

RICS Standard Form of Consultant's Appointment



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This Appointment is suitable for projects in England and Wales only.

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THIS AGREEMENT is made on the _____ day of _____ 20____

BETWEEN:

- (1) The **Client**, Pallant House Gallery
(company registration number 5045130) whose registered office is at

8-9 North Pallant
Chichester
West Sussex
PO19 1TJ

and

- (2) The **Consultant**, TBC
(company registration number TBC) whose registered office is at

NOW IT IS AGREED as follows:

1 Definitions and Interpretation

1.1 In this Appointment the following expressions have the following meanings:

"Additional Services" means any services relating to the Project which are not identified as Basic Services in the services listed in Schedule 1;

"Additional Services Fee" means the fee payable by the Client to the Consultant for Additional Services determined in accordance with Clause 10;

"Adjudicator" means the person named as such in the Appendix or, if no person is named or the person named is not available, such other person as may be appointed as the Adjudicator from time to time in accordance with Clause 16.4;

"Appendix" means the appendix to this Appointment;

"Base Rate" means the rate set from time to time by the Bank of England's Monetary Policy Committee or any successor to it;

"Basic Services" means the services identified by reference in Schedule 1;

"Building Contract" means the contract or contracts between the Client and the Contractor for the construction of the Project, a copy of which (or a copy of relevant extracts of which) the Client provides to the Consultant;

"CDM Regulations" means the Construction (Design and Management) Regulations 2007;

"Client's Brief " means the brief set out in Schedule 3 identifying the Client's requirements in relation to the Project as such requirements may, in accordance with the Client's instructions, be amended from time to time with the Consultant's agreement (which agreement is not to be unreasonably withheld or delayed);

"Client Contracts" means the particulars of all contracts between the Client and third parties, which the Client notifies to the Consultant, relating to the financing or re-financing of the Project, the disposal and/or letting of any interest in the Project, the provision of any enabling works for the Project, or the giving of consent or permission for the carrying out of the Project;

"Client Group Company" means any holding company of the Client or any subsidiary of the Client or of any holding company of the Client (within the meaning of Section 736 of the Companies Act 1985 as amended by Section 144 of the Companies Act 1989);

"Collateral Warranties" means collateral warranties in the relevant forms annexed to this Appointment and signed by the parties by way of identification or in substantially the relevant forms as agreed between the parties;

"Contractor" means the contractor or contractors which the Client appoints under the Building Contract;

"Documents" means all drawings, plans, details, specifications, bills of quantities, schedules, reports, records, calculations and all other documents including computer software and revisions of the same prepared by or on behalf of the Consultant for the purposes of the Project;

"Fee" means the amount payable in accordance with this Appointment by the Client to the Consultant for the Basic Services and includes any adjustment of the Fee under this Appointment;

"Funder" means a person providing finance or re-finance to the Client in connection with the acquisition of the Site and/or the carrying out of the Project;

"Insolvent" means when a party:

- (a) enters into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme or arrangement as a solvent company for the purposes of amalgamation or reconstruction);
- (b) without a declaration of solvency, passes a resolution or makes a determination that it be wound up;
- (c) has a winding-up order or bankruptcy order made against it;
- (d) has appointed to it (whether by that party, by a creditor or by the court) an administrator or administrative receiver;

- (e) is the subject of any analogous arrangement, event or proceedings in any jurisdiction; or
- (f) in the case of a partnership, when each partner is the subject of an individual arrangement or another event or proceedings referred to in this definition;

"Lead Consultant" means the member of the Professional Team designated as such by the Client and identified in the Appendix;

"Pay Less Notice" means the notice referred to in Clause 9.9;

"Practical Completion" means practical completion of the Project in accordance with the Building Contract;

"Professional Team" means the Consultant, the professionals listed in the Appendix and any other professionals engaged by the Client in relation to the Project and which the Client notifies to the Consultant;

"Programme" means the programme agreed by the Professional Team and approved by the Client identifying key completion and other dates and time periods for the completion of key activities and the issue of Documents and information in relation to the Project and which may from time to time be adjusted by agreement between the Client and the Professional Team;

"Project" means the design and/or construction of the works described in the Appendix at the Site and (where appropriate) means the completed Project or any part of it;

"Purchaser" means a person first acquiring from the Client or a Client Group Company a freehold interest in the Project or any part of it, and includes for this purpose a purchaser for capital consideration of a leasehold interest in the Project or any part of it;

"Relevant Period" means:

- (a) where this Appointment is signed under hand, 6 years from Practical Completion; and
- (b) where this Appointment is executed as a deed, 12 years from Practical Completion;

"Requisite Standard" means the standard of reasonable skill and care to be expected of an appropriately qualified professional consultant of the discipline specified in the Appendix holding itself out as having the competence and resources to perform the Services and who is experienced in providing services in connection with works of a similar size, scope, nature, complexity and value as the Project;

"Services" means the Basic Services and, where applicable, the Additional Services;

"Site" means the site described in the Appendix;

"Statutory Requirements" means the requirements of any statute or subordinate legislation relevant to the Project;

"Tenant" means a person first having or acquiring from the Client or a Client Group Company a leasehold interest in the Project or any part of it (other than a Purchaser);

"Third Party Rights" means rights that may be conferred on third parties in accordance with the Contracts (Rights of Third Parties) Act 1999 as agreed between the parties and annexed to this Appointment and signed by the parties by way of identification; and

"VAT" means value added tax imposed by the Value Added Tax Act 1994 or any similar tax from time to time in addition to it or replacing it.

