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| **Appointment of [Design Consultant] as [Architect/Structural Engineer/Mechanical & Electrical Engineer]** |
|  |
| Relating to the development at [▼] |
|  |
| Dated 20[▼] |
|  |
| 1. **[Employer]** |
| 1. **[Consultant]** |
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**This Appointment** is made on 20[▼]

**Between:**

1. **[EMPLOYER]** (company number: [▼]) whose registered office is at [▼] (the "**Employer**") which expression shall include its successors in title and permitted assigns and any party to whom this Appointment is novated; and
2. **[CONSULTANT]** (company number: [▼]) whose registered office is at [▼] (the "**Consultant**") which expression shall include its successors in title and permitted assigns.

**Background:**

* 1. The Employer intends to procure the design, construction and completion of the Development.
  2. The Employer wishes to engage the Consultant to act in the capacity of [architect/structural engineer/mechanical and electrical engineer] in relation to the Development of the Property on the terms and subject to the conditions set out in this Appointment. The Employer has appointed or is in the process of appointing the Construction Manager to coordinate the Development.

**This Deed witnesses** as follows:

**OPERATIVE PROVISIONS**

1. Definitions and interpretation
   1. In this Appointment, unless the context otherwise requires, the following words and expressions have the following meanings:

|  |  |
| --- | --- |
| "**Additional Services**" | means services set out (without limitation) in Schedule 2 Part 3 to be performed by the Consultant which are in the Employer's reasonable opinion additional to the Services as set out in Schedule 3; |
| "**Appointment**" | means this appointment, schedules, appendixes and any addition or amendment to it; |
| "**Application for Payment**" | means a written application by the Consultant stating the sum that the Consultant considers to be due for payment as well as the basis on which such sum has been calculated; |
| “**Beneficiary”** | any Funder, Purchaser or Tenant of the whole or any part of the Development (whether before or after Practical Completion); |
| "**British Standards**" | means standards or guidance published produced or approved by the British Standards Institute; |
| "**CDM Regulations**" | means the Construction (Design and Management) Regulations 2015 including any relevant Codes of Practice and any guidance issued from time to time by the Health and Safety Executive; |
| "**Codes of Practice**" | means any standard or code of practice or guidance note produced, published or approved by any relevant local, national or international body including but not limited to the Health and Safety Commission, any relevant local authority or statutory undertaker, including any certificate issued by the British Board of Agrément; |
| “**Construction Management Agreement”** | means the agreement entered into or to be entered into between the Employer and the Construction Manager relating to management of the construction of the Development; |
| “**Construction Manager”** | means [ ] or such consultant as the Employer shall appoint to provide construction management services for the Development; |
| "**Consultant's Representative**" | means the person named in Part 2 of Schedule 1 or any replacement thereof; |
| "**Development**" | means the design, construction and completion of [▼]; |
| "**Due Date**" | means the later of the relevant Instalment Date and the date 7 days after receipt of a valid Application for Payment by the Employer; |
| "**Final Date for Payment**" | means thirty five (35) days after the Due Date; |
| “**Funder**” | Atelier Capital Partners Limited (company number:11888767) whose registered office is situated at 3-5 Rathbone Place London England W1T 1HJ and each of its respective transferees, successors, or assignees; |
| "**Instalment Date**" | means the dates set out in Part 2 of Schedule 2; |
| "**Other Consultants**" | means the other consultants and professionals involved in the Development as listed in Part 1 of Schedule 1 or their replacements or such other professionals or sub-contractors as the Employer or Contractor may from time to time engage in connection with the Development; |
| "**Pay Less Notice**" | means a written notice specifying the sum which the Employer considers to be due on the date of the notice and the basis upon which sum is calculated; |
| "**Payment Notice**" | means a written notice specifying the amount which the Employer considers to be due and the basis on which such sum has been calculated; |
| "**Practical Completion**" | means the date on which the Development is complete in accordance with the Construction Management Agreement; |
| "**Property**" | means [▼]; |
| “**Purchaser**” | all and any purchaser of the whole or any part of the Development; |
| "**Services**" | means the basic services referred to in clause 2 and listed in Schedule 3 and the additional services (if any) referred to in sub-clause 2.1.3; |
| "**Statutory Requirements**" | means any statute, statutory instrument, regulation, rule or order made or consent or licence issued or required under any statute or directive having the force of law which affects the Development or performance of any obligations under this Appointment; any British Standards and Codes of Practice and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Development or with whose systems the Development is, or is to be, connected; any planning agreements or permissions, any conditions to those planning permissions or agreements and reserved matters approvals and any conditions to those reserved matters approvals (which will include agreements under or in connection with section 106 of the Town and Country Planning Act 1990 and section 38 or section 278 of the Highways Act 1980) and requirements of the local authority access officer; |
| “**Tenant**” | all and any tenant, assignee or sub-tenant of the whole or any part of the Development; |
| "**Third Party Agreements**" | means any agreement now or hereafter made between the Employer and a Third Party which relates to the Development or the Property (but without prejudice to the generality of the foregoing) any building contract, development agreement, lease, agreement for lease or sale or funding agreement and for the avoidance of doubt includes any specified in the Building Contract; |
| “**Trade Contract”** | means any contract to be entered into between the Employer and its trade contractors for the construction of the Development; |
| “**Trade Contractor”** | means any trade contractor employed by the Employer or the Construction Manager to carry out building works in relation to the Development. |

