



Our Ref: Castlewood/Planning/22.08.2019/001
Date: 22nd August 2019

Chloe Staddon
Gerald Eve LLP
72 Welbeck Street
London
W1G 0AY

Dear Chloe

**Royal London - Castlewood House & Medius House Development
Discharge of Condition 45**

We are writing to confirm the appointment of Davies Maguire as Civil and Structural Engineers on the above development.

Their appointment covers demolition activities, together with the design of permanent works, both super and substructure. Davies Maguire will be involved throughout the structural works and will also be reviewing the contractor's temporary works design and method statements including support for the retained façade of Medius House. They will also be periodically reviewing the works on site, and the results of the spatial monitoring which will be taking place.

For ease of reference, we have also included copies of Davies Maguire's engineers CV's responsible for the project which detail relevant experience on similar projects of this scale/nature.

A copy of the appointment together with scope of services is also included for review.

We trust that this is acceptable and meets your approval to satisfy condition 45, however should you wish to discuss, please do not hesitate to contact us.

Yours Sincerely


Mark Carroll
Development Project Manager
ROYAL LONDON ASSET MANAGEMENT

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Mobile: 07803 259 679
Email: mark.carroll@rlam.co.uk

Cc: Kathryn Ware – CBRE
Enc: DMAG CV x 2
DMAG Draft Form of Appointment

ASSET MANAGEMENT
55 Gracechurch Street, London EC3V 0RL
rlam.co.uk

DATED _____ **20**

**RLUKREF NOMINEES (UK) ONE LIMITED AND RLUKREF
NOMINEES (UK) TWO LIMITED IN THEIR CAPACITY AS BARE
TRUSTEES FOR AND ON BEHALF OF HSBC BANK PLC ACTING
IN ITS CAPACITY AS DEPOSITARY FOR THE ROYAL LONDON UK
REAL ESTATE FUND (1)**

and

DAVIES MAGUIRE LIMITED (2)

APPOINTMENT OF CONSULTANT
relating to a Development at
Medius House, New Oxford Street, London

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THIS AGREEMENT is made on

BETWEEN

(1) THE CLIENT

(2) THE CONSULTANT

WHEREAS:

(A) The Client proposes to procure the construction and completion of the Development at the Site

(B) The Client wishes to appoint the Consultant in connection with the Development

1 DEFINITIONS AND INTERPRETATION

1.1 In this Appointment the following terms shall have the following meanings:

"Additional Services" means the services duties and responsibilities (if any) referred to in clause 4 to be performed or discharged by the Consultant.

"Appointment" means this appointment and appendices and any addition or amendment hereto.

"Basic Fee" means the fee set out in Appendix 5 for the carrying out of the Basic Services.

"Basic Services" means the services set out in Appendix 1 and all such other services reasonably required by the Client which are reasonably incidental thereto.

"Building Contract" means the contract detailed in Appendix 2 (or if no contract is detailed in Appendix 2, the contract to be entered into by the Contractor and the Client after the date of this Appointment) for the construction and completion of building works (more particularly described in the Building Contract) in connection with the Development.

"CDM Regulations" means the Construction (Design and Management) Regulations 2015 and any other regulations amending supplementing or replacing the same.

"Client" means the client named in Appendix 2 which expression shall include its successors in title and permitted assigns and any party to whom this Appointment is novated.

"Consultant" means the consultant named in Appendix 2 which expression shall include its successors in title/partnership and permitted assigns.

"Contractor" means the contractor under the Building Contract (and named in Appendix 2 if the Building Contract was entered into on or before the date of this Appointment).

"Consultant's Discipline" means the discipline detailed in Appendix 2

"a Contractor" means the Contractor and any other contractor appointed by the Client to execute all or any part of the Development.

"Development" means the development detailed in Appendix 2.

"Documents" means all technical information drawings models bills of quantities specifications schedules details plans calculations or other materials provided or to be provided by the Consultant in respect of the Development and all amendments and additions thereto (whether in existence or yet to be made) and any works designs or inventions of the Consultant incorporated or referred to therein.

"Professional Team" means those consultants other than the Consultant appointed to perform services in relation to the Development including (but not limited to) those consultants set out in Appendix 2.

"Services" means the Basic Services and the Additional Services.

"the Scheme" means Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 (No. 649).

"Site" means the site detailed in Appendix 2.

"Sub-Contractor" means any person or body appointed by a Contractor to carry out works in relation to the Development.

"Third Party" means any party funding or providing finance for the Development and/or any party who is acquiring or has acquired an interest or involvement in the whole or any part of the Development.

"Third Party Agreements" means any agreement now or hereafter made between the Client and a Third Party which relates to the Development including (but without prejudice to the generality of the foregoing) any building contract development agreement or lease or sale or funding agreement.

1.2 In this Appointment unless otherwise specified:-

- (a) references to a "person" shall be construed so as to include any individual, firm, company, corporation or other body corporate, government, state or agency of a state, joint venture, association or partnership (whether or not having separate legal personality);
- (b) a reference to a statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (c) headings of clauses and sub-clauses are for convenience only and do not affect the interpretation of this Appointment;
- (d) words imparting the singular shall include the plural and vice versa and words imparting a gender include every gender;

- (e) the words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

2 APPOINTMENT

- 2.1 The Client hereby appoints the Consultant and the Consultant hereby agrees to act in the capacity of the Consultant's Discipline and to provide the Services in connection with the Development upon the terms and conditions of this Appointment.
- 2.2 Any services performed prior to the date of this Appointment by the Consultant for the Client in connection with the Development shall be treated as having been performed under the terms of this Appointment which shall supersede any previous agreement between the parties with regard to the Development.

3 BASIC SERVICES

- 3.1 The Consultant shall provide perform and discharge the Basic Services.
- 3.2 The Consultant shall comply with all reasonable instructions of the Client given in writing under or in connection with this Appointment.
- 3.3 The Consultant shall comply with the Client's Sustainability Policy and Sustainable Strategy (copies of which are available on request) as the Client may update from time to time.

4 ADDITIONAL SERVICES

- 4.1 In addition to the Basic Services the Consultant shall perform provide and discharge in relation to the Development such other services as the Client shall reasonably require.

5 DUTY OF CARE

- 5.1 The Consultant warrants to and undertakes with the Client that it has exercised, and will continue to exercise, in the performance and discharge of the Services, all the reasonable skill care and diligence to be expected of a properly qualified skilled knowledgeable and competent consultant of the Consultant's Discipline experienced in the provision of like services to the Services for projects of an equivalent type, size, scope and complexity to the Development and that it has the appropriate level of resources and organisational capability to comply with its duties to include but not limited to duties under the CDM Regulations.
- 5.2 In performing the Services the Consultant shall:
 - (a) carry out the Services promptly and diligently and in accordance with the programmes from time to time issued by or on behalf of the Client after consultation with the Consultant;
 - (b) provide where the same is consistent with the Services hereunder all advice, consents, designs, comments, approvals, instructions and certificates required from the Consultant promptly and in good time so as not to delay or disrupt the

performance of any member of the Professional Team any Contractor or any specialist sub-contractor or the regular progress of the Development as a whole;

- (c) comply with any Act of Parliament, any instrument, rule, order, consent or permission made under any Act of Parliament and any relevant regulation or bye-law of any local authority or of any statutory undertaker or of any public or private utility or undertaking which has any jurisdiction with regard to the Development or with whose systems or property the Development is or will be connected;
- (d) allocate and at all times maintain adequate resources to enable the Consultant to comply with this Appointment.

5.3 No enquiry, inspection, approval, sanction, comment, consent or decision at any time made or given by or on behalf of the Client shall operate to exclude or limit the Consultant's liability under this Appointment.

6 INVESTIGATIONS AND OTHER WORKS

6.1 The Consultant warrants that where:

- (a) copies of any reports and/or findings produced as a result of any investigations carried out in respect of the Development; and/or
- (b) details of any preliminary works carried out in respect of the Development;

have been given to the Consultant the Consultant will have full regard to such reports, findings and preliminary works when carrying out the Services.

7 COST EFFECTIVENESS

7.1 Without prejudice to its other obligations under this Appointment in relation to the structural and civil engineering design, the Consultant shall exercise the degree of skill, care and diligence required by clause 5.1 to specify for the Development such materials and such methods of design and construction with the intent that the construction of the Development and the maintenance and/or repair of the completed Development is as cost effective as is reasonably possible for a development of the type, size, scope and complexity of the Development.

8 STATUTORY APPROVALS AND THE CDM REGULATIONS

8.1 The Consultant using the reasonable skill care and diligence required by clause 5.1 shall perform the Services in such a manner as to ensure that the Development is designed and constructed in full accordance with the terms of all relevant planning consents building regulations and any and all other relevant statutory and regulatory approvals and requirements.

8.2 The Consultant warrants to the Client that it is fully aware of the provisions of the CDM Regulations and that it possesses the requisite degree of competence, knowledge, skill, qualification, experience, organisational capability and level of resources to meet (and shall meet) the requirements of the CDM Regulations and shall at all times use

reasonable endeavours to ensure that the Client does not breach its obligations under the CDM Regulations.

- 8.3 The Consultant in conjunction with the Professional Team shall co-operate and assist the Principal Designer and the Principal Contractor (as defined under the CDM Regulations) in the preparation of the construction phase plan and the health and safety file both to be prepared pursuant to the CDM Regulations).

9 PROSCRIBED MATERIALS

- 9.1 The Consultant warrants to and undertakes with the Client that, unless authorised by the Client in writing, or, where such authorisation is given orally, confirmed by the Consultant to the Client in writing, it has not and will not specify for use in the Development any products or materials which:

- (a) at the time of specification do not conform with British Standards or Codes of Practice or good building practice; or
- (b) at the time of specification are generally known to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or to the durability of buildings or structures.

- 9.2 The Consultant further warrants to and undertakes with the Client that in carrying out the Services it will exercise the degree of skill care and diligence required by clause 5.1 to see that none of the products or materials referred to in clause 9.1 are specified for use or used in the construction of the Development (provided that this clause 9.2 shall not impose any duty on the Consultant to inspect the Development over and above any such duty contained elsewhere in this Appointment).

10 WARRANTIES

- 10.1 The Consultant shall at the Client's written request and upon receipt of the necessary engrossment or engrossments enter into and execute collateral warranties in favour of a Third Party in the relevant form set out in Appendix 3 (but without prejudice to the beneficiary of the warranty being able to make reasonable changes thereto which do not result in the warranty being more onerous for the Consultant) **PROVIDED THAT** where such warranty or warranties has not or have not been provided within 14 days of receipt of the necessary engrossment or engrossments the Client may, notwithstanding any other provisions of this Appointment, withhold any payment due to the Consultant under this Appointment until such time as the warranties requested have been satisfactorily executed and delivered to the Client or its nominated representative.

- 10.2 The Consultant shall at the Client's written request and upon receipt of the necessary engrossment or engrossments procure collateral warranties from any sub-consultant appointed by the Consultant in connection with the carrying out and completion of any part or parts of the Services for the Client's benefit and/or the benefit of a Third Party in the same form (mutatis mutandis) as the relevant form set out in Appendix 3 (but without prejudice to the beneficiary of the warranty being able to make reasonable changes thereto which do not result in the warranty being more onerous for the sub-consultant) **PROVIDED THAT** where such warranty or warranties has not or have not been provided within 14 days of receipt of the necessary engrossment or engrossments the Client may,

notwithstanding any other provision of this Appointment, withhold payment in respect of that part or those parts of the Services to which the warranty/warranties relate(s) until such time as the requested warranty or warranties has been or have been satisfactorily executed and delivered to the Client or its nominated representative.

11 PROFESSIONAL INDEMNITY INSURANCE

- 11.1 The Consultant warrants to the Client that it has, or will take out, and will maintain for a period expiring no earlier than twelve years from the date of practical completion of the Development with reputable insurers carrying on business in the United Kingdom professional indemnity insurance with a limit of indemnity of not less than the level, and for the extent and nature of cover, set out in Appendix 2 **PROVIDED ALWAYS** that such insurance is generally available in the market to the Consultant's profession at commercially reasonable rates.
- 11.2 The Consultant shall when required so to do supply to the Client satisfactory documentary evidence of such insurance and shall immediately inform the Client if the Consultant fails to renew such insurance or fails to renew such insurance at the level required by Clause 11.1.

12 ASSIGNMENT/NOVATION

- 12.1 The Client may assign, charge or otherwise transfer all or any of its rights and/or benefits arising under this Appointment to a Third Party on two occasions only without the Consultant's consent. Further assignments are permitted with the Consultant's consent, such consent not to be unreasonably withheld or delayed.
- 12.2 The Client may novate this Appointment to a party who shall accept responsibility for the payments becoming due to the Consultant hereunder and the Consultant shall accept the instructions of the party to whom this Appointment is novated to the exclusion of the Client and shall continue to perform and discharge the Services and shall at the Client's written request and upon receipt of the engrossment or engrossments enter into and execute:
- (a) a deed of novation in the form set out in Appendix 4;
 - (b) a collateral warranty in favour of the Client in the same form as those set out in Appendix 3 (*mutatis mutandis*).
- 12.3 The Consultant shall not assign charge or otherwise transfer all or any of its rights and/or benefits arising under this Appointment without the prior written consent of the Client.
- 12.4 The Consultant shall not nominate any specialist contractors, sub-contractors or suppliers or sub-let the whole or any part of the Services without the prior written consent of the Client.

