

DATED \_\_\_\_\_

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MASTER ROGER EASTMAN  
MASTERS OF THE BENCH AND TRUSTEES OF THE  
HONOURABLE SOCIETY OF GRAY'S INN

and

[AECOM]

CONSULTANT APPOINTMENT FOR  
STRUCTURAL ENGINEER

relating to the redevelopment of 19/21 High Holborn, London  
WC1R 5JA

**Note: consultant entity to be confirmed**



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**"Architect"**

means the person named in **Schedule 1** or any replacement to act in the Architect's place notified by the Employer to the Consultant at any time;

**"Beneficiary"**

means the party named in the Notice of Third Party Rights issued in accordance with **clauses 8.1 and 8.2**;

**"Basic Services "**

means the services to be performed by the Consultant in connection with the Project set out in **Schedule 3**;

**"Brief"**

means the document in **Schedule 4** detailing the Employer's Project as may be amended at any time by the Employer;

**"Building Contract"**

means the building contract or building contracts between the Employer and any Contractor for carrying out and completing the Works;

**"CDM Regulations"**

means the Construction (Design and Management) Regulations 2015;

**"Confidential Information"**

means all written and oral information about the business and affairs of either party or the Project which is gained through discussions prior to the date of this appointment or during the performance of this appointment;

**"Contractor"**

means any contractor appointed by the Employer for carrying out and completing the Works;

**"Cost Plan"**

means the cost plan for the Works set out in **Schedule 6** as may be the Employer at any time;

**"Design Documents"**

means the drawings, details, plans, specifications, schedules, reports, calculations and other work and data (and the designs contained within them) prepared by or for the Consultant in connection with the Services;

**"Employer"**

includes (except for the purpose of **clause 11**) any person to whom the benefit of this appointment are validly assigned or charged under **clause 19.2** and the person named as the Employer or the Contractor within the meaning of the novation agreement set out in **Schedule 9**;

**"Fee"**

means the lump sum set out in Schedule 2~~Schedule 2~~ payable to the Consultant proper performance of the Basic Services in accordance with this appointment;

**"Funder"**

means any party, including where the finance is syndicated such party acting as funder, agent and/or security trustee, who agrees to provide finance in connection with the Project and/or the Property;

**"Interested Party"**

means any Purchaser, Tenant, Affiliate and/or any other party having or acquiring an interest in the Property;

**"Key Personnel"**

means the person or persons named in Schedule 1~~Schedule 1~~ or any under **clause** 10.3 or 10.4;

**"Practical Completion"**

means practical completion of the Works under the Building Contract;

**"Principal Designer"**

means the person named in **Schedule 1** or another person appointed by the Employer to perform the functions of Principal Designer for the Project under the CDM Regulations;

**"Programme"**

means the programme for the Project set out in Schedule 5~~Schedule 5~~ as may be by the Employer at any time;

**"Project"**

means the development to be carried out at the Property described in the Brief in Schedule 4~~Schedule 4~~;

**"Project Leader"**

means the person named in **Schedule 1** or any replacement appointed under **clause** 10.3 or 10.4;

**"Project Manager"**

means the person named in Schedule 1~~Schedule 1~~ or another person appointed Employer to act in place of the Project Manager;

**"Project Team"**

means collectively those consultants listed in **Schedule 1** and any other consultants appointed by the Employer in connection with the Project at any time;

**"Property"**

means the property defined and described in [Schedule 8](#) ~~Schedule 8~~;

**"Purchaser"**

means any party (other than any Tenant) who may enter into any agreement for the purchase of any freehold or leasehold interest in the property comprising the Project;

**"Services"**

means the Basic Services and the Additional Services;

**"Sub-Contractor"**

means any sub-contractor or supplier employed or engaged by any Contractor in connection with the Works;

**"Tenant"**

means any party who may enter into any lease or agreement for the grant of a leasehold interest in the whole or any part of the Property;

**"Works"**

means the design (including the selection of any materials and goods) and construction of works to be carried out under the Building Contract.

**2. INTERPRETATION**

- 2.1 The contents page, headings and sub-headings in this appointment are for ease of reference only and do not affect the meaning of this appointment.
- 2.2 Words in the singular include the plural and vice versa.
- 2.3 A reference to a party is to a party to this appointment and includes the respective successors or permitted assigns of the original parties.
- 2.4 Any words following the terms "**include**" and "**including**" or any similar expression are illustrative and do not limit the meaning of the words preceding those terms.
- 2.5 A reference to a clause, paragraph or schedule is to a clause or paragraph of or schedule to this appointment and a reference to this appointment includes its schedules and appendices.
- 2.6 A reference to a person includes an individual, firm, partnership, company, association, organisation or trust (in each case whether or not having a separate legal personality).
- 2.7 The words "**subsidiary undertaking**" and "**parent undertaking**" have the same meaning as their respective definitions in the Companies Act 2006.
- 2.8 A reference to legislation is a reference to all legislation having effect in the United Kingdom from time to time, including:
  - 2.8.1 directives, decisions and regulations of the Council or Commission of the European Union;

- 2.8.2 acts of Parliament;
- 2.8.3 orders, regulations, consents, licences, notices and bye-laws made or granted:
- (a) under any act of Parliament; or
  - (b) under any directive, decision or regulation of the Council or Commission of the European Union; or
  - (c) by a local authority or by a court of competent jurisdiction; and
- 2.8.4 any mandatory codes of practice issued by a statutory body.
- 2.9 A reference to particular legislation is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time.

### 3. CONSULTANT'S GENERAL OBLIGATIONS

- 3.1 The Employer appoints the Consultant on the terms of this appointment and the Consultant agrees to perform the Basic Services and any Additional Services which may be instructed by the Employer under **clause 12**.
- 3.2 The Consultant shall comply with the Employer's lawful instructions in connection with the Project provided that if in the performance of the Services, the Consultant has a discretion exercisable between the Employer and the Contractor, the Consultant shall exercise any discretion properly and fairly between the Employer and the Contractor.
- 3.3 If the Consultant seeks or is obliged to seek the Employer's approval or agreement to any matter, the Employer's approval or agreement shall not in any way derogate from the Consultant's obligations nor diminish the Consultant's liability for breach of any obligations under this appointment.
- 3.4 The Consultant warrants to the Employer that the Consultant has exercised and shall continue to exercise in the performance of the Services all the reasonable skill, care and diligence to be expected of a properly qualified and competent consultant of the same discipline as the Consultant experienced in the provision of such services in respect of works of a similar size, scope, nature, complexity and value to the Project.
- 3.5 The Consultant shall keep the Employer fully informed on all aspects of the progress and performance of the Services and shall provide the Employer with all other information in connection with the Project which the Employer reasonably requires.
- 3.6 No enquiry, inspection, approval, sanction, comment, consent, decision, direction or instruction at any time made or given by or on behalf of the Employer shall exclude or limit the Consultant's liability under this appointment.
- 3.7 The Consultant shall comply with all the obligations imposed on the Consultant as a "designer" under the CDM Regulations insofar as they apply to the Project and shall co-operate with the Principal Designer, the Project Team, the Contractor and any Sub-Contractor to enable each of them to comply with their respective obligations under the CDM Regulations in relation to the Project.



- 3.8 The Consultant shall perform the Services in conjunction with the Project Team so as to achieve a BREEAM rating for the completed Project of at least "Very Good" and an "A" rating (or its numerical equivalent if relevant) for the Energy Performance Certificate for the completed Project.
- 3.9 The Consultant shall comply with the *Joint Code of Practice on the Protection from Fire on Construction Sites & Buildings Undergoing Renovation* (current edition) published by the Construction Confederation and the Fire Protection Association.
- 3.10 The Consultant shall comply fully with the requirements of the Brief and in particular shall see that the design of those elements of the Project falling within the Consultant's discipline conforms in all respects with those requirements, provided that nothing in this **clause 3** shall preclude the exercise of independent skill and judgement by the Consultant.
- 3.11 The Consultant shall procure that the Services and the Design Documents comply with all the requirements of any directly applicable provision of the EU Treaty or any EU Regulation, any statutory enactment or any regulation, rule or order made under it or any regulation or bye-law of any local authority or under and pursuant to any notices served under any such enactment, regulation, rule or order, regulation or bye-law and in accordance with the relevant codes of practice, the CDM Regulations and British Standards specifications which relate to designs, layout, workmanship and for materials used.

#### 4. DELETERIOUS MATERIALS

The Consultant warrants to the Employer that:

- 4.1 any materials which the Consultant specifies or authorises for use in the construction of any part of the Works are in accordance with relevant British Standard specifications, codes of practice and good building practice current at the time of specification or authorisation for use;
- 4.2 the Consultant has not specified, shall not specify and, subject to **clause 3.4**, has not authorised and shall not authorise for use in the Works any of the materials identified as potentially hazardous in the BPF/BCO report *Good practice in the selection of construction materials* (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report;
- 4.3 the Consultant has not specified, shall not specify and, subject to **clause 3.4**, has not authorised and shall not authorise for use in the Works materials which are generally known at the time of use to be deleterious to health and safety or to durability in the particular circumstances in which they are used; and
- 4.4 the Consultant shall immediately notify the Employer if in performing the Services the Consultant becomes aware of any proposed or actual use in the Works of any materials not in accordance with this clause.

## 5. PRINCIPAL DESIGN CONSULTANT

The Consultant acknowledges the authority and responsibility of the Architect (acting as the principal design consultant in connection with the Project) and shall fully co-operate with and report to the Architect so that:

- 5.1 the overall design of the Project is fully integrated and co-ordinated;
- 5.2 the Project is completed with all reasonable speed and economy in accordance with the Programme; and
- 5.3 the cost of executing each element of the Project does not exceed each respective estimate stated in the Cost Plan.

## 6. SCOPE OF CONSULTANT'S AUTHORITY

- 6.1 The Consultant shall not, without the Employer's prior written approval:
  - 6.1.1 carry out, instruct or sanction any variation to the approved design of the Project or any substitution of any materials;
  - 6.1.2 do any other thing which would or may either increase the cost of any part of the Project as stated in the Cost Plan or affect the Programme; and
  - 6.1.3 commence the relevant parts of the Services relating to the construction stage of the Project.
- 6.2 When the Consultant considers that the Consultant has completed any stage of the Basic Services, the Consultant shall confirm in writing to the Employer that the Consultant:
  - 6.2.1 considers the Consultant has completed such stage of the Basic Services; and
  - 6.2.2 the Consultant is sufficiently resourced to commence and complete the next stage of the Basic Services.
- 6.3 The Consultant shall not proceed to the next stage referred to in **clause 6.2.2** without first receiving the Employer's written authorisation that the Consultant may do so.
- 6.4 The Consultant shall:
  - 6.4.1 regularly review the anticipated and actual cost of each element of the Project separately identified in the Cost Plan against the relevant budget contained in the Cost Plan in conjunction with the Project Team; and
  - 6.4.2 identify how to make cost savings if the cost of any work or design recommended is likely to exceed the relevant budget cost contained in the Cost Plan.
- 6.5 The Consultant acknowledges the role of the Project Manager in the co-ordination and management of the Project and the Consultant shall co-operate with and report to the Project Manager on all aspects of the Project relating to the Services.

## 7. THIRD PARTY OBLIGATIONS

- 7.1 The Consultant warrants and undertakes to the Employer that no act, omission or default of the Consultant in relation to the Services shall constitute, cause or contribute to a breach by the Employer of the Employer's obligations under the Building Contract, any other agreement with any Interested Party, Funder or any other agreement connected with the Project to which the Employer is party and which the Employer has provided copies (or relevant extracts) to the Consultant.
- 7.2 If required by the Employer, the Consultant shall liaise and co-operate with any Interested Party, Funder and/or any other person who has or may have an interest in the Project (and their respective representatives) and provide them with all information in connection with the Project which they may reasonably require. The Consultant shall notify the Employer of any matter in relation to the Services which may materially affect the respective interests of any Interested Party, Funder and/or any such other person.

