

Dated

2020

KETTERING BOROUGH COUNCIL

-AND-

[XXX]

PROFESSIONAL SERVICES AGREEMENT

IN RELATION TO

Gallery Library and Museum (GLaM) to RIBA
stage 3

District Law
Municipal Offices
Bowling Green Road
Kettering
Northamptonshire
NN15 7QX

Ref: GXS/0[XXX]

THIS AGREEMENT is made []

BETWEEN

- (1) **KETTERING BOROUGH COUNCIL** of Municipal Offices, Bowling Green Road, Kettering, NN15 7QX (the “Client”); and
- (2) **[XXX] (Company Registration No [XXX]) whose offices are at [XXX] (the “Consultant”).**

BACKGROUND:

- (A) In reliance upon the skill, knowledge and experience the Consultant has represented that it has, the Client wishes to appoint the Consultant to provide the Services.
- (B) The Consultant agrees to accept the appointment in accordance with the terms and conditions of this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires the definitions set out below shall apply.

“Agreement”		this professional services agreement, its terms and conditions, the schedule and any other document attached;
“Best Industry Practice”		standards, practices, methods and procedures conforming to the Laws and with all due care, skill, diligence and ability which would be expected from a skilled and appropriately experienced, qualified and trained person or body engaged in a similar type of undertaking under the same or similar circumstances;
“Building Contractor”		the building contractor to be appointed by the Client to deliver the Project;
“Commencement Date”		25 th May 2020;
“Confidential Information”		all information disclosed by one party to the other, orally in writing or in electronic form relating to this Agreement that is not already in the public domain. It shall also include information, documents, drawings, reports or data the Consultant may acquire or generate under or in connection with this Agreement;
“Consultant’s Representative”		the representative appointed by the Consultant in relation to this Agreement, whose details are set out in the Schedule, or such other person as the Consultant may otherwise advise in writing;
“Client’s Officer ”	Authorised	the officer responsible for the monitoring and management of this Agreement whose details are set out in the Schedule, or such other person as the Client may otherwise advise in writing;
“Expiry Date”		18 th December 2020 or on completion of the Services whichever is the earliest;
“Fees”		the fees payable to the Consultant by the Client under the Agreement for the full and proper performance by the Consultant of its obligations under this Agreement, as set out in the Schedule;

“Force Majeure Event”	any cause materially affecting the performance of the Services under the Agreement arising from any act, events, omissions, happenings or non-happenings beyond the parties reasonable control including, without limitation, acts of God, war, riot, fire, flood or any disaster affecting either of the parties but will not mean any labour dispute between the Consultant and the Consultant’s employees, agents or sub-contractors;
“GDPR”	the General Data Protection Regulation (2016), Regulation (EU) 2016/679, as amended or re-enacted from time to time and any United Kingdom Act or European Union Regulation recognised in UK law substantially replacing the same. All compliance references to GDPR in this Agreement are applicable from 25th May 2018. On which date the Data Protection Act 1998 (the “DPA”) shall be replaced with GDPR;
“Laws”	any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body which the Consultant is bound to comply with;
“Prohibited Act”	<p>(a) offering, promising or agreeing to give to any servant of the Client any gift or consideration of any kind as an inducement or reward:</p> <p>(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Client; or</p> <p>(ii) for showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Client;</p> <p>(b) committing any offence:</p> <p>(i) under the Bribery Act; or</p> <p>(ii) under legislation creating offences in respect of fraudulent acts; or</p> <p>(iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Client; or</p> <p>(iv) defrauding or attempting to defraud or conspiring to defraud the Client;</p> <p>(v) any action that may reasonably be considered to be to the detriment of the Client and or its end user’s welfare, either by positive action or by omission. Such action shall include but is not limited to; breach of the law, related to health, safety and or care, safeguarding, abuse, sexual allegations and or misconduct; financial malpractice or business continuity failure;</p>
“Project”	[XXX];
“Safety Legislation”	the Health and Safety at Work Act 1974 and the Consumer Protection Act 1987 together with all regulations made under them including, but not limited to, the General Product Safety Regulations 1994, the Control of Substances Hazardous to Health Regulations 1999 and all other legislation, codes of practice and guidance from time to time amended (including subordinate legislation and European Community legislation to the effect that it has direct effect on member states)

	imposing legal requirements with respect to health and safety at work and/or the safety of any goods and equipment used in the performance of the Services and the health and safety of the users of such equipment;
“Schedule”	the schedule attached to this Agreement;
“Services”	the services to be provided to the Client by the Consultant and its Staff, as specified in the Schedule;
“Staff”	all persons employed by the Consultant to perform its obligations under the Agreement together with the Consultant’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Agreement.
“Working Day”	Monday to Friday, excluding public holidays in England and Wales.

