**Logo

Description automatically generated**

|  |
| --- |
| **Appointment of [Design Consultant] as [Architect/Structural Engineer/Mechanical & Electrical Engineer]** |
|  |
| Relating to the development at [▼] |
|  |
| Dated 20[▼] |
|  |
| 1. **[Employer]** |
| 1. **[Consultant]** |
| **IMPORTANT NOTE: This document is for information only and is made available on the basis that neither Atelier Capital Partners Limited or any affiliated company is responsible for the accuracy of its contents or its fitness for the purpose for which you may wish to use it. Should you wish to use it for a particular transaction we recommend that you seek professional advice from a lawyer.** |

**Contents**

[1 Definitions and interpretation 2](#_Toc96091542)

[2 Services 5](#_Toc96091543)

[4 Design 7](#_Toc96091544)

[6 Third Party Agreements 7](#_Toc96091545)

[7 Statutory approvals and CDM Regulations 8](#_Toc96091546)

[8 Fees 8](#_Toc96091547)

[9 Insurance 9](#_Toc96091548)

[10 Copyright and licence to use documents 10](#_Toc96091549)

[11 Staff 11](#_Toc96091550)

[12 Assignment and sub-contracting 11](#_Toc96091551)

[13 [Novation 11](#_Toc96091552)

[14 Collateral Warranties 11](#_Toc96091553)

[15 Termination/suspension 12](#_Toc96091554)

[16 Partnership 13](#_Toc96091555)

[17 Confidentiality 13](#_Toc96091556)

[18 Notices 14](#_Toc96091557)

[19 Dispute resolution and adjudication 14](#_Toc96091558)

[20 Sub-consulting 14](#_Toc96091559)

[22 Contracts (Rights of Third Parties) Act 1999 15](#_Toc96091560)

[23 Limitation period 15](#_Toc96091561)

[24 Alteration to terms 15](#_Toc96091562)

[25 Governing law and jurisdiction 15](#_Toc96091563)

[Schedule 1 17](#_Toc96091564)

[Part 1 (Other Consultants) 17](#_Toc96091565)

[Part 2 (The Consultant's Representative) 17](#_Toc96091566)

[Schedule 2 18](#_Toc96091567)

[Part 1 (Fees) 18](#_Toc96091568)

[Part 2 (Instalments) 18](#_Toc96091569)

[Part 3 (Additional Services and hourly rates) 18](#_Toc96091570)

[Schedule 3 (Services) 19](#_Toc96091571)

[Appendix 1 20](#_Toc96091572)

**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.

**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; |
| "**Building Contract**" | means the building contract between the Employer and the Contractor to carry out and complete the Development; |
| "**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; |
| "**Contractor**" | means the building contractor who shall be appointed by the Employer to carry out and complete the Development pursuant to the Building Contract; |
| "**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 [▼]; |
| "**Employer’s Requirements**" | means the document entitled Employer's Requirements [dated/reference] [▼], a copy of which has been provided to the Consultant; |
| "**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 practical completion as certified under the Building Contract; |
| "**Property**" | means [▼]; |
| “**Purchaser**” | all and any purchaser of the whole or any part of the Development; |
| "**Rectification Period**" | as defined under the Building Contract entered into between the Employer and the Contractor; |
| "**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. |

* 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 and the 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; and
      5. attend and chair meetings and prepare reports as reasonably requested by the Employer.
   2. In performing the Services the Consultant shall:
      1. comply with the Employer's Requirements;
      2. 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;;
      3. 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;
      4. allocate and at all times maintain adequate staff and resources to enable the Consultant to comply with this Appointment; and
      5. 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**

## 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 the Rectification Period 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. [Novation[[1]](#footnote-1)
   1. Within seven (7) days of the Employer’s request so to do, the Consultant shall enter into a novation agreement in the form set out in Appendix 2.]
8. 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.
9. 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.
10. 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:

……………………………………….

(Signature)

Name:

Witness signature: ……………………………………….

Witness name:

Witness address:

Witness occupation:

**EXECUTED** as a **DEED** by

**the Consultant**

acting by a director

in the presence of a witness:

……………………………………….

(Signature)

Name:

Witness signature: ……………………………………….

