

MR01

Particulars of a charge

035266 / 13



**A fee is payable with this form**  
Please see 'How to pay' on the  
last page

**You can use the WebFiling service to file this form online**  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

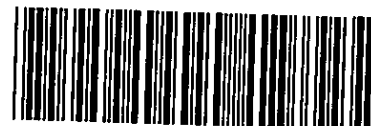
☒ **What this form is NOT for**  
You may not use this form to  
register a charge where there is no  
instrument Use form MR08

For further information, please  
refer to our guidance at  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery

☒ You **must** enclose a certified copy of the instrument with this form This must be scanned and placed on the public record

TUESDAY



A12 22/10/2013 #228  
COMPANIES HOUSE

**1 Company details**

Company number 00819519  
Company name in full ARBUTHNOT LATHAM & CO LIMITED

For official use  
→ **Filing in this form**  
Please complete in typescript or in  
bold black capitals  
All fields are mandatory unless  
specified or indicated by \*

**2 Charge creation date**

Charge creation date 03/10/2013

**3 Names of persons, security agents or trustees entitled to the charge**

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name GMS BRICKS S A.R.L ✓

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

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**Description**

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security

**Continuation page**

Please use a continuation page if you need to enter more details

Description

5

**Fixed charge or fixed security**

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ Yes

☐ No

6

**Floating charge**

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☐ Yes Continue

☒ No Go to Section 7

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

**Negative Pledge**

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☐ Yes

☒ No

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**Trustee statement ①**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

**Signature**

Please sign the form here

Signature

Signature

X *Mathieu de Payre* X

This form must be signed by a person with an interest in the charge

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Particulars of a charge



**Presenter information**

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name NEEL UMMAT

Company name Mishcon de Reya

Address 12 Red Lion Square

Post town London

County/Region

Postcode W C 1 R 4 Q D

Country

DX 37954 Kingsway

Telephone 0207 440 7000



**Certificate**

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



**Checklist**

**We may return forms completed incorrectly or with information missing**

**Please make sure you have remembered the following.**

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy



**Important information**

Please note that all information on this form will appear on the public record.



**How to pay**

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House'



**Where to send**

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below.

**For companies registered in England and Wales.**

The Registrar of Companies, Companies House, Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland:**

The Registrar of Companies, Companies House, Fourth floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland**

The Registrar of Companies, Companies House, Second Floor, The Linenhall, 32-38 Linenhall Street, Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1



**Further information**

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)



**FILE COPY**

## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 819519

Charge code. 0081 9519 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 3rd October 2013 and created by ARBUTHNOT LATHAM & CO , LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd October 2013

Given at Companies House, Cardiff on 23rd October 2013



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

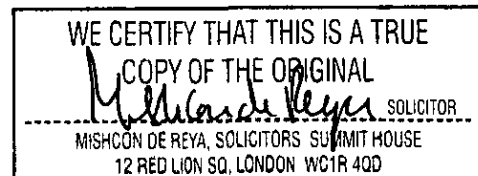
ashurst

## Development Agreement

**ARBUTHNOT LATHAM & CO LIMITED**

and

**GMS BRICKS S.À.R.L**



Relating to 7 – 21 (odd) Wilson Street London  
EC2M 2SN

3 OCTOBER

2013

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THIS AGREEMENT is made on **3 October** 2013

**BETWEEN:**

- (1) **ARBUTHNOT LATHAM & CO LIMITED** (No. 00819519) whose registered office is at Arbuthnot House 20 Ropemaker Street London EC2Y 9AR (the "**Developer**")
- and
- (2) **GMS Bricks S.à.r.l.** (a private limited company (société à responsabilité limitée) incorporated under Luxembourg law registered with Luxembourg Trade and Companies Register No B165661) whose registered office is at 1 Place du Theatre L-2613 Luxembourg with a share capital of GBP 12,500 (the "**Owner**")

**RECITALS:**

- (A) On the date hereof the Developer and the Owner have entered into a contract for the sale of the Premises by the Developer to the Owner.
- (B) On completion of the sale of the Premises to the Owner the Owner will grant to the Developer a lease of the whole of the Premises for a term of 16 years.
- (C) The Developer and the Owner have agreed that the Developer shall undertake the Cat A Works to the Premises and that the Developer may at its sole discretion undertake the Cat B Works.
- (D) The Owner has agreed to pay to the Developer the costs incurred by the Developer in connection with undertaking the Cat A Works, up to but not exceeding the Capital Contribution, as provided for in this agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS**

In this agreement:

**"Act of Insolvency"** means:

- (a) In relation to a corporate body that:
- (i) It is unable to pay its debts as defined in section 123 of the Insolvency Act 1986 (referred to as the "**Act**" in the remainder of this definition) or
  - (ii) a receiver and (or) manager or administrative receiver is appointed whether under Part III of the Act or otherwise or
  - (iii) it goes into liquidation as defined in section 247(2) of the Act (other than a voluntary winding up solely for the purpose of amalgamation or reconstruction while solvent) or
  - (iv) a provisional liquidator is appointed under section 135 of the Act or
  - (v) a proposal is made for a scheme of arrangement under sections 895 and 896 of the Companies Act 2006 or
  - (vi) it is dissolved or applies for its voluntary dissolution under section 1003 of the Companies Act 2006



and the paragraphs above will also apply in relation to a partnership or limited partnership (as defined in the Partnership Act 1890 and the Limited Partnerships Act 1907 respectively) subject to the modifications referred to in the Insolvent Partnerships Order 1994 (SI 1994/2421) (as amended) and to a limited liability partnership (as defined in the Limited Liability Partnerships Act 2000) subject to the modifications referred to in the Limited Liability Partnerships Regulations 2001 (SI 2001/1090)

and for the avoidance of doubt "Act of Insolvency" includes any similar or equivalent step or proceeding which may be taken pursuant to the legislation of another jurisdiction in relation to an entity incorporated or individual domiciled in such relevant jurisdiction

**"Appointments"** means the appointments entered into by the Developer and each member of the Professional Team in the form annexed hereto at schedule 8 with such amendments as may be requested by the relevant member of the Professional Team and approved by the Developer and the Owner (such approval not to be unreasonably withheld or delayed)

**"Approved Plans"** means Cat A Works Specification and Plans incorporating all Approved Variations

**"Approved Variation"** means a variation to the Plans which is approved or permitted under paragraph 2 of schedule 1 or otherwise in accordance with the terms of this agreement (or is otherwise agreed by the Developer and the Owner in writing)

**"Cat A Long Stop Date"** means 31 December 2015 such date to be extended pro rata due to any events of Force Majeure or any extensions of time properly awarded to the Trade Contractors under the Trade Contracts provided that any such delays have not been caused by an act omission breach default or negligence of the Developer

**"Cat A Works"** means the works to be carried out by the Developer as described in the Approved Plans

**"Cat A Works Account"** means an account to be set up with Royal Bank Scotland plc in the name of the Owner in respect of which the bank mandate will require a signature on behalf of the Owner and which shall be designated as the Cat A Works Account

**"Cat A Works Specification"** means the plans drawings and specifications of works which are set out at schedule 3

**"Cat B Works"** means the works to be carried out by the Developer as described in the Cat B Works Specification

**"Cat B Works Specification"** means the plans drawings and specifications of works which are set out at schedule 4

**"Capital Contribution"** means the sum of FIVE MILLION FOUR HUNDRED THOUSAND POUNDS (£5,400,000) (inclusive of VAT) payable by the Owner to the Developer in accordance with the provisions of clause 5

**"CDM Co-Ordinator"** means the Construction Manager

**"Certificate of Making Good"** means the final certificate of making good for the whole of the making good of defects in the Cat A Works issued by the Construction Manager stating that the whole of the making good of defects in the Cat A Works have been completed in accordance with the Trade Contracts