1.2 The interpretation and construction of the Agreement shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) references to any party shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words “include”, “included”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (g) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.
- (h) in cases of conflict the following order of precedence shall apply:
 - 1. the terms and conditions of this Agreement;
 - 2. the Schedule.

2. COMMENCEMENT AND DURATION

2.1 This Agreement is for a period commencing on the Commencement Date and terminating on the Expiry Date (the “Term”), subject always to review or such lesser period as a result of the Agreement being terminated earlier in accordance with the provisions of this Agreement.

2.2 The Consultant knowledge’s and confirms that:

- 2.2.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Client all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement; and

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2.2.2 it has entered into this Agreement in reliance on its own due diligence.

3. THE SERVICE STANDARD

3.1 In performing the Services, the Consultant shall:

3.1.1 comply with the terms of this Agreement and completes the Services in accordance with the requirements set out in the Schedule in all material respects ensuring that, except with the consent of the Client, the Services are carried out exclusively by the persons named in the Schedule;

3.1.2 operate and deliver the Services in accordance with Best Industry Practice and in compliance and conformance with all applicable Laws;

3.1.3 notify the Client in writing immediately on learning of any relationship or potential conflict of interest that might influence or be perceived to influence the provision of the Services;

3.1.4 co-operate with the Client in all matters relating to the Services;

3.1.5 co-operate, and procure that its Staff co-operates, with the Client in carrying out any performance monitoring, at no additional charge to the Client; and

3.1.6 use its best endeavours to promote the interests of the Client.

3.2 Within ten (10) Working Days of a request from the Client, the Consultant shall execute and deliver a deed or deeds of collateral warranty in favour of the Client and or any beneficiary, purchaser, funder, tenant and /or any other party with an interest in the Project including in each case acquiring an interest in or charge over the Project or any part of the Project, in the form of the relevant deed of collateral warranty in the Schedule.

3.3 Notwithstanding any other provisions of the Agreement, the Client may withhold any payment due to the Consultant under the Agreement until such time as any outstanding warranties which have been requested but not provided within the ten (10) Working Days have been satisfactorily executed and delivered to the Client's Authorised Officer.

4. FEES AND PAYMENT

4.1 In consideration of the performance of the Consultant's obligation under the Agreement, the Client shall pay the Fees set out in the Schedule within thirty (30) days of a correctly rendered invoice. No extra charges shall be effective unless agreed in writing and signed by the Client.

4.2 All invoices shall be directed to the Client's Authorised Officer.

4.3 The Client shall pay all undisputed invoices submitted to it by the Consultant in accordance with the payment arrangements set out in the Schedule, to a bank account nominated in writing by the Consultant. Each invoice shall include such supporting information required by the Client to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

4.4 The Client may reduce payment in respect of any Services which the Consultant has either failed to provide or has, in the Client's reasonable opinion, provided inadequate Services;

4.5 All amounts payable by the Client under the Agreement are exclusive of amounts in respect of valued added tax chargeable from time to time (the "VAT"). Where any taxable supply for VAT purposes is made under the Agreement by the Consultant to the Client, the Client shall, on receipt of a valid VAT invoice from the Consultant, pay to the Consultant such additional amounts in respect of VAT as are chargeable on the performance of the Services at the same time as payment is due for the performance of the Services.

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- 4.6 If the Client fails to pay any amount properly due and payable by it under the Agreement, the Consultant shall have the right to charge interest on the overdue amount at the rate of two (2) per cent per annum above the base rate for the time being of the Bank of England, accruing on a daily basis from the due date up to the date of actual payment. This clause shall not apply to payments that the Client disputes in good faith.
- 4.7 The Consultant shall maintain complete and accurate records of the time spent and materials used by the Consultant in the performance of the Services, and the Consultant shall allow the Client to inspect such records at all reasonable times on request.
- 4.8 Payment by the Client shall be without prejudice to any claims or rights which the Client may have against the Consultant and shall not constitute any admission by the Client as to the performance by the Consultant of its obligation hereunder.
- 4.9 The Client may at any time, without notice to the Consultant, set off any liability of the Consultant to the Client against any liability of the Client to the Consultant, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by the Client of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
- 4.10 Where the Consultant enters into a Sub-Contract, the Consultant shall include in that Sub-Contract:
- 4.10.1 provisions having the same effect as clauses 4.3 - 4.4 of this Agreement; and
 - 4.10.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 4.3 - 4.4 of this Agreement;
 - 4.10.3 in clause 4.10, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Client in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
5. STATUTORY RIGHTS
- 5.1 Nothing in these conditions shall affect in any way the statutory rights of the Client or any subsequent amending or consolidating legislation.
- 5.2 A party who is not a party to this Agreement is not entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 except where this Agreement expressly provides otherwise.
- 5.3 The Consultant shall at its own expense, comply in all respects with the Laws and all applicable rules and regulations and Best Industry Practice in all matters arising in the performance of or in connection with the Agreement.
6. MONITORING
- 6.1 The Consultant's performance of the Services shall be monitored by the Client's Authorised Officer, who shall be entitled to make recommendations to the Consultant for improving the standard of the Consultant's performance in undertaking the Services.
- 6.2 The Consultant's Representative will meet regularly with the Client's Authorised Officer (the "Liaison Meetings") upon receiving a request to do so, to discuss the Services being provided by the Consultant and to provide the Client with progress reports.
- 6.3 At Liaison Meetings the Client's Authorised Officer and the Consultant's Representative will review, among other things, the Consultant's performance, key performance indicators (the "KPIs") where applicable, progress-to-date on provision of the Services, and any issues relating to the performance of the Services.