Witness name:

Witness address:

Witness occupation:

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**

*Page left intentionally blank*

**Logo

Description automatically generated**

|  |
| --- |
| **Collateral warranty from a Consultant in favour of Atelier Capital Partners Limited** |
|  |
| Relating to the development at [▼] |
|  |
| Dated 20[▼] |
|  |
| 1. **ATELIER CAPITAL PARTNERS LIMITED** |
| 1. **[CONSULTANT]** |
| 1. **[EMPLOYER/ CONTRACTOR]** |

**DEED OF AGREEMENT** made this      day of 20[▼]

**BETWEEN:**

(1) **Atelier Capital Partners Limited** (company number: 11888767) whose registered office is at 3-5 Rathbone Place London England W1T 1HJ (the **“Beneficiary”**) which expression shall include its successors in title and permitted assigns and those deriving title under it or them; and

(2) **[CONSULTANT]** (company number: [▼]) whose registered office is at [▼] (the **"Consultant"**) such expression shall include its successors and assigns; and

[(3) [[2]](#footnote-2)**[EMPLOYER/CONTRACTOR]** (company number: [▼]), whose registered office is at [▼] (the "**Employer**") such expression shall include its successors and assigns.]

**WHEREAS**

1. By the Appointment, the [Employer/Contractor[[3]](#footnote-3)] has appointed the Consultant to act in the capacity of [architect/structural engineer/mechanical and electrical engineer/quantity surveyor/project manager/insert other consultant type] in relation to the Development.
2. The Beneficiary is providing finance in connection with the Development.
3. The parties have agreed to enter into this agreement by way of Deed in favour of the Beneficiary and its successors and assigns.

**OPERATIVE PROVISIONS:**

1. **DEFINITIONS AND INTERPRETATION**
   1. In this Deed, unless the context otherwise requires, the following words have the following meanings:

|  |  |
| --- | --- |
| "**Appointment**" | means the appointment between the Employer and the Consultant for providing services in relation to the Development and includes any documents or arrangements which are supplemental or ancillary to it by way of variation; |
| **"British Standards"** | means standards or guidance published produced or approved by the British Standards Institute; |
| **"Building Contract"** | means the building contract between the Employer and [company name, number and registered office] (who is the [“Contractor”/”Employer”]) for the purposes of the Building Contract in relation to the design and construction of the Development and includes any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise; |
| **"Codes of Practice"** | means any standard or code of practice or guidance note produced or published 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; |
| "**Development**" | means the development of the Property comprising the design, construction and completion of [▼]; |
| [“**Employer**[[4]](#footnote-4)” | Means [company name, number and registered office] |
| **"this Deed"** | means this deed (including any schedule or annexure to it and any document in agreed form); |
| **“Facility Agreement”** | means the agreement dated on or about the date of this Deed between the Employer and the Beneficiary in relation to providing finance in respect of the Property and/or Works and any future facility agreement entered into by the Parties in respect of the Property and/or the Development;; |
| **“Finance Documents”** | means the Facility Agreement and any security documents entered into in relation to that agreement; |
| "**Practical Completion**" | means practical completion of the Development as defined under the Building Contract; |
| "**Prohibited Materials**" | means materials, goods or equipment which incorporates substances which are generally known at the time of specification to be deleterious to health and safety or the durability or integrity of the completed Development or any part of it in the particular circumstances in which they are to be used and/or which by their nature or application contravene any British Standards or Codes of Practice or European Union equivalent current at the date of specification or use; |
| "**Property**" | means [▼]; |
| **“Works"** | means the works to be performed by the contractor under the Building Contract. |

* 1. In this Deed, unless the context otherwise requires:
     1. words importing the singular only also include the plural and vice versa where the context requires.
     2. words importing persons or parties shall include firms, corporations and any organisation having legal capacity.
     3. a reference to a statute or statutory provision includes:
        1. any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it;
        2. any repealed statute or statutory provision which it re-enacts (with or without modification); and
        3. any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it.
     4. a reference to:
        1. any party includes its successors in title and permitted assigns;
        2. clauses is to clauses of this Deed and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause in which they appear; and
        3. terms defined in the Appointment have the same meaning in this Deed unless the context otherwise requires.

1. **CONSIDERATION**

The consideration for this Deed is the payment of one pound (£1) by the Beneficiary to the Consultant, receipt of which the Consultant hereby acknowledges.