13 COPYRIGHT AND CONFIDENTIALITY

- 13.1 All design rights and copyright in the Documents shall remain vested in the Consultant but the Consultant hereby grants to the Client an irrevocable non-exclusive and royalty-free licence to use, reproduce and modify the Documents for all purposes relating to the

Development including (without limitation) the construction completion reconstruction modification alteration maintenance reinstatement repair use letting sale promotion and advertisement thereof. Such licence shall include a licence to use the Documents for the extension of the Development but such use shall not include a licence to reproduce the designs contained in the Documents for the extension of the Development. The licence shall include the right without the consent of the Consultant to assign the licence or grant a sub-licence to any person whatsoever provided that the Consultant shall not be liable for any such use by the Client or any assignee or licensee for any purposes other than that for which the same were provided by the Consultant.

- 13.2 Without prejudice to any of its obligations under this Appointment the Consultant shall upon the written request of the Client (but subject to reimbursement of the Consultant's reasonable photocopying charges) provide to the Client copies of the Documents and such other information in relation to the Development as the Consultant can reasonably supply.
- 13.3 All of the Documents and other materials relating to the Development whether produced by the Consultant or not shall be treated with confidentiality save where the Consultant has obtained the express written consent of the Client to pass such information to a third party.
- 13.4 The Consultant will not without the Client's prior written approval take or permit to be taken any photographs of the Development for use in any publicity or advertising or publish alone or in conjunction with any other person any articles photographs or other illustrations relating to the Development nor impart to any publication journal or newspaper or any radio or television programme any information regarding the Development.
- 13.5 The Consultant will keep confidential and not disclose to any person or use any confidential information or any technical operational administrative business information relating to the Client, the Development or otherwise without the Client's prior written authority. This restriction shall continue to apply after the termination of this Appointment.

14 TERMINATION/SUSPENSION

- 14.1 The Client may terminate the Consultant's employment under this Appointment by giving 14 days' written notice to the Consultant.
- 14.2 If the Consultant breaches its obligations under this Appointment the Client may terminate the Consultant's Appointment forthwith by giving written notice to the Consultant.
- 14.3 If the Consultant
 - (a) commits an act of bankruptcy or has a receiving or administrative order made against it and/or
 - (b) goes into liquidation, and/or
 - (c) becomes insolvent, and/or
 - (d) makes any arrangement with its creditors, and/or

- (e) ceases or threatens to cease to carry on business

the Client may suspend or terminate the Appointment by giving written notice to the Consultant.

- 14.4 The Client shall be entitled at any time by giving 7 days' written notice to the Consultant to suspend all or any part or parts of the Services.
- 14.5 In the event of a suspension in accordance with the provisions of clause 14.4 for a period exceeding 12 months the Consultant may request in writing that the suspended Services be resumed and unless written instructions to resume are given by the Client within 28 days of the Consultant's request the Consultant's employment in respect of the suspended Services shall be deemed to have been terminated upon the expiry of the said period of 28 days.
- 14.6 Any termination deemed termination or suspension of the Consultant's employment under this Appointment shall not determine the operation of clauses 10, 11 and 13 above which shall continue to apply but only insofar as they relate to duties falling due for performance prior to the date of termination/suspension.
- 14.7 In the event of the failure of the Client to make any payment properly due to the Consultant under the provisions of this Appointment the Consultant may give the Client 30 day's notice of its intention to determine its employment under this Appointment setting out full details of the sums which it considers are due to it ("**the Unpaid Fees**"). If the Unpaid Fees are not paid to the Consultant by the expiry of the 30 day notice period the Consultant may forthwith on the expiry of such notice period by notice in writing to the Client determine its employment under this Appointment. For the avoidance of doubt the Consultant confirms that it will not be entitled to determine its employment under this Appointment for the non-payment of its fees if the Client has issued a Pay Less Notice in accordance with the provisions of clause 16.6 and/or if there is bona fide dispute as to whether or not the Unpaid Fees are payable and/or it has failed to give notice of its intention to do so to the Client.
- 14.8 Termination of the Consultant's employment howsoever arising shall be without prejudice to the rights or remedies of either party in relation to any negligence omission or default of the other prior to such termination.
- 14.9 Upon any termination of the Consultant's employment under this Appointment the Consultant shall deliver to the Client copies of all of the Documents (whether in the course of preparation or completed).

15 CO-OPERATION AND AUTHORITY

- 15.1 The Consultant shall not make any alteration to or omission from the design of the Development unless approved by the Client in writing nor except in an emergency, issue any instruction or give any approval or do any other thing which would or may materially increase the cost of the Development or affect the programme for the Development without first referring the matter to the Client with comments and obtaining the Client's prior written approval thereto.

15.2 The Consultant has no authority to consent or agree to any waiver or release of any obligation of any Contractor Sub-Contractor or any of the Professional Team without prior written approval of the Client.

16 REMUNERATION

16.1 The remuneration payable to the Consultant in respect of the performance of the Basic Services shall be the Basic Fee which shall be paid in instalments in accordance with the payment profile set out in Appendix 5 ("**the Payment Profile**") and the provisions of this clause 16.

16.2 The Basic Fee shall be inclusive of all expenses and disbursements the cost of professional indemnity insurance all travelling and subsistence and the preparation of all documents reasonably required by the Client from time to time for any purpose connected with the Development.

16.3 The Consultant must submit an application for each payment instalment (accompanied by a valid VAT invoice and such details as the Client may reasonably require) on or after the date for submission in accordance with the Payment Profile set out in Appendix 5 and the due date for payment ("**the Due Date for Payment**") of a payment instalment shall be the date of receipt by the Client of a valid application for payment to which the payment instalment relates. The Client shall (subject to the provisions of clauses 16.4 to 16.8) pay each payment instalment which has become due for payment by the relevant final date for payment specified in the Payment Profile ("**the Final Date for Payment**").

16.4 The Client shall, not later than 5 days after the Due Date for Payment give notice ("**a Payment Notice**") to the Consultant specifying the sum that the Client considers to be or to have been due at the payment due date in respect of that payment and the basis on which that sum is calculated. Subject to any Pay Less Notice given by the Client under clause 16.6 the amount of the payment instalment to be made by the Client on or before the Final Date for Payment shall be the sum stated as due in the Payment Notice.

16.5 If a notice is not given in accordance with clause 16.4 then the amount of the relevant payment instalment shall, subject to any notice given under clause 16.6, be the sum stated as due in the application for that payment instalment.

16.6 If the Client intends to pay less than the sum stated as due under a Payment Notice (or an application for a payment instalment if no Payment Notice has been given) then the Client must, not later than 1 day before the Final Date for Payment, give notice to the Consultant ("**a Pay Less Notice**") to that effect which notice must specify:

(a) the sum that the Client considers to be due on the date that the notice is served;
and

(b) the basis on which that sum is calculated.

16.7 In relation to giving notices under this clause 16 it is immaterial that the amount then considered to be due may be zero.

- 16.8 A Payment Notice or a Pay Less Notice to be given by the Client may be given on his behalf by the Employer's Agent or by any other person who the Client notifies the Consultant as being authorised to do so.

17 REMUNERATION FOR ADDITIONAL SERVICES

- 17.1 The Consultant shall be entitled to a fair and reasonable fee ("**the Additional Fee**") in respect of any Additional Services which it may perform.
- 17.2 Any such Additional Fee and the payment profile for such fee shall be agreed in writing between the Client and the Consultant prior to the Consultant undertaking the relevant Additional Services and shall be paid in accordance with that profile and the provisions of clauses 16.3 - 16.6 (mutatis mutandis).
- 17.3 The Consultant shall maintain records of the time spent and the nature of the work involved in providing the Additional Services which records will be made available to the Client on reasonable request.
- 17.4 No fees for Additional Services will become due where and to the extent that such Additional Services arise for reasons attributable in whole or part to the Consultant's default, negligence, omission or breach of contract.

18 REMUNERATION UPON ABANDONMENT/TERMINATION/SUSPENSION

- 18.1 If for any reason the Client does not proceed with or abandons or curtails the Development or if the employment of the Consultant under this Appointment is terminated or suspended (or is deemed to have been terminated under the provisions of clause 14.5) before the Consultant becomes entitled to be paid the full fee herein provided for then in addition to fees and disbursements payable under any other provision of this Appointment the Consultant shall be paid a fair and reasonable amount in respect of the Services properly performed or costs properly incurred prior to the date of termination or suspension (or deemed termination) for which but for this clause the Consultant would not receive any payment.
- 18.2 Save as aforesaid the Consultant shall not be entitled to any compensation for the termination or suspension of the Consultant's employment under this Appointment (including (but not limited to) compensation for loss of profits, loss of contracts or other similar losses) even if the Services or any parts thereof are completed by another consultant or contractor.

19 PERSONNEL

- 19.1 The Consultant shall procure that the person named as the key person in Appendix 2 shall assume personal direction and control of the services provided by the Consultant and that he maintains direct and regular contact with the Client on all matters pertaining to the Consultant's responsibilities hereunder. In the event that he is unable to assume or continue to provide such personal direction and control the Consultant shall consult with the Client and procure that such other member of the Consultant's staff (with at least the same experience and expertise as the outgoing key person) as shall be approved by the Client (such approval not to be unreasonably withheld or delayed) shall assume such personal direction and control.

- 19.2 The Client shall be entitled to require the key person and any other persons employed by the Consultant to be replaced if in the reasonable opinion of the Client that person's performance or conduct is unsatisfactory. Such person shall be replaced with a person of at least the same experience and expertise who shall previously have been approved by the Client (such approval not to be unreasonably withheld or delayed).

20 OBLIGATIONS OF THE CLIENT

- 20.1 The Client shall supply to the Consultant, without charge and in such time so as not to delay or disrupt the performance by the Consultant of the Services, all necessary and relevant data and information in the possession of the Client.
- 20.2 The Client shall give such assistance as shall reasonably be required by the Consultant in the performance of the Services.

21 OTHER AGREEMENTS

- 21.1 The Consultant shall be supplied with copies of any Third Party Agreements (or such parts of the same as shall be relevant to the provision of the Services) and subject to the Consultant receiving copies of such Third Party Agreements (or of such parts of the same as shall be relevant) at the date hereof the Consultant shall so perform and discharge the Services so far as to comply with and so as not by any action or omission to cause or contribute towards a breach of the duties and obligations of the Client under such Third Party Agreements. If any Third Party Agreements (or relevant parts of the same) are provided to the Consultant after the date hereof the Consultant shall (subject to the Consultant having a reasonable opportunity to review such Third Party Agreements or relevant parts thereof) so perform and discharge the Services so far as to comply with and so as not by any action or omission to cause or contribute towards a breach of the duties and obligations of the Client under such Third Party Agreements.

22 CONFLICTS OF INTEREST

- 22.1 The Consultant shall use all reasonable endeavours to avoid any conflict of interest detrimental to the Development. If such conflict of interest shall arise the Consultant shall immediately notify the Client thereof.

23 NOTICES

- 23.1 Any notice provided for in this Appointment shall be duly given if delivered by hand or sent by pre-paid first class special delivery or recorded delivery to the party named therein at the address of such party named in Appendix 2 in this Appointment or at such other address as such party may specify from time to time by written notice to the other party and if sent by pre-paid first class special delivery or recorded delivery shall be deemed to have been received on the second working day after the date of posting.

24 ADJUDICATION

- 24.1 The provisions of the Scheme shall apply to this Appointment. The Adjudicator shall be required to give reasons for his decisions which shall be in writing.

- 24.2 The specified nominating body named in Appendix 2 shall be the body responsible for selecting a person to act as an adjudicator.

25 LITIGATION

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

- 25.2 The Courts shall, without prejudice to the generality of their powers, have power to direct such measurements and/or valuations as may, in their opinion, be desirable in order to determine the rights of the parties and to ascertain and award any such sum which ought to have been the subject of or included in any certificate or payment and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to it in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

26 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 26.1 Notwithstanding any other provision of this Appointment nothing in this Appointment confers or purports to confer any right to enforce any of its terms on any person who is not a party to it where that right would not exist but for the Contracts (Rights of Third Parties) Act 1999.

27 INTEREST ON LATE PAYMENT

- 27.1 Without prejudice to any other right or remedy of the Consultant, if the Client fails to make any payment properly due under this Appointment by the final date for payment in the absence of a Pay Less Notice then the Consultant may charge the Client, and the Client shall pay the Consultant on demand, interest on the unpaid amount at the rate of five percent [(5%)] per annum above the then current base rate of the Bank of England from the final date for payment until payment is received in full by the Consultant.

28 BRIBERY ACT 2010

- 28.1 The Consultant shall:
- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) comply with the Client's Ethics, Anti-bribery and Anti-corruption Policies (copies of which are available on request) as the Client may update from time to time (**Relevant Policies**);

- (d) have and shall maintain in place throughout the term of this Appointment its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 28.1(b), and will enforce them where appropriate;
- (e) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this Appointment;
- (f) immediately notify the Client (in writing) if a foreign public official becomes an officer or employee of the Consultant or acquires a direct or indirect interest in the Consultant (and the Consultant warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Appointment);
- (g) on the date of this Appointment, and annually thereafter, certify to the Client in writing signed by an officer of the Consultant, compliance with this clause 28 by the Consultant and all persons associated with it under clause 28.2. The Consultant shall provide such supporting evidence of compliance as the Client may reasonably request.