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6.4 The Client's Authorised Officer shall keep minutes of all Liaison Meetings.

7. ANTI-BRIBERY AND MODERN SLAVERY ACT REQUIREMENT

7.1 The Consultant shall:

- 7.1.1 comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including, without limitation, the Bribery Act and Modern Slavery Act 2015;
- 7.1.2 maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with all applicable anti-bribery and anti-corruption legislation;
- 7.1.3 use reasonable endeavours to ensure that all persons associated with the Consultant (as defined by section 8 of the Bribery Act) including any sub-contractors and suppliers comply with this clause;
- 7.1.4 implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chain, to ensure that there is no slavery or human trafficking in its supply chain;
- 7.1.5 use reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour in its operations or practice.

8. EQUALITIES

8.1 The Consultant shall (and shall procure that its Staff shall) not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination in employment including but not limited to the Equality Act 2010, and shall (and shall procure that its Staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Services.

9. SAFEGUARDING

9.1 The Consultant acknowledges that in performing the Agreement it may have access to vulnerable adults and or children, their personal data and confidential information relating to them or members of the public and accordingly the Consultant shall ensure that no member of Staff or person is permitted to carry out work in connection with this Agreement where the Security Check (the "Security Check" means security cleared to the standard required for Staff via the Disclosure and Barring Service) reveals any conviction, caution, pending prosecution, binding over order or other criminal record or any soft information that would give a prudent and responsible employer cause for concern in the context of this Agreement. For the avoidance of doubt, and without prejudice to the generality of the foregoing, the Consultant shall ensure that no person who appears on any statutory barred list shall carry out any work in connection with this Agreement.

10. PROTECTION OF DATA

- 10.1 The Consultant shall throughout the term of this Agreement comply with the provisions of the DPA and or GDPR (when in force) and or any subsequent amendment thereto and shall ensure that its agents and Staff are trained in and comply with the data protection principles set out in the DPA and GDPR in their performance of the Services, at no additional cost to the Council.
- 10.2 For the purposes of this clause 10, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA and GDPR.
- 10.3 Both parties will duly observe all their obligations under the DPA and GDPR which arise in connection with the Agreement.

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- 10.4 Notwithstanding the general obligation in clause 10.3, where the Consultant is processing Personal Data (as defined by the DPA) as a Data Processor for the Client the Consultant shall:
- 10.4.1 process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature) as set out in this Agreement or as otherwise notified by the Client;
 - 10.4.2 comply with all applicable laws;
 - 10.4.3 process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Consultant's obligations under this Agreement or as is required by law or any regulatory body;
 - 10.4.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 10.4.5 take reasonable steps to ensure the reliability of its Staff and agents who may have access to the Personal Data;
 - 10.4.6 not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Client or in compliance with a legal obligation imposed upon the Client; and
- 10.5 notify the Client within five (5) Working Days) if it receives:
- 10.5.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 10.5.2 a complaint or request relating to the Client's obligations under the DPA;
- 10.6 The provision of this clause 10 shall apply during the Term and indefinitely after its expiry.
11. FREEDOM OF INFORMATION
- 11.1 The Consultant recognises that the Client has information disclosure obligations under the Freedom of Information Act 2010 ("FOIA") and the Environmental Information Regulations ("EIR"). The Consultant agrees to provide such assistance and support as may be requested from time to time by the Client for the purposes of enabling or assisting the Client to comply with these information disclosure obligations in respect of matters relating to or arising out of this Agreement.
- 11.2 In the event that a request made to the Client for access to information under the FOI or the EIR, or any notice, recommendation or complaint is made to or against the Client in relation to its obligations under the FOIA or EIR, the Consultant will within five (5) Working Days of the date of a request from the Client provide to the Client, any details in its possession relating to this Agreement or to the Consultant as the Client may require to deal with such access request or deal with such notice, recommendation or complaint.
- 11.3 The Consultant acknowledges the Client may be obliged under the FOIA or EIR to disclose information to third parties, including information relating to the appointment of the Consultant to provide the Services under this Agreement, and the terms of this Agreement, subject to certain exemptions. The Consultant further acknowledges and accepts that the decision to disclose information and the application of any such exemptions under the FOIA or EIR will be at the Client's sole discretion PROVIDED THAT the Client shall act reasonably and proportionately in determining whether any exemptions under the FOIA or EIR may apply to protect the Consultant's legitimate commercial interests trade secrets.