## 8. THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

- 8.1 Any Funder, or if required by the Employer, any Interested Party, whose name, address and interest has been notified to the Consultant by or on behalf of the Employer, is entitled to enforce for the benefit of the Funder the terms set out in Part 1 of Contracts (Rights of Third Parties) Act 1999.
- 8.2 Subject to **clause 8.1**, any Interested Party, whose name, address and interest has been notified to the Consultant by or on behalf of the Employer, is entitled to enforce for the benefit of the Interested Party the terms set out in Part 2 of Schedule 7 (Rights of Third Parties) Act 1999.
- 8.3 The notice referred to in **clauses 8.1** and **8.2** shall be substantially in the form set out in Part 3 of Schedule 7.
- 8.4 Within 14 days of the Employer's request to do so, the Consultant shall execute and deliver to the Employer deeds of collateral warranty in favour of:
- 8.4.1 the Employer (where this appointment has been novated under **clause 20.4** of this appointment) in the form set out in Part 4 of Schedule 7;
- 8.4.2 any Funder in the form set out in Part 4 of Schedule 7; and/or
- 8.4.3 any Interested Party in the form set out in Part 5 of Schedule 7.<sup>1</sup>
- 8.5 Any Interested Party and Funder in whose favour a collateral warranty has been executed and delivered to the Employer in accordance with **clause 8.4** shall not be entitled to enforce the terms set out in Part 1 or Part 2 of Schedule 7.
- 8.6 The Employer (whether before or after novation) shall not be obliged to make any further payment to the Consultant under this appointment for as long as any deed of collateral warranty is not delivered to the Employer in accordance with **clause 8.4**.

<sup>1</sup> Consider whether any Interested Party requires step-in rights under Part 4 of Schedule 7 and amend if necessary.

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- 8.7 The Employer and the Consultant may exercise any right they may have to rescind, cancel or vary any term of this appointment without the consent of any Funder, Purchaser, Tenant, Affiliate and/or Interested Third Party being required.

## 9. THE EMPLOYER'S OBLIGATIONS

- 9.1 The Consultant shall notify the Employer in writing of any information the Consultant requires to enable the Consultant to perform the Services in accordance with this appointment.
- 9.2 If requested by the Consultant, the Employer shall supply to the Consultant in reasonable time (having regard to the time and nature of the request) necessary and relevant data and information in the possession or control of the Employer. The Employer shall give or shall request the Project Team or any Contractor to assist the Consultant if reasonably required by the Consultant in the performance of the Services, provided that any obligation of the Employer shall not limit the Consultant's obligation to liaise directly with the Project Team, any Contractor and Sub-Contractors to procure the production of information properly to be supplied by them. The Employer shall not be liable for any inaccuracy or discrepancy in data or information supplied to the Consultant under this **clause 9**.

## 10. CONSULTANT'S TEAM

- 10.1 The Project Leader has full authority to act on behalf of the Consultant for all purposes in connection with this appointment.
- 10.2 The Project Leader and any Key Personnel shall be available for as long as necessary to ensure the proper performance of the Services.
- 10.3 The Consultant shall not replace the Project Leader or any Key Personnel without the Employer's prior written approval. The Consultant shall only replace the Project Leader or any Key Personnel with a person with comparable experience and qualifications and approved by the Employer (in each case such approval not to be unreasonably withheld or delayed).
- 10.4 After consultation with the Consultant, the Employer may request the removal of any person engaged in the performance of the Services if, in the Employer's reasonable opinion, such person's performance or conduct is or has been unsatisfactory. The Consultant shall promptly replace such person with a person approved in writing by the Employer (such approval not to be unreasonably withheld or delayed).

## 11. REMUNERATION

- 11.1 The Employer shall pay the Consultant the Fee for the proper performance of the Basic Services.
- 11.2 The Fee shall be paid by instalments set out in [Schedule 2](#) provided that the Employer shall be entitled to reschedule instalments if, in the Employer's reasonable opinion, the amount of Fee which would otherwise be payable does not substantially correspond as a proportion of the whole of the Fee to the Basic Services properly performed by the Consultant at that time.

- 11.3 On the dates set out in [Schedule 2](#)~~Schedule 2~~, the Consultant shall submit to the Employer:
- 11.3.1 a valid tax invoice showing the instalment of the Fee and any other sums which the Consultant considers is due under this appointment, together with value added tax. Invoices shall comply with Regulations 13 and 14 of the Value Added Tax Regulations 1995 (SI 2518) and shall be supported by documents necessary for verifying the same; and
- 11.3.2 a payment notice to the Employer specifying the sum that the Consultant considers to be due or to have been due at the payment due date and the basis on which that sum is calculated.
- 11.4 The payment due date shall be the date of receipt by the Employer of the documents required under **clause** 11.3. The final date for payment shall be 30 days from the payment due date.
- 11.5 The Employer may give to the Consultant, not less than one day before the final date for payment, a notice of the payer's intention to pay less than the notified sum. Such notice shall specify the sum that the Employer considers to be due on the date such notice is served and the basis on which that sum is calculated.
- 11.6 If any amount properly due under this appointment is not paid in full by the final date for payment under **clause** 11.4 and no effective notice has been given under **clause** 11.5, the Consultant shall be entitled to suspend performance of the Consultant's obligations under this appointment by giving not less than seven days' notice to the Employer stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when the Employer makes payment in full of the amount properly due but unpaid and any period during which performance is validly suspended under this **clause** 11.6 shall be disregarded in computing the time taken by the Consultant to complete any of the Services affected by the suspension.
- 11.7 The Employer may at any time require the Consultant to omit the performance of any of the Basic Services by written instruction. The Fee shall be reduced accordingly to be proportionate to the revised part of the Basic Services to be performed by the Consultant. The Consultant shall not be entitled to make any claim in connection with any such omission of the performance of any of the Basic Services, including any claim for any additional payment, loss (including any direct and/or any consequential loss), expense and/or damages.
- 11.8 Subject to **clauses** 11.9, 12.3 and 16.2, the Fee shall be exclusive payment for the Services and all other matters relating to this appointment and for all costs, disbursements, expenses and overheads incurred by the Consultant in connection with the Project.
- 11.9 The Employer shall pay the Consultant any disbursements set out in [Schedule 2](#)~~Schedule 2~~ incurred in the performance of the Services. The Consultant shall only be entitled to payment in respect of such disbursements if the Consultant has given the Employer prior written notification and the Employer has approved such expenditure in writing.

## 12. ADDITIONAL SERVICES

- 12.1 In addition to the Basic Services, the Consultant shall perform any Additional Services in relation to the Project which the Employer may instruct at any time.

- 12.2 As soon as practicable and not later than seven days after receipt by the Consultant of any request for Additional Services, the Consultant shall provide to the Employer in writing:
- 12.2.1 a description of the tasks to be carried out by the Consultant for such Additional Services;
  - 12.2.2 the Consultant's proposal for resources required for such Additional Services including the details of the Consultant's staff proposed in connection with the Additional Services; and
  - 12.2.3 the Consultant's estimate, acting in good faith, of the man hours required for the proper and efficient performance of the Additional Services and any anticipated disbursements.
- 12.3 A lump sum fee for any Additional Services shall be agreed between the parties on the basis of the information provided under **clause 12.2**. Only in the event that any fee for Additional Services cannot be agreed, such fee shall be calculated on the man hours required for the proper and efficient performance of such Additional Services at the hourly rates contained in [Schedule 2](#).
- 12.4 The Consultant shall not commence the performance of any Additional Services without the Employer's prior written approval. Such prior written approval shall be a condition precedent to the Consultant's entitlement to payment for any such Additional Services.

### 13. TIME FOR PERFORMANCE

- 13.1 The Consultant shall perform the Services in accordance with the Programme.
- 13.2 If the Consultant is prevented or delayed in the performance of the Services, the Consultant shall promptly notify the Employer, giving the specific reason for the prevention or delay, together with the Consultant's best estimate of its effect on the Programme. The Consultant shall use best endeavours to resume and expedite the Services as soon as practicable.

### 14. TERMINATION OR SUSPENSION BY THE EMPLOYER

- 14.1 The Employer may terminate the Consultant's engagement under this appointment or the performance of any part of the Services by seven days' prior notice to the Consultant.
- 14.2 The Employer may provide the Consultant with written notice of any substantial breach by the Consultant of the Consultant's obligations under this appointment. The notice shall specify the breach and require remedy of the breach. If the Consultant fails to remedy such breach within 28 days of receiving the Employer's written notice the Employer may issue the Consultant with a second written notice immediately terminating the Consultant's engagement under this appointment.
- 14.3 The Employer may provide the Consultant with written notice requiring the Consultant to suspend performance of the whole or any part of the Services.
- 14.4 If the Employer requires the Consultant to suspend the performance of the whole of the Services under **clause 14.3**, the Employer may by written notice, within a period of 12 months from the date of the notice, require the Consultant to resume performance of the Services. The Consultant shall, as soon as reasonably practicable, resume performance of the Services in accordance with this appointment. Any payment made under **clause 16.2** shall rank as payment on account towards the payments to be made to the Consultant under

this appointment. If the Employer does not require the Consultant to resume the performance of the Services within the period of 12 months referred to in this **clause 14.4**, then either party may by notice to the other terminate the Consultant's engagement under this appointment.

## **15. TERMINATION BY THE CONSULTANT**

The Consultant may provide the Employer with written notice of any substantial breach by the Employer of the Employer's obligations under this appointment. The notice shall specify the breach and require remedy of the breach. If the Employer fails to remedy such breach within 28 days of receiving the Consultant's written notice the Consultant may issue the Employer with a second written notice immediately terminating the Consultant's engagement under this appointment.

## **16. CONSEQUENCES OF TERMINATION OR SUSPENSION OF CONSULTANT'S ENGAGEMENT**

- 16.1 On termination of the Consultant's engagement under **clause 14** or **15**, or on suspension of the whole of the Services under **clause 14.3**, the Consultant shall take immediate steps to bring the Services to an end in an orderly manner (but with all reasonable speed and economy) and shall within 14 days deliver to the Employer all the Design Documents (whether in the course of preparation or completed) provided that the Consultant shall be entitled to retain copies of the same.
- 16.2 If the Consultant's engagement is terminated, or the performance of the whole of the Services is suspended, the Employer shall (subject to any withholding, deduction and/or set-off which the Employer is entitled to make and to **clauses 16.3**, **16.4** and **23.2**) pay the Consultant that part of the Fee and any other amounts arising under this appointment which have already accrued as due prior to the date of termination or suspension, less the amount of any payments previously made by the Employer to the Consultant under this appointment.
- 16.3 On termination or suspension of the Consultant's engagement the Employer shall not be liable to the Consultant for any loss of profit, loss of contracts or other costs, losses and/or expenses in connection with termination or suspension.
- 16.4 Termination of the Consultant's engagement shall not (subject to **clause 16.3**) limit the rights and remedies of the parties in relation to negligence, omission or default of the other party before termination.

## **17. INSURANCE**

- 17.1 The Consultant shall maintain both professional indemnity insurance and public liability insurance with a limit of indemnity not less than stated in **Schedule 1**, provided that each insurance continues to be generally available in the European Union to consultants of a discipline and standing similar to the Consultant on reasonable terms and at commercially reasonable rates. The Consultant's own claims record shall not be taken into account in determining commercially reasonable rates.