1.2 In this Appointment, unless the context otherwise requires:

- (a) references to Clauses and Schedules are to clauses of and schedules to this Appointment;
- (b) headings are for ease of reference only and do not affect the interpretation of this Appointment;
- (c) words importing the singular include the plural and vice versa;
- (d) words denoting any gender include all genders;
- (e) any reference to a person includes a reference to a company, body corporate (wherever incorporated), partnership, firm, joint venture, unincorporated body of persons, individual or any state or any agency of a state whether or not a separate legal entity;

- (f) any reference to "parties" is construed as a reference to the Client and Consultant together and "party" means either one of them and such references include each party's permitted assigns and transferees;
- (g) any reference to "including" is construed as being illustrative and does not limit the sense of the words preceding that term;
- (h) any reference to a statute or statutory provision is construed as a reference to that statute or provision as amended, consolidated, supplemented or re-enacted (with or without modifications) from time to time (whether before or after the date of this Appointment) and any subordinate legislation made under or deriving validity from that statute or provision; and
- (i) where any Clause requires an act to be done within a specified period after or from a specified date, the period begins immediately after that date. Where the period includes Christmas Day, Good Friday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in England and Wales, that day is excluded.

2 Appointment

The Client engages the Consultant to perform the Services and the Consultant accepts such engagement upon and subject to the terms of this Appointment. The engagement takes effect from the date when the Consultant first commences performance of the Services, irrespective of the date of this Appointment.

3 Consultant's Obligations

Requisite Standard

- 3.1** The Consultant exercises in the performance of the Services the Requisite Standard.

Performance of the Services

- 3.2** The Consultant performs the Services upon and subject to the terms of this Appointment.
- 3.3** The Consultant complies with the Client's Brief exercising the Requisite Standard.
- 3.4** If the Consultant is designated as Lead Consultant in the Appendix, the Consultant co-ordinates the activities of the Professional Team and gives instructions to the Professional Team as necessary. As Lead Consultant, the Consultant schedules the activities so as to comply with the Programme and informs the Client of any failure by any member of the Professional Team to comply with the Programme.
- 3.5** If the Consultant is not designated as Lead Consultant in the Appendix, the Consultant co-operates with the Lead Consultant. The Consultant complies with the instructions of the Lead Consultant in relation to the co-ordination of the activities of the Professional Team unless this causes the Consultant to be in breach of this Appointment or the Consultant is prevented from doing so by circumstances outside its reasonable control.
- 3.6** The Consultant performs the Services exercising the Requisite Standard so that no breach by the Consultant of this Appointment causes or contributes to any breach by the Client of any term of the Building Contract and/or any Client Contract that has been notified to the Consultant by the Client, unless the Consultant is prevented from doing so by circumstances outside its reasonable control. Provided that:
- (a) the Consultant is not required to comply with this Clause to the extent that any term of the Building Contract and/or any Client Contract notified to the Consultant after the date of this Appointment exposes the Consultant to any liability in excess of that which is reasonably foreseeable by the Consultant at the date of this Appointment; and
 - (b) (subject to Clause 3.6(a)) where any term of the Building Contract and/or any Client Contract notified to the Consultant after the date of this Appointment requires the Consultant to perform Additional Services in order to comply with this Clause, the Consultant is entitled to an Additional Services Fee in accordance with this Appointment.
- 3.7** The Consultant performs the Services and provides the Documents so as to comply with the Programme, unless the Consultant is prevented from doing so by circumstances outside its reasonable control.
- 3.8** The Consultant notifies the Client if it becomes aware that the performance of the Services is delayed or likely to be delayed and/or, if the Consultant is the Lead Consultant, that the Project is delayed or likely to be delayed, stating in each case the cause of the delay (if it knows the cause) and giving an estimate of the effect on the Programme.

Instructions and Approvals

- 3.9** The Consultant complies, so far as reasonably practicable, with all lawful instructions given to it by the Client provided that, where it is required to exercise discretion in assessing matters between the Client and the Contractor, it does so fairly and impartially.
- 3.10** No consents of, or approvals or comments from, the Client exclude or limit the liability of the Consultant under this Appointment except to the extent that such consents, approvals or comments are agreed between the parties in writing to have such an effect.

4 Health & Safety, Statutory Requirements and Prohibited Materials

Health & Safety

- 4.1** The Consultant complies at all times with the CDM Regulations to the extent that they apply to the Services or the Project.
- 4.2** Where the Appendix states that the Consultant is a "designer" for the purposes of the CDM Regulations, the Consultant acknowledges that, in relation to the Services, it is a "designer" as defined in the CDM Regulations and it complies with its obligations and duties as a "designer" as provided in the CDM Regulations.

Statutory Requirements

- 4.3** The Consultant complies with the Statutory Requirements when performing the Services.

Design Responsibility

- 4.4** The Consultant is only responsible for the design of the Project or any part of it and/or for specifying or approving materials for the Project or any part of it if and to the extent that it is designated as having such responsibility in the Appendix.

Prohibited Materials

- 4.5** Where the Appendix states that this Clause is applicable, the Consultant exercising the Requisite Standard:
- (a) does not specify for use in connection with the Project any materials which by their nature or application contravene any British Standard or EU equivalent current at the time of specification or which are otherwise generally known within the construction and engineering industry at the time of specification to be harmful to health and safety or to the durability of works in the particular circumstances in which they are specified for use; and
 - (b) insofar as is reasonably practicable and having regard to the nature and extent of the Services, sees that such materials are not used in the construction of those parts of the Project to which the Services relate.