28.2 The Consultant shall ensure that any person associated with the Consultant who is performing services in connection with this Appointment does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consultant in this clause 28 (**Relevant Terms**). The Consultant shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Client for any breach by such persons of any of the Relevant Terms.

28.3 For the purpose of this clause 28, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 28 a person associated with the Consultant includes but is not limited to any subcontractor or sub-consultant of the Consultant.

29 LIMITATION

29.1 No action or proceedings for any breach of this Appointment shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Works.

30 LIABILITIES

RLUKREF Nominees (UK) One Limited (company registration number 10840928) and **RLUKREF Nominees (UK) Two Limited** (company registration number 10840992) both of whose registered office is at 8 Canada Square, London E14 5HQ in their capacity as bare trustees for and on behalf of HSBC Bank plc acting in its capacity as depositary for The Royal London UK Real Estate Fund.

"Depositary"

HSBC Bank PLC (company number 00014259) whose registered office is at 8 Canada Square, London E14

5HQ

"Fund"

means Royal London UK Real Estate Fund as registered with the Financial Conduct Authority on 3 February 2017

"Nominees"

RLUKREF Nominees (UK) One Limited and RLUKREF Nominees (UK) Two Limited

- 30.1 It is hereby agreed and declared that notwithstanding anything to the contrary contained or implied in this Appointment that the Nominees are entering into this Appointment in their capacity as nominees for and on behalf of the Depositary acting as depositary of the Fund and as such any liability on their part pursuant to this Appointment is limited to assets held by them in the Fund for the time being as nominees for and on behalf of the Depositary acting as depositary of the Fund.
- 30.2 The liabilities of the Depositary in respect of the obligations incurred by it under or in consequence of this Appointment shall be limited to such liabilities as can and may lawfully and properly be met out of the net assets of the Fund for the time being in the hands of the Depositary as depositary of the Fund.
- 30.3 The Depositary shall be released from liability under this Appointment if it ceases to be the depositary of the Fund and on such date as its successor as such depositary of the Fund has entered into a direct covenant with the Consultant to comply with the Depositary's obligations under this Appointment.

IN WITNESS whereof this deed has been executed by or on behalf of the parties and delivered the day and year first above written.

APPENDIX 1

BASIC SERVICES

STRUCTURAL ENGINEER (NOVATED)

Basic Services

1 GENERALLY

- 1.1 The following services shall be applicable to all work stages, as the circumstances shall require:
 - 1.1.1 In so far as relevant comply with the CDM Regulations 2015 and co-ordinate with the Principal Designer and Principal Contractor.
 - 1.1.2 Have regard at all times to the Client's cost plan or budgetary requirements for the Development.
 - 1.1.3 Attend design team meetings and project or progress meetings whenever reasonably necessary.
 - 1.1.4 Produce such drawings, computer models and information as the Client may reasonably request, for use in brochures or for similar purposes in connection with planning applications, the funding, letting or sale of the Development, and if requested, attend meetings held and co-operate generally in connection with such matters.
 - 1.1.5 Attend meetings and liaise with prospective tenants of the Development to obtain all information as to their specific requirements which may have a bearing on designs, and disseminate this information as necessary to the Client and other members of the Professional Team; if so instructed, incorporate tenants' requirements into the civil and structural engineering design; inform the Client/Contractor forthwith of any delay on the part of prospective tenants in producing such information.
 - 1.1.6 Assist in the preparation of a technical pack for marketing purposes.
 - 1.1.7 Liaise with the Contractor, Client, Employer's Agent and the Professional Team in respect of the approval of all proposals for works to be carried out by any Third Party and the integration and co-ordination of the same as necessary within the Development. Monitor the progress of such works.
 - 1.1.8 Advise with regard to any Third Party's requirements which may impact upon the construction of the Development particularly any late requirements or alterations as a result of a Third Party changing its requirements or a new Third Party being found after works have commenced.
 - 1.1.9 Take steps to see that the net lettable areas set out in the approved detailed proposals are achieved and are not compromised by subsequent design changes or detailing.
 - 1.1.10 Provide services in connection with any necessary demolition and enabling works
 - 1.1.11 Design and detail the surface and foul water drainage systems externally to and including their connection with the publicly maintained services and below the upper surface of the ground floor or basement slab.
 - 1.1.12 Prepare structural specifications for any roads and parking areas and other hardstandings included in the Development.
 - 1.1.13 If requested, prepare special drawings for planning or legal purposes.

- 1.1.14 Review and comment on designs and specifications provided by the other consultants and specialist sub-contractors and suppliers.
- 1.1.15 Contribute to risk management. Develop proposals for risk mitigation. With the Professional Team assess impact on the Development.
- 1.1.16 Contribute to value management process. Develop proposals for value management. With Professional Team assess impact on the Development.
- 1.1.17 Advise as to the pre-purchase of any materials or products which may be subject to long delivery periods.
- 1.1.18 Liaise with and provide all information to and make and pursue all necessary applications to the public and regulatory authorities having jurisdiction with regard to the civil and structural elements of the Development. Ascertain their requirements and incorporate those requirements in the design of the Development.
- 1.1.19 Advise the Client regarding any actual, proposed or possible changes in legislation (including any regulations) that may affect the Development.
- 1.1.20 Comply with the requirements of the "Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation" (current edition) as published by the Construction Confederation and the Fire Protection Association.
- 1.1.21 Provide assistance reasonably required by the Client in procuring footpath diversions, diversion of services, wayleaves and similar matters.
- 1.1.22 Provide any assistance or information or design data reasonably required to assist the Client in obtaining quotations for and cover for inherent defects insurance or similar insurance in respect of the Development, or required by the insurer's technical audit consultants; take appropriate action to reflect their comments and requirements.
- 1.1.23 Assist with coordinating and integrating the design work of other appointed consultants and specialists during work stages 0-7 (inclusive).
- 1.1.24 Liaise as necessary with the Client, Contractor and other members of the Professional Team
- 1.1.25 Regularly and diligently carry out and complete the performance of all obligations hereunder with due regard to all applicable programmes from time to time approved by the Client/Contractor so as not to cause delay or disruption.
- 1.1.26 Provide all advice, information, reports, documents, consents, comments, approvals and recommendations reasonably required from the Consultant in connection with the Development promptly, efficiently and in good time so not as to delay or disrupt the progress of the Development.
- 1.1.27 In association with the Employer's Agent and Professional Team procure all consents which may be required at the appropriate time in order that the Development proceeds lawfully and that as far as practicable there is no delay in the programme for the Development
- 1.1.28 In conjunction with the Professional Team advise on the need for quality assurance schemes, defects insurance and product guarantees.
- 1.1.29 Ensure the design produced by the Consultant complies with the Client's Sustainability Policy and Sustainability Strategy.
- 1.1.30 When reasonably requested to do so attend meetings with the Contractor and any Third Party or the Client in connection with the Development

- 1.1.31 Perform all other services as reasonably required to enable other members of the Professional Team to carry out their duties under their respective appointments connected with the Development
- 1.1.32 Advise the Client/Contractor on the need for any member of the Professional Team to perform any additional services.
- 1.1.33 Provide all necessary or suitable assistance and advice (or such assistance and advice as the Contractor or Client may reasonably require) in resolving any questions, difficulties and uncertainty or disputes (including any difference or dispute referred to adjudication) that may from time to time arise in connection with the Development.
- 1.1.34 Assist the Employer's Agent in the preparation and update of programmes for the Development advising the Employer's Agent of any changes required to the programmes or any events which are likely to cause a delay in the progress of the Development.
- 1.1.35 Assist the Employer's Agent in the preparation and maintenance of cost plans, cash flow forecasts and development budgets and advise the Employer's Agent on any changes required thereto.
- 1.1.36 At relevant stages throughout the construction process, arrange and provide samples or proposed materials and fittings.
- 1.1.37 Liaise and agree appropriate change management procedures with the Professional Team. Work within the agreed change management procedures.
- 1.1.38 Provide a monthly report to the Client on the status of the Services.
- 1.1.39 Provide all other services of a civil and structural engineering nature incidental to the foregoing provisions of this Appendix 1, as the Client/Contractor may reasonably require.

2 BRIEF

2.1 STAGE 0: STRATEGIC DEFINITION

- 2.1.1 Receive the Client's instructions and information about the Project.
- 2.1.2 Assist the Client and other members of the design team in defining the Client's strategic requirements and the preparation of the Strategic Brief.
- 2.1.3 Provide information for a report on the Project Budget.
- 2.1.4 Comment on alternative project team options.
- 2.1.5 Contribute to the Project Programme and assembling the project team.

3 FEASIBILITY

3.1 STAGE 1: PREPARATION & BRIEF

Generally:

- 3.1.1 Visit the Site and carrying out an initial appraisal.
- 3.1.2 Assist development of the Initial Project Brief including consideration of Project Objectives, Quality Objectives, Project Outcomes, Sustainability Aspirations, Project Budget and other parameters or constraints. Undertaking Feasibility Studies and review of Site Information.
- 3.1.3 Undertake development of Handover Strategy and Risk Assessments.

- 3.1.4 Assist assembly of project team including contributions to the Design Responsibility Matrix, Information Exchanges and the Project Execution Plan.
- 3.1.5 Discuss the Client's requirements including programme and budget; assess these and give general advice on how to proceed. Discuss with the Client the role of the Consultant and his relationship with the Professional Team and Contractor. Discuss with the Client the likely requirements for site staff (these shall be considered again prior to and following the appointment of Contractors).
- 3.1.6 Obtain from the Client and/or statutory undertakers information on ownership and any lessees of the Site, any existing buildings on the Site, boundary fences and other enclosures, and any known easements, encroachments, underground services, culverts, tunnels, rights of way, rights of support and other relevant matters.
- 3.1.7 Obtain information as to the status of the Site and its locality under the Planning Acts.
- 3.1.8 Advise on the approvals under Building Acts and/or any other consents under relevant regulations and other statutory requirements. Carry out any necessary initial discussions with the planning authorities, building control authority, fire authority, environmental authority and any other relevant authorities/bodies.
- 3.1.9 Visit the Site and carry out an initial appraisal. Outline the effects of limitations of the Site caused by the topography and any reasonably identifiable previous uses of the Site and the presence or possible presence of contaminants as a result of such uses. Comment on any physical restrictions which may affect the engineering options for the Development.
- 3.1.10 Advise on the need for other consultant's services and on the scope of those services.
- 3.1.11 Advise on the need for specialist sub-contractors and suppliers for the design and execution of the work and any special requirements for the Development.
- 3.1.12 Prepare a desk study of the Site. Carry out such initial studies/surveys as may be necessary to determine the feasibility of the Client's requirements. If necessary, and with the Client's approval, bring forward from work stage 2 a full site investigation. Prepare in outline for discussion with the Client alternative concepts and layouts. Advise as to alternative construction approaches and cost implications.
- 3.1.13 In conjunction with the Professional Team co-operate with and assist the cost consultant in the preparation of a budget for the Development.
- 3.1.14 The Consultant is to gather the information they require in order to carry out the Services. If such information is not reasonably available the Consultant shall notify the Client as soon as possible.
- 3.1.15 Advise the Client and the Architect on the need for arrangements to be made for the carrying out of geotechnical investigations of the Site. When authorised by and on behalf of the Client, appoint and manage appropriate persons or firms to carry out investigations under the Consultant's direction, on terms to be agreed by the Client and consider and take into account the results of the investigations and report to and advise the Client and the Architect on them.
- 3.1.16 Advise the Client and the Architect on the need for arrangements to be made for carrying out surveys to obtain details of construction in existence on or adjacent to the Site, special investigations or model tests. When authorised by and on behalf of the Client, appoint and manage appropriate persons or firms to carry out surveys, investigations or tests under the Consultant's direction, on terms to be agreed by the Client and consider and take into account the results of them and report to and advise the Client and the Architect on them in order to confirm the structural design of the existing structures which will or may be incorporated into the design including the basement structures and foundations

- 3.1.17 Undertake studies into alternative structural design and construction approaches and the cost, buildability and programme implications of them.