- 17.2 The insurances in this **clause** 17 shall be maintained with reputable insurers in the European Union and shall not be subject to unusual conditions and excesses to those applicable from time to time.
- 17.3 The Consultant shall maintain professional indemnity insurance from the date of commencement of the Services and for a period of 12 years from the date of Practical Completion and shall maintain public liability insurance until completion of the Services.
- 17.4 The Consultant shall produce for inspection documentary evidence that the insurance required under this **clause** 17 is properly maintained, as and when reasonably requested by the Employer.
- 17.5 The Consultant shall immediately notify the Employer if at any time the Consultant is unable to maintain any insurance required under this **clause** 17.
- 17.6 The Consultant shall not compromise, settle or waive any claim the Consultant may have in connection with any insurance required by this **clause** 17.

## 18. COPYRIGHT

- 18.1 The Consultant, as beneficial owner, grants to the Employer an irrevocable, royalty-free, non-exclusive licence to use and to reproduce the Design Documents for any purpose in connection with the Property and/or Project including, without limitation, the execution, completion, maintenance, letting, occupation, management, sale, advertisement, alteration, extension, reinstatement and repair of the same. Such licence shall carry the right to grant sub-licences and shall be transferable to any third party.
- 18.2 The Consultant warrants that the Consultant has the capacity and authority to grant the licence set out in **clause** 18.1. The Consultant warrants that where the Consultant is not the owner of any of the Design Documents, the Consultant has secured the necessary rights to grant such licence. The Consultant warrants that the rights licensed are free from all liens, charges, options, encumbrances and adverse interests of any kind.
- 18.3 The Consultant shall not be liable for the consequences of any use of the Design Documents for any purpose other than that for which the same were prepared.
- 18.4 The Consultant waives any moral rights in connection with the Design Documents under Chapter IV of the Copyright, Designs and Patents Act 1988. The Consultant shall obtain a corresponding written waiver from any third party author of the Design Documents for the Employer.
- 18.5 If requested by the other, the Consultant or the Employer shall execute any documents and do anything reasonably required to effect the rights referred to in **clauses** 18.1–18.4 inclusive.
- 18.6 With the exception of **clause** 18.7, the Consultant shall not without the Employer's prior approval use the Design Documents:
- 18.6.1 to design any building or structure obviously similar in overall design, appearance or features to the Project; and/or
- 18.6.2 for any purpose connected with the Property other than for the purposes of this appointment and the completion of the Project.



- 18.7 **Clause** 18.6 shall not apply to any elements of design within the integrated Design Documents which the Consultant can demonstrate form part of a proprietary system of design developed by the Consultant for use in the general course of the Consultant's business.

## 19. ASSIGNMENT, SUB-LETTING AND NOVATION

- 19.1 The Consultant shall not assign or charge the Consultant's benefit under this appointment in whole or part to any person without the Employer's prior written consent.
- 19.2 The Employer may assign or charge the Employer's benefit under this appointment without the Consultant's consent to any:
- 19.2.1 Affiliate;
  - 19.2.2 Purchaser;
  - 19.2.3 Tenant;
  - 19.2.4 Funder (any such assignment or charge shall include, without limitation, any further assignment on redemption of any finance).
- 19.3 The Consultant shall not sub-contract the performance of any of the Services without the Employer's prior consent. Any sub-contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Consultant under this appointment or otherwise. The Consultant shall be responsible for checking the Services performed by any third party, including design to ensure that the sub-contracted design complies with the overall design intent and is co-ordinated and integrated with the overall design of the Project.
- 19.4 The Consultant shall upon the Employer's written request:
- 19.4.1 execute a novation agreement in the form set out in [Schedule 9](#) and deliver duly executed to the Employer. Following the execution of the novation agreement by the Consultant (and completion of the same by the Contractor and the Employer) all references in this appointment except in **clauses** 1, 7.1, and 20 and "Employer", shall be construed as a reference to the "Contractor"; and
  - 19.4.2 simultaneously with the execution of the novation agreement under **clause** 19.4.1 execute a deed of collateral warranty in favour of the Employer in the form set out in [Part 4](#) of [Schedule 7](#).

## 20. CONFIDENTIALITY

- 20.1 The Consultant shall not without the Employer's prior written approval:
- 20.1.1 take or authorise the taking of any photographs of the Project for use in any publicity or advertising;
  - 20.1.2 publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Property or any part of the Property; and
  - 20.1.3 impart to any publication, journal, newspaper, radio, television or other media any information about the Project.

- 20.2 The Consultant undertakes to the Employer to keep the Confidential Information confidential, except where:
- 20.2.1 the Confidential Information was already lawfully known, or became lawfully known to the Consultant independently;
  - 20.2.2 the Confidential Information is, or comes into, the public domain other than due to wrongful use or disclosure by the Consultant;
  - 20.2.3 disclosure or use is necessary by the Consultant in connection with entry into this appointment or for the proper and effective performance of the Consultant's obligations under this appointment (including disclosure by the Consultant to the Consultant's insurer and professional advisers); or
  - 20.2.4 disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign).
- 20.3 The Consultant shall ensure that the Consultant's respective employees, agents, sub-contractors and nominees comply with the requirements of this **clause 20**. If requested by the Employer, the Consultant shall ensure that the Consultant's respective employees, agents, sub-contractors and nominees sign a confidentiality undertaking in a form approved by the Employer.
- 20.4 The Consultant shall:
- 20.4.1 (if aware) notify the Employer as soon as reasonably practicable of a breach of this **clause 20**;
  - 20.4.2 provide the Employer with details of any person to whom Confidential Information has been divulged; and
  - 20.4.3 give the Employer all reasonable assistance in connection with any proceedings resulting from a breach of this **clause 20**.

## **21. SEVERANCE**

- 21.1 Each provision of this appointment is distinct and severable from the others. If at any time one or more of those provisions is or becomes invalid, unlawful or unenforceable (whether wholly or partly), the validity, lawfulness and enforceability of the remaining provisions (or the same provision to any other extent) shall not be affected or impaired in any way.
- 21.2 If any provision of this appointment is or becomes invalid, unlawful or unenforceable (whether wholly or partly) but the provision would be valid, lawful or enforceable if deleted in part, then the provision shall apply with the minimum deletion necessary to make the provision valid, lawful, enforceable.
- 21.3 The parties may agree to amend this appointment in order to ensure the terms of this appointment are valid, lawful and enforceable.

## **22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 22.1 Except as expressly stated in **clauses** 8.1 and 8.2 in this appointment, a person who is not a party to this appointment may not enforce any terms of this appointment under the Contracts (Rights of Third Parties) Act 1999.
- 22.2 The parties' rights to terminate, rescind or agree any variation, waiver or settlement under this appointment are not subject to the consent of any person that is not a party to this appointment.

## **23. TIME LIMITATION**

- 23.1 No action or proceedings for any breach of this appointment shall be commenced against the Consultant after 12 years from the date of Practical Completion.
- 23.2 Subject to **clause** 23.1, the provisions of this appointment shall continue to bind the parties for as long as necessary to give effect to their respective rights and obligations under this appointment.

## **24. NOTICES**

- 24.1 Any notice or other communication required under this appointment shall be in writing and service shall be by one of the following methods:
- 24.1.1 personally (when service shall be effective on delivery); or
- 24.1.2 by recorded delivery (when service shall be effective on delivery).
- 24.2 Addresses for service are those set out above or any other address that one party has notified to the other party using the notice procedure in **clause** 24.1.

## **25. ALTERATIONS TO TERMS AND WAIVER**

- 25.1 Any variation to this appointment shall be binding only if in writing and duly executed as a deed by the Employer and the Consultant.
- 25.2 A party can only waive a right or remedy provided in this appointment by law by express written notice.
- 25.3 If a party delays or fails to exercise any power, right or remedy under this appointment, this shall not operate as a waiver of that power, right or remedy, nor shall it impair or prejudice it.
- 25.4 Any single or partial exercise or waiver of any power, right or remedy shall not preclude its further exercise or the exercise of any other power, right or remedy.

## **26. ENTIRE AGREEMENT**

- 26.1 This appointment contains the whole agreement between the parties relating to the matters contained in this appointment and supersedes any previous agreement (whether oral or in writing) between the parties relating to those matters.

- 26.2 Except as required by statute, no terms will be implied (whether by custom, usage, course of dealing or otherwise) into this appointment.
- 26.3 Each party acknowledges that in entering into this appointment that each party has not relied on any express or implied representation (including any made negligently), assurance, undertaking, collateral agreement, warranty or covenant which is not set out in this appointment.
- 26.4 In connection with the subject matter of this appointment, each party waives all rights and remedies (including any right or remedy based on negligence) which might otherwise be available to a party in respect of any express or implied representation, assurance, undertaking, collateral agreement, warranty or covenant which is not set out in this appointment.
- 26.5 Nothing in this **clause 26** limits or excludes any liability for fraud.

## **27. GOVERNING LAW AND JURISDICTION**

- 27.1 This appointment and any dispute or claim arising out of or in connection with this appointment or the subject matter or formation of this appointment (including non-contractual disputes or claims) is governed by the law of England and Wales.
- 27.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this appointment or the subject matter or formation of this appointment (including non-contractual disputes or claims).
- 27.3 Any dispute or difference arising under or in connection with this appointment may be referred to an adjudicator appointed at the request of either party by the Chairman of the Technology and Construction Solicitors' Association as nominating body.
- 27.4 The adjudication shall be undertaken in accordance with The Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 save that paragraph 22 of the Scheme shall be amended by deleting "If requested by one of the parties to the dispute" and inserting "written" before "reasons".

## **28. EXECUTION**

This appointment has been executed as a deed and is delivered on the date stated at the beginning of this appointment.

Executed as a deed by [EMPLOYER],  
acting by two directors or a director and  
its secretary:

)  
)  
) Director's signature

.....  
Name (in BLOCK CAPITALS)

.....  
Director's/Secretary's signature

.....  
Name (in BLOCK CAPITALS)

Executed as a deed by [AECOM],  
acting by two directors or a director and  
its secretary:

)  
)  
) Director's signature

.....  
Name (in BLOCK CAPITALS)

.....  
Director's/Secretary's signature

.....  
Name (in BLOCK CAPITALS)

### Schedule 1

#### Project information

1. The Project Team consists of:
  - 1.1 Project Manager [Gleeds].
  - 1.2 Employer's Agent [ ].
  - 1.3 Architect [Rick Mather Architects]
  - 1.4 Structural Engineer [Aecom].
  - 1.5 Mechanical and Electrical Engineer [Waterman].
  - 1.6 Quantity Surveyor [Gleeds]
  - 1.7 Principal Designer [ ].
2. Project Leader [ ].
3. Key Personnel [ ].
4. The minimum limit of professional indemnity insurance referred to in **clause 17.1** is: £[ ] for each and every claim.
5. The minimum limit of public liability insurance referred to in **clause 17.1** is: £[ ] for each and every claim.

