

DATED

20[]

(1) BINGLEY TOWN COUNCIL

-and-

(2) [NAME OF APPOINTEE]

A G R E E M E N T

Appointment as Project Management Consultant

for the provision of Project Management services
in connection with works at the former Public Toilets, Myrtle Walk, Bingley

THIS AGREEMENT is made the _____ day of _____ 20[]

BETWEEN:

- (1) **BINGLEY TOWN COUNCIL** of Cottingley Cornerstone Centre, Littlelands, Cottingley, Bingley BD16 1AL ("**the Employer**"); and
- (2) [Name of appointee] ("**the Consultant**").

BACKGROUND:

- (A) The Employer intends to proceed with the refurbishment of the former Public Toilets, Myrtle Walk, Bingley ("**the Site**"). Such refurbishment includes the re-ordering of the existing toilet facilities and the creation of Office Space for the use of the Employer ("**the Development**").
- (B) The Employer has appointed or intends to appoint a contractor ("**the Contractor**") pursuant to a contract ("**the Building Contract**") to carry out the refurbishment works.
- (C) The Contractor wishes to appoint the **Consultant** to provide the services set out in **Schedule 2** with such variations to them as may be made pursuant to this Agreement ("**the Services**") in relation to the **Development** and on the terms and conditions set out in this Agreement.

IT IS NOW AGREED THAT:

1. CONSULTANT'S OBLIGATIONS

- 1.1 The terms and conditions of this Agreement and the warranties and undertakings which it contains are deemed to apply to all services performed and to be performed by the Consultant in relation to the Development both before and after the date of this Agreement.
- 1.2 The Consultant will provide the Services in accordance with this Agreement and with such reasonable written instructions (if any) as the Employer may give to the Consultant. The Consultant shall obtain the Employer's written authority before initiating any work stage specified in **Schedule 2**. Insofar as the Consultant has already performed or partly performed any of the Services the Consultant warrants that:
 - 1.2.1 it has done so in accordance with the standard of skill, care and diligence and all other terms and conditions set out in this Agreement;
 - 1.2.2 all warranties and undertakings in this Agreement apply to them;
 - 1.2.3 the Consultant will complete the performance of any part performed Services in due time in accordance with this Agreement; and
 - 1.2.4 all sums (if any) paid to the Consultant to date in respect of work done in relation to the Development are payments on account of sums due under this Agreement.
- 1.3 The Consultant warrants that it has exercised and will continue to exercise in the performance of its duties under this Agreement reasonable skill, care and diligence as is to be expected of a properly qualified and competent member of the Consultant's profession experienced in carrying out work such as its duties under this Agreement in relation to projects of similar scope, nature and complexity to the Development and that in the performance of its duties the Consultant will act with all due expedition to enable programmes and timetables to be met and all work to be completed as soon as practically possible.
- 1.4 The Consultant will co-operate with the Employer, the Contractor, the other consultants, the Contractor's sub-contractors, and any other relevant third parties, in seeing that its work is properly co-ordinated with a view to the Services being completed within the timescales required under this Agreement and with as few disputes as possible.
- 1.5 The Consultant will promptly inform and keep the Employer informed of any matters which may adversely affect the provision of the Services.

- 1.6 The Consultant will as part of the Services perform its work, and will conduct itself, so as to comply with and not cause any infringement of the following:
- 1.6.1 the Construction (Design and Management) Regulations 2007 or any replacement of them and with all relevant legal requirements including the requirements of any relevant planning, building regulations or other consent, licence, approval or authority of which the Consultant is or should be aware;
 - 1.6.2 all statutory requirements, regulations and other provisions to be observed and performed in connection with the Services, including but not limited to the Health and Safety at Work etc Act 1974 and the Data Protection Act 1998.

1.7 No approvals, comments, consents or advice, or indication of satisfaction given by or from the Employer nor any enquiry or inspection which the Employer may make or have carried out for its benefit or on its behalf (nor any failure to enquire or inspect) at any time will operate to reduce, extinguish, exclude, limit or modify the Consultant's obligation to fulfil its duties and obligations under this Agreement.

