

**DATED** \_\_\_\_\_ [ ]

**Draft (2): 15.9.15**

**(1) UNIVERSITY OF GLOUCESTERSHIRE**

**(2) [ ]**

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**ARCHITECT'S**

**DEED OF APPOINTMENT  
relating to**

**[ ]**

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**Pinsent Masons**

THIS DEED is made on [ ]

**BETWEEN:-**

- (1) **UNIVERSITY OF GLOUCESTERSHIRE** (Company No 06023243) whose registered office is at Fulwood House, University of Gloucestershire, The Park, Cheltenham, Gloucestershire, GL50 2RH] (the "**Employer**"); and
- (2) [ ] (Company No [ ] of/whose registered office is at [ ] (the "**Consultant**").

**IT IS AGREED** as follows:-

1. Interpretation

1.1 In this Deed:-

" <b>Building Contract</b> "	means a contract entered into or to be entered into between (1) the Employer and (2) the Contractor for the Project
" <b>Contractor</b> "	means the contractor to be employed under the Building Contract
" <b>Contractor's Representative</b> "	means such person as may be communicated to the Consultant by the Employer as being the contractor's representative in relation to the Building Contract from time to time)
" <b>Deed of Novation</b> "	means a deed of novation in the form of the draft annexed at Appendix 3 with any amendments thereto required by the Employer and approved by the Consultant (such approval not to be unreasonably withheld or delayed)
" <b>Employer's Warranty</b> "	means a deed of collateral warranty in the form of the draft annexed at Appendix 4
[" <b>Funder</b> "	means a person having or acquiring a mortgage or charge over the Project or Property or part thereof]
[" <b>Instalment Date</b> "	means the instalment date set out in Part 2 of Schedule 2]
[" <b>Landlord/Funder Warranty</b> "	means a deed of collateral warranty in the form of the draft annexed at Appendix 1 with any amendments thereto required by the Employer and approved by the Consultant (such approval not to be unreasonably withheld or delayed) to give proper effect to the circumstances at the time of entering into such deed]
[" <b>Landlord</b> "	means the counterparty to the Lease]
[" <b>Lease</b> "	means the lease dated [ ] between (1) the Employer and (2) the Landlord in relation to the Property]
" <b>Materials</b> "	means all designs, drawings, models, plans, specifications, design details, photographs, brochures,

reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the 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 Project

"Party"	means the Employer and/or the Consultant
["Periodic Payment"	means the periodic payment set out in Part 2 of Schedule 2]
"Professional Team"	means [Insert details of other members of the professional team]
"Programme"	[Insert description]
"Project"	means [Insert description of the works including reference to any design works] at the Property
"Property"	means [Insert description and address of Project location]
["Purchaser/Tenant"	means any purchaser and/or tenant of the Project or Property or any part thereof]
["Purchaser/Tenant Warranty"	means a deed of collateral warranty in the form of the draft annexed at Appendix 2 with any amendments thereto required by the Employer and approved by the Consultant (such approval not to be unreasonably withheld or delayed) to give proper effect to the circumstances at the time of entering into such deed]
"Regulations"	means the Construction (Design and Management) Regulations 2015 (SI 2015/51) and the related Approved Code of Practice issued by the Health and Safety Commission
["Stage Payment"	means the stage payment set out in Part 2 of Schedule 2]
"Third Party Agreements"	means the Building Contract, [Insert details of any other applicable Third Party Agreements]
["Work Stage"	means the work stage set out in Part 2 of Schedule 2]

1.2 In interpreting this Deed:-

- 1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "person" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.3 references to the Employer shall be deemed to include its successors in title and assigns;
- 1.2.4 any reference to any enactment or code of practice includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 1.2.5 headings to Clauses shall be disregarded.

2. **GENERAL**

2.1 The Employer has by the Building Contract appointed the Contractor to carry out and complete the Project.

2.2 The Employer wishes to appoint the Consultant upon the terms of this Deed.

3. **APPOINTMENT**

The Employer hereby appoints the Consultant to act as architect on the Project upon the following terms.

4. **SERVICES**

4.1 The Consultant will provide the services set out in [Parts 1 and 2 of] Schedule 1 and any other services reasonably required by the Employer (the "**Services**")

4.2 The Parties hereby agree that this Deed governs all services provided by the Consultant in relation to the Project whether before or after the date hereof.