5 Limitations of Liability

- 5.1** Except for liability for death and/or personal injury, the maximum aggregate liability of the Consultant to the Client under or in connection with this Appointment and all other documents relating to the Services (whether in contract, tort (including negligence), for breach of statutory duty or otherwise) is limited to the amount specified in the Appendix.
- 5.2** Where the Appendix states that this Clause is applicable, and without prejudice to any other exclusion or limitation of liability available to the Consultant, the Consultant's liability for loss or damage suffered by the Client in the event of any breach of this Appointment is limited to the proportion of such loss or damage that it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same and on the assumptions that:
- (a) the persons identified in the Appendix have provided contractual undertakings to the Client on terms no less onerous than those set out in this Appointment in respect of the carrying out of their obligations in connection with the Project;
 - (b) there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Client and any person referred to in Clause 5.2(a); and

- (c) all the persons referred to in Clause 5.2(a) have paid to the Client such sums as it is just and equitable for them to pay having regard to the extent of their responsibility for such loss or damage.

Provided always that the Consultant does not assert that it has no or a reduced liability to the Client under this Appointment solely by reason of the fact that the Contractor accepts responsibility for the design of the Project, to the extent such design is undertaken by the Consultant.

- 5.3** No action or proceedings for any breach of this Appointment may be commenced against the Consultant after the expiry of the Relevant Period.

6 Collateral Warranties and Third Party Rights

Choice of Collateral Warranties or Third Party Rights

6.1

- (a) Where the Appendix states that the Consultant is not required to provide Collateral Warranties or to confer Third Party Rights, Clauses 6.2 and 6.3 do not apply.
- (b) Where the Appendix states that the Consultant is required to provide Collateral Warranties in favour of third parties, Clause 6.2 applies.
- (c) Where the Appendix states that the Consultant is required to confer Third Party Rights on third parties, Clause 6.3 applies.

Collateral Warranties

- 6.2** Within 14 days of the receipt by the Consultant of each written request from the Client, the Consultant executes a Collateral Warranty in favour of the person named in such request, provided such person is identified in the Appendix either by name or class as being a person entitled to receive a Collateral Warranty.

Third Party Rights

- 6.3** On each date on which the Client issues a notice to the Consultant identifying by name a person who is identified in the Appendix either by name or class as being a person entitled to receive the benefit of Third Party Rights, the relevant Third Party Rights vest in the person named in such notice.

Contracts (Rights of Third Parties) Act 1999

- 6.4** Except to the extent that rights are granted under Clauses 6.2 and/or 6.3, nothing in this Appointment confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

- 6.5** The rights of the parties:

- (a) to terminate the Consultant's engagement under this Appointment (whether under Clause 15 or otherwise) or to agree to rescind this Appointment;
- (b) to agree to amend or otherwise vary or to waive any of the terms of this Appointment; or
- (c) to agree to settle any dispute or other matter arising out of or in connection with this Appointment

in each case on such terms as they shall in their absolute discretion think fit, are not subject to the consent of any person in whom the benefit of Third Party Rights is vested.

7 Consultant's Personnel

The Consultant nominates the key personnel set out in the Appendix as the persons primarily responsible within its organisation for the carrying out of the Services for so long as they remain in the employment of or (if applicable) partners of the Consultant. The Consultant ensures (unless it is prevented from doing so by circumstances outside its reasonable control) that such persons devote such time and attention to the Services as is necessary for them properly to fulfil their duties. Such persons are not changed other than by written agreement between the parties (such agreement not to be unreasonably withheld or delayed).

8 Client's Obligations

- 8.1** The Client provides the Consultant with any relevant and necessary information which is in its possession or control by the date specified in the Programme or (if no date is specified) in such reasonable time so as not to delay or disrupt the performance by the Consultant of the Services.
- 8.2** The Client gives any decisions, approvals, consents or instructions required within a reasonable time, having regard to the Programme.
- 8.3** The Client gives, and procures (so far as reasonably practicable), that the other members of the Professional Team give, such assistance to the Consultant as is reasonably required by the Consultant for the performance of the Services.
- 8.4** The Client does not warrant the accuracy of any information provided by it to the Consultant save for the following:
- (a) the Client's Brief; and
 - (b) any specialist reports and surveys provided by the Client upon which it is reasonable for the Consultant to rely in performing the Services.
- 8.5** The Consultant notifies the Client upon becoming aware that any of the information referred to in Clause 8.4 is incomplete or contains any inaccuracies or discrepancies.
- 8.6** The Client appoints the person named in the Appendix to act on its behalf in connection with this Appointment subject to the limits of authority (if any) set out in the Appendix. Such person may delegate to any other person the authority to perform any of his functions under this Appointment and may at any time revoke or amend such authority by, in each case, giving prior notice in writing to the Consultant. The Client may replace the person named in the Appendix at any time by giving prior notice in writing to the Consultant.
- 8.7** The Client appoints the Professional Team and the Contractor in sufficient time and on terms that allow the Project to be successfully delivered and so as to secure compliance with all relevant Statutory Requirements (including the CDM Regulations).
- 8.8** Where the Services require the Consultant to issue or give certificates or statements under the Building Contract and/or any Client Contract, the Client procures, so far as reasonably practicable, that the Professional Team provides the Consultant with such information or confirmation as is necessary for it (acting reasonably) to issue such certificates or statements.

9 Payment

Remuneration

- 9.1** The remuneration payable to the Consultant for performance of the Services is calculated and paid in accordance with Schedule 2.
- 9.2** The Client pays the Consultant the Fee set out in Part A of Schedule 2 as full remuneration for the Basic Services, subject to any adjustment to the Fee in accordance with Clause 9.11.
- 9.3** The Fee is payable by instalments on the dates or on completion of the activities set out in Part B of Schedule 2. If not set out in Part B of Schedule 2, the Fee is payable in instalments at intervals of not less than one month, the first instalment being one month from the date the Consultant first commences performance of the Basic Services.
- 9.4** The Client pays the Consultant the Additional Services Fee (if any) determined in accordance with Clause 10. Unless otherwise agreed, the Additional Services Fee is payable following performance of the relevant Additional Service.