12. TRANSPARENCY

- 12.1 The Consultant acknowledges that Client has information publication obligations the Local Government Transparency Code 2014, and agrees that this Agreement (including the Schedule), and any documentation including but not limited to requests for quotes, advertisement issued by the Client seeking expressions of interest, the pre-qualification questionnaire and the tender documents (the “Procurement Documents”) issued by the Client in relation to this Agreement are not Confidential Information, and may be published by the Client, save where in the reasonable opinion of the Client the contents of the Agreement or the Procurement Documents are exempt from disclosure under the FOIA or EIR in which case, the Consultant consents to the Agreement or Procurement Documents being redacted by the Client to the extent necessary to remove or obscure the exempt content, and to publication subject to those redactions.

13. CONFIDENTIALITY AND CLIENT’S PROPERTY

- 13.1 Subject to clause 10 (Data Protection), clause 11 (Freedom of Information) and Clause 12 (Transparency), the Consultant shall not, without the prior written consent of the Client,, publish or disclose to any person, or permit any such disclosure by any of its employees or representatives, any Confidential Information received by it in relation to the Services or to the Client’s business generally.
- 13.2 The restriction in clause 13.1 does not apply to:
- 13.2.1 any information required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation; or
- 13.2.2 any information which is already in, or comes into, the public domain otherwise than through unauthorised disclosure by the Consultant; or
- 13.2.3 any disclosure authorised by the Client.
- 13.3 All designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Services and or Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Services and or Project (the “Material”), and any data or documents (including copies) produced, maintained or whether or not stored on the Client’s computer systems or other electronic equipment (including mobile phones, if provided by the Client) in relation to this Agreement, remain the property of the Client.
- 13.4 All existing and future intellectual property rights and proprietary rights including copyright and all other rights of a like nature conferred under the laws of the United Kingdom (and all other countries of the World) in all works conceived originated or made by the Consultant pursuant to the Services (“Intellectual Property”) shall rest with the Consultant.
- 13.5 The Consultant shall hereby grant the Client exclusive and irrevocable licence to use the Intellectual Property for all purposes connected with this Agreement and the wider Project, including any documents or other works prepared by the Consultant its Staff and any substitutes and subcontractors.
- 13.6 The Consultant warrants and represents that the Intellectual Property will not infringe any intellectual property rights of which a third party is the proprietor. The Consultant agrees to indemnify the Client against any and all liability, loss, damages, costs and expenses which the Client or a third party may incur or suffer as a result of any dispute or contractual, tortious or other claims or proceedings brought against the Client by a third party alleging infringement of its intellectual property rights by reason of the use or exploitation of the Intellectual Property.

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- 13.7 The Council may at any time (whether before or after completion of the Services, or after termination) request a copy or copies of (some or all of) the Material from you, at no additional cost to the Council and you shall provide the copy (or copies) to the Council within a reasonable period of time and in both re-writable and pdf format) so that the Material can be used for the wider Project.
14. INDEMNITY
- 14.1 Without prejudice to any other provision of this Agreement, the Consultant will fully indemnify the Client against any claims made against it as a result of any failure by the Consultant to comply with any statutory provision to be observed or performed in connection with the provision of the Services.
- 14.2 The Consultant's liability to indemnify the Client arising under clause 14.1 will be without prejudice to any other right or remedy of the Client arising under this Agreement.
15. INSURANCE
- 15.1 The Consultant will throughout the Term maintain with a reputable insurance company within the UK such policies of insurance as are necessary to cover any liability of the Consultant in respect of loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Consultant carrying out or failing to carry out its obligations under the Agreement or for which it may become liable to the Client under clause 14, including:
- (i) employers liability insurance in the minimum sum of £10,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited; and
 - (ii) public liability insurance cover in the minimum sum of £10,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited and should be adequate to cover all risks in the performance of the Services;
 - (iii) professional indemnity insurance against the risk of professional negligence on the part of the Consultant or its Staff in the minimum sum of £2,000,000.00 in respect of each and every claim or series of claims arising from any one event.
- 15.2 The Consultant shall continue to maintain the above policies of insurance for a 12-year period following the termination of the Agreement subject to such insurance being available at commercially reasonable rates.
- 15.3 Upon request, the Consultant will provide the Client with details of the policies of insurance (by way of insurer's certificate) effected in accordance with clause 15.1, so as to demonstrate that clause 15.1 is being complied with.
- 15.4 The Consultant will immediately inform the Client of any failure or inability to maintain insurance in accordance with clause 15.1 and of any circumstances likely to render such insurance void or voidable in order that the Consultant and the Client can discuss the means of best protecting their respective positions in the absence of such insurance.
16. TERMINATION OF AGREEMENT
- 16.1 In the event of:
- 16.1.1 the passing by the Consultant of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Consultant or the dissolution of the Consultant; or