5. **CO-OPERATION AND CO-ORDINATION**

5.1 The Consultant shall act as lead consultant for the Project and:

5.1.1 co-ordinate the services of the Professional Team;

5.1.2 give instructions to the Professional Team as necessary to co-ordinate the services of the Professional Team;

5.1.3 schedule the activities of the Professional Team to comply with the Programme; and

5.1.4 notify the Employer of any failure by a member of the Professional Team to comply with the Programme; and

5.1.5 notify the Employer if the Project is delayed or is likely to be delayed, setting out the cause of the delay and its likely duration.

6. **SKILL AND CARE**

6.1 The Consultant undertakes and warrants to the Employer that in the performance of its duties under this Deed, the Consultant has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent and fully qualified member of the Consultant's profession experienced in carrying out services the like of those hereby undertaken by the Consultant for works of a similar nature, value, complexity and timescale to the Project.

6.2 In addition (and without limitation to the above) the Consultant undertakes and warrants to the Employer:-

6.2.1 to exercise the standard of skill, care and diligence referred to in Clause 6.1 above to ensure that the Project will comply with all planning agreements permissions and conditions and with all deeds and documents relating to the Project which shall have been brought to the attention of the Consultant by the Employer or anyone on behalf of the Employer;

6.2.2 that the Consultant has exercised and will continue to exercise the standard of skill, care and diligence referred to in Clause 6.1 not to specify any products or materials for use in the Project which at the time of use:-

(a) do not conform with British and European Standards or Codes of Practice current at the date of use or which contravene the recommendations of the

publication "Good Practice in the Selection of Construction Materials" (British Council for Offices, 2011); or

(b) are generally known within the Consultant's profession to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of the building or structure;

6.2.3 to comply with any Act of Parliament, any instrument, rule or order made under any Act of Parliament and any regulation or bye-law of any local authority or of any statutory undertaker or of any public or private utility or undertaking which has any jurisdiction with regard to the Project or with those systems or property the Project is or will be connected with, and without prejudice to the generality of this Clause, undertakes to carry out and fulfil in all respects the duties of a designer [and principal designer]<sup>1</sup> under and in accordance with the Regulations;

6.2.4 that it will not without the Employer's written consent make or permit any material change in the designs and specifications for the Project after they have been settled or approved.

6.3 The Consultant also agrees:-

6.3.1 to prepare drawings, sketches and schedules in relation to those elements of the Project for which the Consultant is responsible in accordance with the design programme agreed between the Consultant and the Employer; and

6.3.2 to provide the Employer with as many copies as it may reasonably require of the "as built" drawings of the Project.

6.4 No approval or inspection or review by the Employer or by any person acting on behalf of the Employer nor any omission to inspect or review or to disapprove shall negate or diminish any duty or liability of the Consultant under or in connection with this Deed.

6.5 The Consultant hereby acknowledges that the Consultant has received a copy of the Third Party Agreements and that the Consultant is aware of the Employer's liabilities and obligations under the Third Party Agreements in so far as they are relevant to the Services and the Consultant shall carry out the Services so as to comply with and so as not to, by any action or omission, cause or contribute towards a breach of the obligations under the Third Party Agreements.

## 7. REMUNERATION

7.1 The fees payable for the Services provided by the Consultant under this Deed are set out in Part 1 of Schedule 2.

7.2 The Employer will pay such fees in the manner set out in Part 2 of Schedule 2.

7.3 Any fees[,] [and] costs [and disbursements] expressed to be payable to the Consultant shall be deemed to be [exclusive/inclusive] of Value Added Tax [but inclusive of all expenses and disbursements].

7.4 [If for any reason the Employer does not proceed with or curtails the Project, or if the Consultant's employment is terminated or suspended by the Employer other than for the Consultant's breach, the Consultant will be paid (in addition to any amount which shall have become payable under Clause 7.2) a fair and reasonable amount for any abortive work for which the Consultant would not otherwise be remunerated.

7.5 If at the Employer's request the Consultant undertakes any services additional to those covered by Schedule 1, or by reason of any design changes requested by the Employer or any other circumstances beyond the Consultant's control the Consultant is required to undertake significant extra work, provided the Consultant notifies the Employer before undertaking such work that the Consultant may require an additional fee, a fair and reasonable additional fee will be payable.]

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<sup>1</sup> To discuss the application of the CDM Regulations in respect of the architect's appointment.