**"Certificate of Practical Completion"** means the final certificate of practical completion for the whole of the Cat A Works issued by the Construction Manager stating that the

whole of the Cat A Works have achieved practical completion in accordance with the Trade Contracts

**"CDM Regulations"** means the Construction (Design and Management) Regulations 2007 as the same may be amended or replaced from time to time

**"Completion Inspection"** means an inspection of the Cat A Works by the Construction Manager with a view to issuing a Certificate of Practical Completion

**"Construction Management Contract"** means the contract to be entered into by the Developer with the Construction Manager in the form annexed hereto at schedule 5 with such amendments as are reasonably requested by the Developer and approved by the Owner (such approval not to be unreasonably withheld or delayed) provided that no such approval shall be required for any amendments that do not materially adversely effect the Owner's rights under any Warranty

**"Construction Manager"** means Anthony Oliver plc t/a Oliver Associates or such other suitably qualified and experienced construction manager, architect, CDM co-ordinator or cost consultant as the Developer may appoint to procure the carrying out of the Cat A Works in accordance with the terms of this agreement and who is approved by the Owner (such approval not to be unreasonably withheld or delayed)

**"Date of Practical Completion"** means the date on which the Certificate of Practical Completion is issued

**"Date of Making Good"** means the date on which Certificate of Making Good is issued

**"Defects Liability Period"** means the period of 12 months commencing on the Date of Practical Completion

**"Deleterious Materials"** means any goods materials or equipment which are not in accordance with the guidelines contained in the edition of the publication **"Good Practice in Selection of Construction Materials"** (2011) (British Council for Offices) current at the date of specification and any materials which at the time of specification or use are generally considered by construction industry professionals as:

- (a) being deleterious in themselves,
- (b) becoming deleterious when used in a particular situation or in combination with other materials;
- (c) becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of comparable type; or
- (d) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed;

for the purpose of this definition the word "deleterious" shall be deemed to include (without limitation) the use of materials or combinations of materials that would or might be hazardous to health or would or might have the effect of reducing the normal life expectancy:

- (a) of the materials themselves;
- (b) of any materials to which they are affixed;
- (c) of the structure in which they are incorporated or to which they are affixed; or
- (d) to a period less than that which would normally be expected.

**"Developer"** means the first party to this agreement and does not include its successor in title or assigns to the Lease

**"Developer's Account"** means.

Lloyds TSB Bank plc, City Office Branch

Sort Code: 30-00-02

Account Number: 00453205

Account Name: Arbuthnot Latham & Co Ltd no. 2 acc

**"Development Period"** means the period during which the Cat A Works are being carried out commencing on the date of entry on the Premises by the first Trade Contractor and ending on the Date of Practical Completion

**"Developer's Solicitors"** means Ashurst LLP of Broadwalk House 5 Appold Street London EC2A 2HA (Ref: MYH/ARB08.00009)

**"Enactments"** means all relevant Acts of Parliament as amended modified extended re-enacted or applied by or under any other enactment from time to time including all instruments orders notices plans bye-laws regulations permissions consents licences conditions and directions from time to time made or issued thereunder or deriving validity therefrom and all appropriate British Standards and Codes of Practice and also including all directives and other legislation of the European Community directly applicable to England and Wales

**"Expert"** means the independent chartered surveyor appointed in accordance with clause 14 of this agreement

**"Expiry Date"** means 31 October 2013

**"Force Majeure"** means any of the following events:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combination of nuclear fuel radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds
- (c) the use or threat of terrorism and/or the activity of any relevant authorities in dealing with such threat
- (d) the discovery of munitions or explosives on the Premises or in the immediate area of the Premises provided such munitions or explosives have not been brought onto the Premises by the Landlord or any person involved in the Building Works or for whom the Landlord is or has been responsible
- (e) exceptionally adverse weather conditions at least exceeding the worst conditions recorded for the Greater London area by the nearest national meteorological department weather station to the Premises at the same time of year over the previous 50 years
- (f) an official national emergency called by the UK Government in the United Kingdom which enforces a total restriction upon the free movement of goods vehicles or labour for the Cat A Works

- (g) an award order or judgment of the court or other competent authority resulting in the cessation of work at the Premises or material restriction of working hours and/or methods

which results in the Landlord being unable to proceed with the Cat A Works or being materially impeded in progressing the Cat A Works

**"Interest Rate"** means four per cent above the base lending rate from time to time in force of National Westminster Bank PLC or such other bank which is a member of the CHAPS Limited as the Developer may from time to time nominate in writing

**"Lease"** means the lease of the Premises in the form of the draft attached to the Sale and Leaseback Agreement

**"Lender"** means any lender of the Owner.

- (a) written notice of whom has been given by the Owner to the Developer and

- (b) which has taken a legal charge over the Premises as security,

and includes any of its successors, transferees and assigns

**"Licence for Alterations"** means a licence for alterations in respect of the Cat B Works to be in the form of the draft attached as Schedule 6 with such modification (if any) as may be required in pursuance of this agreement and such amendments as the parties may reasonably agree

**"Lloyds Security Account"** means an account with Lloyds Bank plc to be set up in the name of the Developer in respect of which the bank mandate will require a signature on behalf of the Developer and which shall be designated as the Security Account

**"Measurement Surveyor"** means such surveyor acting jointly for the Developer and the Owner as shall be agreed between the Developer and the Owner or in the absence of agreement appointed by the President of the Royal Institution of Chartered Surveyors on the application of either party or if he shall die or become unwilling to act or incapable of acting for any reason or fail to act with reasonable expedition another surveyor appointed in his place in like manner

**"Necessary Consents"** means all necessary planning permissions conservation area consents listed building consents bye-law and building regulation consents stopping-up orders and all other necessary consents and approvals of any competent authority obtained or to be obtained by the Developer for carrying out the Cat A Works or the Cat B Works in accordance with the provisions of this agreement

**"Net Internal Area"** means net internal area of the Premises measured in accordance with the RICS Code of Measuring Practice (6th edition September 2007) and agreed or determined pursuant to clause 7 but disregarding any effect on the Net Internal Area of the Cat B Works

**"Owner"** means the second party to this agreement and (save where otherwise stated in this agreement) does not include the successors in title of the Owner to the Premises and any other person who is at any time entitled to the reversion immediately expectant on the term of the Lease

**"Owner's Account"** means an account with UBS AG (IBAN : CH23 0020 6206 1276 7275 V) with account number 0206-127672.75V and swift code UBSWCH2H80A

**"Owner's Solicitors"** means Mishcon de Reya of Summit House 12 Red Lion Square London WC1R 4QD (Ref: Ian Paul)

**"Owner's Monitoring Surveyor"** means such surveyor representing the Owner as the Owner may from time to time notify to the Developer

**"Plans"** means the plans drawings specifications bills of quantity engineering calculations and other data relating to the Cat A Works to be prepared pursuant to Schedule 1 paragraph 2 and including any variations resulting from alternations additions and revisions agreed from time to time between the Developer and the Owner

**"Practical Completion"** means the practical completion of the relevant part of the Cat A Works pursuant to each of the Trade Contracts as certified by the Construction Manager and "Practically Completed" shall be construed accordingly

**"Premises"** means the 7 - 21 (odd) Wilson Street London EC2M 2SN registered at the Land Registry under title number NGL656326

**"Professional Team"** means Status Design Associates LLP (as mechanical and electrical design consultants) and Lucking and Clark LLP (as structural engineering design consultants) or such other suitably qualified and experienced members of the Professional Team as the Developer may appoint to procure the carrying out of the role of mechanical and electrical design consultants or structural engineering design consultants Cat A Works in accordance with the terms of this agreement and who are approved by the Owner (such approval not to be unreasonably withheld or delayed)