Strategic Brief

- 3.1.18 In conjunction with the Professional Team assist the Employer's Agent/ Project manager to prepare a strategic brief ("Strategic Brief") setting out the Client's key requirements and constraints for the Development, including, but not limited to, the procedures to be adopted, the organisational structure and the team to be engaged in the Development.
- 3.1.19 Present information to the client in order to obtain approval to proceed to the next work stage

4 PRE-CONSTRUCTION PERIOD

4.1 STAGE 2: CONCEPT DESIGN

Generally:

- 4.1.1 Prepare Concept Design and including outline specifications.
- 4.1.2 Provide information for approximate estimate of Construction Cost for inclusion with Cost Information.
- 4.1.3 Contributing to completion of the Final Project Brief.
- 4.1.4 Preparing Stage Report in accordance with agreed Information Exchanges and submitting to Client.
- 4.1.5 Assist with preparing Sustainability Strategy, Maintenance and Operational Strategy and reviewing Handover Strategy and Risk Assessments.
- 4.1.6 Assist with Third Party Consultations, updating of the Project Execution Plan, preparing of the Construction Strategy and Health and Safety Strategies.
- 4.1.7 Review the Strategic Brief and consider the content with the Client and other appointed consultants. Assist with amending and working up the Strategic Brief into a detailed written brief for the Development in line with the Client's requirements.
- 4.1.8 Advise the Client on the need for any site surveys, asbestos surveys, structural surveys, drainage surveys, soil investigations and the like. Prepare a specification for the carrying out of appropriate geotechnical and environmental investigations. Carry out or, as agent for the Client, arrange for others to carry out the required investigations, as the Client may instruct. Report and advise as to the results of the investigations and make recommendations as to foundation design. Certify the amount of any payments to be made by the Client to persons carrying out such investigations. Advise the Client on the need for any other surveys, specialist reports that the Consultant may consider necessary having regard to the Site and the nature of the proposed Works.
- 4.1.9 Advise on the need for arrangements to be made for and define the extent of topographical and dimensional surveys of the Site, surveys to obtain details of construction in existence on or adjacent to the Site, special investigations or model tests. Arrange as agent for the Client when authorised by him for such works to be undertaken, certify the amount of any payments to be made by the Client to the persons or firms carrying out such works, and advise the Client on the results of such works.
- 4.1.10 Inspect and report on the condition of any existing buildings. Survey and prepare drawings of any existing buildings.
- 4.1.11 Investigate and advise on problems in any existing buildings, such as fire protection, floor loadings, sound insulation and change of use.

- 4.1.12 Assist in any negotiations and proceedings concerning party walls.
- 4.1.13 Assist in any negotiations and proceedings concerning rights of light.
- 4.1.14 [Not used].
- 4.1.15 In conjunction with the other appointed consultants prepare several design schemes in outline for discussion with the Client; revise one or more such schemes until the Client's approval of a scheme is obtained.
- 4.1.16 Assist in the submission of an application for outline planning permission.
- 4.1.17 Provide to the Client's cost consultant sufficient information to enable him to produce an approximate costing of the Consultant's several design schemes.
- 4.1.18 Implement/continue preliminary consultations with statutory authorities and other bodies having jurisdiction in relation to the Development.
- 4.1.19 Prepare representative sketches, drawings, specifications and/or calculations as necessary to enable the Architect to conclude the scheme design of the Development and to prepare applications under planning, building act, building regulation or other statutory requirements, or for any presentations to or negotiations with the reversioner, adjoining owners, public authorities, licensing authorities, any funder, purchaser or tenant or others.
- 4.1.20 With the Professional Team, consider the procurement method to be adopted for the Development including advising on the need for the Contractor and/or sub-contractors to design parts of the structural elements of the Development to comply with the Client's requirements. Advise on and approve the selection of appropriate sub-contractors to carry out this design.
- 4.1.21 Advise the Client in relation to the ordering of structural components with long delivery periods.
- 4.1.22 Advise on matters, regulations and guidelines with which the Development must comply (in relation to the structural and civil engineering design) and comment on implications on the Development.
- 4.1.23 Present design information to the client in order to obtain approval to proceed to the next work stage

5 STAGE 3: - DEVELOPED DESIGN

Generally:

- 5.1.1 Developing the approved Concept Design to show spatial arrangements, type of construction, materials and updated outline specifications in sufficient detail to co-ordinate the structural and building services design of the project.
- 5.1.2 Investigating effect of statutory standards and construction safety on Concept Design.
- 5.1.3 Consulting statutory authorities.
- 5.1.4 Providing information for estimate of Construction Cost.
- 5.1.5 Preparing Stage Report in accordance with agreed Information Exchanges and submitting to Client.
- 5.1.6 Reviewing the Project Execution Plan and Risk Assessments and the Sustainability, Maintenance and Operational, Handover, Construction and Health and Safety Strategies.
- 5.1.7 Undertaking Third Party Consultations as required.

- 5.1.8 Develop the detailed structural design from the approved scheme design for the Development, taking into account any amendments requested by the Client.
- 5.1.9 Prepare calculations, drawings, estimates of reinforcement and specifications for the structural elements of the Development in sufficient detail to enable the Architect to conclude the detailed design of the Development.
- 5.1.10 Carry out any necessary special engineering analysis of soil pressures.
- 5.1.11 Provide support to assist in concluding negotiations with all adjoining occupiers of properties adjacent to the Site (all surveyors or others concerned with party wall negotiations will be appointed by the Client to lead on any party wall matters) and any third party who may be affected by or have or acquire some interest in the Development.
- 5.1.12 Assist in the liaison as necessary with all adjoining occupiers of properties adjacent to the Site and/or their surveyors concerning any effect on them from noise, dust or vibration which may result from the carrying out of the Development and report to the Client.
- 5.1.13 Receive design/cost input from other appointed consultants. Develop the chosen scheme design from the outline proposals taking into account amendments requested by the Client.
- 5.1.14 In developing the scheme design consider and advise in conjunction with other appointed consultants as to such issues as gross and net lettable areas, floor loadings, column spacings, smoke and fire protection, means of escape, thermal, acoustic and vibration factors and the requirements of Third Parties.
- 5.1.15 Obtain from and discuss with other appointed consultants their proposals, designs and outline specifications as to architectural, mechanical and electrical elements and requirements as to location and dimensions of plant rooms, ducts and risers.
- 5.1.16 Consult and negotiate as necessary to establish where possible at this stage compliance in principle with statutory (and other relevant) requirements.
- 5.1.17 Review design co-ordination and development with the Principal Designer. Carry out such risk assessments as are required. Provide information to the Principal Designer, as required, for the co-ordination of health and safety matters, inclusion in the health and safety file and inclusion in the construction phase plan.
- 5.1.18 Provide the Client's cost consultant with sufficient information to enable him to produce a reasonably accurate costing of the developed design.
- 5.1.19 Prepare design options for elements of the Works and in conjunction with the other appointed consultants test such options against the Developer's Brief and agree preferred design option.
- 5.1.20 If instructed and with other appointed consultants make changes to the design and advise the Client of the implications of any such changes on the cost of the Development and on the overall programme.
- 5.1.21 Assist (including providing all information reasonably required) in the preparation and submission of an application for full planning permission.
- 5.1.22 In conjunction with other appointed consultants, prepare a report upon the detailed design proposals, illustrating the scheme in scale plans, sections and elevations and specifications in sufficient detail to enable the Client to approve spatial arrangements, materials and appearance, and reporting as to all the above issues required to be dealt with under this work stage 3.
- 5.1.23 Present design information to the client in order to obtain approval to proceed to the next work stage

6 STAGE 4: FINAL PROPOSALS

- 6.1.1 Develop the design of the Development in collaboration with the other appointed consultants and prepare sufficient calculations, drawings, schedules and specifications to enable the lead consultant to prepare the final proposals (excluding RC drawings and schedules). Collaborate with the lead consultant and the other appointed consultants to prepare the final proposals for presentation to the Client drawing attention to any significant differences from the previously agreed requirements for the Development.
- 6.1.2 Complete sizing of all structural elements. Prepare such drawn information and specifications as may reasonably be required by other appointed consultants and as required to illustrate fully the Consultant's designs. Assist the lead consultant in co-ordinating the Consultant's design into the overall design.
- 6.1.3 Provide sufficient design information to the Client's cost consultant to enable him to produce an accurate cost estimate of the Development.
- 6.1.4 Advise the Client on, and agree with him, the type of construction, quality of materials and standard of workmanship.
- 6.1.5 (Subject to the Client's written instructions or consent in each case) prepare outline or performance specifications for specialist items to be designed wholly or partly by others, such as structural steelwork, precast concrete, specialist ground treatment works and any proprietary structural systems and advise upon the suitability of relevant specialist contractors, sub-contractors and suppliers and advise upon tenders received for such items.
- 6.1.6 Integrate into the Consultant's design any requirement of the specialist sub-consultants, contractors or sub-contractors.
- 6.1.7 Consult statutory authorities (and other bodies having jurisdiction in relation to the Development) on the final design proposals.
- 6.1.8 Review design co-ordination and development with the Principal Designer. Carry out such risk assessments as are required. Provide information to the Principal Designer, as required, for the co-ordination of health and safety matters, inclusion in the health and safety file and inclusion in the construction phase plan.
- 6.1.9 Present design information to the client in order to obtain approval to proceed to the next work stage

7 STAGE 4A: - TECHNICAL DESIGN

Generally:

- 7.1.1 Preparing technical designs, calculations and specifications sufficient to tender the project in accordance with the Design Responsibility Matrix and agreed Information Exchanges.
- 7.1.2 Consulting statutory authorities on developing design.
- 7.1.3 Providing information for updating estimate of Construction Cost.
- 7.1.4 Reviewing the Project Execution Plan and Risk Assessments and the Sustainability, Maintenance and Operational, Handover, Construction and Health and Safety Strategies.
- 7.1.5 Undertaking Third Party Consultations as required including preparing and making submissions under building acts and/or regulations or other statutory requirements.
- 7.1.6 Reviewing design information provided by contractors or specialists to establish whether that information can be co-ordinated and integrated with other project information.

- 7.1.7 Giving general advice on operation and maintenance of the building.
- 7.1.8 Develop the design of the Development in collaboration with the lead consultant and other appointed consultants and prepare sufficient calculations, drawings, schedules and specifications to enable the preparation of tender documentation.
- 7.1.9 Provide information to, discuss proposals with and incorporate input of other appointed consultants into production information.
- 7.1.10 Provide information for preparation of tender pricing documents and revision of cost estimate.
- 7.1.11 Prepare such calculations and details relating to the Development as may be required for submission to any appropriate statutory authority including the coordination of such information for the Development submitted by specialist suppliers and/or contractors as is available which may need to be included in such submissions.
- 7.1.12 Prepare any further drawings and schedules necessary to enable Contractors to carry out the Development, but excluding coordination drawings and drawings and designs for temporary works, formwork and shop fabrication details. In the case of reinforced concrete work, general arrangement drawings and drawings of non-standard details should be prepared with sufficient information to enable a Contractor to prepare standard details and bar bending schedules for the Development.

8 STAGE 4B: - TENDER DOCUMENTATION

- 8.1.1 Provide final information for construction phase plan.
- 8.1.2 Finalise all matters arising from statutory and other submissions.
- 8.1.3 Advise on contract conditions, to include preliminaries, preambles, contingencies, access and sequence of works and the like. Advise with other Professional Team members on the need for any special conditions of contract relevant to the Development and on appropriate terms of contract and invitations to tender.
- 8.1.4 Provide to the Architect copies of all design criteria, relevant calculations, assumptions and studies produced by the Consultant in connection with the Development.
- 8.1.5 In conjunction with the Professional Team, advise on and prepare lists of tenderers for the appointment of the Contractor and, where relevant, sub-contractors for the structural elements of the Development, and assist in obtaining the Client's agreement to them. Attend interviews with prospective tenderers and advise on final tender lists.
- 8.1.6 Advise on tender documentation (including the form of Building Contract) for the Contractor and, where relevant, sub-contractors and on any special or additional provisions as may be required. In particular, where relevant in conjunction with the Professional Team, advise on the need for direct warranty agreements between sub contractors and the Client and for the provision of bonds or guarantees in favour of the Client in so far as is reasonable for a consulting engineer to do so.
- 8.1.7 Assist in appraising and advising on the tenders received and on the selection of the Contractor.
- 8.1.8 Assist the Cost Consultant in any financial and other negotiations with the Contractor.
- 8.1.9 Confirm the compliance of all plans, drawings and specifications for the design and construction of the structural elements of the Development and the suitability of materials for them with the Consultant's design intent.
- 8.1.10 In conjunction with the Professional Team and where relevant, examine and analyse sub contract tenders received by the Contractor, report on them and advise the Client as to their respective merits and as to the suitability of tenderers for the carrying out of their

respective parts of the Development. Liaise with the Cost Consultant in negotiation of the same as necessary with the Contractor.

- 8.1.11 With the design team, obtain approval to issue tender documentation to approved contractors.

9 STAGE 4C: - TENDER ACTION

- 9.1.1 Provide such assistance as is necessary to answer any Contractor's queries during the tender period.
- 9.1.2 With the other appointed consultants appraise the contractor's proposals and report on tenders/negotiations.
- 9.1.3 Assist other appointed consultants in negotiating prices and contractual matters with tenderers.
- 9.1.4 If required revise employer's requirements to meet adjustments in the tender sum.
- 9.1.5 Analyse the employer's requirements and prepare scheme design proposals for discussion with the Contractor and the Professional Team where appointed.
- 9.1.6 Assist the Contractor in identifying the need for specialist sub-contractors and suppliers to design and execute parts of the works to comply with the employer's requirements and assist the Contractor in the formulation of the appropriate documentation for these subcontract elements.
- 9.1.7 Throughout the pre-contract period consider alternative design solutions in consultation with the Contractor and the Professional Team for evaluation and possible inclusion within the contractor's proposals.
- 9.1.8 If requested assist the Contractor in the appointment of other consultants.
- 9.1.9 With the Contractor and other appointed consultants where appointed, carry out such studies and evaluations as may be necessary to determine the adequacy and feasibility of the employer's requirements and any other Third Party and or Development requirements.
- 9.1.10 With the Contractor and other appointed consultants visit the Site and make an overall appraisal determining any restrictions, and advise on the actions to be taken such as surveys and site investigations, which may affect the design and/or the construction of the Development.
- 9.1.11 With the Contractor and other appointed consultants where appointed, develop a design from the scheme proposals to meet the employer's requirements taking into account any amendments requested. The scheme design will illustrate the size and character of the Development in sufficient detail to enable agreement of the spatial arrangements, materials and appearance.
- 9.1.12 Prepare any further detailed drawings, specifications and other information necessary for the information of the Contractor and sub-contractors to enable them to carry out and complete the Development, excluding detailed reinforced drawings and bending schedules
- 9.1.13 Advise on the need to obtain planning permission, approvals under Building Acts or regulations and other similar statutory authorities. Make preliminary investigations, where required, with all relevant bodies, in connection with the scheme design and advise the Contractor on progress.
- 9.1.14 At the request of the Contractor, attend any pre-contract meetings convened by the Client or his representative to discuss the tender and implement any changes requested in the design, advising the Contractor of the implications of any such changes.