* 1. In this Appointment unless the context otherwise requires:
     1. references to a "**person**" shall be construed so as to include any individual, firm, company, corporation or other body corporate, government, state or agency of a state, joint venture, association or partnership (whether or not having separate legal personality);
     2. a reference to a statute or statutory instrument or other subordinate legislation shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;
     3. headings of clauses and sub-clauses are for convenience only and do not affect the interpretation of this Appointment;
     4. words imparting the singular shall include the plural and vice versa and words imparting a gender include every gender;
     5. the words and phrases "**other**", "**including**" and "**in particular**" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible; and
     6. references to clauses or schedules are to clauses or schedules of this Appointment and references to sub-clauses or paragraphs are to sub-clauses or paragraphs of the clause or schedule in which they appear, unless otherwise indicated.
  2. In the event that any part or parts of this Appointment are determined to be invalid or unenforceable such determination shall not affect the validity of any remaining portion which shall remain in force and effect as if it had been executed with the invalid part or parts deleted and it is agreed that the intention of the parties is that they would have executed the remaining portion being part of this Appointment without including any such part or parts which may for any reason be declared invalid or unenforceable.

1. Services
   1. The Consultant shall:
      1. provide [architectural/structural engineering/mechanical and electrical] services in relation to the procurement, design, construction and completion of the Development to include all the services listed in Schedule 3;
      2. perform the Services in conjunction and harmony with the Employer, the Other Consultants, the Construction Manager and any Trade Contractor;
      3. not without the consent of the Employer do or omit anything which might vary the cost of the Development or the period for its construction;
      4. perform any Additional Services instructed by the Employer (acting reasonably) subject to the provisions of sub-clause 8.3;
      5. attend and chair meetings and prepare reports as reasonably requested by the Employer;
      6. have due regard to the Employer's obligations under the Construction Management Agreement and any Trade Contract.
   2. In performing the Services the Consultant shall:
      1. carry out the Services promptly and diligently and in accordance with the programmes from time to time issued by or on behalf of the Employer;
      2. provide all advice, consents, design, comments, approvals, instructions and certificates required from the Consultant promptly and in good time so as not to delay or disrupt the progress of the Development;
      3. allocate and at all times maintain adequate staff and resources to enable the Consultant to comply with this Appointment; and
      4. obtain the written authority of the Employer before initiating any of the Services or any work stage.
   3. Any services already provided prior to the date of this Appointment relating to the Development (whether under any letter of intent or otherwise) shall be treated as having been provided under the terms of this Appointment. Any monies paid for any such services shall be deemed to have been paid under the terms of this Appointment and shall form part of the fee specified in Part 1 of Schedule 2.
   4. This Appointment constitutes the entire agreement and understanding of the parties and supersedes any previous agreement or arrangement between them relating to the subject matter of this Appointment. For the avoidance of doubt, the Consultant’s own standard terms and conditions of engagement (if any) shall have no validity under this Appointment.
   5. Both parties acknowledge and agree that in entering into this Appointment, they do not rely on and shall have no remedy in respect of any statement, representation, warranty, collateral agreement or other assurance (whether made negligently or innocently) of any person (whether party to this Appointment or not) other than as expressly set out in this Appointment. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.
   6. No relaxation, forbearance, delay or indulgence in enforcing any of the terms of this Appointment by the Employer shall prejudice, affect or restrict the rights of the Employer under this Appointment, nor shall any waiver of any breach of this Appointment operate as a waiver of any subsequent or continuing breach of this Appointment.