- 7.6 Subject to Clause 7.5 the fees payable to the Consultant under Clauses 7.1 to 7.4 (inclusive) shall be the Consultant's entire remuneration under this Deed.
- 7.7 [The Consultant accepts that the nature of the Services to be provided under this Deed are such as will require an amount of abortive work, reworking, renegotiation and repetition, the extent of which cannot be accurately forecast. The Consultant agrees that no amount of such abortive work, reworking, renegotiation or repetition shall entitle the Consultant to any additional fee whether due to instructions of the Employer or to other circumstances brought about by the Employer or otherwise.]
- 7.8 Subject to Clause 15.6, the Consultant shall not be entitled to any compensation for the termination or suspension of the Consultant's employment under this Deed.
- 7.9 The Consultant shall maintain records of all time spent by his professional and technical staff (including partners) in performing each Services performed by such staff under this Deed.
- 7.10 The Consultant shall from time to time upon request (and after as well as before the termination or conclusion of the Consultant's employment under this Deed) make the records referred to in Clause 7.9 available to the Employer or his appointee for inspection and provide such copies as the Employer may request.

## 8. STAFF

- 8.1 The Consultant's employees with responsibility for the Project are:-
- 8.1.1 [REDACTED]; and
- 8.1.2 [REDACTED]. [DN: names of appropriate employees to be provided by the consultant]
- 8.2 The above will retain their involvement in the Project until completion of the services under this Deed unless otherwise agreed with the Employer.

## 9. ASSIGNMENT

- 9.1 This Deed is personal to the Consultant and the Consultant may not assign or delegate the obligations under this Deed to any person.
- 9.2 The Employer may assign the benefit of this Deed.
- 9.3 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 9.2 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

## 10. DEEDS OF WARRANTY<sup>2</sup>

Within seven days of receiving a written request from the Employer the Consultant will enter into:-

- 10.1 a Landlord/Funder Warranty in favour of the Landlord and/or any Funder and/or any financier of the Project or the Property or any part thereof;
- 10.2 a Purchaser/Tenant Warranty in favour of all or any purchaser and/or tenant of the Project or the Property or any part thereof.

## 11. COPYRIGHT

- 11.1 The copyright in all Materials provided by the Consultant in connection with the Project shall remain vested in the Consultant but the Consultant grants to the Employer and its nominees with full title

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<sup>2</sup> To discuss the extent to which an obligation to provide collateral warranties to third parties is required.

guarantee a non-exclusive irrevocable royalty free licence to copy, use and reproduce the Materials for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable the Employer to copy and use the Materials for the extension of the Project but shall not include a licence to reproduce the designs contained in them for any extension of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

- 11.2 The Consultant shall not be liable for any such use by the Employer or its nominees of any Materials for any purpose other than that for which the same were prepared by the Consultant.
- 11.3 The Employer shall on written request, be entitled to be supplied by the Consultant with copies of any Materials (in either electronic format or hard copy where applicable and/or in such other format as the Employer may reasonably request).
- 11.4 The Consultant unconditionally and irrevocably waives (and shall ensure that any sub-consultants waive), in respect of the Materials and the Project, all moral rights to which the Consultant (or any relevant sub-consultants) may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 as amended from time to time or under any other applicable laws.
- 11.5 This waiver is made in favour of the Employer and shall extend to the Employer's sub-licensees, assignees and successors in title in accordance with this Deed.
- 11.6 The Consultant warrants that the Materials (save to the extent that duly authorised sub-consultants have been used to prepare the same) are the Consultant's own original work and that in any event their use in connection with the Project will not infringe the rights of any third party. The Consultant further warrants that where duly authorised sub-consultants are used their work will be original and that the Consultant will obtain the necessary consents in relation to clause 11.

## 12. INDEMNITY INSURANCE

- 12.1 The Consultant shall maintain professional indemnity insurance covering (inter alia) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than £[REDACTED] ([REDACTED] million pounds) for any one occurrence or series of occurrences arising out of any one event for a period beginning now and ending 12 years after (i) the date of practical completion of the Project or (ii) the date that the Consultant last carried out services under this Deed (whichever is later), provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof. The Consultant shall not, without the prior approval in writing of the Employer, settle or compromise with the insurers any claim which the Consultant may have against the insurers and which relates to a claim by the Employer against the Consultant, or by any act or omission lose or prejudice the Consultant's right to make or proceed with such a claim against the insurers.
- 12.2 Any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 12.3 The Consultant shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in order that the Consultant and the Employer can discuss means of best protecting the respective positions of the Employer and the Consultant in respect of the Project in the absence of such insurance.
- 12.4 The Consultant shall fully co-operate with any measures reasonably required by the Employer, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Consultant in respect of the net cost of such insurance to

the Consultant above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.