2. COLLATERAL WARRANTIES

2.1 Within 14 days of the Employer's written request the Consultant will enter into a collateral warranty executed as a deed in the form set out in **Schedule 4** in favour of any Purchaser, Tenant, Mortgagee and/or Management Company. Where the terms of the collateral warranty grant the beneficiary a right to stand as substitute for the Employer, then as between the Consultant and the Employer, upon the beneficiary serving the requisite notice under the warranty, the Consultant may treat the beneficiary as standing in substitution for the Employer and the Employer will raise no objection to such substitution.

3. PAYMENT OF FEES

3.1 The agreed fee for those Services in **Schedule 2** is set out in **Schedule 3** ("the Fee") and the Fee unless otherwise provided in **Schedule 3** will be inclusive of all expenses and disbursements. VAT will, where chargeable, be paid on the Fee and all other sums payable under this Agreement subject to receipt of a valid VAT invoice.

3.2 The Fee will be payable (and the Consultant will submit proper invoices for it) in the instalments set out in **Schedule 3**. The due date for each payment will be the date on which a proper invoice is received by the Employer.

3.3 The final date for payment of each invoice will be 28 days after the due date for each invoice. Invoices submitted prematurely or which are not valid VAT invoices, will not be proper invoices and will be resubmitted in the proper form at the proper time.

3.4 The Employer will give notice ("the Payment Notice") to the Consultant not later than 5 days after the date on which every payment of sums payable under this Agreement becomes due from the Employer to the Consultant under this Agreement. Each Payment Notice shall specify the sum that the Employer considers to be due or to have been due at the relevant due date ("the Notified Sum") and the basis on which the Notified Sum has been calculated.

3.5 The Employer may give written notice to the Consultant not later than 1 day prior to the final date for payment of any sums payable under this Agreement that it intends to pay less than the Notified Sum ("the Pay Less Notice"). Any Pay Less Notice shall specify:

3.5.1 the sum that the Contractor considers to be due on the date such notice is served; and

3.5.2 the basis on which that sum is calculated.

3.6 Subject to **clause 3.7** the Employer may at any time issue written instructions to the Consultant for the variation of the Services and the Consultant will comply with such instructions. Failing agreement on any consequent variation of the Fee and/or the due dates for payment, the Fee, the invoices and the due dates for payment will be as is fair and reasonable in the circumstances but based where possible on the rates (if any) and other payment arrangements set out in this Agreement.

- 3.7 If the Consultant considers that an instruction by the Employer under **clause 3.6** would require an increase in the Fee then prior to complying with the instruction (save in the case of emergency instructions which require immediate action) the Consultant will so notify the Employer and within three working days of the instruction the Consultant will provide to the Employer an estimate of the increase in the Fee. Following notification by the Consultant the Employer may either withdraw the instruction or instruct the Consultant to comply with it (in which case **clause 3.6** will apply) either before or after attempting to agree the amount of the increase. No additional payment will become due and payable in respect of varied services if the Consultant has not complied with the requirements of this **clause 3.7**.
- 3.8 If any sum payable under this Agreement is not paid by the final date for payment then, without prejudice to the Consultant's other rights under this Agreement, that sum will bear interest from the final date for payment until payment is made in full, both before and after any judgment, at three per cent per annum over Barclays Bank plc base rate from time to time. The parties agree that this **clause 3.8** is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