**Duty of care**

* 1. In performing the Services the Consultant warrants that it has and will exercise all reasonable skill, care and diligence in the discharge of the Services to the standards to be expected of a properly qualified, competent and experienced [architect/structural engineer/mechanical and electrical engineer] experienced in the provision of like services to the Services for developments comparable in size, scope, value, complexity and purpose to the Development.
  2. Without prejudice to its other obligations under this Appointment the Consultant shall exercise the degree of skill, care and diligence required by clause 3.1 to specify for the Development such materials and such methods of design and construction with the intent that the construction of the Development and the maintenance and/or repair of the completed Development is as cost effective as is reasonably possible for a development of the type, size, value, scope and complexity of the Development.

1. Design
   1. The Consultant shall not make any alteration, addition to or omission from the design of the Development without the written consent of the Employer.
   2. The liability of the Consultant under this Appointment shall not be released, diminished, excluded, limited or in any other way affected by any inspection, investigation, enquiry, sanction, comment or approval which may be made or carried out by or on behalf of the Employer or by the Employer’s failure to carry out the same or ensure that the same is carried out on its behalf, including without limitation failure to examine any drawings.

**Prohibited Materials**

* 1. The Consultant warrants that it has not and will not specify for use in the Development any substance or material which it knows or, exercising the skill, care and diligence referred to in clause 3.1, ought to know is deleterious and/or which would not constitute good building practice and/or which are generally known or suspected to be deleterious and/or which would not comply with British Standards/Codes of Practice applicable at the time of specification and/or use and/or incorporation, including without limitation substances which have been published as being deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used in the Development, and/or which are contrary to the guidelines contained in the edition of the publication “Good Practice in Selection of Construction Materials” (2011: British Council for Offices) current at the date of specification and/or use and/or incorporation.

1. Third Party Agreements

Where relevant, the Consultant may be supplied with copies of any Third Party Agreements or such parts or extracts of the same as shall be relevant to the provision of the Services (excluding any financially sensitive information) and subject to the Consultant receiving copies of such Third Party Agreements or such parts or extracts of the same as shall be relevant (excluding any financially sensitive information) the Consultant shall perform and discharge the Services so far as to comply with and so as not by any action or omission to cause or contribute towards a breach of the duties and obligations of the Employer under such Third Party Agreements.