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16.1.2 the making of an administration order in relation to the Consultant or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of, any of the Consultant's assets; or

16.1.3 the Consultant making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;

the Client may, without prejudice to any other power of termination or to any rights or remedies it may have, terminate the Agreement forthwith by notice and the Consultant shall indemnify the Client against all costs, expenses and damages for which the Client becomes liable arising from such termination.

16.2 Without prejudice to the Parties other rights and remedies, either party may forthwith terminate the Agreement by notice if the other:

16.2.1 commits or attempts a Prohibited Act;

16.2.2 fails to comply with Best Industry Practice, Safety Legislation and or the Laws;

16.2.3 commits any material breach of the terms of this Agreement and fails to remedy such breach within seven (7) days of being given written notice to do so by the other; or

16.2.4 fails to perform its obligations under the Agreement,

and the Consultant shall indemnify the Client against all costs, expenses and damages for which the Client becomes liable arising from such termination.

16.3 Notwithstanding the generality of this clause 16 the Client shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving one month's written notice to the Consultant.

17 ASSIGNMENT AND SUB-CONTRACTING

17.1 The Consultant shall not assign or sub-contract the Services under this Agreement, or any part thereof, without the permission of the Client in writing. Assignment or sub-contracting any part of the Services shall not relieve the Consultant of any obligation or duty attributable to the Consultant under this Agreement. The Consultant shall be responsible for the acts and omissions of its assignees and sub-contractors as though they were its own. Where the Client has consented to the placing of an assignment or sub-contracts, copies of each contract of assignment or sub-contract shall be provided by the Consultant to the Client within two (2) Working Days of issue.

18. DISPUTES

18.1 If the Client reasonably believes that the Services are deficient, the Consultant shall be formally notified in writing by the Client, inviting the Consultant at the earliest possible opportunity to discuss the matter and giving clear indications as to how the Services have not been satisfactory.

18.2 After such discussions, the Consultant shall remedy any agreed faults within an agreed, reasonable timescale. Once the Client has formally notified the Consultant of any such deficiencies, it shall be entitled to withhold payment of any invoices which the Consultant has submitted (or may submit) for the Services, or part pay any such invoices as it sees fit until such time as the agreed faults have been remedied.

18.3 If the Consultant is unable or unwilling to remedy the above faults, the Client may terminate this Agreement forthwith; if the Consultant feels that the Services are not deficient or that the Client has been unfair in its judgment of the quality of the Services, and the parties are unable to come to an agreement on the matter amicably between them, the matter may be resolved by reference to an independent mediator who is acceptable to both parties, and whose decision both parties agree shall be final. Both parties shall share the cost of mediation.

19. NOTICES

19.1 Any notice, request, demand, consent or approval given under or in connection with this Agreement must be given in writing. Any such notice, request, demand, consent or approval shall in the case of the Client be sent to the Client's Authorised Officer at the Client's address as set out at the beginning of this Agreement and in the case of the Consultant, to the Consultant's Representative at the Consultant's registered office address as set out at the beginning of this Agreement.

19.2 Notices may be delivered by hand or sent by post. If sent by post, a notice shall be deemed to have been received on the second Working Day following the date of posting. If sent by registered post or recorded delivery, it shall be deemed to have been received on the date and time receipt was acknowledged.

20. NO WAIVER

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement.

21. FORCE MAJEURE

Neither party shall be liable for delay in performing or failing to perform its obligations under this Agreement if the delay or failure results from Force Majeure. Such delay or failure shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is prevented provided that if such delay or failure persists for more than one month nothing in this clause shall be taken to limit or prevent the exercise of the right to terminate under clause 16.

22. ACCRUED RIGHTS AND REMEDIES

The termination of the Agreement will not prejudice or affect any claim, right, action or remedy that will have accrued or will thereafter accrue to either party.

23. RIGHTS AND DUTIES RESERVED

All rights, duties and powers which the Client has as a local authority or which the Client's officers have as local authority officers are expressly reserved.