4. **INTELLECTUAL PROPERTY RIGHTS**

- 4.1 Subject to the following provisions of this Agreement, copyright and registered and unregistered design right in all drawings, details, plans and other documents of any nature whatsoever and any designs contained in them which have been or are hereafter provided by the Consultant in the course of performing its obligations under this Agreement ("**Documents**") will remain vested in the Consultant. The Consultant hereby grants (or if such a grant cannot legally take place until a later date agrees to grant) to the Employer with effect from the date of this Agreement or in the case of Documents not yet in existence with effect from the creation of such Documents an irrevocable royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Consultant's obligations or termination of this Agreement or the determination of the Consultant's engagement under this Agreement or any dispute under this Agreement) to use and to reproduce all Documents for any purpose whatsoever connected with the Development (including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Development). Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 4.2 The Consultant will not be liable for any use the Employer may make of the Documents for any purposes other than that for which they were originally provided by the Consultant.
- 4.3 The Consultant warrants that the Documents (save to the extent that duly authorised sub-consultants have been used) are the Consultant's own original work and that in any event their use in connection with the Development will not infringe the rights of any third party. The Consultant further warrants that where duly authorised sub-consultants are used their work will be original and that the Consultant will obtain the necessary consents in relation to **clause 4.1**.
- 4.4 The Consultant agrees on reasonable request at any time and following reasonable prior written notice to give to the Employer, or those authorised by the Employer, access to the Documents and provide copies (including copy negatives and CAD disks) of the Documents at the Contractor's expense save that the Fee shall include provision of [] hard copies and [] CD format copies of the Documents.
- 4.5 The Consultant hereby waives and agrees not to assert (and to procure that any sub-consultants do likewise) all moral rights in the Documents under Part 1 Chapter IV of the Copyright, Designs and Patents Act 1988 or any re-enactment or modification of it.

5. **PROHIBITED MATERIALS**

- 5.1 The Consultant will exercise reasonable skill, care and diligence in accordance with this Agreement to see that it does not specify for use or (as appropriate) authorise or approve the specification or use by others, of any products or materials:

- 5.1.1 not in conformity with relevant British or European Union Standards or Codes of Practice;
 - 5.1.2 which contravene the recommendations of the publications "Good Practice in the Selection of Construction Materials" (2011 published by the British Council for Offices) or the Building Research Establishment Digest current at the date of specification; or
 - 5.1.3 which are widely known within the Consultant's profession in the European Union to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used.
- 5.2 If in the performance of its duties under this Agreement the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others, of any such products or materials the Consultant will notify the Employer in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the other provisions of this Agreement.

6. **INSURANCE**

- 6.1 The Consultant will maintain, with reputable insurers carrying on business in the European Union, professional indemnity insurance with a minimum level of cover of £5,000,000 for any one claim in relation to the provision of the Services.
- 6.2 The Consultant will promptly produce for inspection satisfactory documentary evidence as to its compliance with **clause 6.1** when reasonably required to do so by the Employer.
- 6.3 If the insurance required under **clause 6.1** ceases to be available at commercially reasonable rates and terms the Consultant shall immediately inform the Employer but the Consultant shall in any event continue to maintain such insurance as most closely corresponds with **clause 6.1** that is available at commercially reasonable rates and terms.
- 6.4 The Consultant shall maintain the professional indemnity insurance referred to in this **clause 6** up until the date which is 12 years after practical completion of the Development provided such insurance is available to members of the Consultant's profession at commercially reasonable rates.
- 6.5 The Consultant shall fully comply with all requirements of, or which relate to, insurance.

7. **CONSULTANT'S PERSONNEL**

- 7.1 The Consultant will employ the named personnel set out in **Schedule 1** in the roles there set out and in entering into this Agreement the Consultant confirms to the Employer that such personnel are suitably skilled and qualified, experienced and competent persons.
- 7.2 The Consultant has nominated the person named in **Schedule 1** to act as the Consultant's Representative ("**the Consultant's Representative**"). The Consultant's Representative will liaise with the Employer as required in connection with the Services.
- 7.3 The Consultant will agree in writing with the Employer any change of named personnel before it is implemented. The Consultant will provide all staff necessary to fulfil its duties properly under this Agreement.
- 7.4 If the Employer considers the Consultant is at any time providing insufficient staff the Employer may notify the Consultant of the fact and the Consultant will comply with the Employer's reasonable instructions regarding the matter. If the Employer so instructs the Consultant will permanently remove a person from contact with the Development (no such instruction to be given unreasonably or vexatiously) and replace them with a person approved by the Employer (such approval not to be unreasonably withheld or delayed). For the avoidance of doubt any replacement personnel will comply with **clause 7.1**