- 9.1.15 Assist the Contractor and other appointed consultants where appointed in the preparation of necessary programmes for the pre-contract period including a 'package procurement', together with a detail design and construction programme to undertake and complete the works taking into account other Third Party / Development requirements in accordance with the proposed contract procedures and conditions.
- 9.1.16 Advise the Contractor on the need for any contractor's proposal clarifications relevant to the design, specification, or proposed use of the Development. Advise the Contractor as to the unsuitability if any, of any materials, plant or systems specified within the employer's requirements and any other Third Party/Development requirements.
- 9.1.17 In agreement with the Contractor provide all necessary information to support the contractor's proposals.
- 9.1.18 The Consultant will assist the Contractor in carrying out a pre-contract offer / contractor's proposals audit prior to award of the Building Contract. The Consultant is to confirm that his designs are in accordance with the contractor's proposals and employer's requirements where applicable.

10 CONSTRUCTION PERIOD

10.1 STAGE 5: - CONSTRUCTION

Generally:

- 10.1.1 Making visits to construction works as Designer
- 10.1.2 Responding to site queries as reasonably required for construction.
- 10.1.3 Complying with the requirements of the Handover Strategy including agreement of information required for commissioning, training, handover, asset management, future monitoring and maintenance and on-going compilation of "As Constructed Information".
- 10.1.4 Assisting with the updating of the Construction and Health & Safety Strategies.
- 10.1.5 Providing record drawings showing the building and main lines of drainage and other information, where applicable, for the *Health and Safety File* and the building log book (*Building Regulations Approved Document Part L2*).

10.2 Mobilisation

- 10.2.1 Assist the Contractor in the provision of further contractor's proposals as required.
- 10.2.2 Provide employer's requirements as required for the Building Contract and construction. Review further contractor's proposals.
- 10.2.3 Contribute to preparation and assembly of contract documents.
- 10.2.4 Implement administrative arrangements.
- 10.2.5 Once the Client is ready to enter into the Building Contract, confirm to the Client in writing that so far as concerns matters within the Consultant's responsibility or knowledge, a state of readiness has been achieved for construction to commence and to proceed in accordance with the proposed construction programme, or notify the Client of any respects in which that is not the case.

10.3 Construction to Practical Completion

- 10.3.1 Carry out any of the services described above, so far as the same are necessary and remain to be performed, including conducting any necessary negotiations with the planning authorities and any negotiations required under the Building Regulations and

taking all appropriate steps within the scope of this Appointment to obtain clearance of reserved matters.

- 10.3.2 Subject to the terms of this Appointment, prepare the detailed civil and structural design of the Development including the foundations or sub-structure, floors and all other load-bearing elements of the structure and prepare all detailed engineering drawings and other structural information required for the construction and completion of the Development.
- 10.3.3 With other appointed consultants where appointed, prepare and issue production information including drawings, schedules, specifications, performance specifications and the like as reasonably required to enable the Contractor to carry out the works in accordance with the agreed schedule of information and construction programme. Prepare detailed drawings and bar bending schedules for reinforced concrete work. Prepare calculations and drawings for any temporary works of a civil engineering or structural nature.
- 10.3.4 The Consultant shall assist the Contractor in developing the design within the limits of the contractor's proposals and the Contractor's contract sum.
- 10.3.5 The Consultant shall not vary or amend the design and specification after the appointment of the Contractor without the prior agreement of the Contractor.
- 10.3.6 Provide the Contractor with the necessary documentation required in the Building Contract to meet the obligations required therein insofar as it relates to the Consultant's scope of work under the Appointment.
- 10.3.7 The Consultant will visit site at intervals appropriate to the stage of construction (being not less than at monthly intervals) to review the progress and quality of the civil engineering and structural elements of the Development and to determine whether they are being executed generally in accordance with the contract documents. Following each visit the Consultant will prepare a site visit report identifying elements of work not in accordance with the designs and specifications prepared by the Consultant and the Contractor will pass a copy to the Client.
- 10.3.8 Advise on the need for special inspections or tests. Advise on the appointment and duties of any necessary site staff.
- 10.3.9 Any agreed revisions to the design of the Development shall be fully co-ordinated with all parties concerned prior to reissuing. All revisions are to be clearly indicated, together with precise reasons for the revision.
- 10.3.10 During the course of construction, the Consultant will assist the Contractor with ongoing quality control such as is reasonable to achieve zero defects on handover. Immediately prior to the proposed practical completion date of the works the Consultant will visit the Site to review the quality of the civil engineering and structural elements of the works and to determine whether they have been executed in accordance with the contract documents. Following such visit the Consultant will provide a statement as to whether the works are in accordance with the designs and specifications prepared by and if not the statement shall identify those elements of works not so in accordance. The Contractor shall pass a copy of the statement to the Client. If following the production of such a statement (either by the Consultant or another appointed consultant) or otherwise, practical completion is not certified on the proposed practical completion date the Consultant shall repeat this service in respect of any new proposed practical completion date (and so on until practical completion has been achieved).
- 10.3.11 In conjunction with the Contractor and other appointed consultants, provide as constructed drawings and all supporting documentation required to comply with the employer's requirements, the Building Contract and the CDM Regulations.
- 10.3.12 Assist the Contractor in the preparation of a comprehensive maintenance and operating manual checking and incorporating all consultants' documents, CAD disks and digital

information in accordance with the latest edition of the building centre's maintenance manual and job diary. The manual shall include planning and building regulation applications and approvals; names and details of contractors, sub-contractors and suppliers; brochures on goods and materials supplied with colour codes; guarantees and warranties; tests, surveys, soil investigations, etc.

10.3.13 With other appointed consultants and sub-contractors assist in the preparation of an appropriate tenant's guide to enable any tenant of the Development to complete its fit out and occupy and maintain any part of the Development safely and without harm to the durability, integrity and finishes in the Development.

10.3.14 Provide record drawings as required by the Building Contract and other information for the health and safety file.

10.3.15 Co-ordinate and visit as necessary subcontractors and manufacturer's premises to monitor fabrication of materials, components and assemblies, prior to delivery to Site.

11 STAGE 6: - HANDOVER AND CLOSE OUT

11.1.1 Provide services required in connection with the defects liability period under the Building Contract and the making good of defects.

11.1.2 Provide record drawings of the works, including co-ordinated external mains services and drainage drawings. Compile maintenance and operating manuals incorporating information prepared by other members of the Professional Team, specialist contractors, sub-contractors and suppliers.

11.1.3 Provide information required for settling final account.

11.1.4 Attend and contribute to post contract review/s.

12 STAGE 7: - IN USE

12.1.1 Carrying out Post-occupation Evaluation, if applicable as attached schedule.

APPENDIX 2

EXPLANATORY DETAILS

Building Contract	:	a contract based upon the JCT Design and Build Contract 2016 (as amended) dated _____ and made between the Client and the Contractor
Client	:	RLUKREF NOMINEES (UK) ONE LIMITED (Company No 10840928) and RLUKREF NOMINEES (UK) TWO LIMITED (Company No 10840992) of 8 Canada Square, London E14 5HQ in their capacity as bare trustees for and on behalf of HSBC Bank plc acting in its capacity as depositary for The Royal London UK Real Estate Fund
Consultant	:	DAVIES MAGUIRE LIMITED (Company no. 07370252) whose registered office is situate at 30 City Road, London, EC1Y 2AB
Consultant's Discipline	:	Civil and Structural Engineer
Contractor	:	The contractor appointed by the Client to carry out the Development
Development	:	redevelopment of an existing office building behind an historic retained front façade with a rebuilt core, 2 storey roof extension and new external envelope to provide 18 affordable housing units and 2 floors of retail near Tottenham Court Road station.
Professional Team	:	MEP Consultant – GDM Partnership Principal Designer – CBRE Limited Architect and Lead Designer – APT Architects + Designers Limited Cost Consultant – Gardiner and Theobald LLP Project Manager/Flood Risk Assessment/Environmental Screening and Co-Ordination – CBRE Limited Rights to Light and Daylight/Sunlight Consultant - Point 2 Limited Planning, Viability and Affordable Housing Consultant – Gerald Eve Highways and Transportation Consultant – Arup Façade Access Consultant – Reef Associates Façade Retention Consultant (to be confirmed) Well Building Assessment Consultant – Cundall

Johnston and Partners Limited
Approved Inspector/Building Control – MLM
Rebar Scheduling (to be confirmed)
Lift Consultant (to be confirmed)
AV/IT Consultant (to be confirmed)
Building Management Consultant (to be confirmed)
Fire Engineer – Arup
Landscape Consultant – Bradley Murphy Design Limited
Forensic Programmer - RPM
Acoustic Consultant – Sandy Brown
Access Consultant - Arup
Party Wall and Neighbourly Matters – Point 2
External Lighting Consultant (to be confirmed)
Clerk of Works (to be confirmed)
Façade Consultant – Wintech
Townscape and Heritage Consultant – Robert Tavernor
PR Consultant – London Communication Agency
Construction Management Plan - Arup
Topographic Measured Survey – Plowman Craven
Phase 1 Environmental Risk Assessment (Ground
Conditions) – LMB Geosolutions Limited
Air Quality Impact Assessment - REC
Noise and Vibration Impact Assessment - REC
Archaeological Desk Based Assessment – Museum of
London Archaeology
Visuals and AVR's – City Scape
Preliminary Bat Roost Assessment (Ecology) -
Basecology
Arboricultural Impact Assessment (Ecology) – Sharon
Hosegood Associates

Secure by Design – WSP

Structural Investigative Works to Medius House –
Martech

Level and extent and nature of Professional Indemnity Insurance : Ten million pounds (£10,000,000.00) any one claim and unlimited in the period of insurance but subject to separate aggregate limits of indemnity for all claims in the period relating to pollution or contamination (£10,000,000) or asbestos (£5,000,000) claims

Key person : Benjamin Torrance

Site : Medius House, New Oxford Street, London

Specified Nominating Body : Chartered Institute of Arbitrators

APPENDIX 3
WARRANTIES

To Fund/Purchaser

DATED

[CONSULTANT] (1)

and

[FUND/PURCHASER] (2)

and

[CONTRACTOR] (3)

WARRANTY

**[] to Fund/Purchaser Collateral to an
Appointment of the Consultant relating to a
development at**

[]

THIS DEED OF WARRANTY is made on

BETWEEN:

- (1) **[CONSULTANT]** [(Company no. [])] [whose registered office is situate at [] [of []] ("**the Consultant**" which expression shall include its successors in title and permitted assigns and those deriving title under it or them)
- (2) **[FUND/PURCHASER]** (Company no. []) whose registered office is situate at [] ("**the Company**" which expression shall include its successors in title and permitted assigns and those deriving title under it or them)
- (3) **[CONTRACTOR]** (Company no. []) whose registered office is situate at [] ("**the Contractor**" which expression shall include its successors in title and permitted assigns and those deriving title under it or them)

WHEREAS:

- (A) [] ("**the Employer**") has appointed the Contractor by a contract made between the Employer of the one part and the Contractor of the other part dated [] ("**the Building Contract**") based upon the JCT Design and Build Contract 2016 Edition (as amended) to carry out the design construction and completion of works (more particularly described in the Building Contract) ("**the Works**") which comprise [part of] [the whole of] the construction of [] at [] ("**the Development**")
 - (B) By a contract ("**the Appointment**") dated [] the Employer appointed the Consultant as [] in connection with the Development and by a novation agreement dated [] the Contractor was substituted as the employer of the Consultant under the Appointment
 - (C) The Company has [agreed to] enter[ed] into an agreement with the Employer for the provision of finance in connection with the construction of the Development ("**the Agreement**")
- or
- [(C) The Company has [agreed to] enter[ed] into an agreement with the Employer for the purchase of [the whole of] [part of] the Development ("**the Agreement**")]

NOW THIS DEED WITNESSES in consideration of the sum of one pound (£1.00) paid by the Company (receipt of which the Consultant acknowledges) as follows:

1 DUTY OF CARE WARRANTY

- 1.1 The Consultant warrants to and undertakes to the Company that it has complied with and will continue to comply with all the Consultant's obligations under the Appointment and that in the performance of its duties under the Appointment (whether to the Employer or the Contractor) (and under any supplemental deeds entered into after the date of the

Appointment varying such duties under the Appointment) the Consultant has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of a properly qualified knowledgeable skilled experienced and competent structural and civil engineer providing professional services in connection with works of equivalent type size and complexity to the Works and the Development and that it has the appropriate level of resources and organisational capability to comply with its duties to include but not limited to duties under the Construction (Design and Management) Regulations 2015.