**Schedule 2**

Fee

- The Fee is the lump sum of [One Hundred and Fifty Thousand, Five Hundred and Twelve Pounds and Fifty Pence] pounds (£150,512.50) exclusive of value added tax.
- The Fee shall be payable by monthly instalments in accordance with **clause** 11.2 of the appointment as payments:

**Commented [A1]:** This is 1.75% of £8,315,000 plus additional £5000 for additional works (Ground Movement Assessment)

**Amount**

**Month**

<b>Invoice Schedule</b>						
Stage	To date	Fee	Add. Work	Total	Cumulative	Notes
Planning	To date	£26,250.00	£5,000.00	£31,250.00	£31,250.00	
	Jul 16	£10,128.13	-	£10,128.13	£41,378.13	Catch up on planning fee.
Stage 3	Jul 16	£14,000.00	-	£14,000.00	£55,378.13	-
Stage 4	Aug 16	£15,000.00	-	£15,000.00	£70,378.13	-
	Sep 16	£15,000.00	-	£15,000.00	£85,378.13	-
Tender	Oct 16	£12,000.00	-	£12,000.00	£97,378.13	-
	Nov 16	£8,000.00	-	£8,000.00	£105,378.13	-
Construction	Dec 16	£8,000.00	-	£8,000.00	£113,378.13	-
	Jan 17	£6,000.00	-	£6,000.00	£119,378.13	-
	Feb 17	£6,000.00	-	£6,000.00	£125,378.13	-
	Mar 17	£5,000.00	-	£5,000.00	£130,378.13	-
	Apr 17	£5,000.00	-	£5,000.00	£135,378.13	-
	May 17	£4,000.00	-	£4,000.00	£139,378.13	-
	Jun 17	£3,000.00	-	£3,000.00	£142,378.13	-
	Jul 17	£2,000.00	-	£2,000.00	£144,378.13	-
	Aug 17	£1,000.00	-	£1,000.00	£145,378.13	-
	Sep 17	£1,000.00	-	£1,000.00	£146,378.13	-
	Oct 17	£1,000.00	-	£1,000.00	£147,378.13	-
	Nov 17	£1,000.00	-	£1,000.00	£148,378.13	-
	Dec 17	£1,000.00	-	£1,000.00	£149,378.13	-
	Jan 18	£1,134.37	-	£1,134.37	£150,512.50	-
	Feb 18	£0.00	-	£0.00	£150,512.50	-
	Mar 18	£0.00	-	£0.00	£150,512.50	-
	Apr 18	£0.00	-	£0.00	£150,512.50	-
May 18	£0.00	-	£0.00	£150,512.50	-	
<b>Total:</b>		<b>£145,512.50</b>	<b>£5,000.00</b>	<b>£150,512.50</b>	<b>£150,512.50</b>	

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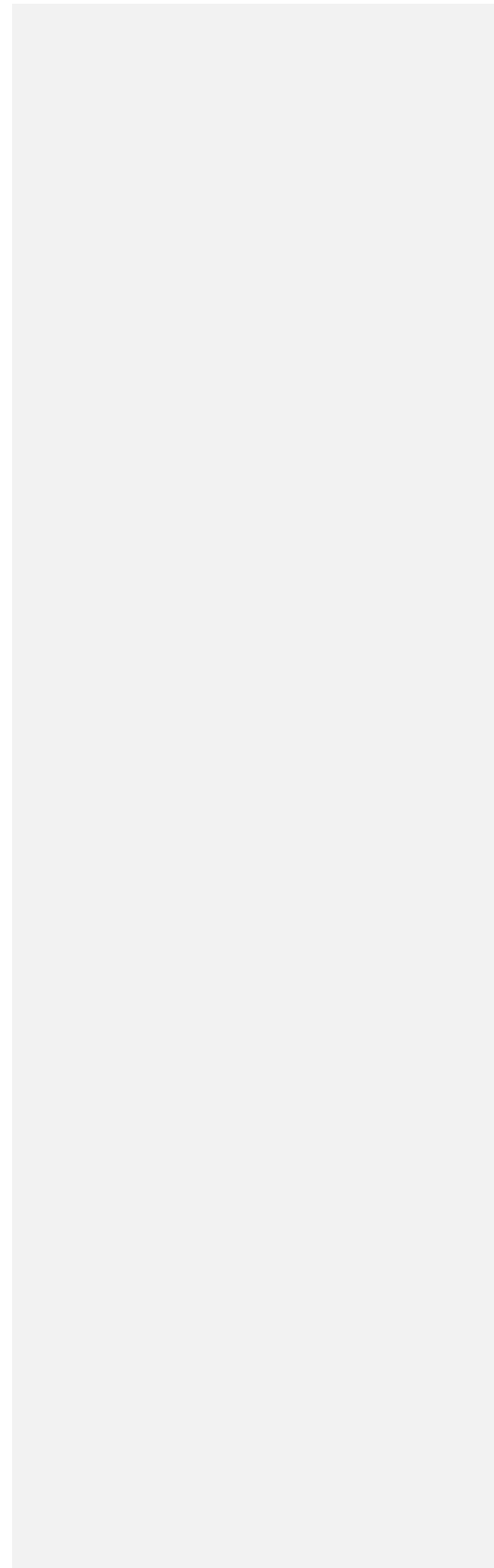
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- Hourly rates referred to in **clause** 12.3 of the appointment shall be:

[ ]

4. Disbursements referred to in **clause** 11.9 of the appointment shall be:  
[    ].





### Schedule 3

#### Basic Services

##### Duties (General)

- a) To undertake the Civil & Structural Engineering design.
- b) Advise the Client on the need for special inspections or tests arising during the construction of the Works.
- c) Examine detailed designs, shop fabrication drawings, standard details, bar bending schedules and specifications submitted by Sub-Contractors for the Works or parts thereof, in respect of conformity with the Consultant's design and in particular in respect of general dimensions, structural adequacy of members and connections and compliance with performance criteria. The Engineer will work with the lead consultant, and shall provide comments and status (using the A, B, C system\*) to the lead consultant within 10 working days of receipt of any specialist sub-contract design.
- d) Attendance at design team meetings for co-ordination of the structure with the Architect and Client and other designers (when required) during the detail design period, followed by attendance at site meetings/visits once work has started. Overall this is to include an average of one meeting or visit for the duration of the detailed design period and site works.
- e) The design and/or detailing of temporary works are excluded.
- f) Check interface details of specialist design contractor's packages to ensure that they have no undue effects on the substructure or superstructure and to highlight if anomalies are found which need to be addressed.
- g) Advise on matters or obligations arising under the CDM Regulations, comply with the CDM Regulations and where applicable, cooperate with the principal designer.

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##### Schedule of Services

###### a) Substructure

- 1. Provide general arrangement drawings for all main structural elements.
- 2. Prepare a specification for the structural works.
- 3. Identify structural solutions for the sub-structure (inc. foundations) and basement areas initially for cost analysis.
- 4. Advise on proposed foundation solutions for various areas of the site to allow optimum platform levels to be determined.
- 5. The Engineer shall produce structural engineering calculations to justify their design sufficient to demonstrate compliance with building regulations.
- 6. Temporary Works are excluded from the Engineer's duties. However, the Engineer shall highlight elements of retained structure, adjacent structure or roadways, which require temporary support during the demolition and subsequent construction.
- 7. Distribute loading through substructure and prepare General Arrangements (GA's) and Loading drawings for foundations. For piled foundations, the pile and pile mat design will be undertaken by the specialist piling subcontractor based on loads and a specification produced by the Engineer. The Engineer will comment on the design calculations and

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method statements produced by the piling subcontractor. The Engineer shall prepare specifications and drawings indicating pile types, numbers, positions and loadings. The Specialist Piling Contractor will use this information plus geotechnical data to design and detail the piles. The selection of factors of safety and testing regimes will be a collective decision based on cost and programme. Piling platforms are part of Temporary Works and should be specified by the Contractor.

8. Waterproofing solutions shall be coordinated with structural elements and must respond to structural movements. The selection of which solution to adopt is a collaborative team effort. The Engineer will also illustrate below ground waterproofing solutions on drawings for structural co-ordination purposes, with detailed design and arrangement to be confirmed by the specialist supplier. Waterproof concrete additive specification should be detailed by a specialist Contractor/Supplier who must provide a guarantee.

9. A ground movement analysis has been completed during the preparation of the planning application. No further analysis or reporting is included.

#### b) SuperStructure

10. For reinforced concrete (RC) frame items the Engineer will produce dimensioned general arrangement drawings. The engineer will indicate builders work holes on GA drawings which require special detailing or steel fixing, or are 200mm in size or larger. The provision of RC details / bending schedules for insitu or precast concrete units or pre-stressed concrete units is excluded.

11. For elemental steelwork items or frames, the Engineer will design the *primary steelwork*, which is defined as steelwork required to support the building structure and/or provide bracing to the building frame. The Engineer will produce drawings and specifications for primary structural steelwork framing, steelwork essential to the integrity and robustness of the structural frame, including positions, sizing, levels, connection loadings and movement joint locations. The Fabricator should prepare the detailed connection design and fabrication drawings. The Engineer will check fabrication drawings and calculations for compliance with design intent. Where steelwork connects to elements of existing structure the Engineer will take the lead in designing such connections to co-ordinate with the Fabricator's details. The Engineer will specify corrosion protection paint finishes.

12. The design and/or detailing of secondary steelwork is excluded from the Engineers duties (i.e. cladding support systems). The architect, contractor or specialist supplier as appropriate shall be responsible for designing and specifying any architectural metalwork and secondary steelwork; such as stringers, stair treads, handrails and balustrades, lift guides, plant supports, partitions, secondary steelwork support to cladding, cladding systems in general, safety barriers etc. The Engineer will assist in co-ordinating supporting details and provide guidance on structural matters including fixings to and forces applied to the primary structure. The connections are to be designed by the steelwork subcontractor based on moments and forces provided by the Engineer. The Engineer will comment on all drawings and calculations produced by the subcontractor. Specialist contractors/suppliers should design structural metal framing systems including sheeting rails and purlins for framed buildings; and produce fabrication drawings and detailed connection design. The Engineer will provide requirements in terms of design loadings and acceptable support positions. The Engineer will check fabrication drawings and calculations for compliance with design intent.

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The Specialist should redefine loadings for the Engineer to finish the design of the supporting structure.

13. The architect or appointed Fire Safety Consultants shall define and be responsible for the project fire strategy. Fire resistance periods and fire protection details for all elements are to be shown on the architect's drawings. The Engineer will advise on intumescent paint treatments for steelwork structure, design elements of concrete structure to meet the specified fire rating and check exposed timber sizes for adequacy subject to an appropriate charring rate.
14. The Engineer shall check the structure of any lift shafts for loads supplied by the lift Manufacturer. The Contractor's drawings, which are to be used for setting out of any cast in fixings will show the position of permanent fixing locations
15. Provide specifications for all items of design covered by the Engineer as mentioned above using a standard agreed format.
16. Produce all structural GA drawings for construction of the works based upon issued architect's drawings.
17. All builders work holes through the structure, however small, will be indicated on AutoCAD drawings by others and issued to the engineer prior to commencement of the engineer's detailed design.
18. Produce Overall area plans & sections (drawings/details) to convey complex or multi layered construction areas at 1:50 scale or larger.
19. Provide product or specification information on any item of structural cast-in items (such as shear connectors or movement joint connections etc.)

#### **c) Drainage (below ground)**

1. The Engineer will produce drainage calculations to justify their design sufficient to demonstrate compliance with building regulations.
2. Provide underground buried drainage design for foul and surface water disposal in accordance with building regulations. Detailed design of the drainage systems should be in accordance with any planning consent constraints. Any pumping stations required for drainage to be designed by M&E Consultant, chambers for pumps and containment below ground to be detailed by the Structural Engineer.
3. Produce drainage general arrangement drawings for the main network infrastructure for foul and surface water systems to connection points to public sewer/point of discharge within or just adjacent to the site boundary.