Disbursements and Expenses

- 9.5** Unless otherwise provided in the Appendix, the Client reimburses disbursements and expenses incurred by the Consultant in the proper performance of the Services in accordance with Part C of Schedule 2, such disbursements and expenses being included in the next VAT invoice after they are incurred.

Payment

- 9.6** The Consultant submits to the Client VAT invoices in respect of the Fee, the Additional Services Fee and disbursements and expenses on the dates or on completion of the activities set out in Part B of Schedule 2. All invoices are accompanied by such supporting documents,

records and receipts as are reasonably necessary for checking each invoice. The invoices and supporting documents, records and receipts (if any) specify the sum that the Consultant considers to be due to it on the payment due date in accordance with this Clause 9 and the basis on which that sum is calculated. The payment due date is the date the Client receives the relevant invoice (the “due date”). The Client pays the Consultant the total amount of VAT properly chargeable on the supply of the Services.

- 9.7** The Client gives notice to the Consultant of the sum that the Client considers to have been due at the due date in respect of the payment and the basis on which that sum is calculated. Such notice is given not later than 5 days after the due date.

Payment dates

- 9.8** The Client, subject to any Pay Less Notice, pays the Consultant the sum referred to in the Client's payment notice under Clause 9.7 (or, if the Client has not given notice under Clause 9.7, the sum stated in the invoice referred to in Clause 9.6) (the “**notified sum**”) on or before the final date for payment of the invoice. The final date for payment is 28 days after the due date or, if a different period is stated in the Appendix, within such period.
- 9.9** If the Client intends to pay less than the notified sum, it gives the Consultant notice of that intention not later than 7 days before the final date for payment by specifying the amount the Client considers to be due to the Consultant at the date the notice is given and the basis on which that amount is calculated (the “**Pay Less Notice**”). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment is not less than the amount stated as due in the Pay Less Notice.
- 9.10** If the Client fails to pay the notified sum (or, where a Pay Less Notice is given, the amount specified in that Notice) by the final date for payment, the Client pays to the Consultant simple interest on the unpaid amount for the period from the final date for payment until the date of actual payment, calculated on a daily basis at the rate of 4% above the Base Rate. It is acknowledged that this provision constitutes a substantial remedy for the purposes of Section 9 (1) of the Late Payment of Commercial Debts (Interest) Act 1998.

Adjustments to the Fee

- 9.11** The Fee is adjusted if the performance of the Basic Services is materially delayed and/or disrupted as a result of a change in the scope, size, complexity or duration of the Project or for any other cause outside the Consultant's reasonable control.
- 9.12** If the Consultant intends to make a claim for an adjustment of the Fee under Clause 9.11, it gives the Client:
- (a) notice of such intention as soon as reasonably practicable after it becomes aware of any material delay and/or disruption to the Services; and
 - (b) written estimate of the proposed adjustment to the Fee and of the likely effect on the performance by the Consultant of the Services and on the Programme.

Wherever practicable, the parties agree the adjustment to the Fee and the timing of its payment. If the adjustment to the Fee is not agreed, such adjustment is based on the time-charges set out in Part D of Schedule 2. Unless otherwise provided in the Appendix, such time-charges are inclusive of all disbursements and expenses, other than the disbursements and expenses referred to in Part C of Schedule 2.

- 9.13** The Consultant is not entitled to an adjustment to the Fee to the extent that the delay and/or disruption to the Basic Services is due to any negligence of, or breach of this Appointment by, the Consultant.
- 9.14** In relation to the requirements for the giving of notices under this Clause 9, it is immaterial that the amount then considered to be due may be zero.

10 Additional Services

- 10.1** If at any time it is apparent to the Consultant that Additional Services are likely to be required, it notifies the Client of this as soon as reasonably practicable after identifying the requirement and submits a proposal for Additional Services to the Client.
- 10.2** The Consultant performs such Additional Services as it is instructed in writing to perform by the Client provided they are reasonably capable of being performed by the Consultant. The Consultant may, in the case of an emergency, perform Additional Services without such an instruction, but not otherwise.

- 10.3** If the Consultant is instructed by the Client to perform Additional Services, it gives the Client, within a reasonable time of the Client's request, a written estimate of:
- (a) the cost of providing such Additional Services, taking into account any reduction in work or savings which might result; and
 - (b) the effect (if any) of such Additional Services on the Programme.
- 10.4** Wherever practicable, the parties agree the Additional Services Fee and the timing of its payment before Additional Services are performed. If the Client instructs the Consultant under Clause 10.2 to perform Additional Services notwithstanding that an Additional Services Fee is not agreed, or if the Consultant performs Additional Services in the case of an emergency, the Additional Services Fee is based on the time-charges set out in Part D of Schedule 2.
- 10.5** The Additional Services Fee is adjusted if the performance of the Additional Services is materially delayed and/or disrupted as a result of a change in the scope, size, complexity or duration of the Project or for any other cause outside the Consultant's reasonable control.
- 10.6** If the Consultant intends to make a claim for an adjustment of the Additional Services Fee under Clause 10.5, it gives the Client:
- (a) notice of such intention as soon as reasonably practicable after it becomes aware of any material delay and/or disruption to the Additional Services; and
 - (b) a written estimate of the proposed adjustment to the Additional Services Fee and of the likely effect on the performance by the Consultant of the Services and on the Programme.