1.2 The Consultant further warrants that it owes a duty of care to the Company and the Consultant acknowledges that the Company will be relying upon the Consultant complying with its obligations under the Appointment.

1.3 The Consultant shall be entitled in any actions or proceedings by the Company to rely upon any limitations in the Appointment and to raise equivalent rights of defence of liability as it would have against the Employer under the Appointment (but not taking into account any claim for contributory negligence, set-off or counterclaim) provided that the Consultant shall not be entitled to raise as a defence the fact that any loss suffered by the Company is not a loss suffered by the Employer

PROVIDED THAT the duties of the Consultant to the Company under this clause 1 shall be no greater than the duties the Consultant would have had to the Company under the Appointment had the Company been named as the employer of the Consultant in the Appointment.

2 MATERIALS

2.1 The Consultant warrants to and undertakes with the Company that, unless authorised by the Employer in writing, or, where such authorisation is given orally, confirmed by the Consultant to the Employer in writing, it has not and will not specify for use in the Development any products or materials which:

- (a) at the time of specification do not conform with British Standards or Codes of Practice or good building practice; and/or
- (b) at the time of specification are generally known to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures.

3 DELEGATION

3.1 It is hereby agreed and declared that the duties obligations responsibilities and liabilities of the Consultant under this Deed shall not be modified released or in any way affected by the fact that the Consultant may delegate or may have delegated all or any part of the design of the Works to a sub-consultant or sub-contractor.

4 COPYRIGHT

4.1 All design rights and copyright in all technical information drawings models bills of quantities specifications schedules details plans calculations or other materials provided or to be provided by the Consultant in respect of the Works/Development and all amendments and additions thereto (whether in existence or yet to be made) and any

works designs or inventions of the Consultant incorporated or referred to therein ("**the Documents**") shall remain vested in the Consultant but the Consultant hereby grants to the Company an irrevocable non-exclusive and royalty-free licence to use, reproduce and modify the Documents for all purposes relating to the Works/Development including (without limitation) the construction completion reconstruction modification alteration maintenance reinstatement repair use letting sale promotion and advertisement thereof. Such licence shall include a licence to use the Documents for the extension of the Works/Development but such use shall not include a licence to reproduce the designs contained in the Documents for any extension of the Works/Development. The licence shall include the right without the consent of the Consultant to assign the licence or grant a sub-licence to any person whatsoever provided that the Consultant shall not be liable for any such use by the Company or any licensee for any purpose other than that for which the same were provided by the Consultant.

- 4.2 The Consultant shall upon the written request of the Company (but subject to reimbursement of the Consultant's reasonable photocopying charges) provide to the Company copies of the Documents and such other information in relation to the Works as the Consultant can reasonably supply.

5 COMPANY'S RIGHTS AND LIABILITIES

- 5.1 Save as hereinafter mentioned the Company has no authority to issue any direction or instruction to the Consultant in relation to the performance of the Consultant's duties and responsibilities under the Appointment.
- 5.2 The Consultant acknowledges that the Company has no liability to the Consultant in respect of fees and expenses under the Appointment unless and until the Company exercises its rights under clause 6.2 to be substituted for the Contractor.

6 STEP-IN RIGHTS¹

- 6.1 The Consultant will not in any circumstances exercise any right it may have to terminate its employment under the Appointment or to treat its employment under the Appointment as having been terminated by the Contractor or to discontinue the performance of its duties and responsibilities thereunder until it shall first have given to the Company not less than twenty one days written notice of such matters ("**the Consultant's Notice**") PROVIDED THAT compliance by the Consultant with the provisions of this clause 6 shall not be treated as a breach of the Appointment by the Consultant nor as a waiver of any breach on the part of the Contractor giving rise to the right of determination nor otherwise prevent the Consultant from exercising his rights after the expiration of the notice unless the right of determination shall have ceased under the provisions of clause 6.3.
- 6.2 In the event of termination by the Employer of the Contractor's employment under the Building Contract otherwise than by mutual agreement with the Contractor or the service of a Consultant's Notice the Consultant will (PROVIDED THAT the Employer does not exercise any right it may have under and in accordance with the provisions of any warranty given to it by the Consultant to, in such circumstances, be substituted for the Contractor as employer under the Appointment) if so required by notice in writing given to

¹ Clause 6 is applicable to a Fund only, except where a Purchaser is providing forward funding for the Development

it by the Company within 28 days of the date of termination of the Contractor's employment under the Building Contract or the Consultant's Notice accept the instructions of the Company or its appointee to the exclusion of the Contractor to continue to perform its duties and responsibilities under the Appointment.

- 6.3 Provided always that any notice given by the Company under clause 6.2 shall state that in the event of the Company's right to be substituted for the Contractor being exercised the Company or its appointee accepts liability for payment of the monies payable to the Consultant under the Appointment including payment of any monies properly due to the Consultant under the terms of the Appointment and outstanding at the date of such notice. Upon receipt of such notice by the Consultant the Appointment shall continue in full force and effect as if any right of determination on the part of the Consultant had not arisen and in all respects as if the Appointment had been made between the Consultant and the Company (to the exclusion of the Contractor) ab initio.
- 6.4 Upon payment by the Company of an amount equal to the fees and disbursements owed by the Employer to the Consultant at the date of the Company's notice to the Consultant under clause 6.2 the Consultant shall assign to the Company all the Consultant's rights against the Contractor in respect of such unpaid fees and disbursements and shall pay to the Company any of the same subsequently received by him from the Contractor.
- 6.5 The Consultant and the Contractor hereby agree with the foregoing provisions of this clause 6 and to be bound by them and that they will not vary or agree to vary the conditions of the Appointment without the prior written consent of the Company such consent not to be unreasonably withheld or delayed.

7 INSURANCE

- 7.1 The Consultant currently has, or shall take out from the date hereof, and will maintain for a period expiring no earlier than twelve years from the date of Practical Completion of the Works with reputable insurers carrying on business in the United Kingdom professional indemnity insurance of not less than ten million pounds (£10,000,000.00) any one claim and unlimited in the period of insurance but subject to separate aggregate limits of indemnity for all claims in the period relating to pollution or contamination (£10,000,000) or asbestos (£5,000,000) **PROVIDED ALWAYS** that such insurance is generally available in the market to the Consultant's profession at commercially reasonable rates².
- 7.2 The Consultant shall when required so to do supply to the Company satisfactory documentary evidence of such insurance and shall immediately inform the Company if the Consultant fails to renew such insurance or fails to renew such insurance at the level required by clause 7.1.

8 ASSIGNMENT

- 8.1 The Company shall be fully entitled without the consent of the Consultant to assign all or any of its rights and benefits arising under this Deed at any time to any third party (but this Deed shall not be assigned on more than two occasions).

² Amend this clause to reflect the insurance requirements shown in Appendix 2 of the Appointment.

8.2 The Company shall notify the Consultant upon each occasion that it shall assign this Deed.

8.3 The Consultant shall not be entitled to assign transfer charge or otherwise dispose of all or any of its rights or liabilities arising under this Deed to any other party.

9 WARRANTIES

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

9.2 Within fourteen days of a written notice so to do by the Company the Consultant shall execute and provide to the Company a warranty or warranties (to be executed as a deed) in favour of any third parties to whom the Consultant is required, under the Appointment, to provide warranties. Such warranties to be in the same form as is required under the Appointment.

10 INDEPENDENT INSPECTION

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

11 LIMITATION

11.1 No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Works.

12 NOTICES

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

13 LAW

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

14 GENERAL

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

14.2 Notwithstanding any other provision of this Deed nothing in this Deed confers or purports to confer any right to enforce any of its terms on any person who is not a party to it where that right would not exist but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed by or on behalf of the parties and delivered the day and year first above written

EXECUTED AS A DEED by
[CONSULTANT] acting by
(or, where the Common Seal of
[CONSULTANT] was hereunto
affixed, in the presence of):³

Director
Signature

.....
Print name

Director/Secretary
Signature

.....
Print name

³ Use this format where Consultant is a registered company

EXECUTED AS A DEED by
[FUND/PURCHASER] acting by
(or, where the Common Seal of
[FUND/PURCHASER] was hereunto
affixed, in the presence of):⁴

Director
Signature

.....
Print name

Director/Secretary
Signature

.....
Print name

EXECUTED AS A DEED by
[CONTRACTOR] acting by
(or, where the Common Seal of
[CONTRACTOR] was hereunto
affixed, in the presence of):

Director
Signature

.....
Print name

Director/Secretary
Signature

.....
Print name

⁴ Use this format where Consultant is a registered company

To Tenant

DATED

[CONSULTANT] (1)

and

[TENANT] (2)

WARRANTY

**[] to Tenant Collateral to an Appointment
of the Consultant relating to a development at**

[]

THIS DEED OF WARRANTY is made on

BETWEEN:

- (1) **[CONSULTANT]** [(Company no. [])] [whose registered office is situate at] [of] [] ("**the Consultant**" which expression shall include its successors in title and permitted assigns and those deriving title under it or them)
- (2) **[TENANT]** [(Company no. [])] [whose registered office is situate at] [of] [] ("**the Tenant**" which expression shall include its successors in title and permitted assigns and those deriving title under it or them)

WHEREAS:

- (A) [] ("**the Employer**")⁵ has appointed [] ("**the Contractor**") by a contract made between the Employer of the one part and the Contractor of the other part dated [] ("**the Building Contract**") based upon the JCT Design and Build Contract 2016 Edition (as amended) to carry out the design construction and completion of works (more particularly described in the Building Contract) ("**the Works**") which comprise [part of] [the whole of] the construction of [] at [] ("**the Development**")
- (B) By a contract ("**the Appointment**") dated [] the Employer appointed the Consultant as [] in connection with the Development and by a Novation Agreement dated [] the Contractor was substituted as the employer of the Consultant under the Appointment
- (c) By an agreement dated [] made between the Employer of the one part and the Tenant of the other part the Tenant has [taken] [agreed to take] a leasehold interest in [the whole of] [part of] the Development

NOW THIS DEED WITNESSES in consideration of the sum of one pound (£1.00) paid by the Tenant (receipt of which the Consultant acknowledges) as follows:

1 DUTY OF CARE WARRANTY

- 1.1 The Consultant warrants to and undertakes to the Tenant that it has complied with and will continue to comply with all the Consultant's obligations under the Appointment and that in the performance of its duties under the Appointment (whether to the Employer or the Contractor) (and under any supplemental deeds entered into after the date of the Appointment varying such duties under the Appointment) the Consultant has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of a properly qualified knowledgeable skilled experienced and competent structural and civil engineer providing professional services in connection with works of equivalent type size and complexity to the Works and the Development and that it has the appropriate level of resources and organisational capability to comply with its duties to include but not limited to duties under the Construction (Design and Management) Regulations 2015.

⁵ Insert the name and address of the Client from Appendix 2

- 1.2 The Consultant further warrants that it owes a duty of care to the Tenant and the Consultant acknowledges that the Tenant will be relying upon the Consultant complying with its obligations under the Appointment.

PROVIDED THAT the duties of the Consultant to the Tenant under this clause 1 shall be no greater than the duties the Consultant would have had to the Tenant under the Appointment had the Tenant been named as the employer of the Consultant in the Appointment.

- 1.3 The Consultant shall be entitled in any actions or proceedings by the Tenant to rely upon any limitations in the Appointment and to raise equivalent rights of defence of liability as it would have against the Employer under the Appointment (but not taking into account any claim for contributory negligence, set-off or counterclaim) provided that the Consultant shall not be entitled to raise as a defence the fact that any loss suffered by the Tenant is not a loss suffered by the Employer

2 MATERIALS

- 2.1 The Consultant warrants to and undertakes with the Tenant that unless authorised by the Employer in writing or where such authorisation is given orally confirmed by the Consultant to the Employer in writing it has not and will not specify for use in the Development any products or materials which:

- (a) at the time of specification do not conform with British Standards or Codes of Practice or good building practice; and/or
- (b) at the time of specification are generally known to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures.

3 DELEGATION

- 3.1 It is hereby agreed and declared that the duties obligations responsibilities and liabilities of the Consultant under this Deed shall not be modified released or in any way affected by the fact that the Consultant may delegate or may have delegated all or any part of the design of the Works to a sub-consultant or sub-contractor.

4 COPYRIGHT

- 4.1 All design rights and copyright in all technical information drawings models bills of quantities specifications schedules details plans calculations or other materials provided or to be provided by the Consultant in respect of the Works/Development and all amendments and additions thereto (whether in existence or yet to be made) and any works designs or inventions of the Consultant incorporated or referred to therein ("**the Documents**") shall remain vested in the Consultant but the Consultant hereby grants to the Tenant an irrevocable non-exclusive and royalty-free licence to use, reproduce and modify the Documents for all purposes relating to the Works/Development including (without limitation) the construction completion reconstruction modification alteration maintenance reinstatement repair use letting sale promotion and advertisement thereof. Such licence shall include a licence to use the Documents for the extension of the Works/Development but such use shall not include a licence to reproduce the designs contained in the Documents for any extension of the

Works/Development. The licence shall include the right without the consent of the Consultant to assign the licence or grant a sub-licence to any person whatsoever provided that the Consultant shall not be liable for any such use by the Tenant or any licensee for any purpose other than that for which the same were provided by the Consultant.