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**Schedule 4**

Brief

[To be inserted]

**Schedule 5**

Programme

[To be inserted]

**Schedule 6**

Cost Plan

[To be inserted]

## Schedule 7

### Part 1

#### Schedule of third party rights (with step-in rights)

#### 1. CONSULTANT'S WARRANTIES

- 1.1 The Consultant warrants and undertakes that the Consultant has:
- 1.1.1 exercised and shall continue to exercise in the performance of the Services, all the reasonable skill, care and diligence to be expected of a properly qualified and competent consultant of the same discipline as the Consultant experienced in the provision of such services in respect of works of a similar size, scope, nature, complexity and value to the Project; and
  - 1.1.2 observed and performed and shall continue to observe and perform each and all of the obligations on the Consultant's part to be observed and performed under the appointment in accordance with the terms of the appointment.
- 1.2 The Consultant extends to the Beneficiary the benefit of all warranties and undertakings on the part of the Consultant contained in the appointment.
- 1.3 The Consultant acknowledges that the Beneficiary shall be deemed to have relied and shall be entitled to continue to rely upon the warranties and undertakings given by the Consultant under this schedule.
- 1.4 The Consultant shall:
- 1.4.1 owe no greater obligations to the Beneficiary under this schedule than it would have owed had the Beneficiary been named as a joint employer with the Employer under the appointment; and
  - 1.4.2 have equivalent rights of defence under this schedule to those it would have had under the appointment had the Beneficiary been named as a joint employer with the Employer under the appointment. The Consultant shall not be entitled to exercise any right of set-off or counter-claim that it may be entitled to exercise under the appointment.

#### 2. DELETERIOUS MATERIALS

Subject to **paragraph 1.1.1**, the Consultant warrants that:

- 2.1 any materials which the Consultant specifies or authorises for use in the construction of any part of the Project are in accordance with relevant British Standard specifications and codes of practice and good building practice current at the time of specification or authorisation for use;
- 2.2 the Consultant has not and shall not specify or authorise for use in the Project any of the materials identified as potentially hazardous in the BPF/BCO report *Good practice in the selection of construction materials* (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report;

- 2.3 the Consultant has not and shall not specify or authorise for use in the Project materials which are generally known at the time of use to be deleterious to health and safety or to durability in the particular circumstances in which they are used; and
- 2.4 the Consultant shall immediately notify the Beneficiary if in performing the Services the Consultant becomes aware of any proposed or actual use in the Project of any materials not in accordance with this **paragraph 2**.

### 3. OTHER REMEDIES

Nothing in this schedule shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Consultant in the absence of this schedule.

### 4. STEP-IN RIGHTS<sup>2</sup>

- 4.1 The Consultant agrees that the Consultant shall not without first giving the Beneficiary not less than 28 days' written notice exercise any right the Consultant may have to terminate the appointment or treat the appointment as having been repudiated by the Employer or discontinue the performance of any obligations to be performed by the Consultant under the appointment.
- 4.2 The Consultant's right to terminate the appointment or treat the appointment as being repudiated or discontinue performance of any obligations to be performed by the Consultant under the appointment shall cease if within the period of notice described in **paragraph 4.1** (subject to **paragraph 4.5**) the Beneficiary shall give written notice to the Consultant requiring the Consultant to accept the instructions of the Beneficiary or the Beneficiary's appointee to the exclusion of the Employer in respect of the Services on the terms and conditions of the appointment.
- 4.3 The Consultant agrees that upon termination of the agreement between the Beneficiary and the Employer (the "**Agreement**") the Consultant shall if so required by written notice given by the Beneficiary (subject to **paragraph 4.5**) accept the instructions of the Beneficiary or the Beneficiary's appointee to the exclusion of the Employer in respect of the Services on the terms and conditions of the appointment.
- 4.4 The Employer acknowledges that the Consultant shall be entitled to rely on a notice given under **paragraph 4.3** as conclusive evidence of termination of the Agreement for the purposes of this schedule.
- 4.5 It shall be a condition of any notice given by the Beneficiary under **paragraph 4.2** or **4.3** that the Beneficiary or the Beneficiary's appointee accepts liability for payment of the amounts payable to the Consultant under the appointment and for performance of the Employer's obligations under the appointment, including payment of any amounts properly due but unpaid at the date of such notice subject to any abatement, set-off or counterclaim.
- 4.6 Upon the issue of any notice by the Beneficiary under **paragraph 4.2** or **4.3** the appointment shall continue in full force and effect and the Consultant shall be liable to the Beneficiary or

<sup>2</sup> **Paragraph 44** is applicable when identified in any letter notifying the Consultant of such rights being conferred on any such Beneficiary.



the Beneficiary's appointee under this schedule in place of the Consultant's liability to the Employer.

- 4.7 If any notice given by the Beneficiary under **paragraph 4.2** or 4.3 requires the Consultant to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Beneficiary's appointee.
- 4.8 The Consultant shall, within seven days of the notice from or on behalf of the Employer to the Consultant of the rights being conferred on the Beneficiary under this schedule, provide written details to the Beneficiary of any payments properly due but unpaid to the Consultant as at the date of such notice.
- 4.9 The Consultant acknowledges that all payments properly due to the Consultant under the appointment have been paid up to the date of notice from or on behalf of the Employer to the Consultant of the rights being conferred on the Beneficiary under this schedule unless the Consultant provides written details to the Beneficiary in accordance with **paragraph 4.8**.
- 4.10 [Notwithstanding **paragraphs 4.2** and 4.3:
- 4.10.1 any notice served by the Consultant on the Beneficiary under **paragraph 4.1** shall be invalid and of no effect unless a similar notice has been simultaneously served by the Consultant on the Funder;
- 4.10.2 the Beneficiary shall not give notice to the Consultant under **paragraph 4.2** or 4.3 if the Funder has notified the Beneficiary that the Funder has exercised the Funder's equivalent rights under the Funder's schedule of third party rights; and
- 4.10.3 the Beneficiary shall have no power to give notice to the Consultant under **paragraph 4.2** or 4.3 if the Funder has properly exercised any of the Funder's equivalent rights under the Funder's schedule of third party rights.]<sup>3</sup>

## 5. PROFESSIONAL INDEMNITY INSURANCE

- 5.1 The Consultant warrants that the Consultant has and shall maintain professional indemnity insurance in accordance with the Appointment, provided that such insurance continues to be generally available in the European Union to consultants of a discipline and standing similar to the Consultant on reasonable terms and at commercially reasonable rates. The Consultant's own claims record shall not be taken into account in determining commercially reasonable rates. Such insurance shall be maintained:
- 5.1.1 with reputable insurers in the European Union and shall not be subject to unusual conditions and excesses to those applicable from time to time;
- 5.1.2 from the date of commencement of the Services and for a period of 12 years from the date of Practical Completion.
- 5.2 The Consultant shall produce for inspection documentary evidence that the insurance required by this schedule is properly maintained, as and when reasonably requested by the Beneficiary.

<sup>3</sup> Delete **paragraph 4.104-10** unless the Beneficiary has secondary rights of step in.

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5.3 The Consultant shall immediately notify the Beneficiary if at any time the Consultant is unable to maintain the insurance required under this schedule.

## 6. COPYRIGHT

6.1 The Consultant, as beneficial owner, grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to use and to reproduce the Design Documents for any purpose in connection with the Property and/or Project including, without limitation, the execution, completion, maintenance, letting, occupation, management, sale, advertisement, alteration, extension, reinstatement and repair of the same. Such licence shall carry the right to grant sub-licences and shall be transferable to any third party.

6.2 The Consultant warrants that the Consultant has the capacity and authority to grant the licence set out in **paragraph 6.1**. The Consultant warrants that where the Consultant is not the owner of any of the Design Documents, the Consultant has secured the necessary rights to grant such licence. The Consultant warrants that the rights licensed are free from all liens, charges, options, encumbrances and adverse interests of any kind.

6.3 The Consultant shall not be liable for the consequences of any use of the Design Documents for any purpose other than that for which the same were prepared.

6.4 The Consultant shall provide copies of the Design Documents to the Beneficiary upon request, subject to payment by the Beneficiary of the Consultant's reasonable copying charges for the same.

## 7. ASSIGNMENT

The Beneficiary may assign or charge the benefit of this schedule without the Consultant's consent:

7.1 to any party, subject to a maximum of two assignments; and

7.2 without prejudice to **paragraph 7.1**, to any funder of the Beneficiary (any such assignment, charge or transfer shall include, without limitation, any further assignment on redemption of any finance).

## 8. TIME LIMITATION

No action or proceedings for any breach of this schedule shall be commenced against the Consultant after 12 years from the date of Practical Completion of the Works.

## 9. NOTICES

9.1 Any notice or other communication required under this schedule shall be in writing and service shall be by one of the following methods:

9.1.1 personally (when service shall be effective on delivery); or

9.1.2 by recorded delivery (when service shall be effective on delivery).

- 9.2 Addresses for service of notices or other communications are the Beneficiary's, Employer's and Consultant's registered offices or any other address that one party has notified to the other party using the notice procedure in **paragraph 9.1**.
- 9.3 A requirement that a notice or other communication to be given or made under or in connection with this schedule shall be signed by the person giving or making it will be deemed to be satisfied if the notice or other communication is signed on behalf of the person giving or making it.

## **10. GOVERNING LAW AND JURISDICTION**

- 10.1 This schedule and any dispute or claim arising out of or in connection with this schedule or the subject matter or formation of this schedule (including non contractual disputes or claims) is governed by the law of England and Wales.
- 10.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this schedule or the subject matter or formation of this schedule (including non contractual disputes or claims).

### Part 2

#### Schedule of third party rights

## **11. CONSULTANT'S WARRANTIES**

- 11.1 The Consultant warrants and undertakes that the Consultant has:
- 11.1.1 exercised and shall continue to exercise in the performance of the Services, all the reasonable skill, care and diligence to be expected of a properly qualified and competent consultant of the same discipline as the Consultant experienced in the provision of such services in respect of works of a similar size, scope, nature, complexity and value to the Project; and
- 11.1.2 observed and performed and shall continue to observe and perform each and all of the obligations on the Consultant's part to be observed and performed under the appointment in accordance with the terms of the appointment.
- 11.2 The Consultant extends to the Beneficiary the benefit of all warranties and undertakings on the part of the Consultant contained in the appointment.
- 11.3 The Consultant acknowledges that the Beneficiary shall be deemed to have relied and shall be entitled to continue to rely upon the warranties and undertakings given by the Consultant under this schedule.
- 11.4 The Consultant shall:
- 11.4.1 owe no greater obligations to the Beneficiary under this schedule than it would have owed had the Beneficiary been named as a joint employer with the Employer under the appointment; and

- 11.4.2 have equivalent rights of defence under this schedule to those it would have had under the appointment had the Beneficiary been named as a joint employer with the Employer under the appointment. The Consultant shall not be entitled to exercise any right of set-off or counter-claim that it may be entitled to exercise under the appointment.

## 12. DELETERIOUS MATERIALS

Subject to **paragraph 11.1.1**, the Consultant warrants that:

- 12.1 any materials which the Consultant specifies or authorises for use in the construction of any part of the Project are in accordance with relevant British Standard specifications and codes of practice and good building practice current at the time of specification or authorisation for use;
- 12.2 the Consultant has not and shall not specify or authorise for use in the Project any of the materials identified as potentially hazardous in the BPF/BCO report *Good practice in the selection of construction materials* (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report;
- 12.3 the Consultant has not and shall not specify or authorise for use in the Project materials which are generally known at the time of use to be deleterious to health and safety or to durability in the particular circumstances in which they are used; and
- 12.4 the Consultant shall immediately notify the Beneficiary if in performing the Services the Consultant becomes aware of any proposed or actual use in the Project of any materials not in accordance with this **paragraph 12**.

## 13. OTHER REMEDIES

Nothing in this schedule shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Consultant in the absence of this schedule.

## 14. PROFESSIONAL INDEMNITY INSURANCE

- 14.1 The Consultant warrants that the Consultant has and shall maintain professional indemnity insurance in accordance with the Appointment, provided that such insurance continues to be generally available in the European Union to consultants of a discipline and standing similar to the Consultant on reasonable terms and at commercially reasonable rates. The Consultant's own claims record shall not be taken into account in determining commercially reasonable rates. Such insurance shall be maintained:
- 14.1.1 with reputable insurers in the European Union and shall not be subject to unusual conditions and excesses to those applicable from time to time;
- 14.1.2 from the date of commencement of the Services and for a period of 12 years from the date of Practical Completion.