12.5 As and when reasonably requested to do so by the Employer the Consultant shall produce for inspection documentary evidence (including, if required by the Employer, the original of the relevant insurance documents) that its professional indemnity insurance is being maintained.

12.6 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by the Employer.

### 13. **NOVATION**

13.1 Within five business days of receiving a written request from the Employer, the Consultant shall enter into and deliver to the Employer:

13.1.1 a Deed of Novation; and

13.1.2 an Employer Warranty in favour of the Employer.

### 14. **ADJUDICATION**

14.1 If a dispute or difference arises under this Deed either Party may give notice of its intention to refer such dispute or difference to adjudication at any time and shall within 7 days thereafter refer the same to the decision of the Adjudicator. The Party referring such dispute shall be called the "**Referrer**" and the Party responding shall be called the "**Respondent**".

14.2 Where either Party has given notice of his intention to refer a dispute to adjudication then:-

14.2.1 any agreement by the Parties on the appointment of the Adjudicator must be reached and the appointment made in sufficient time so that the dispute or difference can be referred to the Adjudicator within 7 days of the date of the notice of intention to refer; and

14.2.2 if the Parties are unable to agree on the appointment of the Adjudicator then application to the Chartered Institute of Arbitrators for the appointment of the adjudicator must be made with the object of securing the appointment of and the referral of the dispute or difference to the Adjudicator within 7 days of the date of the intention to refer.

14.3 Upon the appointment of the Adjudicator the Parties shall comply with all the directions which he may issue for the purposes of fairly and expeditiously considering the facts and issues in the dispute and so that the Adjudicator shall reach a decision within 28 days of the date of referral to him under Clause 14.1 or such longer period as is agreed by the Parties after the dispute has been referred and the Adjudicator may extend the period of 28 days by up to 14 days with the Referrer's consent.

14.4 The Adjudicator shall act fairly and impartially and shall take the initiative in ascertaining the facts and the law and shall reach his decision in accordance with the applicable law in relation to this Deed and shall publish his decision simultaneously to both Parties.

14.5 In determining any dispute referred to him for a decision the Adjudicator:-

14.5.1 shall consider any written representations, statements and expert's reports submitted to him by the Parties (which shall be exchanged between the Parties when the same are supplied to the Adjudicator);

14.5.2 shall afford the Parties the opportunity to address him in a meeting or meetings at which both Parties must be present;

14.5.3 shall permit the Parties to be represented by such legal or other representatives as they shall see fit;

- 14.5.4 shall have the power to require the Parties to produce to him and to the other Party copies of any documents they are able to produce which may assist in the reference (save any which would be privileged from production in Court proceedings) between the Parties relating to the dispute; and
- 14.5.5 shall be entitled to instruct an expert and to take Counsel's opinion as to any matter within their field of expertise raised by the reference, but shall not be entitled to delegate any decision to such expert or Counsel.
- 14.6 The Adjudicator may in his decision allocate his fees and expenses between the Parties.
- 14.7 The Adjudicator's decision is binding upon the Parties until finally determined by legal proceedings or by agreement.
- 14.8 The Adjudicator may, within 5 days of giving his decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.
- 14.9 The Parties hereby agree that the Adjudicator (including any employee or agent of the Adjudicator) appointed in accordance with this Clause 14 shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith.
- 14.10 If either Party does not comply with the decision of the Adjudicator the other Party shall be entitled to take proceedings in the Courts to secure such compliance pending any final determination of the referred dispute or difference pursuant to Clause 14.7.
- 14.11 Subject to the provisions of Clauses 14.3, 14.4, 14.5 and 14.13, in deciding any dispute referred to him, the Adjudicator shall determine and take into account any matter ("**Cross-claim**") raised by the Respondent to the notice to refer by way of defence or set-off or counter claim, provided such Cross-claim arises under this Deed.
- 14.12 Clauses 14.3 to 14.10 (inclusive) shall apply to any Cross-claim as they apply to any dispute referred to the Adjudicator pursuant to Clause 14.1.
- 14.13 Clauses 14.11 and 14.12 shall not apply to any Cross-claim if such Cross-claim is being decided or has been decided by an adjudicator other than the Adjudicator appointed pursuant to Clauses 14.1 to 14.3 inclusive to determine the relevant dispute or difference.
- 15. TERMINATION AND SUSPENSION**
- 15.1 The Employer may terminate the Consultant's employment under this Deed at any time upon seven days notice in writing to the Consultant.
- 15.2 The Consultant may terminate its employment under this Deed if the Employer shall be in material and persistent breach of its obligations (including without limitation the non payment of fees) and shall fail to remedy the same after receiving a 30 day written notice from the Consultant specifying the breach and requiring its remedy in accordance with this Clause 15.
- 15.3 The termination of the Consultant's employment under this Deed, howsoever arising, shall be without prejudice to the rights and remedies of either Party in relation to any omission or default of the other prior to such termination.
- 15.4 [The Employer may suspend the Consultant's Services by written notice. Upon suspension the Consultant's fee entitlement shall be as provided in Clause 7.4.]
- 15.5 Upon any suspension of the performance of the Services or termination of the Consultant's engagement under this Deed the Consultant shall take immediate steps to bring the performance of the Services to a halt in a safe and orderly manner but with all reasonable speed and economy (including advising and assisting the Employer in relation the protection and preservation of the Project) and shall also relinquish any lien upon and deliver to the Employer within 7 days of such suspension or termination any and all drawings, reports, specifications, bills of quantities,