**"Quarter"** means the periods of 25 December to 24 March, 25 March to 23 June, 24 June to 28 September and 29 September to 24 December

**"Reconciliation Payment"** means the payment calculated in accordance with clause 7.7

**"RBS Security Account"** means an account with The Royal Bank of Scotland plc to be set up in the name of the Developer in respect of which the bank mandate will require a signature on behalf of each of the Owner and the Developer and which shall be designated as the Security Account

**"Sale and Leaseback Agreement"** means an agreement of even date herewith between (1) the Developer and (2) the Owner in respect of the sale and leaseback of the Premises

**"Satisfaction Date"** means the date of actual completion of the sale of the Premises and the grant of the Lease pursuant to the Sale and Leaseback Agreement

**"Security Account"** means either:

- (a) the RBS Security Account; or
- (b) If the RBS Security Account has not been opened by the date which is three months following the Satisfaction Date (other than as a result of a breach by the Developer of its obligations at clause 6.2 of this agreement), the Lloyds Security Account

**"Security Sum"** means the sum of TWO MILLION SIX HUNDRED THOUSAND POUNDS (£2,600,000) (Inclusive of VAT)

**"Snagging Items"** means minor items of decorative finish or repair which do not prevent or materially adversely affect the beneficial use or occupation of the Premises in which the said items are located and which are capable of being remedied within a reasonable period of being identified on any snag list

**"Step-In Deed"** means the deed in the form attached at Schedule 9 (with such amendments as the parties acting reasonably may agree)

**"Trade Contract"** means a trade contract in the form of JCT Trade Contract 2011 as amended by the schedule of amendments set out at schedule 7 with such other amendments as are reasonably requested by the Developer and approved by the Owner (such approval not to be unreasonably withheld or delayed) provided that no such approval shall be required for any amendments that do not materially adversely effect the Owner's rights under any Warranty

**"Trade Contract Defects Certificate"** means each certificate of making good which relates to each Trade Contract which the Construction Manager is required to issue as soon as each Trade Contract has achieved the date of making good in accordance with the Trade Contract

**"Trade Contract PC Certificate"** means each certificate of practical completion which relates to each Trade Contract which the Construction Manager is required to issue as soon as each Trade Contract has achieved practical completion in accordance with the Trade Contract

**"Trade Contractors"** means such suitably qualified and experienced trade contractors as may be appointed from time to time by the Developer with the prior written approval of the Owner (such approval not to be unreasonably withheld or delayed) in connection with the following works packages for the Cat A Works.

- (b) Mechanical Services
- (c) Electrical Services
- (d) Lift Engineering Services
- (e) Roof Works
- (f) Suspended Ceiling Installations
- (g) Raised Access Flooring

and any other material and/or substantial work packages that are required as a result of any variations to the Cat A Works Specification in respect of which the Owner's approval is required pursuant to paragraph 2 of schedule 1

**"VAT"** means Value Added Tax and any other tax or levy of a like nature

**"Warranty"** means the collateral warranties to be given by:

- (a) Construction Manager in the form set out in the Construction Management Agreement with such amendments as the Developer, the Owner and Construction Manager shall agree acting reasonably and
- (b) Trade Contractors in the form set out in the Trade Contracts with such amendments as the Developer, the Owner and the Trade Contractors shall agree acting reasonably and
- (c) Each member of the Professional Team in the form set out in the Appointments with such amendments as may be requested by the Professional Team members and approved by the Owner and the Developer (such approval not to be unreasonably withheld or delayed)

and each collateral warranty will be by deed and will include step in rights for the Owner and the Lender and will be capable of at least two assignments without the requirement for any consent.

**"Warranty Satisfaction Date"** means the date upon which all the Warranties from the Construction Manager and the Trade Contractors and members of the Professional Team that the Developer is to procure in favour of the Owner and the Lender in accordance with the terms of this agreement have been provided to the Owner

**"Working Day"** means any day excluding Saturdays Sundays bank holidays and days on which the clearing banks in the City of London are not open for business and the period from Christmas Eve to 2 January inclusive

## **2. INTERPRETATION**

In this agreement unless there is something in the subject or context inconsistent therewith

- 2.1 The masculine includes the feminine and the neuter and the singular includes the plural and vice versa
- 2.2 Obligations undertaken by either party where the relevant party comprises more than a single person are joint and several obligations
- 2.3 Any covenant by either party not to do an act or thing shall be construed as if it were also a covenant not to permit or suffer such act or thing
- 2.4 Any obligation on the part of a party (the "Covenantor") to procure or ensure any act or omission by another (or to otherwise "see to it" that something is or is not done) whether or not that other is also under a contractual or other obligation with regard to that act or omission shall take effect as a primary obligation of the Covenantor and not as a guarantee or other secondary obligation
- 2.5 Any consent or approval of either party required pursuant to the terms of this agreement is valid only if given in writing
- 2.6 The obligations of the Developer in this agreement are entered into by Arbuthnot Latham & Co Limited in its personal capacity only and shall not be binding on its successors in title to the Lease
- 2.7 The contents page and clause headings are for reference only and shall not be deemed to form part of this agreement nor shall they affect its construction
- 2.8 Any reference to an Act of Parliament shall include any modification or re-enactment of such Act for the time being in force and all instruments orders plans registrations permissions and directions for the time being made issued or given thereunder or deriving validity from such Act

## **3. CONDITIONALITY**

- 3.1 Save as otherwise stated and save as regards the rights and obligations set out in clauses 4, 5, 6, 7, 8 and 9 (which are conditional upon the Satisfaction Date occurring) the provisions of this agreement shall take effect on the date hereof
- 3.2 If the Satisfaction Date has not fallen on or before the Expiry Date then at any time thereafter either party shall be entitled to give written notice to the other to determine this agreement and on the giving of such notice this agreement shall determine and cease to have any further effect and the respective rights and obligations of the parties hereto shall cease to have any further effect but without prejudice to any existing obligation right





or remedy of either party to or against the other under this agreement and which accrued prior to the determination of this agreement

4. **CAT A WORKS AND CAT B WORKS**

4.1 From and including the Satisfaction Date the Developer shall comply with its obligations in and accept the terms of.

(a) Schedule 1 and

(b) Schedule 2

5. **CAPITAL CONTRIBUTION TO CAT A WORKS**

5.1 The Owner shall pay the Capital Contribution towards the cost of the Cat A Works and transfer to the Cat A Works Account on the date being five Working Days after the Satisfaction Date the Capital Contribution

5.2 The Capital Contribution shall be treated as a contribution by the Owner within the meaning of section 537 of the Capital Allowances Act 2001 to the maximum extent permitted by that section and the Developer shall not claim any capital allowances on expenditure in relation to which the Capital Contribution is such a contribution

5.3 The Developer will provide all data and information within its possession which may be reasonably and properly required by the Owner in order to provide the Owner's Inspector of Taxes with such supporting data as may be required by law to substantiate any claim by the Owner to capital allowances in respect of such of the expenditure in carrying out the Cat A Works as would (but for the provisions of section 532 of the Capital Allowances Act 2001) have entitled the Developer to allowances under the Capital Allowances Act 2001 and will not do anything or permit or procure anything to be done which will prevent such part of the Cat A Works as is attributable to the Capital Contribution being treated as belonging to the Owner in accordance with the provisions of section 538 of the Capital Allowances Act 2001

5.4 The Developer agrees that the Capital Contribution shall be paid towards the cost of the Cat A Works and that the Owner's liability for the Cat A Works shall be limited to the Capital Contribution and it shall not be liable for any additional amount in the event that the costs of the Cat A Works exceed the Capital Contribution