8. **ASSIGNMENT**

- 8.1 The Consultant may not assign, sub-contract or otherwise transfer the whole or any part of the benefit of, or any of its rights or obligations under, this Agreement without the Employer's prior written consent, such consent to be given or withheld at the Employer's absolute discretion. Any sub-contracting to which the Employer may consent will not in any way relieve the Consultant from its obligations and liabilities under this Agreement.
- 8.2 The Employer may assign the benefit of and its benefits and rights under this Agreement on two occasions only subject to **clause 8.3** by giving written notice to the Consultant. The Consultant shall not contend that any assignee of the Agreement under this **clause 8.2** is precluded from recovering any loss resulting from any breach of this Agreement (whenever the breach occurred) because that person is an assignee of the Agreement and not the original promisee or because the Employer or any intermediate assignee escaped loss due to its having disposed of its interest in the Development.
- 8.3 For the purposes of counting the number of permitted assignments under **clause 8.2**, any assignment to a subsidiary or holding company as defined by Section 1159 of the Companies Act 2006 and any assignment by way of security or re-assignment on redemption shall not count and the Employer shall be free to assign in such manner in addition to the two permitted assignments under **clause 8.2**.

9. **CONFIDENTIALITY**

- 9.1 The Consultant will not, without the Employer's prior written approval, take or permit to be taken any photographs of the Development for use in any publicity or advertising.
- 9.2 The Consultant will not, without the Employer's prior written approval, disclose to any other person (other than any of the Consultant's professional advisors or any person to whom disclosure must be made in order for the Consultant to fulfil its duties under this Agreement) any information about the Development including the Documents, any designs, drawings or other documents or information relating to the Services, or any information about the Employer or their business or any information about the technology, business affairs, or finances of any other person involved in the Development nor will the Consultant use or exploit any such information for its own benefit or the benefit of any other person. All information referred to in this **clause 9.2** shall be treated in strict confidence.
- 9.3 The Consultant will ensure that its employees, sub-contractors and agents are also bound with the confidentiality obligations in this **clause 9**.
- 9.4 The Consultant's obligations in this **clause 9** do not apply to any information:
- 9.4.1 which the Employer has given its written authority to consent to the disclosure of;
 - 9.4.2 the use or disclosure of which is necessary for the proper performance of the Consultant's obligations under this Agreement;
 - 9.4.3 is already in, or has become part of, the public domain, other than as a result of a breach of the Consultant's obligations under this Agreement;
 - 9.4.4 which was lawfully in the possession of the Consultant at the date of commencement of the Services;
 - 9.4.5 which is required to be disclosed by law.

- 9.5 The Consultant will return to the Employer within seven days of a written request all copies it holds of confidential information.

10. **TERMINATION**

- 10.1 In addition to any other rights and remedies which the Employer may have the Employer may at any time by notice in writing to the Consultant terminate forthwith the whole or any part of the Services.