calculations, correspondence, minutes of meetings, records and/or any other documents or data of any kind in its possession, custody or control relating to the Project.

15.6 If the Employer fails to pay the Consultant in accordance with paragraph B.4 of Section B of Schedule 2, then the Consultant may, by giving not less than [21 days] written notice to the Employer, suspend performance of any or all of its obligations under this Deed. The right to suspend performance shall cease when the Employer makes payment of the relevant outstanding amount to the Consultant. For the avoidance of doubt, where the Consultant exercises its right of suspension under and in accordance with this Clause 15.6, the Employer shall be liable to pay the Consultant a reasonable amount in respect of costs and expenses reasonably incurred by the Consultant as a result of such suspension.

## 16. **BRIBERY ACT**

16.1 The Consultant shall:

16.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

16.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

16.1.3 comply with the Employer's anti-bribery and anti-corruption policies as published and updated by the Employer from time to time;

16.1.4 have and maintain throughout the term of this Deed its own anti-bribery and anti-corruption policies and procedures, including but not limited to adequate procedures to ensure compliance with the Bribery Act 2010 and the Employer's anti-corruption policy and will enforce where appropriate;

16.1.5 immediately notify the Employer if a foreign public official becomes an officer or employee of the Consultant or requires a direct or indirect interest in the Consultant (and the Consultant warrants that it has no public officials as officers, employees or direct or indirect owners at the date of this Deed);

16.1.6 ensure that all persons associated with the Consultant or other persons who are performing services or providing goods in connection with this Deed comply with this Clause 16.1.

16.2 The Consultant warrants and represents that at the time of entering into the Deed it has not and none of its officers, employees, agents, representatives, subcontractors, consultants, or other persons acting with the authority of the Consultant have done anything that would have placed it or them in breach of the obligations at Clause 16.1 above.

16.3 If the Consultant is in breach of any obligation, warranty or representation as provided in this Clause 16, then the Employer shall be entitled:

16.3.1 (without prejudice to any other right or remedy including the right to terminate the Deed) to suspend performance of this Deed for such period as the Employer may consider to be necessary in order to investigate any such breach. During any such period of suspension, the Employer shall be under no obligation to perform its part of this Deed, but the Consultant will continue to be bound by all of its obligations under this Deed insofar as they are compatible with this Deed being suspended and will continue to comply with all of its duties under this Deed. The Employer shall be entitled to require the Consultant to stay away from the Employer's premises and to have no contact with any employees, officers, customers, clients, agents or suppliers of the Employer; and

16.3.2 (without prejudice to any other right or remedy) to terminate this Deed with immediate effect on written notice and the provisions of Clauses 15.3 and 15.5 shall apply.

16.4 The Consultant is liable for and is to indemnify the Employer against all payment, loss, damage, action, cost, fines, financial penalty or expense of whatsoever nature paid made or incurred by the Employer arising out of or in connection with any breach by the Consultant of its obligations, representations and/or warranties under this Clause 16.