14.2 The Consultant shall produce for inspection documentary evidence that the insurance required by this schedule is properly maintained, as and when reasonably requested by the Beneficiary.

14.3 The Consultant shall immediately notify the Beneficiary if at any time the Consultant is unable to maintain the insurance required under this schedule.

## 15. COPYRIGHT

15.1 The Consultant, as beneficial owner, grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to use and to reproduce the Design Documents for any purpose in connection with the Property and/or Project including, without limitation, the execution, completion, maintenance, letting, occupation, management, sale, advertisement, alteration, extension, reinstatement and repair of the same. Such licence shall carry the right to grant sub-licences and shall be transferable to any third party.

15.2 The Consultant warrants that the Consultant has the capacity and authority to grant the licence set out in **paragraph 15.1**. The Consultant warrants that where the Consultant is not the owner of any of the Design Documents, the Consultant has secured the necessary rights to grant such licence. The Consultant warrants that the rights licensed are free from all liens, charges, options, encumbrances and adverse interests of any kind.

15.3 The Consultant shall not be liable for the consequences of any use of the Design Documents for any purpose other than that for which the same were prepared.

15.4 The Consultant shall provide copies of the Design Documents to the Beneficiary upon request, subject to payment by the Beneficiary of the Consultant's reasonable copying charges for the same.

## 16. ASSIGNMENT

The Beneficiary may assign or charge the benefit of this schedule without the Consultant's consent:

16.1 to any party, subject to a maximum of two assignments; and

16.2 without prejudice to **paragraph 16.1**, to any funder of the Beneficiary (any such assignment, charge or transfer shall include, without limitation, any further assignment on redemption of any finance).

## 17. TIME LIMITATION

No action or proceedings for any breach of this schedule shall be commenced against the Consultant after 12 years from the date of Practical Completion of the Works.

## 18. NOTICES

- 18.1 Any notice or other communication required under this schedule shall be in writing and service shall be by one of the following methods:
- 18.1.1 personally (when service shall be effective on delivery); or
  - 18.1.2 by recorded delivery (when service shall be effective on delivery).
- 18.2 Addresses for service of notices or other communications are the Beneficiary's and Consultant's registered offices or any other address that one party has notified to the other party using the notice procedure in **paragraph 18.1**.
- 18.3 A requirement that a notice or other communication to be given or made under or in connection with this schedule shall be signed by the person giving or making it will be deemed to be satisfied if the notice or other communication is signed on behalf of the person giving or making it.

## 19. GOVERNING LAW AND JURISDICTION

- 19.1 This schedule and any dispute or claim arising out of or in connection with this schedule or the subject matter or formation of this schedule (including non contractual disputes or claims) is governed by the law of England and Wales.
- 19.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this schedule or the subject matter or formation of this schedule (including non contractual disputes or claims).

Part 3

Notice conferring benefit of third party rights

**BY RECORDED DELIVERY**

[NAME OF CONSULTANT]

[CONSULTANT'S ADDRESS]

Company registration number [ ]

For the attention of [ ]

[DATE]

Our ref: [ ]

Dear Sirs

**Notice of Third Party Rights**

This letter is notice that the third party named below (the "**Beneficiary**") is entitled to enforce for the Beneficiary's benefit the rights in the Third Party Rights Schedule in [Part 1/Part 2] Appointment.

**Property** \_\_\_\_\_

**Employer** \_\_\_\_\_

**Date of Appointment** \_\_\_\_\_

**Consultant's Discipline** \_\_\_\_\_

**Beneficiary's Name** \_\_\_\_\_

**Beneficiary's Address** \_\_\_\_\_

**Nature of Beneficiary's Third Party Interest** Affiliate/ Funder/Purchaser/Tenant of all/Tenant of [*insert description of Tenant's part*] of the Property

**Entitlement to Step In Rights (paragraph [6] of the Third Party Rights Memorandum)** Yes/No

Yours faithfully

**For and on behalf of [EMPLOYER]**

cc: [Beneficiary]

Part 4  
Collateral Warranty (with step-in rights)

DATED \_\_\_\_\_

[AECOM]

and

[BENEFICIARY]

and

[EMPLOYER]

DEED OF COLLATERAL WARRANTY FROM STRUCTURAL  
ENGINEER

relating to the redevelopment of 19/21 High Holborn, London  
WC1R 5JA



N A B A R R O

125 London Wall  
London EC2Y 5AL  
Tel: +44(0)20 7524 6000



## DEED OF COLLATERAL WARRANTY

### DATE

### PARTIES

- (1) [AECOM] (incorporated and registered in England and Wales under company registration number [         ]), the registered office of which is at [         ] (the "**Consultant**"); and
- (2) [EMPLOYER/BENEFICIARY] (incorporated and registered in England and Wales under company registration number [         ]), the registered office of which is at [         ] (the "**Beneficiary**"), which term shall include successors in title and permitted assigns); and./
- (3) [[EMPLOYER] (incorporated and registered in England and Wales under company registration number [         ]), the registered office of which is at [         ] (the "**Employer**").]<sup>4</sup>

### RECITALS

- (A) The [Beneficiary/Employer] has appointed the Consultant under the Appointment to perform the Services [and by a novation agreement dated [         ] between (1) the [Beneficiary/Employer] (2) the Consultant and (3) the Contractor, the Appointment was novated to the Contractor].
- (B) [By [a] [an] [Funding] [other] Agreement [for [Lease] [Sale]] [the Employer agreed to grant and the Beneficiary agreed to take a lease of [part of] the Project] [the Employer agreed to sell and the Beneficiary agreed to buy [part of] the Project] [the Beneficiary agreed to provide finance for the Project]. [The Beneficiary owns a freehold/leasehold reversionary interest in the Project.]]

### 1. DEFINITIONS

The following definitions apply in this collateral warranty:

#### **"Agreement"**

means the agreement relating to the Property between (1) the Employer and (2) the Beneficiary;

#### **"Appointment"**

means the appointment dated [         ] between (1) the Employer and (2) the Consultant (and any further agreement varying or supplementing the appointment) under which the Consultant has agreed to perform the Services;

---

<sup>4</sup> Delete if the Beneficiary is the Employer.

**"Contractor"**

means [ ] (incorporated and registered in England and Wales under company registration number [ ]), the registered office of which is at [ ];

**"Design Documents"**

means the drawings, details, plans, specifications, schedules, reports, calculations and other work and data (and the designs contained within them) prepared by or for the Consultant in connection with the Services;

**["Employer"**

means [ ] (incorporated and registered in England and Wales under company registration number [ ]), the registered office of which is at [ ]<sup>5</sup>;

**"Funder"**

means the person defined as such in the Appointment;

**"Practical Completion"**

means defined as such in the Appointment;

**"Project"**

means the design, construction works and services to be carried out at the Property;

**"Property"**

means 19/21 High Holborn, London WC1R 5JA;

**"Services"**

means the services performed or to be performed by the Consultant in connection with the Project as more particularly described in the Appointment.

**2. CONSULTANT'S WARRANTIES**

2.1 The Consultant warrants and undertakes to the Beneficiary that the Consultant has:

2.1.1 exercised and shall continue to exercise in the performance of the Services, all the reasonable skill, care and diligence to be expected of a properly qualified and competent consultant of the same discipline as the Consultant experienced in the provision of such services in respect of works of a similar size, scope, nature, complexity and value to the Project; and

2.1.2 observed and performed and shall continue to observe and perform each and all of the obligations on the Consultant's part to be observed and performed under the Appointment in accordance with the terms of the Appointment.

<sup>5</sup> Delete definition if the Employer is not the Beneficiary.

- 2.2 The Consultant extends to the Beneficiary the benefit of all warranties and undertakings on the part of the Consultant contained in the Appointment.
- 2.3 The Consultant acknowledges that the Beneficiary shall be deemed to have relied and shall be entitled to continue to rely upon the warranties and undertakings given by the Consultant under this collateral warranty.
- 2.4 The Consultant shall:
- 2.4.1 owe no greater obligations to the Beneficiary under this collateral warranty than it would have owed had the Beneficiary been named as a joint employer with the Employer under the Appointment; and
- 2.4.2 have equivalent rights of defence under this collateral warranty to those it would have had under the Appointment had the Beneficiary been named as a joint employer with the Employer under the Appointment. The Consultant shall not be entitled to exercise any right of set-off or counter-claim that it may be entitled to exercise under the Appointment.

### 3. DELETERIOUS MATERIALS

Subject to **clause 2.1.1**, the Consultant warrants to the Beneficiary that:

- 3.1 any materials which the Consultant specifies or authorises for use in the construction of any part of the Project are in accordance with relevant British Standard specifications and codes of practice and good building practice current at the time of specification or authorisation for use;
- 3.2 the Consultant has not and shall not specify or authorise for use in the Project any of the materials identified as potentially hazardous in the BPF/BCO report *Good practice in the selection of construction materials* (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report;
- 3.3 the Consultant has not and shall not specify or authorise for use in the Project materials which are generally known at the time of use to be deleterious to health and safety or to durability in the particular circumstances in which they are used; and
- 3.4 the Consultant shall immediately notify the Beneficiary if in performing the Services the Consultant becomes aware of any proposed or actual use in the Project of any materials otherwise than in accordance with this **clause 3**.

### 4. OTHER REMEDIES

Nothing in this collateral warranty shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Consultant in the absence of this collateral warranty.

### 5. STEP-IN RIGHTS

- 5.1 The Consultant agrees that the Consultant shall not without first giving the Beneficiary not less than 28 days' written notice exercise any right the Consultant may have to terminate the Appointment or treat the Appointment as having been repudiated by the Employer or

discontinue the performance of any obligations to be performed by the Consultant under the Appointment.

- 5.2 The Consultant's right to terminate the Appointment or treat the Appointment as being repudiated or discontinue performance of any obligations to be performed by the Consultant under the Appointment shall cease if within the period of notice described in **clause 5.1** (subject to **clause 5.5**) the Beneficiary shall give written notice to the Consultant requiring the Consultant to accept the instructions of the Beneficiary or the Beneficiary's appointee to the exclusion of the Employer in respect of the Services on the terms and conditions of the Appointment.
- 5.3 The Consultant agrees that upon termination of the Agreement the Consultant shall if so required by written notice given by the Beneficiary (subject to **clause 5.5**) accept the instructions of the Beneficiary or the Beneficiary's appointee to the exclusion of the Employer in respect of the Services on the terms and conditions of the Appointment.
- 5.4 The Employer acknowledges that the Consultant shall be entitled to rely on a notice given under **clause 5.3** as conclusive evidence of termination of the Agreement for the purposes of this collateral warranty.
- 5.5 It shall be a condition of any notice given by the Beneficiary under **clause 5.2** or **5.3** that the Beneficiary or the Beneficiary's appointee accepts liability for payment of the amounts payable to the Consultant under the Appointment and for performance of the Employer's obligations under the Appointment, including payment of any amounts properly due but unpaid at the date of such notice subject to any abatement, set-off or counterclaim.
- 5.6 Upon the issue of any notice by the Beneficiary under **clause 5.2** or **5.3** the Appointment shall continue in full force and effect and the Consultant shall be liable to the Beneficiary or the Beneficiary's appointee under the Appointment in place of the Consultant's liability to the Employer.
- 5.7 If any notice given by the Beneficiary under **clause 5.2** or **5.3** requires the Consultant to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Beneficiary's appointee.
- 5.8 [Notwithstanding **clauses 5.2** and **5.3**:
- 5.8.1 any notice served by the Consultant on the Beneficiary under **clause 5.1** shall be invalid and of no effect unless a similar notice has been simultaneously served by the Consultant on the Funder;
- 5.8.2 the Beneficiary shall not give notice to the Consultant under **clause 5.2** or **5.3** if the Funder has notified the Beneficiary that the Funder has exercised the Funder's equivalent rights under the Funder's collateral warranty; and
- 5.8.3 the Beneficiary shall have no power to give notice to the Consultant under **clause 5.2** or **5.3** if the Funder has properly exercised any of the Funder's equivalent rights under the Funder's collateral warranty.]<sup>6</sup>

<sup>6</sup> Delete **clause 5.8.3** unless the Beneficiary has secondary rights of step in.