- 10.2 If the Employer is in material and persistent breach of its obligations under this Agreement and fails to remedy the same after receiving a 30 day notice from the Consultant specifying the breach and requiring its remedy then the Consultant will be entitled forthwith by written notice to the Employer to terminate its engagement in connection with the Development.
- 10.3 The Employer may by notice in writing to the Consultant suspend all or any of the Consultant's duties under this Agreement. If such notice is given and the Employer has not within six months requested the Consultant to resume the duties suspended, the Consultant may serve 30 days' notice on the Employer requiring it to end the suspension. If the Employer has not notified the Consultant within that 30 day period that the suspension is ended the Consultant may forthwith by written notice to the Employer terminate its engagement in connection with the Development.
- 10.4 Subject to **clause 3.5**, upon any suspension or termination under this **clause 10** the Employer will pay the Consultant:
- 10.4.1 any instalments of the Fee and other sums which have become due to the Consultant prior to the date of such suspension or termination and which remain unpaid (the final date for payment of which shall be as set out in **clause 3.3**); and
- 10.4.2 a fair and reasonable proportion of the next following instalment of the Fee commensurate with the Services which the Consultant has performed up to the date of such suspension or termination (the due date for which shall be the later of the date of termination or suspension and the date of issue of the Consultant's valid VAT invoice for such proportion and the final date for which shall be 28 days after the due date for such proportion).
- 10.5 Upon any suspension or termination under this **clause 10** the Consultant will not be entitled to any sums in respect of loss of anticipated profit, loss of contracts or other losses and expenses arising by reason of or in connection with such suspension or termination. Subject thereto, termination of the Consultant's engagement and/or the whole or any part of the Services howsoever arising will:
- 10.5.1 be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other prior to such termination; and
- 10.5.2 not terminate any other ongoing obligations contained in this Agreement (including but not limited to the obligation on the Consultant to complete a collateral warranty in accordance with clause 2 in relation to the Services provided).
- 10.6 Following any termination of the Consultant's engagement howsoever arising the Consultant will immediately take all necessary steps to end, in an orderly manner, the provision by it of the Services terminated, such steps to be taken with all reasonable speed and economy and the Consultant will within 14 days of the termination deliver to the Employer in such form as the Employer may reasonably require all equipment or resources, Documents and other documents including (inter alia) photographs, negatives and CAD disks (whether originals or copies in any medium, or being in the course of preparation or completed) which the Consultant holds in connection with the Services terminated together with the originals and any copies which the Consultant may hold of all documents provided to it by the Employer or by others in connection with the Services terminated.
- 10.7 Further at the request of the Employer, the Consultant will also delete or destroy any other copies of the documents in its possession which relate to the terminated Services.

11. **NOTICES**

- 11.1 Any notice to be given by either party under this Agreement will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45 pm on any day it will be deemed to be

served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting, if the end of that period falls before 4.45 pm on a working day and otherwise on the next working day.

12. **DISPUTES**

12.1 Where Part II of the Housing Grants, Construction and Regeneration Act 1996 (as amended) applies, either party may refer any dispute or difference arising under this Agreement to adjudication. The adjudication procedures and the agreement for the appointment of an adjudicator will be as set out in the Model Adjudication Procedures published by the Construction Industry Council current at the date of reference. The nominating body will be the Technology and Construction Solicitors' Association or any successor organisation.

13. **ENTIRE UNDERSTANDING**

13.1 This Agreement comprises the entire understanding of the parties and there are no other arrangements between the parties relating to the subject matter of this Agreement intended to form part of this Agreement and no amendment or modification of this Agreement will be valid or binding on any party unless the same is made in writing and refers expressly to this Agreement and is signed by the parties concerned or their duly authorised representatives.

14. **THIRD PARTY RIGHTS**

14.1 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

15. **GOVERNING LAW AND JURISDICTION**

15.1 This Agreement will be construed in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

16. **LIMITATION**

16.1 No proceedings shall be commenced against the Consultant under this Agreement more than 12 years after the practical completion of the Development under the Building Contract.

17. **INTERPRETATION**

17.1 In this Agreement:

- (a) **"Development"** includes any part of the Development;
- (b) **"Management Company"** means any company responsible for or which will become responsible for the management of the completed Development;
- (c) **"Mortgagee"** means any person with a mortgage or charge over the Development and/or any person providing funding in respect of the Development;
- (d) **"Purchaser"** means any person having or acquiring a freehold interest or a leasehold interest for a capital consideration in the Development;
- (e) **"Tenant"** means any person having or acquiring a leasehold interest in the Development (other than a Purchaser);
- (f) a reference to a person includes any firm and any entity having legal capacity;
- (g) any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Agreement.

Executed as a deed by)
BINGLEY TOWN COUNCIL)
acting by a Councillor, in the presence of:)
Councillor

Signature of witness:

.....
Name (in BLOCK CAPITALS):

.....
Address:

.....

.....

.....

Executed as a deed by)
[Name of appointee])
acting by a director, in the presence of:)

.....
Director

Signature of witness:

.....
Name (in BLOCK CAPITALS):

.....
Address:

.....

.....

.....