24. SURVIVAL OF TERMS

The terms of the Agreement will (except in respect of any obligations fully performed prior to or at the completion of the Services) continue in force and effect after the completion of the Services by the Consultant.

25. PUBLICITY AND BRANDING

The Consultant shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
 - (b) use the Client's name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the Client's Authorised Officer.

26. AUTHORITY TO ENTER INTO THE AGREEMENT

Each of the parties warrants its power to enter into this Agreement and that it has obtained the necessary approvals to do so.

27. ENTIRE AGREEMENT

27.1 This Agreement contains the whole agreement between the parties and neither party has relied upon any oral or written representations made to it by the other or the others employees, representatives or agents and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

27.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

28. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

29. NO PARTNERSHIP OR AGENCY

29.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to bind or make or enter into any commitments for or on behalf of any other party.

29.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

30. VARIATION

30.1 This Agreement may only be varied by a document signed by both parties.

31. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

Part 3 – Conditions of Contract

The parties have shown their agreement to the terms of this deed by executing it as a deed.

Executed as a deed by the **CLIENT** acting by:

(1) Signature

Print

(2) Signature

Print

Executed as a deed by the **CONSULTANT**
acting by:

(1) Signature (Director)

Print

(2) Signature (Director)

Print

THE SCHEDULE

(i) THE SCOPE OF SERVICES AND FEE

(ii) AUTHORISED OFFICER DETAILS

CLIENT'S AUTHORISED OFFICER	
Name:	
Job Title:	
Address:	
Telephone number:	
Email address:	
CONSULTANT'S REPRESENTATIVE	
Name:	
Job Title:	
Address:	
Telephone number:	
Email address:	

(iii) FORMS OF COLLATERAL WARRANTY

DATED

2020

(1) [CONTRACTOR]

and

(2) [CLIENT] COUNCIL

and

(3) [BENEFICIARY]

DEED OF CONTRACTOR COLLATERAL WARRANTY

relating to the provision of

[]

Date of Agreement:
Project: []
Works: [] (as more particularly described in the Building Contract)
Client: [] COUNCIL of []
Contractor: [] Company Registration Number: [] of/whose registered office is at: []
Beneficiary: [] Company Registration Number: [] of/whose registered office is at: []
Building Contract dated: [] Parties: The Client (1) and the Contractor (2)
Professional/Contractor's Indemnity Insurance: [£2,000,000.00] million (minimum cover)

1 INFORMATION

The information completed on page 2 of this agreement forms part of this agreement.

2 BACKGROUND

2.1 The Contractor has been appointed by the Client under the Building Contract to undertake the construction and the design (if any) of the Works.

2.2 The Beneficiary has an actual or prospective interest in the Project.

3 CONSIDERATION

This agreement is made on the date appearing on page 2 between the Contractor and the Beneficiary in consideration of the payment of £1 by the Beneficiary to the Contractor (receipt of which the Contractor hereby acknowledges).

4 WARRANTY AND LIABILITY

4.1 The Contractor warrants to the Beneficiary that it has complied, and will at all times comply, with the terms of the Building Contract and any specifications or requirements included or referred to in the Building Contract and that it has exercised, and will continue to exercise, the degree of skill, care and diligence reasonably to be expected of a competent contractor, and (to the extent that the Contractor is responsible for any design under the Building Contract) the degree of skill, care and diligence reasonably to be expected from a competent professional designer or combination of designers, holding himself or themselves out as being competent to carry out the construction and design of the Works.

4.2 The Contractor has 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 Building Contract as joint employer and the Contractor shall be entitled in any action or proceedings by the Beneficiary under this agreement to rely on any limitation in the Building Contract and to raise the equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have had if the Beneficiary had been named as the Client under the Building Contract. It shall not be a defence to any action brought against the Contractor under this Agreement that the Client has suffered no loss under the Building Contract previously. Upon the expiration of 12 years from the date of completion of the Works in accordance with the Building Contract the liability of the Contractor under this agreement shall cease, save in relation to any claims made by the Beneficiary against the Contractor and notified previously in writing by the Beneficiary to the Contractor.

5 STANDARDS OF PRODUCTS AND MATERIALS

5.1 The Contractor warrants to the Beneficiary that (unless otherwise authorised or instructed by or on behalf of the Client):

5.1.1 in relation to any part of the Works for which the Contractor is responsible for the design, it has exercised, and will exercise, all reasonable skill care and diligence in accordance with this agreement to see that it has not specified, selected, approved or authorised for use and will not specify, select, approve or authorise for use; and

5.1.2 it has not used, and will not use, in connection with the Works any product or material or building practice or technique which is prohibited by the Building Contract or is not in conformity with relevant British or European Union Standards and/or Codes of Practice or which at the time of specification, selection, approval or authorisation is otherwise generally known within the UK construction industry to be deleterious or hazardous to health and safety or to the durability of the Works.