17. **SUB-CONTRACTING**

17.1 The Consultant shall not sub-let or delegate the whole or any part of his duties under this Deed without the Employer's prior written consent.

17.2 Where the Employer consents to the sub-letting or delegation of the whole or any part of the Consultant's duties under this Deed such consent shall be without prejudice to the Consultant's continuing obligation to ensure that the sub-let and/or delegated Services are and continue to be performed at all times in accordance with the requirements of this Deed.

18. **SITE ATTENDANCES**

Where the Consultant is required to monitor the execution of the Project or any of the aspects or elements of the Project for which he is responsible under this Deed the Consultant will be expected to attend the site of and/or any other place where such works are being carried out at such intervals and for such periods as are necessary and/or appropriate to perform the Services and to establish and verify that the works are being carried out in accordance with the Building Contract and the Employer's expectations and requirements.

19. **REPORTING REQUIREMENTS**

19.1 The Consultant shall keep the Employer and the Contractor's Representative fully, properly and promptly apprised of any and all pertinent developments concerning those matters which are the Consultant's responsibility under this Deed as and when they occur.

19.2 The Consultant shall send to the Employer and the Contractor's Representative on a day-to-day basis, copies of all pertinent correspondence and documents (including minutes of meetings) sent or received by the Consultant in connection with the Project.

20. **CO-OPERATION AND GOOD FAITH**

The Consultant shall at all times co-operate with and act in good faith towards the Employer, the Contractor and the other members of the Professional Team and any public organisations and/or authorities, funders, purchasers, tenants, landlords, managing agents and/or contractors with whom the Employer may be in negotiation.

21. **CONFIDENTIALITY**

21.1 Save as required by law or as may be necessary for the proper performance of its duties the Consultant shall not during the employment of the Consultant under this Deed or following termination of its employment hereunder disclose to any third party or make use of any information relating to the Project.

21.2 The Consultant shall not, without the prior written consent of the Employer, publish alone or in conjunction with any other person any articles, illustrations, photographs or videos relating to the Project.

22. **WAIVER**

Failure by either Party at any time to enforce any provision of this Deed against the other shall not be construed as a waiver of such entitlement and shall not affect the validity of this Deed or any part or parts hereof or the right of the relevant Party to enforce any provision in accordance with its terms. The rights and/or remedies of either Party may only be waived by formal written waiver which is signed by a duly authorised representative of the Party waiving its rights and which makes express and unequivocal reference to the waiver being made pursuant to this Clause 22.

23. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or set of counterparts executed by both Parties shall constitute the full and original Deed for all purposes.

24. **SEVERANCE**

If any term or condition of this Deed is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Deed and the validity and enforceability of the remainder of this Deed shall not be affected or impaired thereby.

25. **NOTICES**

Any notice to be served under this Deed must be in writing and must be served by hand or by registered post or recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect two days after posting, excluding Saturdays, Sundays and statutory holidays.

26. **[AGENT FOR SERVICE**

The Consultant hereby appoints **[Insert name of agent]** (No **[ ]**) of/whose registered office is at **[ ]** to act as its agent for service within the United Kingdom for any notice, request, demand or other communication to be made or given pursuant to this Deed, in accordance with Clause 24 at the address, facsimile number and marked for the attention of the person set out below:-

**[Insert agent's address ]**  
**[ ]**  
**[ ]**  
**[ ]**

Facsimile : **[ ]**

Attention : **[ ] [DN: For use where the Consultant is not UK based. Where not required replace with "Not used."]**

27. **LIABILITY PERIOD**

No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from (i) the date of practical completion of the Project or (ii) the date that the Consultant last carried out services under this Deed (whichever is later).

28. **THIRD PARTY RIGHTS**

This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Employer is deemed to be a party to this Deed.

29. **ENTIRE AGREEMENT**

29.1 This Deed shall constitute the entire agreement between the Employer and the Consultant and will replace any previous agreement between the Employer and the Consultant relating to the Project.

29.2 Without prejudice to any liability the Employer may have in respect of fraudulent misrepresentation, the Consultant hereby acknowledges and confirms to the Employer that in

entering into this Deed it has placed no reliance upon any statement, representation or warranty made or given by the Employer during the course of negotiations which is not reflected in the body of this Deed or any documents referred to herein.

29.3 Any and all additions, amendments and/or modifications to the terms and conditions of this Deed must be in writing and shall only be binding if signed by the original signatories to this Deed or other duly authorised representatives of the Employer and Consultant.