SCHEDULE 1

The Consultant

The person referred to in **clause 7** is []

SCHEDULE 2

The Services

- Providing a start to finish project plan with clearly-defined timescales and definitions of roles and responsibilities
- Presenting the final scheme and budget to Town Council Officers and Councillors for approval
- Provision of risk assessments and method statements.
- Providing a detailed specification of works in conjunction with appointed professional team.
- Appointing suitable professionals, including, where appropriate, Architects, Engineers and Quantity Surveyor, to finalise and quantify conversion plans
- Seeking and gaining necessary planning, Building Control and other relevant consents
- Obtaining quotations in respect of the various building works and making recommendations as to the suitability of contractors and their ability to carry out the works in a timely and efficient manner.
- Managing the onsite building programme from start to final sign-off, ensuring the appointed contractor adheres to all health and safety, environmental and other relevant legislation and being responsible for onsite security until completion
- Ensuring regular and timely liaison with Bradford Council and other relevant authorities/parties
- Providing weekly written updates to the Town Council
- Where appropriate obtaining collateral warranties from any professional or contractor having a design input into the scheme
- Working within the public sector (particularly local council) legal framework

SCHEDULE 3

The Fee

The Fee is £??????. Such Fee shall be inclusive of all disbursements and outlays but shall be exclusive of VAT thereon.

Note all invoices to be made out to Bingley Town Council and issued

The Fee may be invoiced in the following instalments:

1	Submission of planning application	£
2	On issue of tender documents	£
3	Completion of design team and contractor appointments	£
4	Receipt of planning approval	£
5	Commencement of work on site	£
6	Practical Completion of works and issue of Building Control Certificate	£
7	Completion of defects liability period	£
8		

SCHEDULE 4
Form of Collateral Warranty

DATED _____ **20[]**

(1) [CONSULTANT]

(2) [BENEFICIARY]

(3) [EMPLOYER]

COLLATERAL WARRANTY

relating to works at Myrtle Walk Bingley

THIS DEED is made on

20[]

BETWEEN:

- (1) **[CONSULTANT]** [(registered number []) whose registered office is at] [(a partnership between []) of] [ADDRESS] ("**the Consultant**");
- (2) **[BENEFICIARY]** (registered number []) whose registered office is at [ADDRESS] ("**the Beneficiary**" which expression includes its permitted successors in title and assigns); and
- (3) **[EMPLOYER]** (registered number []) whose registered office is at [ADDRESS] ("**the Employer**").

[Note: Employer to be a party only where step-in rights included.]

BACKGROUND:

- (A) The Consultant has been appointed by the Employer under a deed of appointment dated ("**the Appointment**") to provide services ("**the Services**") in relation to a development at [] comprising [] and all associated works ("**the Development**").
- (B) [The Beneficiary has a mortgage or charge over [part of] the Development.][The Beneficiary has agreed to provide finance in respect of [part of] the Development.][The Beneficiary has agreed to purchase [part of] the Development.][The Beneficiary has agreed to take a lease of [part of] the Development.][The Beneficiary is a company set up to manage the Development.]
- (C) The Consultant is obliged to give a warranty in this form in favour of the Beneficiary.

IT IS NOW AGREED THAT in consideration of the payment of one pound (£1.00) by the Beneficiary to the Consultant receipt of which the Consultant acknowledges:

1. CONSULTANT'S WARRANTIES

- 1.1 The Consultant warrants to the Beneficiary that it has performed and will continue to perform its duties under the Appointment in accordance with the Appointment and that it has exercised and will continue to exercise in the performance of those duties the reasonable skill care and diligence to be expected of a properly qualified and competent member of its profession experienced in carrying out duties such as its duties under the Appointment in relation to projects of similar scope, nature and complexity to the Development.
- 1.2 The Consultant shall owe no greater liability to the Beneficiary under **clause 1.1** of this Deed than it would owe if (and the same defences to any claim by the Beneficiary shall be available to the Consultant (save anything in the nature of set-off or counterclaim) as if) in lieu of this Deed the Beneficiary had been named in place of the Employer under the Appointment.