1. Statutory approvals and CDM Regulations
   1. The Consultant using the reasonable skill care and diligence required by sub-clause 3.1 shall perform the Services in such a manner as to ensure that the Development is designed and constructed in full accordance with all relevant Statutory Requirements.
   2. The Consultant warrants to the Employer that it is fully aware of the provisions of Regulation 9 ("**Duties of Designers**") of the CDM Regulations and that it possesses the requisite degree of competence and level of resources to meet (and shall meet) the requirements of the said Regulation 9 and shall all times discharge the Services so as not by any action or omission to cause or contribute towards a breach by the Employer of its obligations under the CDM Regulations.
2. Fees
   1. The Employer shall pay to the Consultant the fee payable for the Services performed by the Consultant specified in Part 1 of Schedule 2.
   2. If the Consultant considers that it is about to or has been requested or instructed to carry out Additional Services the Consultant shall (prior to carrying out such services) give written notice of the same together with an estimate of the cost of provision of the Additional Services to the Employer. The Employer shall determine whether the notified services are Additional Services and in the event that the Employer determines that the services notified by the Consultant are Additional Services then the Employer may at its sole discretion direct either:
   3. that the Additional Services are carried out for the amount specified in the Consultant’s estimate or such other amount as may be agreed between them; or
   4. that the remuneration for the Additional Services be calculated by reference to the time spent by the Consultant on the Additional Services in accordance with the hourly rates for personnel specified in Schedule 2 Part 3 which are inclusive of all expenses and disbursements but exclusive of Value Added Tax.
   5. The provisions of this clause 6 shall apply to the payment of remuneration for such Additional Services.
   6. Subject to this clause 8, sub-clause 15.6 and sub-clause 15.7, payments of the fee shall be made by interim instalments in accordance with Part 2 of Schedule 2.
   7. All payments of the fee made by the Employer to the Consultant shall constitute no more than payments on account and shall be subject to the Services being satisfactorily performed. The making of any payment by the Employer to the Consultant shall not be deemed to indicate satisfactory performance of the Services.
   8. Applications for Payment shall be submitted by the Consultant to the Employer at each Instalment Date, together with supporting invoices and any other supporting documentation that the Employer may reasonably require. If the Consultant submits a premature Application for Payment it shall be deemed submitted at the appropriate date of the next Instalment Date as stated in Part 2 of Schedule 2.
   9. Payment shall become due to the Consultant on the Due Date.
   10. The Employer shall not later than five (5) days after the Due Date serve a Payment Notice. Subject to any Pay Less Notice given in accordance with sub-clause 8.12, the Employer shall make payment to the Consultant of the amount stated as due in the Payment Notice on or before the Final Date for Payment.
   11. If a valid Payment Notice is not given in accordance with sub-clause 8.10, the sum to be paid by the Employer shall be the sum stated in the Application for Payment, subject to any Pay Less Notice given in accordance with sub-clause 8.12.
   12. If the Employer intends to pay less than the sum due as stated in any valid Payment Notice or valid Application for Payment, the Employer or its nominee shall serve a Pay Less Notice. The Pay Less Notice shall be served no later than one (1) day before the Final Date for Payment.
   13. Any notices required under this clause 8 shall be issued even when the amount of that notice is zero.
   14. Without prejudice to any other right or remedy of the Consultant under this Appointment, if the Employer fails to make any payment properly due under this Appointment by the Final Date for Payment then the Consultant may suspend all or any part of its Services under this Appointment by giving no less than seven (7) days' written notice of such suspension. The right to suspend performance of the Services shall cease when the Employer makes payment in full of the sum due.. Where the Consultant exercises his right of suspension, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right upon providing such evidence of the costs as are reasonably requested by the Employer.
   15. Without prejudice to any other right or remedy of the Consultant under this Appointment, if the Employer fails to make any payment properly due under this Appointment by the Final Date for Payment in the absence of a Pay Less Notice then the Consultant may claim interest on the unpaid amount at the rate of five per cent (5%) per annum above the official dealing rate of the Bank of England current at the date that the payment became due. By entering into this Appointment the parties agree that this is a substantial contractual remedy as defined in section 8(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
3. Insurance
   1. The Consultant warrants to the Employer that it has, or will take out, and will maintain for a period commencing on the date when the Consultant commenced providing the Services whether prior to the date of the Appointment or otherwise expiring no earlier than twelve (12) years from the date of expiry of Practical Completion with reputable insurers carrying on business in the United Kingdom professional indemnity insurance with a limit of indemnity not less than £[▼] million for each and every claim or series of claims arising out of the same originating event.
   2. As and when reasonably required by the Employer the Consultant shall produce for inspection satisfactory documentary evidence that the insurances referred to in this clause 9 are being properly maintained and confirm that payment has been made in respect of the last preceding premiums due under them.
   3. The Consultant shall comply with all conditions and obligations of any such insurance policy referred to in this clause 9 and shall immediately inform the Employer if any such insurance ceases to be maintained or ceases to be available at commercially reasonable rates and on reasonable terms. The Employer and the Consultant shall discuss the best means of protecting the Employer’s interests and the Consultant shall if requested by the Employer take out such insurance with such a limit of indemnity as is available in the market at commercially reasonable rates and on reasonable terms.
   4. 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.
   5. The Consultant shall not knowingly do or omit any thing whereby any insurance policy referred to in this clause 9 may become void or voidable.
   6. The Consultant shall give notice to the Employer of any claim arising under any insurance policy referred to in this clause 9 relating to the Development.
4. Copyright and licence to use documents
   1. The copyright in all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials and any other materials provided by the Consultant in connection with the Development (whether in existence or to be made) and all amendments and additions to them and any works, designs or inventions of the Consultant incorporated or referred to in them shall remain vested in the Consultant but the Consultant hereby grants to the Employer an irrevocable royalty-free, non-terminable, non-exclusive licence to use and reproduce the same for all purposes relating to the Development including (without limitation) the construction, completion, reconstruction, modification, extension, repair, reinstatement, refurbishment, redevelopment, maintenance, use, letting, sale, promotion and advertisement of the Development such licence carrying the right to grant sub-licences and to be transferable without the prior consent of the Consultant, provided that the Consultant shall not be liable for any such use by the Employer (or any assignee or sub-licensee) for any purposes other than that for which the same were prepared or provided by the Consultant.
   2. The Consultant agrees:
      1. on request at any time to give the Employer or any persons authorised by the Employer access to the documents referred to in sub-clause 10.1 and subject to sub-clause 10.2.2 to provide copies of them at the Employer’s expense; and
      2. at the Consultant’s expense, to provide the Employer with [6] sets of all such material on or before Practical Completion of the Development.
   3. The Consultant shall indemnify the Employer from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Employer arising out of or in connection with the infringement or alleged infringement of any copyrights, design rights, registered design, patent or other intellectual property rights of third parties by the Consultant.