- 5.2 If in the performance of its duties under the Building Contract the Contractor becomes aware that it, or any other person, has specified, used, authorised or approved the specification or use by others, of any such products or materials, building practices or techniques, the Contractor will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Contractor to inspect or check the work of others which is not required by the Building Contract.

6 INSURANCE

6.1 The Contractor covenants:

- 6.1.1 in relation to any design of the Works for which the Contractor is responsible, to take out and maintain with reputable insurers in the UK insurance market professional indemnity insurance in an amount not less than that stated on page 2 for each and every claim or series of claims arising out of the same originating cause for a period expiring no earlier than 12 years after the date of practical completion of the Works in accordance with the Building Contract, provided always that such insurance continues to be available in the UK insurance market at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts or omissions particular to the Contractor shall be deemed to be within commercially reasonable rates;
- 6.1.2 to inform the Beneficiary or its assignees in writing immediately of any failure or inability to maintain insurance in accordance with clause 6.1.1, and of any circumstances likely to render such insurance void or voidable, in order that the Contractor and the Beneficiary can discuss the means of best protecting their respective positions in the absence of such insurance; and
- 6.1.3 when reasonably requested by the Beneficiary to produce for inspection documentary evidence that its professional indemnity insurance cover is being maintained properly and that payment has been made in respect of the last preceding premium.

7 DOCUMENTS

- 7.1 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 Contractor in the course of performing its obligations under the Building Contract ("Documents") the Contractor 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-licence 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 Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it.
- 7.2 The Contractor 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 copy negatives and CAD disks) thereof at the Beneficiary's expense.

- 7.3** The Contractor 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 any duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

8 ASSIGNMENT

- 8.1** 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 Contractor provided that the Contractor shall be entitled to receive notice of such an assignment in writing within a reasonable period of the assignment taking place. The Contractor 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 that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Works or that that original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.
- 8.2** Notwithstanding clause 8.1 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)

9 INSPECTION OF DOCUMENTS

The Contractor’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 inquiry or inspection which the Beneficiary may make or procure to be made for its benefit or on its behalf.

10 SUCCESSORS

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

11 SUBCONTRACTORS

Following a written request from the Beneficiary the Contractor will (unless it has already done so) use all reasonable endeavours to procure that its subcontractors (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 Building Contract obliged the Contractor to give, or procure the giving, of such warranties.

12 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 second working day after the same shall have been posted.

13 THIRD PARTY RIGHTS

This agreement is enforceable by the original parties to it and by 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.

14 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.

Part 3 – Conditions of Contract

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

EXECUTED AS A DEED by the **CONTRACTOR** by the signatures of:

Director

Director

EXECUTED AS A DEED by the **BENEFICIARY** by the signatures of:

Director

Director

EXECUTED AS A DEED by the **CLIENT** by the signatures of:

Authorised Signatory

Authorised Signatory

DATED

2020

(1) [SUBCONTRACTOR]

AND

(2) [CONTRACTOR]

AND

(3) [CLIENT] COUNCIL

DEED OF SUB-CONTRACTOR COLLATERAL WARRANTY

relating to the provision of

[]

Date of Agreement:

Project: []

Works: []

(as more particularly described in the Building Contract)

Subcontract Works: []

(as more particularly described in the Subcontract)

Client: [] COUNCIL

of []

Contractor: []

Company Registration Number: []

of/whose registered office is at: []

Subcontractor: []

Company Registration Number: []

of/whose registered office is at: []

Building Contract dated: []

Subcontract dated: []

Professional/Contractor's Indemnity Insurance: [£2,000,000.00] million (minimum cover)

15 INFORMATION ON PAGE 2

The information completed on page 2 of this agreement forms part of this agreement.

16 BACKGROUND

16.1 The Client has appointed the Contractor under the Building Contract to carry out the Works.

16.2 The Contractor has entered into, or intends to enter into, the Subcontract with the Subcontractor for the design (if applicable) and construction of the Subcontract Works.

17 CONSIDERATION

This agreement is made on the date appearing on page 2 between the Contractor, the Subcontractor, and the Client in consideration of the payment of £1 by the Client to the Subcontractor (receipt of which the Subcontractor hereby acknowledges).

18 WARRANTY AND LIABILITY

18.1 The Subcontractor warrants to the Client that it has complied, and will at all times comply, with the terms of the Subcontract and any specifications or requirements included or referred to in the Subcontract and that it has exercised and will continue to exercise the degree of skill, care and diligence reasonably to be expected of a competent Subcontractor, and (to the extent that the Subcontractor is responsible for any design under the Subcontract) the degree of skill, care and diligence reasonably to be expected of a competent professional designer or combination of designers holding himself or themselves out as being experienced in carrying out works and design in relation to works of a similar size, scope and nature to the Subcontract Works.