5.5 The Developer shall require that each of the Trade Contractors issues its application for payment under the relevant Trade Contract countersigned by the Construction Manager and that the Construction Manager shall submit the same to the Owner's Monitoring Surveyor for approval and the Owner shall procure that such approval is not unreasonably withheld or delayed (and if the same are not rejected in writing within ten Working Days of receipt by the Owner's Monitoring Surveyor then they shall be deemed to be approved) and once the same are approved the Construction Manager shall then issue the interim payment advices in accordance with the Construction Management Contract. Such interim payment advices shall constitute **"Trade Contract Sums"**

5.6 Subject to paragraph 6.2 of Schedule 1, the Owner, the Owner's Monitoring Surveyor and its advisers may enter the Premises accompanied (if requested by the Owner) by the Developer at reasonable times for the purpose of assessing whether applications for payment made by Trade Contractors are correct and valid

5.7 The Developer shall render to the Owner's Monitoring Surveyor and the Owner on the Thursday following the Friday after the last Sunday of each calendar month (or where not a Working Day the next Working Day thereafter) a notice (the **"Drawdown Notice"**) together with invoices showing (where appropriate) the Trade Contract Sums



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- 5.8 Subject to the provisions of this clause 5 the Owner shall make payment in settlement of the amount of the Trade Contract Sums by making a credit transfer in favour of the Developer from the Cat A Works Account to the Developer's Account
- 5.9 Subject to clause 5.7 and to the Developer first producing to the Owner if so requested by the Owner or the Owner's Monitoring Surveyor reasonable evidence that the Trade Contract Sums have been paid to the Trade Contractors, all payments due pursuant to clause 5.8 shall be made within 10 Working Days of receipt by the Owner of a Drawdown Notice Provided that no payments shall be required to be made unless and until the Warranty Satisfaction Date has arisen (and in respect of which if there are any Trade Contract Sums outstanding but not paid due to the fact that the Warranty Satisfaction Date had not arisen then the same shall be paid within 10 Working Days of the Warranty Satisfaction Date)
- 5.10 In the event that the Owner or the Owner's Monitoring Surveyor disputes the Trade Contract Sums or sums set out in the Drawdown Notice the Owner or the Owner's Monitoring Surveyor shall notify the Developer in writing and may refer the matter to expert determination in accordance with clause 14
- 5.11 The date of payment shall be deemed to be the date of the credit transfer provided that the Owner shall not be liable for any delay in payment caused by any actions of any bank or any strike lock-out or other industrial action
- 5.12 The aggregate of the sums payable under the Drawdown Notices shall not exceed the following amounts (inclusive of VAT) prior to the following dates
- |            |                              |
|------------|------------------------------|
| Amount     | Date                         |
| £4,860,000 | Date of Practical Completion |
| £5,130,000 | Date of Making Good          |
- 5.13 In the event that the Owner exercises its rights under paragraph 11 of Schedule 1 it shall be entitled to withdraw sums from the Cat A Works Account in accordance with that paragraph
- 5.14 Within 10 Working Days from the Date of Making Good the Owner shall transfer to the Developer all sums held in the Cat A Works Account (including all interest accrued) to the Developer's Account
- 5.15 No sums shall be withdrawn from the Cat A Works Account save as provided for in this clause 5
- 5.16 As security for the payments mentioned in clause 5.8 the Owner charges to the Developer by way of first fixed charge with full title guarantee all its right and entitlement to the sums in the Cat A Works Account (and its right and entitlement to be repaid the same or an amount equal to the same in accordance with this agreement)

provided that the Developer shall if required in writing by the Owner promptly enter into a deed of priority with a proposed Lender (such deed to be in a form reasonably approved by the Developer and to be delivered by the Developer in escrow to the Lender's Solicitors conditionally upon the creation of the Lender's security over the Property/Cat A Works Account) in which the Developer agrees that the Owner may charge the monies in the Cat A Works Account to the Lender and that as between the Lender or the Owner on the one hand and the Developer on the other the entitlement to funds in the Cat A Account shall be as provided in this Agreement

- 5.17 Following the making of a credit transfer in favour of the Developer in accordance with clause 5.8 the Developer shall as soon as reasonably practicable thereafter issue a VAT invoice to the Owner in respect of the amount transferred
- 5.18 The charge referred to in clause 5.16 shall be automatically released and discharged on and from the date upon which the Owner exercises its rights under paragraph 11 of Schedule 1 and the Developer shall take all reasonable steps to cancel any registrations at Companies House or otherwise in respect of the said charge as soon as reasonably practicable after the said date
- 5.19 The Owner shall serve written notice on The Royal Bank of Scotland plc on the date of payment of the Capital Contribution in accordance with clause 5.1 notifying it of the charge created by clause 5.16 and shall promptly provide a copy of such written notice to the Developer
- 5.20 The Owner shall pay to the Developer by way of a transfer to the Developer's Account the balance in the Cat A Works Account in the event that an Act of Insolvency has occurred in respect of the Owner and the Lender has not entered into a Step-In Deed as provided for in clause 20
- 5.21 In the event that a Step-In Deed is delivered to the Developer in conformity with clause 20.4 the Lender delivering the Step-In Deed shall be substituted for the Owner in relation to the Cat A Works Account

## **6 ACT OF INSOLVENCY SECURITY**

- 6.1 The Developer shall pay the Security Sum or shall procure that the Security Sum is paid to the Security Account on the later of (a) the date being five Working Days after the Satisfaction Date and (b) the date being 5 Working Days after the date that the Security Account is opened
- 6.2 If the RBS Security Account has not been opened by the date being five Working Days after the Satisfaction Date, the Security Sum shall be immediately paid into the Developer's Solicitor's client account pending the opening of the Security Account and the Developer and the Owner shall use reasonable endeavours to open the RBS Security Account as soon as possible thereafter which shall include, for the avoidance of doubt, an obligation on the part of the Developer to promptly supply all relevant information to The Royal Bank of Scotland plc in order for the Developer to comply with the "Know Your Customer" requirements of The Royal Bank of Scotland plc
- 6.3 If the RBS Security Account has not been opened by the date which is three months following the Satisfaction Date (other than as a result of a breach by the Developer of its obligations at clause 6.2 of this agreement), the Developer shall promptly open the Lloyds Security Account thereafter (and, in any event, by the date which is three months and two weeks following the Satisfaction Date)
- 6.4 If applicable the Developer shall procure that the Developer's Solicitors shall transfer the Security Sum to the Security Account within 5 Working Days of the same being opened
- 6.5 In respect of the RBS Security Account, the Owner may draw, and the Developer shall (if required) sign the relevant instruction to The Royal Bank of Scotland plc to pay to the Owner, by way of a transfer to the Owner's Account from the Security Account, or, in respect of the Lloyds Security Account, the Developer shall pay to the Owner by way of a transfer to the Owner's Account from the Security Account or, in respect of the period during which the Developer's Solicitors are holding the Security Sum in accordance with clause 6.2, the Developer shall procure that the Developer's Solicitors shall transfer to the Owner's Account.