Wherever practicable, the parties agree the adjustment to the Additional Services Fee and the timing of its payment. If the adjustment to the Additional Services Fee is not agreed, such adjustment is based on the time-charges set out in Part D of Schedule 2. Unless otherwise provided in the Appendix, such time-charges are inclusive of all disbursements and expenses other than the disbursements and expenses referred to in Part C of Schedule 2.

- 10.7** The Consultant is not entitled to an adjustment to the Additional Services Fee to the extent that the delay and/or disruption to the Additional Services is due to any negligence of, or breach of this Appointment by, the Consultant.

11 Consultant's Authority

- 11.1** Subject to Clause 11.2, but notwithstanding any other provision of this Appointment, the Consultant has no authority to do any of the following on the Client's behalf without the Client's prior written consent:
- (a) vary the agreed design or specification of work or materials or their quality or quantity from that described in the Building Contract;
 - (b) subject to any greater limit of expenditure stated in the Appendix, issue any instruction or notice under the Building Contract or any Client Contract which either delays completion of the Project or increases the cost of the Project (per item or in the aggregate); or
 - (c) terminate the Building Contract or any Client Contract or the appointment of any other member of the Professional Team, agree any amendment of their contract terms or waive compliance by the Contractor or any party to any Client Contract or any other member of the Professional Team with their respective obligations.
- 11.2** In the event of an emergency, the Consultant has authority to issue any instruction reasonably required to prevent danger to persons on or adjacent to the Site or material damage to the Project. The Consultant promptly notifies the Client of any such instruction and of its cost implications and effect on the Programme.

12 Insurance

- 12.1** Without prejudice to its obligations, the Consultant effects and maintains professional indemnity insurance as specified in the Appendix for the Relevant Period subject to such insurance being available in the insurance market on reasonable terms and rates. Such insurance is to be with a well-established insurance office or underwriter of repute.
- 12.2** If the specified insurance is not available on reasonable terms and rates or is not maintained in accordance with this Appointment, the Consultant notifies the Client immediately and the parties discuss the best way to protect their respective positions, having regard to the provisions of this Appointment and the status of the Project at the time.

- 12.3** The Consultant produces written evidence that the specified insurance is being maintained whenever reasonably requested to do so by the Client.

13 Copyright and Confidentiality

Copyright

- 13.1** Copyright in all Documents remains the property of the Consultant.
- 13.2** The Consultant grants to the Client a royalty-free, irrevocable (but subject to the right to suspend set out in this Clause), non-exclusive licence to use and reproduce the Documents and the designs contained in them for any purpose relating to the Project including the construction, completion, maintenance, operation, letting, sale, promotion, advertisement, reinstatement, mortgaging, refurbishment and repair of the whole or any part of the Project. Provided that the Consultant may suspend such licence if and for so long as the Client is in breach of any of its payment obligations under this Appointment by giving 7 days' notice of its intention to do so. Such licence:
- (a) enables the Client to use and reproduce the Documents for any extension of the Project, but such use does not include a licence to reproduce any designs contained in them for any such extension;
 - (b) continues notwithstanding termination of the Consultant's engagement under this Appointment;
 - (c) confers the right to grant sub-licences; and
 - (d) is transferable to third parties.
- 13.3** The Consultant is not liable for any use of the Documents for any purpose other than that for which they were originally prepared.
- 13.4** The Consultant warrants to the Client that, to the best of its knowledge, the Documents do not infringe the intellectual property rights of any third party.
- 13.5** Where the Appendix states that the Consultant waives its rights under Chapter IV of the Copyright, Design and Patents Act 1988, the Consultant waives any moral rights it may have or be deemed to possess under Chapter IV of such Act in respect of the Documents and the Project.

Confidentiality

- 13.6** The Consultant does not:
- (a) release or disclose to any third party, other than the Client, Client Group Companies, other members of the Professional Team, the Contractor, sub-contractors, parties to Client Contracts, and persons entitled to receive Collateral Warranties or the benefit of Third Party Rights, any information relating to the Project;
 - (b) take or authorise the taking of any photographs of the Project; or
 - (c) publish or authorise the publication of any articles, photographs or other illustrations of the Project.
- 13.7** Notwithstanding Clause 13.6, disclosure is permitted if:
- (a) the Consultant obtains the prior written consent of the Client;
 - (b) the information or documents are already in the public domain (other than through any fault of the Consultant);
 - (c) such disclosure is required by law; or
 - (d) the disclosure is to the Consultant's professional advisers

14 Assignment, Transfer of Rights and Obligations and Sub-Contracting

Assignment and transfer of rights and obligations

- 14.1** The Consultant does not assign or transfer any of its rights or obligations under this Appointment to any person without the prior written consent of the Client (which consent is not to be unreasonably withheld or delayed).
- 14.2** The Client is entitled to assign the benefit of this Appointment to any third party specified in the Appendix.

- 14.3** The Client is entitled to transfer all of its rights and obligations under this Appointment to any Funder and/or to any Client Group Company provided that, where such rights and obligations are transferred to a Client Group Company, such Client Group Company establishes to the Consultant's reasonable satisfaction that it is as able as the Client to perform and discharge the Client's obligations under this Appointment and, if it is reasonable in all the circumstances for the Consultant to request it to do so, the Client guarantees the obligations of the Client Group Company under this Appointment.
- 14.4** The Consultant does not contend that any assignee or transferee is precluded from recovering any loss it has incurred due to any breach of this Appointment because the assignee or transferee is not a named promisee under this Appointment.

Sub-contracting

- 14.5** The Consultant does not sub-contract or delegate the Services or any of them to any person without the prior written consent of the Client (which consent is not to be unreasonably withheld or delayed).
- 14.6** Any sub-contracting or delegation of the Services or any of them by the Consultant does not exclude or limit the Consultant's obligations and liabilities under this Appointment and the Consultant remains wholly responsible for the acts, omissions and defaults of its sub-consultants and delegates as if they are its own acts, omissions and defaults.