2. INTELLECTUAL PROPERTY RIGHTS

- 2.1 In relation to all drawings, details, plans and other documents of any nature whatsoever and any designs and inventions contained in them which have been or are hereafter provided by the Consultant in the course of performing its obligations under the Appointment ("**the Documents**") the Consultant hereby grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation of such Documents an irrevocable royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Consultant's obligations under the Appointment or termination of the Appointment or the determination of the Consultant's engagement under it or any dispute under the Appointment or under this Deed) to use and to reproduce all Documents for any purpose whatsoever connected

with the Development including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Development. Such licence will carry the right to grant sub-licences and will be transferable to third parties. The Beneficiary will not hold the Consultant liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it unless the Consultant authorises such use and confirms that the Documents are suitable for it. The Consultant will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Appointment or under this Deed or as otherwise required to enable it to fulfil its obligations under the Appointment.

- 2.2 The Consultant agrees on reasonable request at any time and following reasonable written prior notice to give the Beneficiary or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) of the Documents upon payment of the Consultant's reasonable copying costs.
- 2.3 The Consultant warrants to the Beneficiary that the Documents (save to the extent duly appointed sub-consultants are used to prepare the same) are its own original work and that in any event their use in connection with the Development will not infringe the rights of any third party. The Consultant further warrants that where duly authorised sub-consultants are used their work will be original and that the Consultant will obtain the necessary consents in relation to **clause 2.1**.
- 2.4 The Consultant hereby waives and agrees not to assert (and to procure that any sub-consultants do likewise) all moral rights in the Documents under Part 1 Chapter IV of the Copyright, Designs and Patents Act 1988 or any re-enactment or modification of it.

3. **PROFESSIONAL INDEMNITY INSURANCE**

- 3.1 The Consultant hereby covenants with the Beneficiary that it has effected professional indemnity insurance cover with a limit of indemnity of not less than £[] for any one occurrence or series of occurrences arising out of any one event in relation to the Development and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date of this Deed until 12 years after practical completion of the Development provided that such insurance is generally available to members of the Consultant's profession at commercially reasonable rates and terms and (for the avoidance of doubt) provided further that payment of any increased or additional premiums required by insurers by reason of the Consultant's own claims record or other acts omissions matters or things peculiar to the Consultant will be deemed to be within the Consultant's obligations.
- 3.2 As and when reasonably required by the Beneficiary the Consultant will produce for inspection documentary evidence that the insurance referred to in **clause 3.1** is being properly maintained and that payment has been made in respect of the last preceding premium due under the policy.
- 3.3 If the professional indemnity insurance ceases to be available at commercially reasonable rates and terms the Consultant shall immediately inform the Beneficiary but the Consultant shall in any event continue to maintain such insurance as most closely corresponds with **clause 3.1** that is available at commercially reasonable rates and terms.
- 3.4 The Consultant shall fully comply with all requirements of, or which relate to, the professional indemnity insurance.

4. **PARTNERSHIP**

- 4.1 Where the Consultant is a partnership references in this Deed to "the Consultant" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

5. **NOTICES**

- 5.1 Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45 pm on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45 pm on a working day and otherwise on the next working day.

6. **ASSIGNMENT**

- 6.1 The benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Consultant:
- 6.1.1 by way of security or by way of re-assignment on redemption; and
 - 6.1.2 on two other occasions only.
- 6.2 The Consultant will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary under this Deed or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Development or that the original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

7. **OTHER RIGHTS AND REMEDIES**

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

8. **NO APPROVAL**

- 8.1 The Consultant's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure be made for its benefit or on its behalf (nor by any failure to so inspect or approve the Documents, attend at site meetings or make or procure any other enquiry or inspection).