- (a) the sums mentioned in paragraph 11.2(c) of Schedule 1 for the purposes mentioned in that paragraph, and/or
  - (b) the balance in the Security Account in the event that the Lease is terminated by forfeiture due to the fact that an Act of Insolvency has occurred in respect of the Developer before the Date of Practical Completion.
- 6.6 The balance of the Security Sum (along with all interest accrued) shall be repaid to the Developer on the Date of Practical Completion (provided that the Lease has not been forfeited prior to that date due to an Act of Insolvency in respect of the Developer and the Developer has not transferred the sums from the Security Account as provided for in clause 6.5(b)) and both parties shall (in the case of the RBS Security Account) sign the relevant instruction to The Royal Bank of Scotland plc
- 6.7 Neither party shall withdraw any sums from the Security Account save as provided for in this clause 6
- 6.8 As security for the possible payment to the Owner the sum mentioned in clause 6.5 the Developer charges to the Owner by way of first fixed charge with full title guarantee all its right and entitlement of the Security Sum and (from the date that the Security Account is opened) the sums in the Security Account (and its right and entitlement to be repaid the same or an amount equal to the same in accordance with this agreement)
- 6.9 The Developer shall serve written notice on The Royal Bank of Scotland plc or Lloyds Bank plc (as applicable) on the date of payment of the Security Sum to the Security Account in accordance with clause 6.1 notifying it of the charge created by clause 6.8 and shall promptly provide a copy of such written notice to the Owner
- 6.10 The charge referred to in clause 6.8 shall be automatically released and discharged on and from the Date of Practical Completion and the Owner shall take all reasonable steps to cancel any registrations at Companies House or otherwise in respect of the said charge as soon as reasonably practicable after the said date
- 6.11 In the event that a Step-In Deed is delivered to the Developer in conformity with clause 20.4 the Lender delivering the Step-In Deed shall be substituted for the Owner in relation to the Security Account

## **7 MEASUREMENT AND RECONCILIATION PAYMENT**

- 7.1 The Developer and the Owner shall endeavour to agree the Net Internal Area as soon as reasonably practicable after the Date of Practical Completion but if they shall be unable to agree the Net Internal Area (whether or not an attempt to reach agreement shall have been made) then it shall be determined at the request of either the Developer or the Owner by the Measurement Surveyor who shall act as an expert
- 7.2 The Measurement Surveyor shall.
- (e) give notice to the Landlord and the Tenant inviting each of them to submit to him within such time as he shall stipulate a proposal as to the Net Internal Area which may be supported by a submission of reasons and/or a professional report
  - (f) accord to each party an opportunity to make counter-submissions in respect of any such submission or report and
  - (g) give notice to the Landlord and the Tenant of his decision as to the Net Internal Area as soon as possible

- 7.3 The fees of the Measurement Surveyor shall be borne and paid by the Developer and the Owner in such shares and in such manner as he shall decide or failing such decision in equal shares
- 7.4 The Net Internal Area shall be the figure agreed or determined in accordance with this clause 7
- 7.5 If (whether by agreement or determination pursuant to this clause 7) the Net Internal Area exceeds 38,565 square feet or is less than 38,565 square feet by less than 2 per cent no Reconciliation Payment shall be made
- 7.6 If (whether by agreement or determination pursuant to this clause 7) the Net Internal Area is more than 2 per cent less than 38,565 square feet then the Developer shall pay to the Owner within 10 Working Days of the date upon which the Net Internal Area is agreed or determined pursuant to this clause 7 the Reconciliation Payment
- 7.7 The Reconciliation Payment shall be calculated in accordance with the following formula:

$$RP = 0.58468 \times A \times \left( \frac{B}{38,565} \right)$$

Where

RP = Reconciliation Payment

A = Net Internal Area in square feet less 37,794 square feet

B = 31,615,000

## 8. **FITNESS FOR PURPOSE**

Nothing contained or implied in this agreement shall be or be taken to be and there is expressly excluded any representation warranty or undertaking by or on behalf of the Developer in relation to the Premises or its fitness for purpose.

## 9. **SUITABILITY OF THE PREMISES**

Subject to the standard of care set out in paragraph 4.5 of Schedule 1 the Developer warrants that the Premises are suitable for the Cat A Works.

## 10. **INTEREST**

Each party shall pay to the other (without prejudice to the other's other remedies) interest (as well after as before any judgment) at the Interest Rate calculated on a daily basis on sums becoming due under this agreement (whether formally demanded or not) and not paid on the date upon which they become due and such interest shall be payable in respect of the period from and including the date they become due down to the date of payment

## 11. **SET-OFF**

Any sums payable by either party under this agreement shall be paid in full and free from all set-off claims counter-claims or demands and without deduction withholding restriction or condition

**12. GOVERNING LAW AND JURISDICTION**

- 12.1 This agreement and any dispute controversy proceedings or claim of whatever nature arising out of or in any way relating to this agreement or its formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law
- 12.2 Each party to this agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit action or proceedings and/or to settle any disputes which may arise out of or in any way relate to this agreement or its formation (including any non-contractual disputes or claims) and for these purposes each party irrevocably submits to the exclusive jurisdiction of the courts of England
- 12.3 The Owner appoints Mishcon de Reya of Summit House 12 Red Lion Square London WC1R 4QD or such firm of solicitors in England as may be notified to the Developer as its agents to accept the service of all proceedings on its behalf

**13. SURVIVAL OF THIS AGREEMENT**

Notwithstanding completion of the grant of the Lease all the provisions of this agreement shall continue in full force and effect to the extent that any of them remain to be implemented

**14. DISPUTES**

- 14.1 Any dispute or difference which may arise between the Developer and the Owner concerning the Cat A Works or which may arise under clause 5.10 shall (except to the extent such dispute or difference relates to the legal effect or construction of this agreement) be referred to an Expert appointed in accordance with clause 14.2
- 14.2 The Expert shall be an independent chartered surveyor with at least ten years' relevant experience and shall be appointed by agreement between the parties or in the absence of such agreement by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors or his duly authorised delegate and shall act as an expert and not as an arbitrator
- 14.3 The decision of the Expert shall be final and binding upon the parties
- 14.4 The parties shall instruct the Expert to give his decision to each party as speedily as possible (**SAVE** that in respect of any dispute referred to the Expert in accordance with clause 5.10 the Expert shall give his decision within 5 Working Days) and to give reasons in writing for his decision
- 14.5 The cost of appointing the Expert and his costs and disbursements in connection with his duties shall be shared between the parties in such proportions as he shall determine but in the absence of such determination shall be shared equally between the Developer and Owner
- 14.6 If the Expert becomes unable or unwilling to act then the procedure for his appointment may be repeated as often as necessary

**15. VAT**

All sums payable under this agreement are inclusive of any VAT which arises. For the avoidance of doubt neither party shall be entitled to charge additional sums to the other equal to any VAT which arises as a result of any supply made by either party pursuant to or as a result of this agreement

**16. NOTICES**

16.1 Any notice to be given or served hereunder may be given or served by sending it by registered or recorded delivery post (in which case it shall be deemed to be duly served on the Working Day following the date of posting) or by facsimile transmission (in which case it shall be deemed to have been duly served on the day of transmission if transmitted before 4.00 pm on a Working Day but otherwise on the next following Working Day) to the party to whom it is to be given or on whom it is to be served in the case of the Developer at its registered office and in the case of the Owner at its registered office

16.2 Service by electronic mail shall not be valid for the purposes of this agreement

**17. MISCELLANEOUS AND SUPPLEMENTAL**

17.1 If any provision of this agreement or its application to any person or circumstance is void or unenforceable then such provision or its application to such person or circumstances shall be severed from this agreement so that the validity of the remainder of this agreement and the application of such provision to other persons or circumstances shall not be affected by such severance

17.2 No claim in tort shall be made by either party against the other arising out of the various obligations under this agreement

**18. ENTIRE AGREEMENT**

Any additional conditions or variations of the conditions contained in this agreement which are agreed in correspondence between the Developer and the Owner (or their respective solicitors with their authority) where the correspondence makes express reference to this clause are deemed to be incorporated in this agreement and it is hereby acknowledged that this agreement (with the incorporation of any such additional conditions or variations) constitutes the entire contract between the parties