15 Termination and Suspension

Procedure and grounds for termination

- 15.1** The Client may terminate the Consultant's engagement under this Appointment at any time by giving 28 days' prior notice in writing of such termination to the Consultant.
- 15.2** If the Project is cancelled by the Client or cannot proceed for reasons outside the reasonable control of the Client, either party may immediately terminate the Consultant's engagement under this Appointment by giving written notice to the other.
- 15.3** If a party is in material breach of its obligations under this Appointment and fails to remedy such breach within 14 days after the other party gives it written notice to do so, the party which gave such notice may immediately thereafter terminate the Consultant's engagement under this Appointment by giving written notice to that effect to the party in breach.
- 15.4** If a party becomes Insolvent, then the other party may immediately terminate the Consultant's engagement under this Appointment by giving written notice to that effect to the Insolvent party.

Procedure and grounds for suspension

- 15.5** The Client may at any time suspend the Consultant's performance of all or part of the Services by giving notice in writing to the Consultant. Subject to Clause 15.8, the Consultant resumes performance of the Services which have been suspended as soon as reasonably practicable after it receives written notice to do so from the Client.
- 15.6** If the Client fails to pay the notified sum (or, where a Pay Less Notice is given, the amount specified in that Notice) by the final date for payment under Clause 9.8, the Consultant may suspend performance of any or all of the Services and its obligations under this Appointment by giving not less than 7 days' notice in writing to the Client of its intention to suspend such performance and the ground or grounds for doing so. The Consultant resumes performance of any or all of the Services when the reason for the suspension is removed or resolved.
- 15.7** In the event of a suspension of the performance of any or all of the Services and in addition to any other sums due under this Appointment, the Client pays the Consultant any adjustment to the Fee or the Additional Services Fee due under Clauses 9.11 and/or 10.5 and a reasonable amount in respect of all costs, disbursements and expenses reasonably incurred by the Consultant in suspending and/or resuming performance of any or all of the Services.
- 15.8** If the Client suspends performance of all of the Services pursuant to Clause 15.5 and does not instruct the Consultant to resume performance within the period specified in the Appendix, either party may terminate the Consultant's engagement under this Appointment by giving written notice to the other.

Effect of termination or suspension

- 15.9** Upon any termination of the Consultant's engagement under this Appointment or suspension of the Consultant's performance of any or all of the Services, the Client pays the Consultant in accordance with Clause 9 (without prejudice to any rights the Client has under Clause 15.11 in respect of any breach by the Consultant of its obligations under this Appointment):
- (a) that part of the Fee, the Additional Services Fee (if any) and any other sums which have accrued due up to the date of termination or suspension (as the case may be) and a fair and reasonable proportion of the next instalment of the Fee and the Additional Services Fee (if any) commensurate with the Services performed, less any amounts previously paid to the Consultant; and
 - (b) (save where such termination or suspension is due to the Consultant being in breach) all reasonable costs, disbursements and expenses reasonably incurred by the Consultant (including any costs incurred in suspending and/or resuming performance of any or all of the Services) as a direct result of such termination or suspension.
- 15.10** Upon any termination of the Consultant's engagement under this Appointment, the Consultant:
- (a) discontinues performance of the Services as safely, efficiently and speedily as possible with the minimum disruption to the Project; and
 - (b) provided it can lawfully do so, and only following receipt of a written request to do so, hands over to the Client copies of any Documents and other information relating to the Project in its possession or prepared by it (but not its own internal notes and memoranda or any Document which is subject to a confidentiality restriction in favour of a third party), subject to the terms of the licence under Clause 13.2 and to payment of the Consultant's reasonable copying charges and amounts due under Clause 15.9.
- 15.11** Termination of the Consultant's engagement under this Appointment does not affect the rights or remedies of either party in relation to any breach of this Appointment by the other prior to termination.
- 15.12** Termination of the Consultant's engagement under this Appointment does not prevent the Appointment binding the parties so far as is necessary to give effect to their rights and obligations upon termination or the continuing operation of Clause 13.

16 Dispute Resolution

Negotiation and mediation

- 16.1** The parties use reasonable endeavours to resolve any issue or dispute between them without delay by way of negotiation or, if they so choose, by mediation. If mediation is chosen, the parties endeavour to agree the identity of the mediator and either party may propose a list of up to 3 mediators to the other party. In default of agreement within 14 days of submission of such proposal, a mediator may be nominated by the President or Vice-President of the Royal Institution of Chartered Surveyors on the application of either party.
- 16.2** Any mediation is carried out in accordance with the edition of the CEDR Model Mediation Procedure published by the Centre for Effective Dispute Resolution which is current at the date of this Appointment.

Adjudication

- 16.3** Regardless of any negotiation or mediation, either party may at any time refer any dispute under this Appointment to adjudication under the Scheme for Construction Contracts (England and Wales) Regulations 1998, Part I (as amended).
- 16.4** The Adjudicator's decision is binding until the dispute or difference is finally determined by arbitration or litigation as provided in Clause 16.7 or by agreement. If the Adjudicator is not named or if the person named is not available, the parties agree the identity of the Adjudicator. If the parties fail to agree the identity of the Adjudicator within 5 days after one party notifies the other that it wishes to do so, the Adjudicator is appointed by the body stated in the Appendix.
- 16.5** Any dispute or difference in connection with the enforcement of a decision of the Adjudicator is referred to the English Courts.

- 16.6** The provisions for arbitration in Clauses 16.8 to 16.10 (inclusive), if applicable, do not apply to any dispute or difference in connection with the enforcement of any decision of the Adjudicator.