- 4.2 The Consultant shall upon the written request of the Tenant (but subject to reimbursement of the Consultant's reasonable photocopying charges) provide to the Tenant copies of the Documents and such other information in relation to the Works as the Consultant can reasonably supply.

5 TENANT'S RIGHTS AND LIABILITIES

- 5.1 The Tenant has no authority to issue any direction or instruction to the Consultant in relation to the performance of the Consultant's duties and responsibilities under the Appointment.
- 5.2 The Consultant acknowledges that the Tenant has no liability to the Consultant in respect of fees and expenses under the Appointment.

6 INSURANCE

- 6.1 The Consultant currently has, or shall take out from the date hereof, and will maintain for a period expiring no earlier than twelve years from the date of Practical Completion of the Works with reputable insurers carrying on business in the United Kingdom professional indemnity insurance of not less than ten million pounds (£10,000,000.00) any one claim and unlimited in the period of insurance but subject to separate aggregate limits of indemnity for all claims in the period relating to pollution or contamination (£10,000,000) or asbestos (£5,000,000) **PROVIDED ALWAYS** that such insurance is generally available in the market to the Consultant's profession at commercially reasonable rates.
- 6.2 The Consultant shall when required so to do supply to the Tenant satisfactory documentary evidence of such insurance and shall immediately inform the Tenant if the Consultant fails to renew such insurance or fails to renew such insurance at the level required by clause 6.1.

7 ASSIGNMENT

- 7.1 The Tenant shall be fully entitled without the consent of the Consultant to assign all or any of its rights and benefits arising under this Deed at any time to any third party (but this Deed shall not be assigned on more than two occasions).
- 7.2 The Tenant shall notify the Consultant upon each occasion that it shall assign this Deed.
- 7.3 The Consultant shall not be entitled to assign transfer charge or otherwise dispose of all or any of its rights or liabilities arising under this Deed to any other party.

8 WARRANTIES

- 8.1 Within fourteen days of a written notice so to do by the Tenant the Consultant shall obtain from any sub-consultant or sub-contractor appointed by the Consultant in connection with the carrying out and completion of its duties under the Appointment a warranty or warranties (to be executed as a deed) in favour of any third parties (including the Tenant) for whom the

Consultant is required, under the Appointment, to procure warranties from its sub-contractors or consultants. Such warranties to be in the same form as is required under the Appointment.

9 INDEPENDENT INSPECTION

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

10 LIMITATION

- 10.1 No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Works.

11 NOTICES

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

12 LAW

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

13 GENERAL

- 13.1 The provisions of this Deed shall remain in full force and effect notwithstanding the termination of the Appointment.
- 13.2 Notwithstanding any other provision of this Deed nothing in this Deed confers or purports to confer any right to enforce any of its terms on any person who is not a party to it where that right would not exist but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed by or on behalf of the parties and delivered the day and year first above written

EXECUTED AS A DEED by
[CONSULTANT] acting by
(or, where the Common Seal of
[CONSULTANT] was hereunto
affixed, in the presence of):⁶

Director
Signature
.....
Print name

Director/Secretary
Signature
.....
Print name

EXECUTED AS A DEED by
[TENANT] acting by
(or, where the Common Seal of
[TENANT] was hereunto
affixed, in the presence of):⁷

Director
Signature
.....
Print name

Director/Secretary
Signature
.....
Print name

⁶ Use this format where Consultant is a registered company

⁷ Use this format where Consultant is a registered company

To Employer

DATED

[CONSULTANT] (1)

and

[EMPLOYER] (2)

and

[CONTRACTOR] (3)

WARRANTY⁸

**To Employer Collateral to an Appointment of
the Consultant relating to a development at**

[]

⁸ This reverse warranty will have to be changed if there is a novation to another client

THIS DEED OF WARRANTY is made on

BETWEEN:

- (1) **[CONSULTANT]** [(Company no. []) [whose registered office is situate at [] [of [] ("**the Consultant**" which expression shall include its successors in title and permitted assigns and those deriving title under it or them)
- (2) **[EMPLOYER]** (Company no. []) whose registered office is situate at [] ("**the Employer**" which expression shall include its successors in title and permitted assigns and those deriving title under it or them)
- (3) **[CONTRACTOR]** (Company no. []) whose registered office is situate at [] ("**the Contractor**" which expression shall include its successors in title and permitted assigns and those deriving title under it or them)

WHEREAS:

- (A) The Employer has appointed the Contractor by a contract made between the Employer of the one part and the Contractor of the other part dated [] ("**the Building Contract**") based upon the JCT Design and Build Contract 2016 Edition [] (as amended) to carry out the design construction and completion of works (more particularly described in the Building Contract) ("**the Works**") which comprise [part of] [the whole of] the construction of [] at [] ("**the Development**")
- (B) By a contract ("**the Appointment**") dated [] the Employer appointed the Consultant as [] in connection with the Development and by a novation agreement dated [] the Contractor was substituted as the employer of the Consultant under the Appointment

NOW THIS DEED WITNESSES in consideration of the sum of one pound (£1.00) paid by the Employer (receipt of which the Consultant acknowledges) as follows:

1 DUTY OF CARE WARRANTY

- 13.3 The Consultant warrants to and undertakes to the Employer that it has complied with and will continue to comply with all the Consultant's obligations under the Appointment and that in the performance of its duties under the Appointment (whether to the Employer or the Contractor) (and under any supplemental deeds entered into after the date of the Appointment varying such duties under the Appointment) the Consultant has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of a properly qualified skilled knowledgeable experienced and competent []⁹ providing professional services in connection with works of equivalent type size and complexity to the Works and the Development and that it has the appropriate level of resources and organisational capability to comply with its duties to include but not limited to duties under the Construction (Design and Management) Regulations 2015.

⁹ Insert consultant's discipline

- 13.4 The Consultant further warrants that it owes a duty of care to the Employer and the Consultant acknowledges that the Employer will be relying upon the Consultant complying with its obligations under the Appointment.

PROVIDED THAT the duties of the Consultant to the Employer under this clause 1 shall be no greater than the duties the Consultant would have had to the Employer under the Appointment had the Employer been named as the employer of the Consultant in the Appointment.

- 1.3 The Consultant shall be entitled in any actions or proceedings by the Employer to rely upon any limitations in the Appointment and to raise equivalent rights of defence of liability as it would have against the Employer under the Appointment (but not taking into account any claim for contributory negligence, set-off or counterclaim) provided that the Consultant shall not be entitled to raise as a defence the fact that any loss suffered by the Employer is not a loss suffered by the employer under the Appointment

14 MATERIALS

- 14.1 The Consultant warrants to and undertakes with the Employer that unless authorised by the Contractor in writing (and confirmed by the Employer) or where such authorisation is given orally confirmed by the Consultant to the Contractor and the Employer in writing it has not and will not specify for use in the Development any products or materials which:

- (a) at the time of specification do not conform with British Standards or Codes of Practice or good building practice; and/or
- (b) at the time of specification are generally known to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures.

15 DELEGATION

- 15.1 It is hereby agreed and declared that the duties obligations responsibilities and liabilities of the Consultant under this Deed shall not be modified released or in any way affected by the fact that the Consultant may delegate or may have delegated all or any part of the design of the Works to a sub-consultant or sub-contractor.

16 COPYRIGHT

- 16.1 All design rights and copyright in all technical information drawings models bills of quantities specifications schedules details plans calculations or other materials provided or to be provided by the Consultant in respect of the Works/Development and all amendments and additions thereto (whether in existence or yet to be made) and any works designs or inventions of the Consultant incorporated or referred to therein ("**the Documents**") shall remain vested in the Consultant but the Consultant hereby grants to the Employer an irrevocable non-exclusive and royalty-free licence to use, reproduce and modify the Documents for all purposes relating to the Works/Development including (without limitation) the construction completion reconstruction modification alteration maintenance reinstatement repair use letting sale promotion and advertisement thereof. Such licence shall include a licence to use the Documents for the extension of the Works/Development but such use shall

not include a licence to reproduce the designs contained in the Documents for any extension of the Works/Development. The licence shall include the right without the consent of the Consultant to assign the licence or grant a sub-licence to any person whatsoever provided that the Consultant shall not be liable for any such use by the Employer or any licensee for any purpose other than that for which the same were provided by the Consultant.

- 16.2 The Consultant shall upon the written request of the Employer (but subject to reimbursement of the Consultant's reasonable photocopying charges) provide to the Employer copies of the Documents and such other information in relation to the Works as the Consultant can reasonably supply.

17 EMPLOYER'S RIGHTS AND LIABILITIES

- 17.1 Save as hereinafter mentioned the Employer has no authority to issue any direction or instruction to the Consultant in relation to the performance of the Consultant's duties and responsibilities under the Appointment.
- 17.2 The Consultant acknowledges that the Employer has no liability to the Consultant in respect of fees and expenses under the Appointment unless and until the Employer exercises its rights under clauses 6.1 and 6.3 to be substituted for the Contractor.

18 STEP-IN RIGHTS

- 18.1 The Consultant will not in any circumstances exercise any right it may have to terminate its employment under the Appointment or to treat its employment under the Appointment as having been terminated by the Contractor or to discontinue the performance of its duties and responsibilities thereunder until it shall first have given to the Employer not less than twenty one days written notice of such matters ("**the Consultant's Notice**") **PROVIDED THAT** compliance by the Consultant with the provisions of this clause 6 shall not be treated as a breach of the Appointment by the Consultant nor as a waiver of any breach on the part of the Contractor giving rise to the right of determination nor otherwise prevent the Consultant from exercising his rights after the expiration of the notice unless the right of determination shall have ceased under the provisions of clause 6.3.
- 18.2 In the event of termination by the Employer of the Contractor's employment under the Building Contract otherwise than by mutual agreement with the Contractor or the service of a Consultant's Notice the Consultant will if so required by notice in writing given to it by the Employer within 21 days of the date of termination of the Contractor's employment under the Building Contract or the Consultant's Notice accept the instructions of the Employer or its appointee to the exclusion of the Contractor to continue to perform its duties and responsibilities under the Appointment.
- 18.3 Provided always that any notice given by the Employer under clause 6.2 shall state that in the event of the Employer's right to be substituted for the Contractor being exercised the Employer or its appointee accepts liability for payment of the monies payable to the Consultant under the Appointment including payment of any monies properly due to the Consultant under the terms of the Appointment and outstanding at the date of such notice. Upon receipt of such notice by the Consultant the Appointment shall continue in full force and effect as if any right of determination on the part of the Consultant had not arisen and in all

respects as if the Appointment had been made between the Consultant and the Employer (to the exclusion of the Contractor) ab initio.

- 18.4 Upon payment by the Employer of an amount equal to the fees and disbursements owed by the Contractor to the Consultant at the date of the Employer's notice under clause 6.2 the Consultant shall assign to the Employer all the Consultant's rights against the Contractor in respect of such unpaid fees and disbursements and shall pay to the Employer any of the same subsequently received by him from the Contractor.
- 18.5 The Consultant and the Contractor hereby agree with the foregoing provisions of this clause 6 and to be bound by them and that they will not vary or agree to vary the conditions of the Appointment without the prior written consent of the Employer such consent not to be unreasonably withheld or delayed.

19 INSURANCE

- 19.1 The Consultant currently has, or shall take out from the date hereof, and will maintain for a period expiring no earlier than twelve years from the date of Practical Completion of the Works with reputable insurers carrying on business in the United Kingdom professional indemnity insurance of not less than ten million pounds (£10,000,000.00) any one claim and unlimited in the period of insurance but subject to separate aggregate limits of indemnity for all claims in the period relating to pollution or contamination (£10,000,000) or asbestos (£5,000,000) **PROVIDED ALWAYS** that such insurance is generally available in the market to the Consultant's profession at commercially reasonable rates.
- 19.2 The Consultant shall when required so to do supply to the Employer satisfactory documentary evidence of such insurance and shall immediately inform the Employer if the Consultant fails to renew such insurance or fails to renew such insurance at the level required by clause 7.1.

20 ASSIGNMENT

- 20.1 The Employer shall be fully entitled without the consent of the Consultant to assign all or any of its rights and benefits arising under this Deed at any time to any third party (but this Deed shall not be assigned on more than two occasions).
- 20.2 The Employer shall notify the Consultant upon each occasion that it shall assign this Deed.
- 20.3 The Consultant shall not be entitled to assign transfer charge or otherwise dispose of all or any of its rights or liabilities arising under this Deed to any other party.

21 WARRANTIES

- 21.1 Within fourteen days of a written notice so to do by the Employer the Consultant shall obtain from any sub-consultant or sub-contractor appointed by the Consultant in connection with the carrying out and completion of its duties under the Appointment a warranty or warranties (to be executed as a deed) in favour of any third parties (including the Employer) for whom the Consultant is required, under the Appointment, to procure warranties from its sub-contractors or consultants. Such warranties to be in the same form as is required under the Appointment.
- 21.2 Within fourteen days of a written notice so to do by the Employer the Consultant shall execute and provide to the Employer a warranty or warranties (to be executed as a deed) in favour of

any third parties to whom the Consultant is required, under the Appointment, to provide warranties. Such warranties to be in the same form as is required under the Appointment.