1. **DUTY OF CARE**
   1. The Consultant warrants and undertakes to the Beneficiary that it:
      1. has complied with and will continue to comply with the terms of the Appointment;
      2. has exercised and will continue to exercise all reasonable skill, care and diligence to be expected of a properly qualified, competent and experienced professional consultant of the relevant discipline providing professional services in connection with works of equivalent type, size, character, value, scope and complexity to the Development;
      3. shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Consultant’s responsibilities in the Appointment; and
      4. The Consultant acknowledges that the Beneficiary is relying and shall continue to rely exclusively on the Consultant’s exercise of reasonable skill, care and diligence in respect of all matters within the scope of the Appointment and this Deed
2. **Consent To Security**
   1. The Employer hereby gives notice to the Consultant that, pursuant to the Finance Documents the Employer has charged (or may charge in the future) by way of security to the Beneficiary its present and future right title and interest in and to the Appointment.
   2. The Consultant acknowledges notice of, and consents to, the security interest granted by the Employer under the Finance Documents over the Employer's rights under the Appointment in favour of the Beneficiary.
   3. The Consultant confirms that it has not received notice of any other security interest granted over the Employer's rights under the Appointment.
   4. The Consultant shall promptly notify the Beneficiary of any default, potential default or any other event that may result in the termination, suspension or rescission of the Appointment by the Consultant.
3. **NO TERMINATION WITHOUT NOTICE**
   1. The Consultant shall not terminate the Appointment or regard the Appointment as terminated or treat the Appointment as having been repudiated by the Employer without giving to the Beneficiary at least 21 days' prior written notice (a "**Termination Notice**"). During the period of such notice the Consultant shall diligently and properly continue to perform its obligations under the Appointment. The Termination notice must identify:
      1. the proposed date of termination;
      2. the ground or grounds for termination;
      3. all unpaid amounts invoiced by the Consultant under the Appointment on or before the date of the Termination Notice; and
      4. the nature and amount of any sum or monetary claim due or asserted by the Consultant to be due under the Appointment from the Employer in accordance with the terms of the Appointment (not already included within clause 5.1.2).

The Consultant warrants to the Beneficiary that the statements submitted by it under this clause 5.1 shall be prepared with all due care and in good faith.

* 1. The Consultant shall not suspend its obligations under the Appointment without giving the Beneficiary 21 days' prior written notice (a "**Suspension Notice**") stating:
     1. the proposed date of suspension;
     2. the ground or grounds for suspension; and
     3. all unpaid amounts invoiced by the Consultant under the Appointment on or before the date of the Suspension Notice.
  2. A Termination Notice or Suspension Notice can be revoked by the Consultant at any time. On any such revocation, the rights and obligations of the Parties shall be construed as if the relevant notice had not been given.

1. **STEP-IN AND NOVATION**
   1. On or after receipt of a Termination Notice and/or a Suspension Notice, or upon termination of the finance agreement between the Employer and the Beneficiary the Beneficiary may (without prejudice to the Beneficiary’s rights under the Facility Agreement) give notice to the Consultant requiring it to accept the instructions of the Beneficiary and continue it's obligations under the Appointment in relation to the Development to the exclusion of the Employer:
      1. confirming that the Beneficiary or its nominee is assuming all the obligations of the Employer under the Appointment; and
      2. undertaking to the Consultant to discharge all payments which are due and payable to the Consultant under the terms of the Appointment provided that such payments were specified in the Termination Notice and/or Suspension Notice in accordance with the provisions of clause 5.1.3 and clause 5.2.3; and
      3. undertaking to the Consultant to discharge all payments which may subsequently become due and payable to the Consultant under the terms of the Appointment.
   2. Service by the Beneficiary of a notice under clause 6.1 will operate with effect from the date of the notice to novate the Appointment from between the Employer and the Consultant into a new contract between the Beneficiary (or its nominee) and the Consultant on the same terms mutatis mutandis as the Appointment and thereafter the Consultant will look solely to the Beneficiary (or its nominee) as the other contracting party. The form of novation agreement to be entered into by the Employer and the Consultant pursuant to this clause 5 shall be in a form approved by the Employer.
   3. Until the service of a notice under clause 6.1 nothing contained in this Deed shall operate expressly or by implication to constitute a novation of the Appointment and the Consultant shall look solely to the Employer for the performance of the duties and obligations on the part of the employer.
   4. Where the Consultant has given rights in relation to the Appointment similar to those contained in this clause 6 to any other person then if both the Beneficiary and any such other person serve notice under clause 5.1 or its equivalent, the following order of priority will apply:

* FIRST: the Beneficiary; and
* SECOND: any other third party who has been granted step-in rights under a collateral warranty.
  1. If there is any difference between the notice provisions in the Appointment and the notice provisions in this Deed the notice provisions in this Deed shall prevail.
  2. The Consultant acting in accordance with the provisions of this clause 6 shall not by so doing incur any liability to the Employer.