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## **6. PROFESSIONAL INDEMNITY INSURANCE**

- 6.1 The Consultant warrants that the Consultant has and shall maintain professional indemnity insurance in accordance with the Appointment, provided that such insurance continues to be generally available in the European Union to consultants of a discipline and standing similar to the Consultant on reasonable terms and at commercially reasonable rates. The Consultant's own claims record shall not be taken into account in determining commercially reasonable rates. Such insurance shall be maintained:
- 6.1.1 with reputable insurers in the European Union and shall not be subject to unusual conditions and excesses to those applicable from time to time;
- 6.1.2 from the date of commencement of the Services and for a period of 12 years from the date of Practical Completion.
- 6.2 The Consultant shall produce for inspection documentary evidence that the insurance required by this collateral warranty is properly maintained, as and when reasonably requested by the Beneficiary.
- 6.3 The Consultant shall immediately notify the Beneficiary if at any time the Consultant is unable to maintain the insurance required under this collateral warranty.

## **7. COPYRIGHT**

- 7.1 The Consultant, as beneficial owner, grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to use and to reproduce the Design Documents for any purpose in connection with the Property and/or Project including, without limitation, the execution, completion, maintenance, letting, occupation, management, sale, advertisement, alteration, extension, reinstatement and repair of the same. Such licence shall carry the right to grant sub-licences and shall be transferable to any third party.
- 7.2 The Consultant warrants that the Consultant has the capacity and authority to grant the licence set out in **clause 7.1**. The Consultant warrants that where the Consultant is not the owner of any of the Design Documents, the Consultant has secured the necessary rights to grant such licence. The Consultant warrants that the rights licensed are free from all liens, charges, options, encumbrances and adverse interests of any kind.
- 7.3 The Consultant shall not be liable for the consequences of any use of the Design Documents for any purpose other than that for which the same were prepared.
- 7.4 The Consultant shall provide copies of the Design Documents to the Beneficiary upon request, subject to payment by the Beneficiary of the Consultant's reasonable copying charges for the same.

## **8. ASSIGNMENT**

The Beneficiary may assign or charge the benefit of this collateral warranty without the Consultant's consent:

- 8.1 to any party, subject to a maximum of two assignments; and

8.2 without prejudice to **clause 8.1** to any funder of the Beneficiary (any such assignment, charge or transfer shall include, without limitation, any further assignment on redemption of any finance).

## **9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this collateral warranty may not enforce any terms of this collateral warranty under the Contracts (Rights of Third Parties) Act 1999.

## **10. TIME LIMITATION**

No action or proceedings for any breach of this collateral warranty shall be commenced against the Consultant after 12 years from the date of Practical Completion.

## **11. NOTICES**

11.1 Any notice or other communication required under this collateral warranty shall be in writing and service shall be by one of the following methods:

11.1.1 personally (when service shall be effective on delivery); or

11.1.2 by recorded delivery (when service shall be effective on delivery).

11.2 Addresses for service are those set out above or any other address that one party has notified to the other party using the notice procedure in **clause 11.1**.

11.3 A requirement that a notice or other communication to be given or made under or in connection with this collateral warranty shall be signed by the person giving or making it will be deemed to be satisfied if the notice or other communication is signed on behalf of the person giving or making it.

## **12. GOVERNING LAW AND JURISDICTION**

12.1 This collateral warranty and any dispute or claim arising out of or in connection with this collateral warranty or the subject matter or formation of this collateral warranty (including non-contractual disputes or claims) is governed by the law of England and Wales.

12.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this collateral warranty or the subject matter or formation of this collateral warranty (including non-contractual disputes or claims).

## **13. EXECUTION**

This collateral warranty has been executed as a deed and is delivered on the date stated at the beginning of this collateral warranty.

Executed as a deed by [AECOM],  
acting by two directors or a director and  
its secretary:

)  
)  
) Director's signature

.....  
Name (in BLOCK CAPITALS)

.....  
Director's/Secretary's signature

.....  
Name (in BLOCK CAPITALS)

Executed as a deed by [BENEFICIARY],  
acting by two directors or a director and  
its secretary:

)  
)  
) Director's signature

.....  
Name (in BLOCK CAPITALS)

.....  
Director's/Secretary's signature

.....  
Name (in BLOCK CAPITALS)

Executed as a deed by [EMPLOYER],  
acting by two directors or a director and  
its secretary:

)  
)  
) Director's signature

.....  
Name (in BLOCK CAPITALS)

.....  
Director's/Secretary's signature

.....  
Name (in BLOCK CAPITALS)

Part 5  
Collateral Warranty

DATED

---

[AECOM]

and

[BENEFICIARY]

---

DEED OF COLLATERAL WARRANTY FROM STRUCTURAL  
ENGINEER

relating to the redevelopment of 19/21 High Holborn, London  
WC1R 5JA

---



N A B A R R O

125 London Wall  
London EC2Y 5AL  
Tel: +44(0)20 7524 6000



## DEED OF COLLATERAL WARRANTY

### DATE

### PARTIES

- (1) [AECOM] (incorporated and registered in England and Wales under company registration number [ ], the registered office of which is at [ ] (the "Consultant"); and
- (2) [BENEFICIARY] (incorporated and registered in England and Wales under company registration number [ ], the registered office of which is at [ ] (the "Beneficiary", which term shall include successors in title and permitted assigns).

### RECITALS

- (A) The Employer has appointed the Consultant under the Appointment to perform the Services and by a novation agreement dated [ ] between (1) the Employer (2) the Consultant and (3) the Contractor, the Appointment was novated to the Contractor.
- (B) By [an] [other] Agreement [for [Lease] [Sale]] [the Employer agreed to grant and the Beneficiary agreed to take a lease of [part of] the Project] [the Employer agreed to sell and the Beneficiary agreed to buy [part of] the Project]. [The Beneficiary owns a freehold/leasehold reversionary interest in the Project.]

### 1. DEFINITIONS

The following definitions apply in this collateral warranty:

#### "Appointment"

means the appointment dated [ ] between (1) the Employer and (2) the Consultant (and any further agreement varying or supplementing the appointment) under which the Consultant has agreed to perform the Services;

#### "Contractor"

means [ ] (incorporated and registered in England and Wales under company registration number [ ], the registered office of which is at [ ];

#### "Design Documents"

means the drawings, details, plans, specifications, schedules, reports, calculations and other work and data (and the designs contained within them) prepared by or for the Consultant in connection with the Services;

**"Employer"**

means [ ] (incorporated and registered in England and Wales under company registration number [ ]), the registered office of which is at [ ];

**"Practical Completion"**

means defined as such in the Appointment;

**"Project"**

means the design, construction works and services to be carried out at the Property;

**"Property"**

means 19/21 High Holborn, London WC1R 5JA;

**"Services"**

means the services performed or to be performed by the Consultant in connection with the Project as more particularly described in the Appointment.

**2. CONSULTANT'S WARRANTIES**

- 2.1 The Consultant warrants and undertakes to the Beneficiary that the Consultant has:
  - 2.1.1 exercised and shall continue to exercise in the performance of the Services, all the reasonable skill, care and diligence to be expected of a properly qualified and competent consultant of the same discipline as the Consultant experienced in the provision of such services in respect of works of a similar size, scope, nature, complexity and value to the Project; and
  - 2.1.2 observed and performed and shall continue to observe and perform each and all of the obligations on the Consultant's part to be observed and performed under the Appointment in accordance with the terms of the Appointment.
- 2.2 The Consultant extends to the Beneficiary the benefit of all warranties and undertakings on the part of the Consultant contained in the Appointment.
- 2.3 The Consultant acknowledges that the Beneficiary shall be deemed to have relied and shall be entitled to continue to rely upon the warranties and undertakings given by the Consultant under this collateral warranty.
- 2.4 The Consultant shall:
  - 2.4.1 owe no greater obligations to the Beneficiary under this collateral warranty than it would have owed had the Beneficiary been named as a joint employer with the Employer under the Appointment; and
  - 2.4.2 have equivalent rights of defence under this collateral warranty to those it would have had under the Appointment had the Beneficiary been named as a joint employer with the Employer under the Appointment. The Consultant shall not be entitled to exercise any right of set-off or counter-claim that it may be entitled to exercise under the Appointment.

### 3. DELETERIOUS MATERIALS

Subject to **clause 2.1.1**, the Consultant warrants to the Beneficiary that:

- 3.1 any materials which the Consultant specifies or authorises for use in the construction of any part of the Project are in accordance with relevant British Standard specifications and codes of practice and good building practice current at the time of specification or authorisation for use;
- 3.2 the Consultant has not and shall not specify or authorise for use in the Project any of the materials identified as potentially hazardous in the BPF/BCO report *Good practice in the selection of construction materials* (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report;
- 3.3 the Consultant has not and shall not specify or authorise for use in the Project materials which are generally known at the time of use to be deleterious to health and safety or to durability in the particular circumstances in which they are used; and
- 3.4 the Consultant shall immediately notify the Beneficiary if in performing the Services the Consultant becomes aware of any proposed or actual use in the Project of any materials otherwise than in accordance with this **clause 3**.

### 4. OTHER REMEDIES

Nothing in this collateral warranty shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Consultant in the absence of this collateral warranty.

### 5. PROFESSIONAL INDEMNITY INSURANCE

- 5.1 The Consultant warrants that the Consultant has and shall maintain professional indemnity insurance in accordance with the Appointment, provided that such insurance continues to be generally available in the European Union to consultants of a discipline and standing similar to the Consultant on reasonable terms and at commercially reasonable rates. The Consultant's own claims record shall not be taken into account in determining commercially reasonable rates. Such insurance shall be maintained:
  - 5.1.1 with reputable insurers in the European Union and shall not be subject to unusual conditions and excesses to those applicable from time to time;
  - 5.1.2 from the date of commencement of the Services and for a period of 12 years from the date of Practical Completion.
- 5.2 The Consultant shall produce for inspection documentary evidence that the insurance required by this collateral warranty is properly maintained, as and when reasonably requested by the Beneficiary.
- 5.3 The Consultant shall immediately notify the Beneficiary if at any time the Consultant is unable to maintain the insurance required under this collateral warranty.

## **6. COPYRIGHT**

- 6.1 The Consultant, as beneficial owner, grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to use and to reproduce the Design Documents for any purpose in connection with the Property and/or Project including, without limitation, the execution, completion, maintenance, letting, occupation, management, sale, advertisement, alteration, extension, reinstatement and repair of the same. Such licence shall carry the right to grant sub-licences and shall be transferable to any third party.
- 6.2 The Consultant warrants that the Consultant has the capacity and authority to grant the licence set out in **clause 6.1**. The Consultant warrants that where the Consultant is not the owner of any of the Design Documents, the Consultant has secured the necessary rights to grant such licence. The Consultant warrants that the rights licensed are free from all liens, charges, options, encumbrances and adverse interests of any kind.
- 6.3 The Consultant shall not be liable for the consequences of any use of the Design Documents for any purpose other than that for which the same were prepared.
- 6.4 The Consultant shall provide copies of the Design Documents to the Beneficiary upon request, subject to payment by the Beneficiary of the Consultant's reasonable copying charges for the same.