   4. The Consultant hereby waives (and shall procure that any sub-consultants do likewise) all moral rights in the documents referred to in sub-clause 10.1 under Chapter IV of the Copyright, Designs and Patents Act 1998 or any re-enactment or modification of it.
5. Staff
   1. The Consultant shall ensure so far as is reasonable and practicable that the Consultant’s Representativeshall have full authority to act on behalf of the Consultant for all purposes in connection with this Appointment and shall assume personal direction and control of the Services provided by the Consultant and that he maintains direct and regular contact with the Employer on all matters pertaining to the Consultant’s responsibilities under this Appointment.
   2. The Employer shall be entitled to require the Consultant’s Representative and any other persons employed by the Consultant to be replaced if in the reasonable opinion of the Employer that person’s performance or conduct is unsatisfactory and the Consultant shall promptly remove the person so specified. Such person shall be replaced with a person of at least the same experience and expertise who shall previously have been approved by the Employer (such approval not to be unreasonably withheld or delayed).
6. Assignment and sub-contracting
   1. This Consultant shall not assign, charge or transfer any benefit of or right arising under this Appointment to any other person. No delegation, sub-contracting or other transfer of any portion of the Services by the Consultant to any other person shall be permitted without the Employer's written consent. The Consultant will remain fully liable to the Employer in every respect for any and all of the Services notwithstanding any such sub-letting to any other person.
   2. The Employer may assign the benefit of this Appointment without consent.
   3. The Consultant shall not be entitled to contend that any person to whom this Appointment is assigned in accordance with sub-clause 12.2 is precluded from recovering under this Appointment any loss incurred by such an assignee resulting from any breach of this Appointment (whenever happening) by reason that such person is an assignee and named promisee under this Appointment.
7. Collateral Warranties
   1. The Consultant shall within seven (7) days of request by the Employer provide a collateral warranty substantially in the form appended at Appendix 1 to this Appointment in favour of the Funder and/or other Beneficiary and/or the Employer in a form as may be required and approved by the Employer. If the Consultant fails to provide any such warranty, no further payment shall be due to the Consultant under this Appointment until such warranty is provided.
8. Termination/suspension
   1. Without prejudice to the provisions of sub-clause 15.2 the Employer may at any time terminate the Consultant's employment under this Appointment on giving seven (7) days' notice in writing to the Consultant. Termination shall be effective on the expiry of the seven (7) days' notice.
   2. The Employer may by written notice forthwith terminate the Consultant's employment under this Appointment in the event that:
      1. the Consultant commits any continuing or material breach of any of the provisions of this Appointment and, if the breach is capable of remedy, the Consultant fails to remedy the breach within seven (7) days after receipt of notice from the Employer of the breach and requiring it to be remedied and without prejudice to the generality of the foregoing, breach or failure to comply with the requirements of any Statutory Requirements, including without limitation the requirements of the CDM Regulations shall be a material breach; or
      2. If the Consultant ceases to carry on business or commits an act of bankruptcy or goes into liquidation (except for the purpose of solvent amalgamation or reconstruction), receivership, becomes subject to a moratorium under [Part A1](https://www.lexisnexis.com/uk/lexispsl/construction/docfromresult/D-WA-A-WZYZ-AUUU-MsSAYWZ-UUW-UZEYAAUUW-U-U-U-U-U-U-AZVCUWUUCB-AZVWZUUYCB-WVWVCAVYU-U-U/3/linkHandler.faces?psldocinfo=Short_form_of_consultant_s_appointment&linkInfo=F%23GB%23UK_LEG%23num%251986_45a_PART_A1%25&A=0.8926957695128354&bct=A&risb=&service=citation&langcountry=GB) of the Insolvency Act 1986 or a restructuring plan under [Part 26A](https://www.lexisnexis.com/uk/lexispsl/construction/docfromresult/D-WA-A-WZYZ-AUUU-MsSAYWZ-UUW-UZEYAAUUW-U-U-U-U-U-U-AZVCUWUUCB-AZVWZUUYCB-WVWVCAVYU-U-U/3/linkHandler.faces?psldocinfo=Short_form_of_consultant_s_appointment&linkInfo=F%23GB%23UK_LEG%23num%252006_46a_PART_26A%25&A=0.5060107870857087&bct=A&risb=&service=citation&langcountry=GB) Companies Act 2006, or otherwise becomes insolvent.
   3. The Employer shall be entitled to suspend all or any part or parts of the Services at any time by service on the Consultant of at least seven (7) days' written notice.
   4. After any instances where the Employer has required the Consultant to suspend the Services under sub-clause 15.3 the Employer may at any time within a period of twelve (12) months from the date of such notice require the Consultant by further written notice to resume the performance of the Services. In such event the Consultant shall as soon as reasonably practicable (and in any event no later than one (1) calendar month from such notice) resume the performance of the Services. The Consultant shall be entitled to payment of its reasonable costs directly incurred as a result of remobilisation and the provisions of clause 8 shall apply to the payment of such costs and any payment made under sub-clause 15.6 shall rank as payment on account towards the payments to be made to the Consultant.
   5. In the event of a suspension in accordance with the provisions of sub-clause 15.3 for a period exceeding twelve (12) months the Consultant may request in writing that the suspended Services be resumed and unless written instructions to resume are given by the Employer within thirty (30) days of the Consultant’s request the Consultant’s employment in respect of the suspended Services shall be deemed to have been terminated upon the expiry of the said period of thirty (30) days.
   6. If the Services are suspended under sub-clause 15.3 or if the Consultant’s employment is terminated under sub-clause 15.1 the Employer shall pay to the Consultant any instalments of the fee which shall have accrued as due prior to the date of such suspension or termination together with a fair and reasonable proportion of the next following instalment of the fee subject always to the total amount of the fee paid being commensurate with the Services satisfactorily performed by the Consultant up to the date of ending the Services. The fees paid in accordance with this clause shall be the full entitlement of the Consultant and no other fees or claim for loss of profit or damage either in contract or tort or otherwise sustained by the Consultant as a result of the termination or suspension shall be payable including (but not limited to) those arising in connection with: loss of profit; loss of any opportunity; loss of production; loss of any contract; loss of sales; cost of capital; and interest charges.
   7. If the Consultant’s employment is terminated under sub-clause 15.2, the Employer shall not be obliged to make any further or other payment to the Consultant under or in connection with this Appointment until the Development has been completed or abandoned at which time the Employer shall pay to the Consultant any instalments of the fee outstanding subject always to the total amount of the fee paid being commensurate with the Services performed by the Consultant up to the date of termination save that the Employer shall be entitled to deduct from any such payment all and any costs and expenses (including professional fees and internal management costs) incurred by the Employer arising out of the termination and/or the Consultant’s default. Termination of the Consultant’s employment howsoever arising shall be without prejudice to the rights or remedies of either party in relation to any negligence omission or default of the other prior to such termination.
   8. Upon any suspension or termination of the Consultant's employment the Consultant shall if so instructed by the Employer take such reasonable steps as may be necessary to organise a safe and orderly conclusion of the Consultant’s activities with all reasonable speed and economy and deliver to the Employer copies of all of the material referred to in clause 10, (whether in the course of preparation or completed).
   9. Following any termination of the Consultant’s employment all other relevant provisions of this Appointment shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations.
9. Partnership