22 INDEPENDENT INSPECTION

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

23 LIMITATION

23.1 No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of Practical Completion of the Works under the Building Contract.

24 NOTICES

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

25 LAW

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

26 GENERAL

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

26.2 Notwithstanding any other provision of this Deed nothing in this Deed confers or purports to confer any right to enforce any of its terms on any person who is not a party to it where that right would not exist but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed by or on behalf of the parties and delivered the day and year first above written

EXECUTED AS A DEED by
[CONSULTANT] acting by
(or, where the Common Seal of
[CONSULTANT] was hereunto
affixed, in the presence of):¹⁰

Director

Signature

.....

Print name

Director/Secretary

Signature

.....

Print name

EXECUTED AS A DEED by
[EMPLOYER] acting by
(or, where the Common Seal of
[EMPLOYER] was hereunto
affixed, in the presence of):¹¹

Director

Signature

¹⁰ Use this format where Consultant is a registered company

¹¹ Use this format where Consultant is a registered company

.....

Print name

Director/Secretary

.....

Signature

.....

Print name

EXECUTED AS A DEED by

[CONTRACTOR] acting by

(or, where the Common Seal of

[CONTRACTOR] was hereunto

affixed, in the presence of):¹²

Director

.....

Signature

.....

Print name

Director/Secretary

.....

Signature

.....

Print name

¹² Use this format where Consultant is a registered company

APPENDIX 4

DEED OF NOVATION

DATED

20

[CLIENT]

(1)

and

[CONTRACTOR]

(2)

and

[CONSULTANT]

(3)

NOVATION OF CONSULTANT'S APPOINTMENT¹³

**Client to Contractor relating to a development
at**

[]

¹³ This novation agreement will have to be changed if there is a novation to another client

THIS AGREEMENT is made on

BETWEEN:

- (1) **[CLIENT]** (Company no. []) whose registered office is situate at [] ("**the Client**"); and
- (2) **[CONTRACTOR]** (Company no. []) whose registered office is situate at [] ("**the Contractor**"); and
- (3) **[CONSULTANT]** [(Company no. []) [(practising under the name of []) [whose registered office is situate at] [of] [] ("**the Consultant**")

WHEREAS:

- (A) By an agreement in writing dated [] ("**the Appointment**") the Client appointed the Consultant to provide [] services in connection with the construction of [] at [] ("**the Development**")
- (B) The Client and the Contractor have entered into a contract incorporating the JCT Design and Build Contract 2016 edition, [] (as amended) under which the Contractor has been appointed to design and construct the Development.
- (C) The parties have agreed to novate the Appointment to the Contractor on the terms set out below.
- (D) It is intended by the parties hereto that the Contractor shall be entitled to recover damages from the Consultant in respect of any losses suffered by the Contractor arising by reason of any breaches by the Consultant of the Appointment prior to, and following, the date hereof.

NOW THIS DEED WITNESSES and the parties agree as follows:

- 1 The Appointment is hereby novated from the Client and the Consultant to the Contractor and the Consultant.
- 2 The Client shall no longer owe any duty or obligation to the Consultant under or in respect of the Appointment.
- 3 The Consultant shall no longer owe any duty or obligation to the Client under the Appointment whether by virtue of its terms or by virtue of any breach or otherwise.
- 4 The Consultant warrants to the Contractor that it has complied with and will continue to comply with the Consultant's obligations under the Appointment. The Consultant acknowledges that the Contractor has relied upon, and will rely upon, the Consultant's performance of such obligations prior to and following the date hereof. It is agreed that the Consultant shall be liable for all losses suffered by the Contractor as a result of any breaches of such obligations, whether or not such losses were suffered by the Client (whether solely, or jointly with the Contractor, or otherwise) and whether or not such losses were suffered prior to the date hereof.

- 5 The Consultant binds himself to the Contractor in the terms of the Appointment as if the Contractor were and always had been named in the Appointment in place of the Client.
- 6 The Contractor binds itself to the Consultant in the terms of the Appointment as if the Contractor were and always had been named in the Appointment in place of the Client.
- 7 All rights of action and remedies vested in the Client against the Consultant under the Appointment shall from the date of this Deed vest in the Contractor.
- 8 All rights of action and remedies vested in the Consultant against the Client under and in respect of the Appointment shall from the date of this Deed lie against the Contractor.
- 9 The Consultant acknowledges that all fees and disbursements earned by the Consultant in respect of services performed to date under the Appointment have been paid in full.
- 10 [The Consultant and the Contractor agree that the terms of the Appointment shall be and are varied in the manner set out in schedule 1.]
- 11 Subject to the terms of this Deed the Appointment shall remain in full force and effect.
- 12 Nothing in this Deed shall affect or derogate from any collateral warranty given or to be given by the Consultant to the Client respecting the Development.
- 13 Any notice to be given under this Deed shall be in writing and shall be deemed to be given properly if it is delivered by hand, or sent by special delivery or recorded delivery to the address of the relevant party set out above (or such other address as that party may have nominated for service). If the notice is sent by special delivery or recorded delivery, it shall be deemed to be received two working days after the day it was posted. If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered.
- 14 This Deed and any dispute or claim arising out of, relating to or in connection with it is governed by, and construed in accordance with, the laws of England. All disputes or claims arising out of, relating to or in connection with this Deed shall be subject to the jurisdiction of the English courts to which the parties irrevocably submit.
- 15 Notwithstanding any other provision of this Deed nothing in this Deed confers or purports to confer any right to enforce any of its terms on any person who is not a party to it where that right would not exist but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this deed has been executed by or on behalf of the parties and delivered the day and year first above written

SCHEDULE 1

Variations to the terms of the Appointment

(Clause 10)

[List variations, if appropriate]

EXECUTED AS A DEED by
[CLIENT] acting by
(or, where the Common Seal of
[CLIENT] was hereunto
affixed, in the presence of):¹⁴

Director

Signature

.....

Print name

Director/Secretary

Signature

.....

Print name

EXECUTED AS A DEED by
[CONTRACTOR] acting by
(or, where the Common Seal of
[CONTRACTOR] was hereunto
affixed, in the presence of):¹⁵

Director

Signature

¹⁴ Use this format where Consultant is a registered company

¹⁵ Use this format where Consultant is a registered company

.....

Print name

Director/Secretary

.....

Signature

.....

Print name

EXECUTED AS A DEED by

[CONSULTANT] acting by

(or, where the Common Seal of

[CONSULTANT] was hereunto

affixed, in the presence of):¹⁶

Director

.....

Signature

.....

Print name

Director/Secretary

.....

Signature

.....

¹⁶ Use this format where Consultant is a registered company

Print name

APPENDIX 5

BASIC FEE AND PAYMENT PROFILE

Basic Fee:	£157,160.00 pounds (excluding VAT)
Invoice Submission Date:	First working day after end of period to which the payment instalment relates
Due Date for Payment:	22 days after receipt by the Client of a valid application for payment to which the payment instalment relates
Final Date for Payment:	6 days after the relevant Due Date for Payment

Period to which Payment Instalment Relates	Amount of Payment Instalment
Feasibility to planning	£19,650.00
Nov-17	£3,930.00
Dec-17	
Jan-18	
Stage 3	
Apr-18	£10,000.00
May-18	
Jun-18	
Jul-18	
Aug-18	£13,580.00
Sep-18	
Stage 4	
Oct-18	
Nov-18	
Dec-18	£10,000.00
Jan-19	
Feb-19	£10,000.00
Mar-19	£5,000.00
Apr-19	£5,000.00

May-19	£5,000.00
Jun-19	£5,000.00
Jul-19	£7,120.00
stage 5/6	£62,880.00

SIGNED as a **DEED** by
as attorney for **RLUKREF NOMINEES (UK) ONE LIMITED**
in the presence of:

Signature of witness:

Name (in block capitals):

Address: 55 Gracechurch Street, London EC3V 0RL

SIGNED as a **DEED** by
as attorney for **RLUKREF NOMINEES (UK) TWO LIMITED**
in the presence of:

Signature of witness:

Name (in block capitals):

Address: 55 Gracechurch Street, London EC3V 0RL

EXECUTED AS A DEED by **DAVIES**)
MAGUIRE LIMITED acting by (or, where)
the Common Seal of **DAVIES MAGUIRE**)
LIMITED was hereunto affixed, in the)
presence of):

Director
Signature

.....
Print name

Director/Secretary
Signature

.....
Print name

Benjamin (Benji) Torrance MA (Cantab) MEng CEng MICE Associate

ICE Membership Number 64685323

Profile:

Benjamin has ten years of experience designing and leading new build and refurbishment projects, with extensive recent experience in the London residential sector. He has a proven track record of successfully delivering award-winning multi-disciplinary projects with internationally renowned consultancies, having worked at Ramboll and Buro Happold prior to joining Davies Maguire.

Notable project experience:

Southall Waterside Phase A

Client: Berkeley Homes

Architect: John Thompson Partners / Atkins

This £60m residential development provides 623 mixed-tenure units across 8 RC framed blocks 4-10 storeys tall. A large shared basement lies beneath 5 of the blocks, providing car parking and plant space. A podium slab above has been developed in detail, allowing for the various civil and landscaping build-up.

7-11 Dean's Mews

Client: The King's Fund

Architect: ADAM Architecture

Demolition and construction of 4 new-build terrace houses in Central London. The project involved the design of a three-storey steel frame with timber floors within a constricted mews location. The structural solution was developed to enable a fast track programme and various foundations solutions were explored to help manage challenging party wall issues.

Castlewood House

Client: Royal London

Architect: Robert Partington & Partners

Demolition and replacement of an existing mid-20th century building into a new nine-storey mixed use development in Central London. The new steel frame structure retained units along the ground floor, whilst the rest of the superstructure was commercial. The complex site also included an existing building within a conservation area, which was retained and converted into affordable housing. We utilised a steel frame and concrete metal deck slabs to form the new building. An existing two storey basement was reused and extended in parts to create a larger back of house area.

King's Cross P1 (Plimsoll building), London

Client: Argent Estates

Architect: David Morley Architects

The Plimsoll building is part of the Kings Cross Central redevelopment on a large industrial brownfield site. This £65m scheme provides approximately 260 private sale and affordable rented apartments in a fourteen-storey building that also contain a pair of schools in the bottom two storeys, and a basement car park. The post-tensioned concrete frame is cantilevered over an underground tunnel and columns are integrated with the basement parking to avoid transfer structure.

Awards: NLA Housing Winner 2014

King's Cross R5 (Saxon Court & Roseberry Mansions), London

Client: Argent Estates

Architect: David Morley Architects

A residential development comprising two blocks of eight and sixteen stories. The buildings contain a mix of tenures: social rent, shared ownership, extra care housing for the elderly and private housing, all over a ground floor storey of retail. A post-tensioned concrete frame was used to minimise cost and storey height.

Awards: RIBA National Award 2014

Jess Davies MA (Cantab) MEng CEng MICE **Senior Engineer**

ICE Membership Number 69951259

Profile:

A chartered engineer with seven years' experience at Davies Maguire, Jess has built up significant experience in refurbishment of listed buildings and large scale new-build residential schemes.

Leading internal project teams and skilled at liaising with consultants and contractors, Jess brings technical rigour and efficiency, along with an excellent understanding of the approaches required when dealing sensitively with historic buildings and neighbourly matters. From her work on listed buildings, she has built a reputation for finding quick and practical solutions to unforeseen issues encountered on sites.

Jess is an active STEM ambassador, visiting numerous schools each year to present on Structural Engineering and inspire students to join the profession.

Sample projects and experience with Davies Maguire

18 Queen Anne's Gate

Client: Private Client

Architect: Smallwood Architects

This Grade 1 listed 18th century structure has been converted from office space into a family home, with complete remodeling of the lower ground floor to accommodate a large modern kitchen. The upper floors have been strengthened to allow for large events to take place in the living areas and at roof level additional plant is incorporated and water damage prevention and repair undertaken to safeguard the listed building.

1-2 Lincoln's Inn Fields

Client: Private Client

Architect: David Chipperfield

Sensitive refurbishment of a Grade 2 listed family home overlooking London's biggest square. Works include expansion of an original 19th century staircase in collaboration with the conservation officer. This involved detailed timber connection design, which were both efficient but sympathetic to the original features. Up-to-date services are being incorporated into all the floors around the 18th century structure. The extension to the rear of the property includes a glazed lift shaft, a roof terrace and an additional storey.

Southall Waterside Phase A

Client: Berkeley Homes West Thames

Architect: JTP/ Atkins

This £60m residential development provides 623 mixed-tenure units across 8 RC framed blocks 4-10 storeys tall. A large shared basement lies beneath 5 of the blocks, providing car parking. Careful coordination minimised the transfers required at podium level, whilst maximising the number of parking spaces below. Engineering design focused on efficiency and repeatability across the many floors.

The Corniche

Client: St James

Architect: Foster & Partners/ JRA

The project consisted of three concrete frame residential towers on the Albert Embankment ranging from 16 to 26 storeys, with commercial / retail space at ground floor and two levels of basement carparking below. The structure was designed to enable long clear spans, and blade columns hidden within partitions. Construction of the basement adjacent brick railway arches required detailed liaison with Network Rail and piled buttress walls.