9. **[STEP-IN RIGHTS]**

- 9.1 The Consultant will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Appointment or its employment under it or discontinue or suspend the performance of any duties or obligations under the Appointment without first giving to the Beneficiary not less than twenty-eight days' prior notice specifying the Consultant's ground for terminating or treating as terminated or repudiated the Appointment or its employment under it or discontinuing or suspending its performance of the Appointment and stating the amount (if any) of monies outstanding under the Appointment. Within such period of notice:
- 9.1.1 the Beneficiary may give written notice to the Consultant that the Beneficiary will thenceforth become the employer under the Appointment to the exclusion of the Employer and thereupon such will be the case and the Agreement will be and remain in full force and effect notwithstanding any of the said grounds; and
 - 9.1.2 if the Beneficiary has given such notice under **clause 9.1.1** or under **clause 9.3**, the Beneficiary will as soon as practicable thereafter remedy any outstanding breach by the Employer (provided that where the notice is given pursuant to **clause 9.1.1** rather than pursuant to **clause 9.3** such breach has properly been included in the Consultant's specified grounds under **clause 9.1.1**); and

9.1.3 if:

9.1.3.1 the Beneficiary has given such notice under **clause 9.1.1** then from the date of the Consultant's notice; or

9.1.3.2 the Beneficiary has given notice under **clause 9.3** then from the date of the Beneficiary's notice

the Beneficiary will become responsible for all sums properly payable to the Consultant under the Appointment and for the observance and performance of all of the other duties and obligations on the part of the employer to be observed and performed under the Appointment accruing due after the service of such Consultant's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the employer under the Appointment.

9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Consultant the Beneficiary will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Consultant under **clause 9.1.1** or **clause 9.3**.

9.3 Provided that the Appointment has not previously been terminated (and whether or not the Consultant shall have served notice on the Beneficiary pursuant to **clause 9.1.1**) if the Beneficiary serves upon the Consultant a notice to do so, the Consultant shall thereafter accept the instructions of the Beneficiary to the exclusion of the Employer in respect of the Services upon the terms and conditions of the Appointment and the Beneficiary shall thenceforth become the employer under the Appointment to the exclusion of the Employer. The Consultant shall not be concerned or required to enquire whether and shall be bound to assume that as between the Employer and the Beneficiary the circumstances have occurred permitting the Beneficiary to give notice under this **clause 9**.

9.4 If the employment of the Consultant under the Appointment is terminated before service of any notice under **clause 9.1.1** or **clause 9.3**, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new appointment with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary shall reasonably require to reflect altered circumstances. Immediately upon the execution of such new appointment the Beneficiary shall pay to the Consultant an amount equal to the sum which, immediately before termination of the Consultant's employment, was owing to the Consultant by the Employer under the Appointment.

9.5 The Consultant acting in accordance with the provisions of this **clause 9** shall not by so doing incur any liability to the Employer.

9.6 The Employer agrees to the foregoing provisions of this **clause 9** and agrees to be bound by them.

9.7 The Beneficiary may by notice in writing to the Consultant appoint another person to exercise its rights under this **clause 9** subject to the Beneficiary remaining liable to the Consultant as guarantor for its appointee in respect of its obligations under this Deed.

9.8 [Specify order of priority where more than one beneficiary has step-in rights.]

[Note: clause 9 to be included in warranties in favour of a Mortgagee or Purchaser only.]

10. **[OTHER COLLATERAL WARRANTIES]**

Following a written request from the Beneficiary the Consultant will (unless it has already done so) execute a deed of collateral warranty in the relevant form specified in the Appointment in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such a warranty.]

[Note: clause 10 to be included in warranties in favour of the Employer, a Mortgagee or Purchaser only.]

11. **GOVERNING LAW AND JURISDICTION**

11.1 This Deed will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

12. **THIRD PARTY RIGHTS**

12.1 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

13. **EXPIRY OF WARRANTY**

13.1 No proceedings shall be commenced against the Consultant under this Deed more than 12 years after the practical completion of the Development.

Executed as a deed by)
[CONSULTANT])
acting by a director, in the presence of:)
Director

Signature of witness:
.....
Name (in BLOCK CAPITALS):
.....
Address:
.....
.....
.....

[Executed as a deed by)
[BENEFICIARY])
acting by a director, in the presence of:)
Director

Signature of witness:
.....
Name (in BLOCK CAPITALS):
.....
Address:
.....
.....
.....]

[Executed as a deed by)
[**EMPLOYER**])
acting by a director, in the presence of:)
Director

Signature of witness:

.....
Name (in BLOCK CAPITALS):

.....
Address:

.....

.....

.....]