1. **COPYRIGHT AND LICENCE TO USE DOCUMENTS**
   1. The Consultant grants and agrees to grant to the Beneficiary an irrevocable, royalty-free, non-terminable, non-exclusive licence to use and reproduce 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 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 Beneficiary (or any assignee or sub-licensee) for any purposes other than that for which the same were provided by the Consultant.
   2. The Consultant agrees:
      1. on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in clause 6.1 and, at the Beneficiary 's expense to provide copies of it; and
      2. at the Consultant's expense, to provide the Beneficiary with a set of all such material on Practical Completion.
   3. All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the Appointment shall be paid by the Consultant.
   4. The Consultant shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary 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 in the course of or in connection with the Appointment.
   5. The Consultant hereby waives (and to procure that any sub-consultants do likewise) all moral rights in the documents under Chapter IV of the Copyright, Designs and Patents Act 1998 or any re-enactment or modification of it.
2. **PROFESSIONAL INDEMNITY INSURANCE**
   1. The Consultant warrants to the Beneficiary that it has, or will take out, and will maintain for a period expiring no earlier than twelve years from the date 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, provided that such insurance is available at commercially reasonable rates
   2. As and when reasonably required by the Beneficiary the Consultant shall produce for inspection satisfactory documentary evidence that the insurance referred to in clause 8.1 is being properly maintained and confirm that payment has been made in respect of the last preceding premium due under it.
   3. The Consultant shall comply with all conditions and obligations of such insurance policy and shall immediately inform the Beneficiary if such insurance ceases to be maintained or ceases to be available at commercially reasonable rates and on reasonable terms. The Beneficiary and the Consultant shall discuss the best means of protecting the Beneficiary's interests and the Consultant shall if requested by the Beneficiary 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 the insurance policy for the time being in force may become void or voidable.
   6. The Consultant shall give notice to the Beneficiary of any claim arising under the insurance policy relating to the Development.
3. **PROHIBITED MATERIALS**

The Consultant further warrants to the Beneficiary that it has not specified for use, or permitted to be used, by or on behalf of the Consultant in relation to the Development or any part or parts of it any Prohibited Materials.

1. **[[5]](#footnote-5)[EMPLOYER] OR [CONTRACTOR]**

The [Employer OR Contractor] agrees that it will not take any steps which would prevent or hinder the Beneficiary from exercising its rights under this Deed and confirms that the rights of the Beneficiary in clauses 5 and 6 override any obligations of the Consultant to the Employer under the Appointment.

1. **CONCURRENT LIABILITIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies he may have against the Consultant including, without prejudice to the generality of the foregoing, any remedies in negligence.

1. **ASSIGNMENT**
   1. The Beneficiary shall be fully entitled without the consent of the Consultant to transfer this Deed and/or assign all its rights and benefits arising under this Deed at any time to any third party:
      1. by way of a security or by way of re-assignment on redemption;
      2. by absolute assignment to a subsidiary of the Beneficiary, or holding company or another subsidiary of a holding company of the Employer (as those expressions are defined in s.1159 of the Companies Act 2006); and
      3. by absolute assignment on three other occasions only.
   2. The Beneficiary shall notify the Consultant upon each occasion that it shall assign this Deed.
   3. The Consultant shall not be entitled to assign transfer charge or otherwise dispose of all or any of its rights or liabilities arising under this Deed to any other party.
   4. The Consultant undertakes to the Beneficiary not to contend in any proceedings under this Deed that any person to whom the Beneficiary assigns or has assigned its rights under this Deed or any of them in accordance with the foregoing provisions of this clause shall be precluded from recovering therein any loss resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not the original promisee hereunder or by reason that the Beneficiary named herein or any intermediate assignee of the Beneficiary escaped loss resulting from such breach of its interest in the same.
2. **WARRANTIES**

Within fourteen days of a written notice so to do by the Beneficiary the Consultant shall use all reasonable endeavours to obtain from any sub-consultant appointed by the Consultant in connection with the carrying out and completion of its duties under the Appointment a warranty or warranties (to be executed as a deed) in favour of any third parties (including the Beneficiary) for whom the Consultant is required, under the Appointment, to procure warranties from its sub-consultants, such warranties to be in the same form as required under the Appointment.