Arbitration or litigation

- 16.7** If, in the Appendix, the parties choose arbitration as the method of dispute resolution, Clauses 16.8 to 16.10 (inclusive) apply. Otherwise, Clause 16.11 applies.

Arbitration

- 16.8** Subject to the provisions of Clauses 16.1 and 16.2 and the parties' right to refer any dispute to adjudication at any time, any dispute between the parties under or in connection with this Appointment is referred to arbitration in accordance with the provisions of the Arbitration Act 1996.
- 16.9** The arbitrator is the person agreed by the parties. If the parties fail to agree on a person to act as arbitrator within 14 days after one party serves notice of arbitration on the other, the arbitrator is to be appointed by the body stated in the Appendix.
- 16.10** Any arbitration is carried out in accordance with the edition of the Construction Industry Model Arbitration Rules which is current at the date of this Appointment.

Litigation

- 16.11** If litigation is the method of dispute resolution, subject to Clause 16.3, the parties submit to the exclusive jurisdiction of the Courts of England and Wales.

17 Notices

- 17.1** Any notice under this Appointment is deemed to be given if it is in writing and delivered by hand or sent by pre-paid, recorded or special delivery post to the Client or the Consultant (as the case may be) at such person's address set out in the Appendix or other address notified in accordance with this Clause.
- 17.2** Any notice sent by hand is deemed received upon actual receipt by the party to whom it is addressed.
- 17.3** Any notice sent by a postal method as described in Clause 17.1 is deemed received 48 hours after it was posted.
- 17.4** The parties may give notices by any non-postal method set out in the Appendix in accordance with any procedures stated or identified in the Appendix or otherwise agreed in writing between the parties.

18 Entire Agreement

- 18.1** This Appointment supersedes any previous agreements or arrangements between the parties in respect of the Project.
- 18.2** This Appointment may only be amended or varied with the written consent of the parties, provided that this is without prejudice to the right of the Client to issue instructions varying the scope of the Services.

19 Governing Law

This Appointment is governed by and construed in accordance with English law.

SCHEDULE 1

Services

The Basic Services to be performed by the Consultant are those indicated in the attached schedule(s), as identified below:

☐ **RICS BUILDING SURVEYOR SERVICES**

- ☐ Construction
- ☐ Building and Measured Surveys
- ☐ Asset Management
- ☐ Insurance
- ☐ Feasibility
- ☐ Property
- ☐ Landlord and Tenant
- ☐ Miscellaneous

☐ **RICS CDM CO-ORDINATOR SERVICES**

☐ **RICS EMPLOYER'S AGENT SERVICES**

☒ **RICS PROJECT MANAGER SERVICES**

☐ **RICS QUANTITY SURVEYOR SERVICES**

☐ **OTHER**

SCHEDULE 2

Fees and Payment

Part A

Fee

Lump Sum

Save as otherwise provided in this Appointment, the Consultant's remuneration for the provision of the Basic Services is the fixed lump sum of This sum is exclusive of VAT.

Part B

Fee instalments

In the following table the Date column refers to the Instalment date

Date	Proportion of Fee for the Basic Services (amount or percentage)
TBC	TBC

Part C

Reimbursable Expenses (Clauses 9.5, 9.11 and 10.6)

Save as otherwise provided in this Appointment, the Client reimburses the Consultant the following disbursements and expenses against VAT invoices accompanied by such documents, records and receipts as are necessary to verify the amount incurred:

- (a) the cost of producing or reproducing typed or printed tender and other documents, drawings, maps, photographic and other records and presentation materials;
- (b) travel, hotel and subsistence expenses (including milage for car travel);
- (c) courier expenses;
- (d) fees and advertising costs in connection with applications for local government consents, including planning consents and Building Regulations consents;
- (e) statutory fees (including planning and Building Regulations fees);
- (f) specialist materials (including materials for marketing brochures and lease plans) for marketing and selling the Site; and
- (g) such other disbursements and expenses which the Client expressly authorises in writing.

Part D

Rates for Additional Services (Clause 10.4)

Name	Role/Position	Hourly Rate (£)	Daily Rate (£)

All rates are exclusive of VAT.

SCHEDULE 3

Client's Brief

Refer to Tender Documentation, including Appendices 1-3.

***WHERE THE APPOINTMENT IS TO BE SIGNED UNDER
HAND AND NOT AS A DEED:***

Signed by or on behalf of the parties.

Signature by or on behalf of the Client

Use where the Client is a limited company, partnership, limited partnership or limited liability partnership. The signatory should print his/her name in the space in square brackets, sign where indicated and state his/her position, e.g. director, partner, etc, by deleting the inappropriate wording in brackets.

SIGNED by [_____] _____
(Directory/Secretary/Partner/Member)
for and on behalf of the **CLIENT**

Signature by or on behalf of the Consultant

Use where the Consultant is a limited company, partnership, limited partnership or limited liability partnership. The signatory should print his/her name in the space in square brackets, sign where indicated and state his/her position, e.g. director, partner, etc, by deleting the inappropriate wording in brackets.

SIGNED by [_____] _____
(Directory/Secretary/Partner/Member)
for and on behalf of the **CONSULTANT**

WHERE THE APPOINTMENT IS TO BE EXECUTED AS A DEED:

In witness whereof this document has been duly executed as a deed and is intended to be and is delivered on the date first above written.