18.2 The Subcontractor has no liability under this agreement which is greater or of longer duration than it would have had if the Client had been a party to the Subcontract as joint employer and the Subcontractor shall be entitled in any action or proceedings by the Client under this agreement to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability (but excluding set offs and counterclaims) as it would have had if the Client had been named as such under the Subcontract. Upon the expiration of 12 years from the date of completion of the Subcontract Works in accordance with the Subcontract the liability of the Subcontractor under this agreement shall cease save in relation to any claims made by the Client against the Subcontractor and previously notified in writing by the Client to the Subcontractor.

19 STANDARDS OF PRODUCTS AND MATERIALS

19.1 The Subcontractor warrants to the Client that (unless otherwise authorised or instructed by or on behalf of the Client):

19.1.1 in relation to any part of the Subcontract Works for which the Subcontractor is responsible for the design, it has exercised, and will exercise, all reasonable skill, care and diligence in accordance with this agreement to see that it has not specified, selected, approved or authorised for use and will not specify, select, approve or authorise for use; and

19.1.2 it has not used, and will not use, in connection with the Subcontract Works:

any product or material or building practical or technique which is prohibited by the Subcontract or is not in conformity with relevant British or European Union Standards and/or Codes of Practice or which at the time of specification, selection, approval or authorisation is otherwise generally known within the UK construction industry to be deleterious or hazardous to health and safety or to the durability of the Subcontract Works.

- 19.2 If in the performance of its duties under the Subcontract the Subcontractor becomes aware that it or any other person has specified, used, authorised or approved the specification or use by others of any such product or materials, building practices or techniques, the Subcontractor will notify the Client forthwith. This clause does not create any additional duty for the Subcontractor to inspect or check the work of others which is not required by the Subcontract.

20 INSURANCE

20.1 The Subcontractor covenants:

- 20.1.1 in relation to any design of the Subcontract Works for which the Subcontractor is responsible, to take out and maintain with reputable insurers in the UK insurance market professional indemnity insurance in an amount of not less than that stated on page 2 for each and every claim or series of claims arising out of the same originating cause, for a period expiring no earlier than 12 years after the date of completion of the Subcontract Works in accordance with the Subcontract, provided always that such insurance continues to be available in the UK insurance market at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Subcontractor's own claims record or other acts or omissions particular to the Subcontractor shall be deemed to be within commercially reasonable rates;
- 20.1.2 to inform the Client or its assignees in writing immediately of any failure or inability to maintain insurance in accordance with clause 6.1.1, and of any circumstances likely to render such insurance void or voidable, in order that the Subcontractor and the Client can discuss the means of best protecting their respective positions in the absence of such insurance;
- 20.1.3 when reasonably requested by the Client, to produce for inspection documentary evidence that its professional indemnity insurance cover is being maintained properly and that payment has been made in respect of the last preceding premium.

21 DOCUMENTS

- 21.1 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 Subcontractor in the course of performing its obligations under the Subcontract ("Documents") the Subcontractor hereby grants, or agrees to grant, to the Client 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 Subcontract Works. 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 of any sub-licence 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 Client nor any recipient of any sub-licence under this clause shall hold the Subcontractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it.
- 21.2 The Subcontractor 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 copy negatives and CAD disks) thereof at the Client's expense.

- 21.3** The Subcontractor warrants to the Client 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 any duly appointed sub-subcontractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Subcontract Works will not infringe the rights of any third party.

22 ASSIGNMENT

- 22.1** The Client shall be entitled to assign the benefit of this agreement or any rights arising hereunder to a purchaser, mortgagee or tenant of the whole or any part of the Project twice only without the consent of the Subcontractor provided that the Subcontractor shall be entitled to receive notice of such an assignment in writing within a reasonable period of the assignment taking place. The Subcontractor 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 that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Subcontract Project or the Project or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.
- 22.2** Notwithstanding clause 8.1, the Client may assign the benefit of this agreement without restriction to any company within the same “group” as the Client (as defined by Section 42 of the Landlord and Tenant Act 1954).

23 INSPECTION OF DOCUMENTS

The Subcontractor’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 Client may make or procure to be made for its benefit or on its behalf.

24 SUCCESSORS

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

25 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.

26 THIRD PARTY RIGHTS

This agreement is enforceable by the original parties to it and by 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.

27 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.

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

EXECUTED AS A DEED by the **SUBCONTRACTOR** by the signatures of:

Director

Director

EXECUTED AS A DEED by the **CONTRACTOR** by the signatures of:

Director

Director

EXECUTED AS A DEED by the **CLIENT** by the signatures of:

Authorised Signatory

Authorised Signatory