30. **GOVERNING LAW**

This Deed and any non-contractual obligations in connection with this Deed is subject in all respects to English law and the Parties hereby submit to the exclusive jurisdiction of the English Courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this Clause 30 and for the enforcement of any judgment, order or award given under English jurisdiction.

**EXECUTED AS A DEED** by the Parties on the date which first appears in this Deed.

## SERVICES

The services to be provided are as follows:-

**[DN: Client to insert the agreed Services as appropriate, which must set out the Consultant's responsibility for design.]**

### PART 1

[ ]

## PART 1

### FEES

[The Consultant's fee will be the lump sum of £[ ] [(of which £[ ] has been paid and the Consultant acknowledges receipt)].

OR

[The Consultant's fee will be [ ] per cent of the final contract sum under the Building Contract (but excluding any amounts in respect of loss and expense payable to the Contractor due to delay or disruption and any increase to the final contract sum resulting from a breach of the Consultant's obligations under this Deed and excluding the actual or estimated design fees or costs of any specialist contractor or sub-contractor or other specialist who may be employed on the Project).]

**[DN: To be updated as appropriate to reflect the Consultant's fee.]**

## PART 2

### PAYMENT OF FEES

Section A	[Work Stage] [Instalment Date]	[Amount of Stage Payment] [Periodic Payment]
A.1		
A.2		
A.3		
A.4		
A.5		

**[DN: payment milestones to be completed as appropriate]**

### Section B

- B.1 The Consultant shall upon or within 3 working days of the [Instalment Date] [completion of the relevant Work Stage] submit to the Employer an application for payment specifying the sum that the Consultant considers will become due at the Payment Due Date and the basis on which that sum is calculated (including any additional sums relating to the [Work Stage] [Instalment Date] covered by the [Stage Payment] [Periodic Payment]) together with a VAT invoice for that sum (the "**Application for Payment**").
- B.2 Payment of the sum specified in the Application for Payment shall be due 10 days after the date the Application for Payment, submitted in accordance to paragraph B.1, is received by the Employer (the "**Payment Due Date**").
- B.3 No later than 5 days after the Payment Due Date the Employer shall submit to the Consultant a notice specifying the sum that the Employer considers to be due at the Payment Due Date and the basis on which that sum is calculated (the "**Payment Notice**"). It is immaterial that the sum referred to in the Payment Notice may be zero.
- B.4 The Employer shall, subject to any Pay Less Notice, pay the sum specified in the Payment Notice or, if no Payment Notice is issued by the Employer pursuant to paragraph B.3, the amount stated in the Application for Payment (in either case the "Notified Sum"), within 25 days of the Payment Due Date (the "**Final Date for Payment**").

B.5 If the Employer intends to pay less than the "Notified Sum" the Employer shall, not later than 1 day before the Final Date for Payment, give the Consultant notice of that intention specifying:

B.5.1 the sum which the Employer considers to be due to the Consultant at the date the notice is given; and

B.5.2 the basis on which that sum is calculated;

(a "**Pay Less Notice**"). It is immaterial that the amount then considered to be due may be zero. Where a Pay Less Notice is given, the payment to be made on or before the Final Date for Payment shall not be less than the amount stated in the Pay Less Notice.

B.6 If the Employer fails to pay the amount due to the Consultant by the Final Date for Payment the Employer shall pay to the Consultant in addition to the amount not properly paid simple interest thereon for the period until such payment is made. Payment of such simple interest shall be treated as a debt due to the Consultant by the Employer. The rate of interest payable shall be four per cent (4%) over the Base Rate of the Bank of England which is current at the Final Date for Payment.

**APPENDIX 1 – Landlord/Funder Collateral Warranty**

**APPENDIX 2 – Purchaser/Tenant Collateral Warranty**

**APPENDIX 3 - Deed of Novation**

**APPENDIX 4- Employer Warranty**



**SIGNED** (but not delivered )  
until the date hereof )  
**AS A DEED** by )  
[ ] )  
in the presence of:- )

Signature of Witness: .....

Name of Witness (printed): .....

Address: .....

.....

Occupation: .....

**SIGNED** (but not delivered )  
until the date hereof )  
**AS A DEED** by )  
[ ] )  
in the presence of:- )

Signature of Witness: .....

Name of Witness (printed): .....

Address: .....

.....

Occupation: .....