If the Consultant is a partnership each partner shall be jointly and severally liable under this Appointment.

1. Confidentiality
   1. The Consultant shall not, without our prior written approval of the Employer: -
      1. take, use or authorise the taking or use of any photographs of the Development and/or the Property for use in any publicity or advertising;
      2. publish alone, or in conjunction with any other party, any articles photographs or other illustrations relating to the Development and/or the Property or any part of either of them; or
      3. impart to any publication, journal or newspaper, or any radio or television programme, any information regarding the Development and/or the Property.
   2. The provisions of this paragraph shall survive termination of this Agreement.
2. Notices
   1. Any notice to a party under this Appointment shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post or prepaid recorded delivery to the address of the party as set out on page 2 of this Appointment or as otherwise notified in writing from time to time.
   2. A notice shall be deemed to have been served:
      1. at the time of delivery if delivered personally;
      2. forty eight (48) hours after posting in the case of an address in the United Kingdom and ninety six (96) hours after posting for any other address.
   3. If the deemed time of service is not during normal business hours in the country of receipt, the notice shall be deemed served at the opening of business on the next business day of that country.
3. Dispute resolution and adjudication
   1. Any dispute or difference arising under or in any way connected with this Appointment may be referred to an adjudicator in accordance with the provisions of this clause 20 and The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 shall apply to any adjudication arising under this Appointment.
   2. Nothing in the above provisions limits the right of either party to commence court proceedings in relation to any dispute arising under this Appointment provided that the Consultant may not commence court proceedings before Practical Completion of the Development.
   3. Any dispute or difference shall be tried by the High Court of England and Wales or by the appropriate County Court and the parties shall use their best endeavours to ensure where appropriate that the matter is tried in the Technology and Construction Court.
4. Sub-consulting
   1. The Consultant shall be fully responsible in all respects and assume liability for any design and/or services which may be carried out or which will be carried out by any sub-consultants or suppliers of the Consultant in connection with the Development as if such design and/or services had been carried out by the Consultant.