## **7. ASSIGNMENT**

The Beneficiary may assign or charge the benefit of this collateral warranty without the Consultant's consent:

- 7.1 to any party, subject to a maximum of two assignments; and
- 7.2 without prejudice to **clause 7.1** to any funder of the Beneficiary (any such assignment, charge or transfer shall include, without limitation, any further assignment on redemption of any finance).

## **8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this collateral warranty may not enforce any terms of this collateral warranty under the Contracts (Rights of Third Parties) Act 1999.

## **9. TIME LIMITATION**

No action or proceedings for any breach of this collateral warranty shall be commenced against the Consultant after 12 years from the date of Practical Completion.

## **10. NOTICES**

- 10.1 Any notice or other communication required under this collateral warranty shall be in writing and service shall be by one of the following methods:
- 10.1.1 personally (when service shall be effective on delivery); or

- 10.1.2 by recorded delivery (when service shall be effective on delivery).
- 10.2 Addresses for service are those set out above or any other address that one party has notified to the other party using the notice procedure in **clause** 10.1.
- 10.3 A requirement that a notice or other communication to be given or made under or in connection with this collateral warranty shall be signed by the person giving or making it will be deemed to be satisfied if the notice or other communication is signed on behalf of the person giving or making it.

**11. GOVERNING LAW AND JURISDICTION**

- 11.1 This collateral warranty and any dispute or claim arising out of or in connection with this collateral warranty or the subject matter or formation of this collateral warranty (including non-contractual disputes or claims) is governed by the law of England and Wales.
- 11.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this collateral warranty or the subject matter or formation of this collateral warranty (including non-contractual disputes or claims).

**12. EXECUTION**

This collateral warranty has been executed as a deed and is delivered on the date stated at the beginning of this collateral warranty.

Executed as a deed by [AECOM], )  
 acting by two directors or a director and )  
 its secretary: ) Director's signature

.....  
 Name (in BLOCK CAPITALS)

.....  
 Director's/Secretary's signature

.....  
 Name (in BLOCK CAPITALS)

Executed as a deed by [BENEFICIARY], )  
 acting by two directors or a director and )  
 its secretary: ) Director's signature

.....  
 Name (in BLOCK CAPITALS)

.....  
 Director's/Secretary's signature

.....  
 Name (in BLOCK CAPITALS)

**Schedule 8**

Plan of Property

[To be inserted]

**Schedule 9**  
Novation Agreement

DATED \_\_\_\_\_

[EMPLOYER]

and

[AECOM]

and

[CONTRACTOR]

\_\_\_\_\_  
NOVATION AGREEMENT STRUCTURAL ENGINEER  
relating to the redevelopment of 19/21 High Holborn, London  
WC1R 5JA  
\_\_\_\_\_



N A B A R R O

125 London Wall  
London EC2Y 5AL  
Tel: +44(0)20 7524 6000

## NOVATION AGREEMENT

### DATE

### PARTIES

- (1) [EMPLOYER] (incorporated and registered in England and Wales under company registration number [                   ]), the registered office of which is at [                   ] (the "**Employer**");
- (2) [AECOM] (incorporated and registered in England and Wales under company registration number [                   ]), the registered office of which is at [                   ] (the "**Consultant**"); and
- (3) [CONTRACTOR] (incorporated and registered in England and Wales under company registration number [                   ]), the registered office of which is at [                   ] (the "**Contractor**").

### RECITALS

- (A) The Employer has appointed the Consultant to provide the Services.
- (B) The Employer has employed the Contractor for the design and construction of the Works.
- (C) The parties to this novation agreement have agreed to novate the Appointment from the Employer to Contractor.

### 1. DEFINITIONS

The following definitions apply in this novation agreement:

#### "Appointment"

means the appointment dated [                   ] between (1) the Employer and (2) the Consultant for [                   ] professional services in relation to the Project;

#### "Building Contract"

means the building contract dated [                   ] between (1) the Employer and (2) the Contractor for the design and construction of the Works;

#### "Project"

means the development to be carried out at the Property, including the design and construction of the Works;



**"Property"**

means the property known as 19/21 High Holborn, London WC1R 5JA;

**"Services"**

means the professional services described in the Appointment;

**"Works"**

means the works as defined under the Building Contract.

**2. INTERPRETATION**

- 2.1 Unless otherwise expressly stated, the rules of interpretation set out in this **clause 2** apply in this novation agreement.
- 2.2 The headings and sub-headings in this novation agreement are for ease of reference only and do not affect the meaning of this novation agreement.
- 2.3 Words in the singular include the plural and vice versa.
- 2.4 A reference to a party is to a party to this novation agreement and includes the respective successors or permitted assigns of the original parties.
- 2.5 General words do not have a restrictive meaning because they are preceded or followed by specific words indicating a particular type, class or category.
- 2.6 Any words following the terms "**include**" and "**including**" or any similar expression are illustrative and do not limit the meaning of the words preceding those terms.
- 2.7 A reference to a clause is to a clause in this novation agreement.
- 2.8 A reference to particular legislation is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time.
- 2.9 A reference to a person includes an individual, firm, partnership, company, association, organisation or trust (in each case whether or not having a separate legal personality).
- 2.10 A reference to a document in this novation agreement is to that document as amended, varied or novated from time to time as permitted by the terms of that document.
- 2.11 A requirement that a notice or other communication to be given or made under or in connection with this novation agreement shall be signed by the person giving or making it will be deemed to be satisfied if the notice or other communication is signed on behalf of the person giving or making it.

**3. NOVATION OF THE APPOINTMENT**

- 3.1 The parties to this novation agreement have agreed the following:
  - 3.1.1 the Consultant releases and discharges the Employer from any and all obligations and liabilities owed to the Consultant under the Appointment arising at any time;

- 3.1.2 the Consultant accepts the liability of the Contractor under the Appointment under **clause 3.1.3** of this novation agreement in place of the liability of the Employer;
- 3.1.3 the Contractor agrees to perform the obligations of the Employer under the Appointment and to comply with the terms of the Appointment as if the Contractor were a party and had always been a party to the Appointment as employer under the Appointment in place of the Employer; and
- 3.1.4 except as provided for in this novation agreement and/or in the deed of collateral warranty to be entered into in favour of the Employer under **clause 6.1**, the Consultant shall be released and discharged from any and all of its obligations to the Employer under the Appointment.
- 3.2 The Consultant warrants to the Contractor that at the date of this novation agreement the Consultant has performed the Services in accordance with the Appointment. The Consultant further warrants and undertakes to the Contractor to perform the Services in accordance with the Appointment and agrees to comply with the terms of the Appointment and to be liable to the Contractor for the performance of the Services.
- 3.3 The Consultant warrants to the Contractor that any and all information produced by or on behalf of the Consultant and provided at any time to the Contractor (including without limitation at any time prior to the date of this novation agreement) has been provided in the full knowledge and anticipation that the Contractor may rely upon such information in connection with the design and construction of the Project.
- 3.4 The Consultant undertakes not to contend in defence of proceedings brought by the Contractor under this novation agreement that the Consultant's liability to the Contractor is affected or diminished by reason of the Employer having suffered no loss and/or by reason of any loss claimed to have been suffered by the Contractor which would not have been suffered by the Employer following any breach or alleged breach by the Consultant. The Consultant acknowledges and agrees that the Contractor shall have the right to enforce the terms of the Appointment and pursue all claims (future or existing) whatsoever arising out of or in respect of the Appointment at any time.
- 3.5 The Consultant acknowledges receipt of payment of the sum of [ ] pounds (£[ ]) exclusive of value added tax by the Employer up to the date of this novation agreement.

#### **4. CONTINUING EFFECT OF THE APPOINTMENT**

Save as expressly provided in this novation agreement, the Appointment shall in all other respects remain in full force and effect.

#### **5. POST NOVATION**

- 5.1 The Employer and the Contractor accept that the Consultant is obliged to inform both parties of any material facts or circumstances which the Consultant reasonably believes may be adverse to the interests of either party.
- 5.2 [The Employer and the Contractor acknowledge that following the date of this novation agreement the Consultant has been or shall be appointed by the Employer in relation to post

novation services to the Employer for the Project. Both the Employer and the Contractor acknowledge that they are fully aware of the Consultant's obligations to the other party].

## **6. COLLATERAL WARRANTIES**

- 6.1 On the date of this novation agreement, the Consultant shall execute and deliver a deed of collateral warranty in favour of the Employer in the form set out in Schedule [7 Part [4]] of the Appointment.
- 6.2 The Consultant shall, within 14 days of each request made by the Employer, execute and deliver a deed or deeds of collateral warranty to the Employer in the form set out in **Schedule** [7 Part [4/5]] of the Appointment in favour of the [Funder/Purchaser/Tenant/[other]].

## **7. ASSIGNMENT**

- 7.1 The Contractor will not assign the benefit of the Appointment without the Employer's prior written approval.
- 7.2 The Consultant will not assign the benefit of the Appointment without the Employer's prior written approval.

## **8. SEVERANCE**

- 8.1 Each provision of this novation agreement is distinct and severable from the others. If at any time one or more of those provisions is or becomes invalid, unlawful or unenforceable (whether wholly or partly), the validity, lawfulness and enforceability of the remaining provisions (or the same provision to any other extent) shall not be affected or impaired in any way.
- 8.2 If any provision of this novation agreement is or becomes invalid, unlawful or unenforceable (whether wholly or partly) but the provision would be valid, lawful or enforceable if deleted in part or reduced in application, then the provision shall apply with the minimum deletion or modification necessary to make the provision valid, lawful, enforceable.
- 8.3 The parties may agree to amend this novation agreement in order to ensure the terms of this novation agreement are valid, lawful and enforceable.

## **9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this novation agreement may not enforce any terms of this novation agreement under the Contracts (Rights of Third Parties) Act 1999.

## **10. NOTICES**

- 10.1 Any notice or other communication required under this novation agreement shall be in writing and service shall be by one of the following methods:
  - 10.1.1 personally (when service shall be effective on delivery); or

10.1.2 by recorded delivery (when service shall be effective on delivery).

10.2 Addresses for service are those set out above or any other address that one party has notified to the other party using the notice procedure in **clause** 10.1.

**11. GOVERNING LAW AND JURISDICTION**

11.1 This novation agreement and any dispute or claim arising out of or in connection with this novation agreement or the subject matter or formation of this novation agreement (including non-contractual disputes or claims) is governed by the law of England and Wales.

11.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this novation agreement or the subject matter or formation of this novation agreement (including non-contractual disputes or claims).

**12. EXECUTION**

This novation agreement has been executed as a deed and is delivered on the date stated at the beginning of this novation agreement.

Executed as a deed by [EMPLOYER], )  
acting by two directors or a director and )  
its secretary: ) .....  
Director's signature  
.....  
Name (in BLOCK CAPITALS)  
.....  
Director's/Secretary's signature  
.....  
Name (in BLOCK CAPITALS)

Executed as a deed by [AECOM], )  
acting by two directors or a director and )  
its secretary: ) .....  
Director's signature  
.....  
Name (in BLOCK CAPITALS)  
.....  
Director's/Secretary's signature  
.....  
Name (in BLOCK CAPITALS)

Executed as a deed by [CONTRACTOR],  
acting by two directors or a director and  
its secretary:

)  
)  
)

.....  
Director's signature

.....  
Name (in BLOCK CAPITALS)

.....  
Director's/Secretary's signature

.....  
Name (in BLOCK CAPITALS)