**19. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms but this does not affect any right or remedy of a third party which exists or is available apart from that Act

**20. ASSIGNMENT AND STEP IN**

20.1 Subject to clauses 20.2, 20.3 and 20.4 and paragraph 10 of Schedule 1 this agreement is personal to the Owner and the Developer and shall not bind any successors in title to the Premises or the Lease (as applicable) and neither party shall assign mortgage charge or part with the benefit of this agreement in whole or in part nor shall it novate or otherwise transfer the burden of this agreement in whole or in part

20.2 The Owner is entitled to assign by way of security only the benefit of this agreement to a Lender

20.3 In the event that written notice of an assignment pursuant to clause 20.2 is served on the Developer the Developer shall not be entitled to exercise any of its rights under this agreement (including for the avoidance of doubt its rights under the charge referred to at clause 5.16) in respect of a breach by the Owner (other than an Act of Insolvency on the part of the Owner) save to the extent that:

- (a) the Developer has served written notice on the Lender setting out the details of the breach, and



- (b) within 15 Working Days of the date of the service of the notice referred to in sub-clause (a) above such breach has not been cured to the reasonable satisfaction of the Developer; and
  - (c) the Developer has served written notice on the Lender that such breach has not been cured to the reasonable satisfaction of the Developer by the expiry of the 15 Working Day period referred to above in sub-clause (b)
- 20.4 In the event that written notice of an assignment pursuant to clause 20.2 is served on the Developer the Developer shall not be entitled to exercise any of its rights under this agreement in respect of an Act of Insolvency in respect of the Owner save to the extent that:
  - (a) the Developer has served written notice on the Lender setting out the details of the Act of Insolvency; and
  - (b) the Lender has not within 15 Working Days of the date of the service of the notice referred to in sub-clause (a) above entered into a Step-In Deed as provided for in clause 20.5.
- 20.5 In the event that the Owner assigns the benefit of this agreement to a Lender in conformity with clause 20.2 the Lender may at any time prior to the Date of Making Good deliver to the Developer a Step In Deed expressed to be made between the Lender or a receiver appointed by the Lender over the Premises on the one part and the Developer on the other part and executed as a deed and together, in the case of the receiver, with evidence of his appointment
- 20.6 In the event that the Developer receives a Step-In Deed in conformity with clause 20.5 the Developer shall give the person who enters into the Step-In Deed such assistance as that person may properly require to enable that person to be substituted for the Owner in relation to the Cat A Works Account and the Security Account and for any other proper purposes of this Agreement

**IN WITNESS** whereof this agreement has been executed as a deed on the date first above written

## **SCHEDULE 1**

### **Cat A Works**

#### **1. CONSTRUCTION MANAGEMENT CONTRACT AND TRADE CONTRACTS**

- 1.1 The Developer shall enter into the Construction Management Contract with the Construction Manager within 10 Working Days of the Satisfaction Date
- 1.2 The Developer shall procure that the Construction Manager enters into a Warranty in favour of the Owner and the Lender in the form set out in the Construction Management Contract at the time of its appointment and shall deliver such Warranty to the Owner
- 1.3 The Developer shall procure that each member of the Professional Team enters into the Appointments with the Construction Manager within 10 Working Days of the Satisfaction Date
- 1.4 The Developer shall supply to the Owner a complete copy of the Construction Management Contract and Appointments as soon as practicable following execution of the Construction Management Contract and the Appointments
- 1.5 The Developer will prior to the commencement of the relevant parts of Cat A Works by the Trade Contractors enter into the Trade Contracts with the Trade Contractors and will notify the Owner of the dates of the respective Trade Contracts and supply copies thereof
- 1.6 The Developer shall procure that each of the Trade Contractors and member of the Professional Team enter into a Warranty in favour of the Owner and the Lender in the form set out in the relevant Trade Contract or Appointment at the time of each of the Trade Contractor's or Professional Team member's appointment and shall deliver such Warranties to the Owner
- 1.7 The Developer shall not agree to any amendment or variation to the Construction Management Contract, Appointments or the Trade Contracts which have a material effect on the rights and benefits of the Owner or the Lender under the Warranties
- 1.8 If the Construction Manager or any of the Trade Contractors or Professional Team Members appointed by the Developer shall withdraw or be dismissed the Developer shall forthwith give notice thereof to the Owner and as soon as reasonably practicable thereafter the Developer shall appoint another person firm or company (to be approved by the Owner (such approval not to be unreasonably withheld or delayed)) to be the Construction Manager or Professional Team members or the relevant Trade Contractor on terms of the Construction Management Contract or Appointment or the relevant Trade Contract (as appropriate)
- 1.9 The Developer will:
  - (a) require as a condition of appointment of the Construction Manager and each of the Professional Team that they maintain professional indemnity insurance throughout the period that they retain liability for breach of the terms of their appointments with a reputable insurer of at least
    - (i) TWO MILLION POUNDS (£2,000,000) for each claim (for the Construction Manager) and
    - (ii) FIVE MILLION POUNDS (£5,000,000) for each claim (for each member of the Professional Team)
  - (b) take all reasonable steps to procure that the Owner is provided with evidence of the professional indemnity insurance referred to in paragraphs 1.9(a) of this

Schedule as the Owner shall reasonably require that such Insurance is in place (but not more than once in any period of a year)

**1.10 The Developer will:**

- (a) diligently take all steps necessary effectually to procure the due performance and observance of the obligations and duties of the Construction Manager and each Trade Contractor and Professional Team member
- (b) not waive release vary nor estop himself from enforcing or seeking redress for any such obligation or duty without the consent of the Owner (such consent not to be unreasonably withheld or delayed) and
- (c) not do nor omit to do any act or thing which would entitle the Construction Manager or a Trade Contractor or Professional Team member to treat as terminated by breach his appointment in connection with the Cat A Works

**2 THE PLANS**

**2.1** The Developer will cause to be prepared the Plans in accordance with the Cat A Works Specification by 18 October 2013

**2.2** The Developer will cause the Plans to be prepared in such form and manner as are likely to obtain planning permission (if applicable) and to comply with and bring about the grant of other Necessary Consents before and throughout the course of the Development Period

**2.3** The Developer will submit the Plans to the Owner within five Working Days of the same being prepared. The Owner's approval shall not be required to any Plans that are in accordance with the Cat A Works Specification. Any Plans that are not in accordance with the Cat A Works Specification will require the approval of the Owner (such approval not to be unreasonably withheld or delayed and shall be deemed to be given if not refused in writing by the Owner within 15 Working Days of receipt by the Owner of the relevant Plans) but the Owner may refuse to give such approval if any of the works (either individually or cumulatively) contemplated in the Plans have an adverse impact on the capital or rental value of the Premises.

**2.4** If and so often as the Developer may wish to revise vary or update the Plans it will prepare and submit such variation to the Owner. The Owner's approval shall not be required to any variations or updates that are in accordance with the Cat A Works Specification. Where any such variations or updates are not in accordance with the Cat A Works Specification then the plans will be submitted for the Owner's prior approval of the design content and quality of the Cat A Works in all material respects as it progresses (which approval shall not be unreasonably withheld or delayed and shall be deemed to be given if not refused in writing by the Owner within 10 Working Days of receipt by the Owner of the variation) but the Owner may refuse to give such approval if any of the works (either individually or cumulatively) contemplated in the Plans have an adverse impact on the capital or rental value of the Premises.