EXECUTION BY THE CLIENT

THE COMMON SEAL of the **CLIENT** was affixed to **THIS DEED** in the presence of:

Signature of Director _____

Print name of Director _____

Signature of Director/Secretary _____

Print name of Director/Secretary _____

SIGNED AS A DEED
by the **CLIENT** acting by:

Signature of Director _____

Print name of Director _____

Signature of Director/Secretary _____

Print name of Director/Secretary _____

SIGNED AS A DEED
by the **CLIENT** acting by:

Signature of Director _____

Print name of Director
in the presence of: _____

Witness signature _____

Name _____

Address _____

Occupation _____

Companies using a seal If the Client is a company and wishes to use a common seal, it should execute the Appointment using this form of attestation.

The affixing of the common seal should be attested by either two directors or one director and one company secretary.

For these purposes, and for the purposes of the attestation blocks set out below, it is assumed that the directors and company secretaries are individuals and not themselves companies. Legal advice should be taken if that is not the case.

Companies not using a seal Instead of affixing its common seal, a company may execute the Appointment as a deed through signature by:

(a) two directors or one director and the company secretary; or

(b) one director in the presence of a witness, who should then sign where indicated and set out his/her name, address and occupation in the spaces provided.

Companies using a seal If the Consultant is a company and wishes to use a common seal, it should execute the Appointment using this form of attestation.

The affixing of the common seal should be attested by either two directors or one director and one company secretary.

For these purposes, and for the purposes of the attestation blocks set out below, it is assumed that the directors and company secretaries are individuals and not themselves companies. Legal advice should be taken if that is not the case.

Companies not using a seal Instead of affixing its common seal, a company may execute the Appointment as a deed through signature by:

(a) two directors or one director and the company secretary; or

(b) one director in the presence of a witness, who should then sign where indicated and set out his/her name, address and occupation in the spaces provided.

EXECUTION BY THE CONSULTANT

THE COMMON SEAL of the **CONSULTANT** was affixed to **THIS DEED** in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SIGNED AS A DEED

by the **CONSULTANT** acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SIGNED AS A DEED

by the **CONSULTANT** acting by:

Signature of Director

Print name of Director

in the presence of:

Witness signature

Name

Address

Occupation

1.1 Definitions

The Adjudicator:

TBC

of

The Professional Team:

Full name of each member

The Project:

Pallant House Gallery are seeking to appoint a Project Manager to deliver a capital building project for the Gallery, which will include works to a new building, as well as its existing spaces.

In 2016, the Gallery celebrated 10 years since the opening of its contemporary wing. Building on the success of this major capital project, the Gallery is now in a position to move forward with the next phase of development. The acquisition of the adjoining building, the 'Coach House' in 2017, answers the capacity needs of the Gallery as well as allowing for the expansion of its outreach programmes.

The project will meet the following objectives:

- An increase in access to the collections for public, staff and volunteers
- Much improved facilities for collections care
- Wider interpretation of the collections
- More diverse engagement with the collections
- Become a resilient and sustainable organisation

The Site:

8 East Pallant
Chichester
West Sussex
PO19 1TZ

The discipline of the Consultant:

Project Manager

3.4/3.5 Lead Consultant

The details of the Lead Consultant are set out below:

The Lead Consultant

Architect

of

4.2 CDM Regulations

The Consultant is not a "designer" for the purposes of the CDM Regulations

4.4 Design Responsibility

The Consultant is not responsible for the design of the Project

The Consultant is not responsible for specifying and/or approving materials

4.5 Prohibited Materials

Clause 4.5 is not applicable

5.1 Maximum Aggregate Liability

The maximum aggregate liability of the Consultant is limited to the amount of the Consultant's professional indemnity insurance specified in Clause 12.1 of this Appendix

5.2 Net Contribution

Clause 5.2 is applicable

The persons referred to in Clause 5.2(a) are:

The Building Contractor, any sub-contractors and the other members of the Professional Team.

6.1 Collateral Warranties or Third Party Rights

The Consultant is not required to provide Collateral Warranties or to confer Third Party Rights (Clause 6.1(a))

7 Consultant's Personnel

The key personnel referred to in Clause 7:

Full name of each person

8.6 Client's Obligations

The person referred to in Clause 8.6:
Beth Troakes

of
8-9 North Pallant
Pallant House Gallery
Chichester
West Sussex
PO19 1TJ

Limits of authority (if any):

9.5/9.11 Reimbursement of Disbursements and Expenses
/10.6

The Client does not reimburse disbursements and expenses in accordance with Part C of Schedule 2

9.8 Payment dates

The final date for payment is 28 days after the due date in accordance with Clause 9.6

11.1 Consultant's Authority

The amount(s) referred to in Clause 11.1(b):

12.1 Professional Indemnity Insurance

Such amount as is maintained by the Consultant on the date of this Appointment

13.5 Waiver of rights under Chapter IV of the Copyright, Design and Patents Act 1988

The Consultant does not waive its rights under Chapter IV of the Copyright, Design and Patents Act 1988

14.2 Assignment

The benefit of this Appointment may be assigned without the consent of the Consultant by the Client by way of an absolute legal assignment to another person (A1) acquiring the Client's interest or the Client Group Company's interest in the Project and by A1, by way of an absolute legal assignment, to another person (A2) acquiring A1's interest in the Project. No further or other assignment of this Appointment is permitted and, in particular, A2 is not entitled to assign this Appointment

15.8 Termination following suspension

Period of suspension is 6 months

16.4 Nominating body for Adjudicator

President or Vice-President of the Royal Institution of Chartered Surveyors

16.7 Arbitration or litigation

Arbitration is the method of dispute resolution

16.9 Nominating body for Arbitrator

President or Vice-President of the Royal Institution of Chartered Surveyors

17.1 Addresses of Consultant and Client

Consultant:

The address set out at the head of this Appointment

Client:

The address set out at the head of this Appointment

17.4 Non-postal methods of giving notice