall procure the waiver of any moral and/or authorship rights which it might otherwise possess under the Copyright, Designs and Patents Act 1988 in respect of the Proprietary Material and/or those parts of the Project relating to the Proprietary Material.
- 3.4 The Service Provider shall procure for the Beneficiary a waiver corresponding to that in paragraph 3.3 from any sub-Service Provider employed or engaged by the Service Provider who is an author (as referred to in the Copyright, Designs and Patents Act 1988) of any part of the Proprietary Material and/or those parts of the Project relating to the Proprietary Material.
- 3.5 The Service Provider shall indemnify the Beneficiary against any liability which the Beneficiary may incur by reason of the Service Provider infringing or being held to have infringed any copyright or other intellectual property in connection with the Proprietary Material.
- 3.6 The Service Provider shall provide to the Beneficiary on request (without charge) one complete set of paper copies of the Proprietary Material and an electronic version of all the Proprietary Material. The Service Provider shall provide further copies of any or all of the Proprietary Material (in hard copy or electronic form) as the Beneficiary may reasonably require upon payment by the Beneficiary of the Service Provider's reasonable photocopying charges.
- 3.7 Insofar as ownership of any copyright in any Proprietary Material is vested in any person other than the Service Provider, the Service Provider shall procure for the Beneficiary the benefit of a licence on the same terms as the licence granted pursuant to paragraph 3.1 in respect of such Proprietary Material.

4. Insurance

- 4.1 The Service Provider shall maintain with reputable insurers with a place of business within the United Kingdom professional indemnity insurance from the date of this Appointment until 12 years from practical completion of the Works (notwithstanding the earlier termination, expiry or suspension of the Service Provider's engagement under this Appointment) with a limit of indemnity of not less than the amount set out in schedule SCHEDULE 1: , provided that such insurance continues to be available on reasonable terms and at commercially reasonable rates to Service Providers performing services substantially similar to the Services.
- 4.2 The Service Provider shall on request produce documentary evidence to show compliance with paragraph 4.1 and promptly notify the Beneficiary if such insurance ceases to be available or there is a material reduction in the scope or level of cover.

5. Assignment

- 5.1 The Beneficiary may at any time without the consent of the Service Provider being required, assign the benefit of this schedule and/or any of its rights arising under it to any person on two occasions without the consent of the Service Provider by way of absolute legal assignment.
- 5.2 Any assignment by the Beneficiary to a subsidiary or associated company of the Beneficiary or a member of the same group of companies (as defined by Section 42 of the Landlord and Tenant Act 1954) or an assignment by way of security or on redemption will not count as an assignment pursuant to this clause 5.
- 5.3 The Service Provider shall not contend that any person to whom the Beneficiary assigns or has assigned its rights pursuant to this schedule shall be precluded from recovering any loss resulting from any breach of this Appointment by reason of such person not being the Beneficiary and/or the loss suffered being different or greater to any loss that may have been suffered by the Beneficiary.
- 5.4 The Service Provider shall not, without the prior written consent of the Beneficiary, assign the whole or part of its interest in and/or any rights arising under or out of this schedule.

6. Other remedies

- 6.1 Nothing in this schedule shall in any way limit or affect any other rights or remedies (whether under any contract, at law, negligence, in equity or otherwise) which the Beneficiary would have against the Service Provider in the absence of this schedule.
- 6.2 The obligations, duties, and liabilities of the Service Provider under this schedule shall not be released, diminished, prejudiced, or in any other way affected by (i) any instruction, approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary and/or (ii) any investigation, monitoring, examination, test, survey, and/or inquiry into any relevant matter which the Beneficiary or 'those acting on its behalf may make or fail to make.
- 6.3 Any non-enforcement or delay in enforcement by the Beneficiary in exercising any right shall not be construed as a waiver of such right and shall not affect the ability of the Beneficiary to subsequently exercise that right.

7. Limitation

- 7.1 Notwithstanding any provision of the Limitation Act 1980, the Beneficiary shall be entitled to commence legal proceedings against the Service Provider in respect of its duties and/or liabilities arising out of or in connection with this schedule at any time up to and including the date that is 12 years from Practical Completion but not thereafter. The Service Provider shall remain liable after that date for any breaches of such duty, or such liabilities where proceedings are commenced before such date, and shall remain liable until the matter is finally settled or determined.
- 7.2 The directors, partners and employees of the Service Provider shall not have any personal liability to the Beneficiary in respect of any and all obligations, duties and liabilities (whether accrued or accruing) of the Service Provider arising out of or in connection with this schedule.

- 7.3 This paragraph 7 shall not be affected by any termination or suspension of this Appointment and the provisions of this paragraph 7 shall continue in full force and effect notwithstanding any such termination or suspension of this Appointment.
- 7.4 This paragraph 7 shall not apply to any liability in respect of death, personal injury, fraud, or any matter that cannot lawfully be limited or excluded.
- 7.5 Except as expressly stated in this Appointment (including this schedule), this schedule shall not and shall not purport to confer on any third party any benefit or right to enforce any term of this schedule whether by way of the Contract (Rights of Third Parties) Act 1999 or otherwise.

8. Notices

A notice or other communication required under this schedule shall be given in writing and shall be deemed properly given if it complies with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

9. Governing law and disputes

- 9.1 The application and interpretation of this schedule shall in all respects be governed by English law and any disputes or differences arising under or in respect of it shall be referred to the English courts.
- 9.2 Termination of this Appointment shall not affect the accrued rights of the Beneficiary under or arising out of this schedule and the provisions of this schedule shall continue to bind the parties for as long as necessary to give effect to such rights.