**2.5** The Developer may make variations without such consent if:

- (a) the variations are Insubstantial or Immaterial
- (b) the variation relates to the substitution of materials which are or have become unavailable or are in short supply or not available at reasonable cost and provided that the materials which are substituted are of equivalent or superior quality and standard and
- (c) the variation is in accordance with the Cat A Works Specification



and the Developer shall promptly give details in writing of such variations to the Owner's Monitoring Surveyor

- 2.6 The Developer will keep the Owner furnished throughout the Development with a complete set of the Plans as amended and revised from time to time and will within a reasonable time after the Date of Practical Completion deliver to the Owner two complete sets of the Plans of the Premises as finally built

**3. NECESSARY CONSENTS**

- 3.1 The Developer will apply for and take all reasonable steps to obtain all Necessary Consents from time to time as may be appropriate before and throughout the course of the Development Period
- 3.2 The Developer will promptly notify the Owner of the grant of a Necessary Consent and deliver a copy to the Owner
- 3.3 The Developer will if required negotiate the terms of planning or other obligations with the local planning or other authority (under section 106 of the Town and Country Planning Act 1990 section 38 of the Highways Act 1980 or other statutory provisions requiring undertakings from the Developer) but may not settle the terms without the approval of the Owner (such approval not to be unreasonably withheld or delayed)
- 3.4 If a Necessary Consent is refused or is granted subject to a condition which is unacceptable to the Developer or which the Owner notifies the Developer is unacceptable to the Owner (each acting reasonably) the Developer will appeal against the refusal or take such other appropriate action in order to proceed with the Cat A Works and Cat B Works subject to the approval of the Owner (such approval not to be unreasonably withheld or delayed)

**4 THE CAT A WORKS**

- 4.1 The Developer will take reasonable steps to commence the Cat A Works within 4 weeks from the Satisfaction Date
- 4.2 The Developer will take all reasonable steps to procure that the Cat A Works are completed within 15 months after their commencement but the time for completion shall be extended by.

(a) the aggregate of the periods of extension commensurate with those properly allowed to each of the Trade Contractors by the Construction Manager under the terms of the relevant Trade Contracts except to the extent that delay is attributable to an act or omission of the Developer; and

(b) Force Majeure

and such extensions shall run consecutively or concurrently as may be fair and reasonable in the circumstances

- 4.3 The Developer shall procure that the Cat A Works are carried out:

- (a) in a good and workmanlike manner and in accordance with good building practice
- (b) with good quality and suitable materials
- (c) in accordance with the Approved Plans and the Necessary Consents

- (d) In compliance with planning and other obligations whether under section 106 of the Town and Country Planning Act 1990 section 38 of the Highways Act 1980 or other statutory provisions applicable to the Cat A Works
  - (e) In compliance with all statutory orders and regulations made under or deriving validity from them and any requirements and codes of practice of local authorities and competent authorities affecting the Premises including (without limitation) the CDM Regulations
  - (f) without infringement of any rights reservations covenants restrictions stipulations or other encumbrances binding on or affecting the Premises
  - (g) so that they are free of Deleterious Materials
- 4.4 The Developer will use reasonable endeavours to procure that the Cat A Works are carried out:
- (a) so as to maximise the finished floor to ceiling heights in the office areas of the Premises
  - (b) so as to achieve the highest BREEAM rating reasonably practical
  - (c) so as to achieve an energy performance certificate rating of "D" or better
- 4.5 The Developer shall procure the carrying out of the design of the Cat A Works using all the skill, care and diligence reasonably to be expected of a qualified and competent designer experienced in carrying out the design of works of a similar size, scope, complexity and nature to the Cat A Works.
- 4.6 (a) The Developer hereby elects to be treated as the only client for the purposes of the CDM Regulations and the Owner hereby consents to such election
- (b) The Developer shall comply with its obligations as client under the CDM Regulations
- 4.7 The Developer will use its best endeavours to ensure that the performance of the CDM Co-ordinator the Construction Manager and the Trade Contractors and the Professional Team and that the execution of the Cat A Works complies with the CDM Regulations and in the course of carrying out those obligations the Developer will:
- (a) appoint the CDM Co-ordinator and Trade Contractors and the Professional Team in respect of the Cat A Works and take all steps as are in the circumstances reasonable to ensure that each is provided with the relevant information to enable him to perform his duties under the CDM Regulations
  - (b) allow sufficient time and resources to enable the CDM Co-ordinator and Trade Contractors and the Professional Team to comply with their obligations relating to health and safety matters arising from the CDM Regulations and to co-operate with them to that end
  - (c) notify the CDM Co-ordinator and Trade Contractors and the Professional Team of any change in circumstances relating to the Cat A Works of which it is or ought reasonably to be aware which may affect the health and safety of persons involved or likely to become involved in the Cat A Works
  - (d) comply with the construction phase plan
  - (e) Include in the design all information in relation to the design and materials which might reasonably affect the health and safety of persons working on the Cat A Works and its maintenance and repair and

- (f) procure and deliver to the Owner at the Date of Practical Completion a draft health and safety file containing such finalised information as is available and as soon as practicable after the Date of Practical Completion (but not more than one month after that date) the health and safety file (in print and on CD ROM) prepared maintained and completed as required by the CDM Regulations
- 4.8 The Developer will keep the Owner and his professional advisers informed of:
- (a) material measures taken and stages reached by the Developer in performing his obligations
  - (b) the progress of the Cat A Works; and
  - (c) material problems or delays affecting the Cat A Works
- 5 CONSTRUCTION INDUSTRY SCHEME**
- 5.1 In this paragraph:
- (a) **"FA 2004"** means the Finance Act 2004 and any statutory amendment or modification thereof
  - (b) **"construction operations"** means those operations defined in section 74 of the FA 2004 as construction operations
  - (c) **"contractor"** means a person who is a contractor for the purposes of FA 2004 and the Regulations
  - (d) **"direct cost of materials"** means the direct cost to the Developer or to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is made relates as provided in section 61 of FA 2004
  - (e) **"Regulations"** means the Income Tax (Construction Industry Scheme) Regulations 2005 (No 2045) or any amendment or re-making thereof and references to any individual **"regulation"** shall be construed accordingly
  - (f) **"relevant percentage"** means the relevant percentage of any payment as mentioned in section 61 of FA 2004
  - (g) **"subcontractor"** means a person who is a subcontractor for the purposes of the FA 2004 and the Regulations
  - (h) **"Gross Payee"** is a person registered for gross payment pursuant to section 63(2) of the FA 2004
  - (i) **"Net Payee"** is a person registered for payment under deduction of tax pursuant to section 63(3) of the FA 2004
  - (j) **"HMRC"** means Her Majesty's Revenue & Customs
- 5.2 The Developer hereby warrants that it has registered with HMRC pursuant to section 63 of FA 2004 and its registration has not been cancelled and the Owner warrants that it is a contractor
- 5.3 The Developer shall as soon as reasonably practicable supply the Owner with its company registration number and its unique taxpayer reference ("**UTR**")