**Anti-Bribery and Corruption**

* 1. The Consultant shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
  2. The Consultant shall have and shall maintain in place throughout the term of this Appointment its own policies and procedures, including adequate procedures under the Bribery Act 2010.The Consultant warrants that it has not and shall not:
     1. give, promise to give, or offer, a payment, gift or hospitality to any third party and/or person with the expectation or hope that a business or personal advantage will be received, or to reward a business or personal advantage already given;
     2. give, promise to give, or offer, a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure;
     3. accept a gift, hospitality or payment from a third party that is known or suspected to be offered or provided with the expectation that it will obtain a business or personal advantage for them; and/or
     4. participate in any activity which is intended to facilitate tax evasion;

1. Contracts (Rights of Third Parties) Act 1999

Unless expressly provided in this Appointment, no term of this Appointment is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

1. Limitation period

Notwithstanding any other provision of this Appointment the parties shall have no further liability to each other in relation to any form of claim or liability howsoever arising out of, under or in connection with this Appointment or the Development, whether by way of breach of contract, under any indemnity, breach of statutory duty, tort or otherwise which is made or first arises after the date falling twelve (12) years from the date of Practical Completion save in relation to any such claim or liability where legal proceedings under clause 20 have been commenced by either party against the other party prior to that date.

1. Alteration to terms

Save as may be specifically provided in this Appointment all additions amendments and variations to this Appointment shall be binding only if in writing and executed by the Employer and the Consultant as a deed.

1. Governing law and jurisdiction

This Appointment is governed by the law of England and Wales and any dispute is subject to the exclusive jurisdiction of the courts and tribunals of England and Wales.

This Appointment has been executed as a deed but not delivered until the date appearing at the head of page 2.

EXECUTED as a deed by

**the Employer**

acting by a director

in the presence of a witness:

Director signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXECUTED as a deed by

**the Consultant**

acting by a director

in the presence of a witness:

Director signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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2. (Other Consultants)

|  |  |
| --- | --- |
| **Architect:** | [▼] |
| **Structural Engineer:** | [▼] |
| **Quantity Surveyor:** | [▼] |
| **Project Manager:** | [▼] |
| **Employer’s Agent:** | [▼] |
| **Mechanical and Electrical Engineer:** | [▼] |
| **Others:** | sub-contractors for [roofing, window/curtain glazing, steelwork] and any other sub-contractor appointed by the Contractor to carry out works in relation to the Development |

1. (The Consultant's Representative)

[▼]

2. (Fees)

[▼] [plus VAT/excl. VAT] (which is, for the avoidance of doubt, inclusive of all expenses and disbursements)

1. (Instalments)

[▼e.g. the first day of every month or the nearest business day in that month]

1. (Additional Services and hourly rates)

**Additional Services**

[▼]

**Hourly rates**

[▼]

Schedule 3  
(Services)

[▼]

**Appendix 1**

* **Collateral warranty from Consultant in favour of Funder**

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