1. **INDEPENDENT INSPECTION**

The liability of the Consultant under this Deed shall not be modified released or diminished or in any way affected by any independent inspection investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection investigation or enquiry nor by the appointment by the Beneficiary of any independent firm company or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Consultant's duties under the Appointment nor by any action or omission of such firm company or party whether or not such action or omission might give rise to any independent liability of such firm company or party provided always that nothing in this clause shall modify or affect any rights which the Consultant might have but for the existence of this clause to claim a contribution from any third party whether under statute or at common law.

1. **LIMITATION**
   1. The duties of the Consultant to the Beneficiary under this Deed shall be no greater than the duties the Consultant would have had to the Employer under the Appointment had the Beneficiary been named as the employer of the Consultant in the Appointment and in any action arising under this Deed the Consultant shall be entitled to rely upon the same defences as the Consultant would be entitled to raise under the Appointment in defence of such claim (but, for the avoidance of doubt, not for this purpose taking account of any set-off or counterclaim against the Employer or any agreement to vary the terms of the Appointment or any waiver of rights under the Appointment as would prejudice the Beneficiary 's rights under this Deed unless the Beneficiary has given its written consent) provided always that the Consultant shall not be entitled to raise any defence against a claim by the Beneficiary on the basis that any loss incurred by the Beneficiary is not a loss to the Employer.
   2. No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of Practical Completion of the Development under the Contract.
2. **NOTICES**

Any notice provided for in this Deed shall be duly given if delivered by hand or sent by first class pre-paid special delivery or recorded delivery post to the party named therein at the address of such party shown above in this Deed or at such other address as such party may specify from time to time by written notice to the other party hereto and if sent by first class pre-paid special delivery or recorded delivery post it shall be deemed to have been received on the second working day after the date of posting.

1. **LAW**

This Deed and any dispute or claim arising out of, relating to or in connection with it is governed by, and construed in accordance with, the laws of England. All disputes or claims arising out of, relating to or in connection with this Deed shall be subject to the jurisdiction of the English courts to which the parties irrevocably submit.

1. **THIRD PARTY RIGHTS**

A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed. This clause does not affect any right or recovery of any person which exists or is available otherwise than pursuant to that Act.

1. **ANTI-BRIBERY AND CORRUPTION**

The Consultant warrants that it has and will continue to comply with all applicable laws, statutes, regulations and codes relating to tax evasion, anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and the Criminal Finances Act 2017.

1. **GENERAL**

The provisions of this Deed shall remain in full force and effect notwithstanding the termination of the Appointment.

In witness this instrument has been executed as a deed on the date appearing at the head of page 1.

**EXECUTED** as a **DEED** by

**ATELIER CAPITAL PARTNERS LIMITED**

acting by a director

in the presence of a witness:

……………………………………….

(Signature)

Name:

Witness signature: ……………………………………….

Witness name:

Witness address:

Witness occupation:

**EXECUTED** as a **DEED** by

**[CONSULTANT]**

acting by a director

in the presence of a witness:

……………………………………….

(Signature)

Name:

Witness signature: ……………………………………….

Witness name:

Witness address:

Witness occupation:

**EXECUTED** as a **DEED** by

**[EMPLOYER]**

acting by a director

in the presence of a witness:

……………………………………….

(Signature)

Name:

Witness signature: ……………………………………….

Witness name:

Witness address:

Witness occupation:

1. This clause (and Appendix 2) can be deleted if the consultant’s appointment is not being novated. [↑](#footnote-ref-1)
2. Amend accordingly to reflect whether the Consultant was appointed by the Employer or the Contractor. [↑](#footnote-ref-2)
3. Delete the reference to Employer or to Contractor depending which has appointed the Consultant. [↑](#footnote-ref-3)
4. Delete definition where Employer is a party to the warranty. [↑](#footnote-ref-4)
5. Delete reference accordingly to reflect the parties to the warranty. [↑](#footnote-ref-5)