- 5.4 Not later than 14 days before the first payment is due to be made by the Owner to the Developer the Owner shall (unless regulation (6)4 exempts it from so doing) verify with HMRC pursuant to regulation 6 whether the Developer (or if appropriate its nominee) is a Gross Payee or a Net Payee
- 5.5 Where the Developer is a Net Payee then not later than seven days before the final date for payment of any sum due:
- (a) the Developer shall give to the Owner a statement showing the direct cost of materials to be included in the payment and
  - (b) the Owner shall deduct the relevant percentage from that part of the payment which is not in respect of the direct cost of materials
- 5.6 Where the Developer complies with paragraph 5.5(a) and the Owner has no reasonable grounds to believe that any statement provided in compliance with paragraph 5.5(a) is incorrect then the direct cost of materials shall be deemed for the purposes of paragraph 5.5(b) above to be as specified in the statement provided
- 5.7 Where the Developer fails to comply with paragraph 5.5(a) or where the Owner has reasonable grounds to believe that any statement provided in compliance with paragraph 5.5(a) is incorrect the Owner shall make a fair estimate of the direct cost of materials for the purposes of paragraph 5.5(b) above
- 5.8 Where the Developer is a Gross Payee the Owner shall pay any amount due without making any deduction
- 5.9 Where the Developer has been a Net Payee and the Owner is notified by HMRC that the Developer is now a Gross Payee paragraph 5.8 shall thereupon apply
- 5.10 Where the Owner is notified by HMRC pursuant to regulation 6(6)(b) that the Developer is no longer a Gross Payee then paragraphs 5.5 5.6 and 5.7 shall thereupon apply
- 5.11 Where the Developer is a Net Payee and the Owner has made payments to the Developer the Owner shall on the 19th day of the month following the month in which payment is made provide the Developer with a written statement detailing the following information:
- (a) the Owner's name and tax reference
  - (b) the tax month to which the statement relates
  - (c) the Developer's name and UTR (if known)
  - (d) the total amount of any contract payments (as defined in section 60 of the FA 2004) made to the Developer during the tax month
  - (e) the total amount included in those payments which the Owner is satisfied represents the direct cost of materials and
  - (f) the total amount deducted from the payments mentioned in sub-paragraph (d) above pursuant to paragraph 5.5(b) above
- 5.12 Where an error or omission has been made by the Owner in calculating the amount deducted under paragraph 5.5(b) above:
- (a) in the case of an over-deduction the Owner shall within ten working days of becoming aware of such over-deduction correct that error by making a payment of the sum over-deducted to the Developer



- (b) In the case of an under-deduction the Owner may deduct such sum under-deducted from the next payment due to the Developer provided that not later than five working days before such next payment the Owner shall serve a notice on the Developer specifying the sum to be deducted and its grounds for doing so
- 5.13 If compliance with this paragraph 5 involves the Owner or the Developer in not complying with any other provisions of this agreement then the provisions of this paragraph 5 shall prevail

## **6 INSPECTION OF THE CAT A WORKS BY THE OWNER, MEETINGS AND REPORTING**

- 6.1 The Owner, the Owner's Monitoring Surveyor and its advisers may at all reasonable times during the Development Period by arrangement with the Construction Manager enter the Premises in order to inspect and view the state and progress of the Cat A Works and the materials used
- 6.2 The Owner and its advisers in doing so may not impede or obstruct the progress of the Cat A Works nor issue any instructions to the Construction Manager any workmen employed on the site or the Trade Contractors but will address any requirement or comment only to the Developer
- 6.3 The Developer will give to the Owner, the Owner's Monitoring Surveyor and his professional advisers at least seven working days' prior notice of progress meetings (as referred to in paragraph 6.4 below) and key site meetings of the Trade Contractors and the Construction Manager or any of them in connection with the Cat A Works and the Owner and his professional advisers are entitled to attend at and participate in such meetings and shall be promptly provided with copies of the minutes
- 6.4 During the period commencing from the date of this Agreement and ending on the Date of Making Good the Developer shall organise, attend and chair progress meetings at intervals of not less than one calendar month attended by the Construction Manager, relevant Trade Contractors and all other relevant parties. No later than 3 Working Days before each progress meeting the Developer shall procure that the Development Manager issues to the Owner and Owner's Monitoring Surveyor a written progress report for the Cat A Works, each progress report shall contain details on achieved programme against anticipated programme, cashflow forecasts (actual against projected), performance of Trade Contractors against the agreed specification and health and safety
- 6.5 The Developer will pay due regard to representative of the Owner and the Owner's Monitoring Surveyor

## **7. INSURANCE**

- 7.1 The Developer will at all times during the Development Period keep insured (or procure the insurance of) the relevant structures and Cat A Works in their full reinstatement cost for the time being and unfixed goods and materials in connection with the Cat A Works in their full replacement cost for the time being against the insured risks with an insurer of repute
- 7.2 For the purposes of paragraph 7.1
- (a) the insured risks are fire lightning explosion storm tempest flood bursting or overflowing of water tanks apparatus or pipes earthquake aircraft and other aerial devices or articles dropped from them riot and civil commotion malicious damage and
- (b) the relevant structures are the buildings and structures constructed in course of construction or standing on the Premises

- 7.3 The Insurance is to be placed in the joint names of the Developer the Owner and any mortgagee of the Premises
- 7.4 The Developer will supply the Owner with a copy of the insurance policy and endorsements made to it and produce documentary evidence of its renewal including receipts for payments of premiums when reasonably requested by the Owner
- 7.5 The Developer will cause all Cat A Works damaged or destroyed to be reinstated with due diligence and replace or repair any unfixed materials or goods destroyed or damaged and remove and dispose of any debris and proceed as soon as may be practicable with carrying out and completion of the Cat A Works and will cause the proceeds of the insurance to be applied towards the reinstatement

## **8. PRACTICAL COMPLETION**

- 8.1 The Developer will give notice (and use all his reasonable endeavours to give at least ten Working Days' notice) to the Owner of the pending issue of each of the Trade Contract PC Certificate and the Certificate of Practical Completion in order to allow the Owner, the Owner's Monitoring Surveyor and his professional advisers the opportunity to inspect the Cat A Works and make reasonable representations to the Construction Manager as to the state and condition of the Cat A Works and whether the relevant Trade Contract PC Certificate and the Certificate of Practical Completion should be issued
- 8.2 The Trade Contract PC Certificate and the Certificate of Practical Completion may be issued subject to a list of Snagging Items and the Developer shall use all reasonable endeavours to procure that the Trade Contractors make good any Snagging Items as soon as practicable after the issue of each Trade Contract PC Certificate and Certificate of Practical Completion (as applicable)
- 8.3 The Developer shall procure that the Construction Manager shall have due regard to any representations made by the Owner the Owner's Monitoring Surveyor and his professional advisers pursuant to paragraph 8.1 but the Construction Manager shall not be fettered from issuing a Trade Contract PC Certificate or the Certificate of Practical Completion at such time as in his opinion he thinks fit
- 8.4 The Developer shall procure that a copy of each Trade Contract PC Certificate and the Certificate of Practical Completion is supplied to the Owner within ten Working Days of the date of its issue
- 8.5 On or before the issue of the Certificate of Practical Completion the Developer shall deliver to the Owner copies of the following in relation to the Cat A Works,
  - (a) As-built drawings and final specification (in print and CD ROM) together with an unconditional royalty free licence to use them in perpetuity
  - (b) Test certificates
  - (c) Manufacturer's product warranties and guarantees
  - (d) Operation and maintenance manuals
  - (e) Building regulation completion certificates and any other Necessary Consents

## **9. DEFECTS LIABILITY**

- 9.1 The Developer will enforce the defects liability provisions in each of the Trade Contracts and in each contract entered into with any other contractor appointed by the Developer to carry out any part of the Cat A Works

- 9.2 The Developer will give prior notice (and use all reasonable endeavours to give ten Working Days' notice) to the Owner of any inspection of the Premises relating to defects in order to allow the Owner and the Owner's Monitoring Surveyor the opportunity to inspect any defects and make representations as to the defects during such inspection
- 9.3 The Developer will procure that the Construction Manager will inspect the Premises and prepare a schedule of defects itemising defects shrinkages and other faults due to materials or workmanship not in accordance with the relevant Trade Contracts occurring before Practical Completion and the Developer will procure that the Construction Manager considers any reasonable representations made pursuant to paragraph 9.2 and
- 9.4 The Developer will procure that the Construction Manager will:
- (a) deliver a copy of the schedules of defects to the Owner in time for the Owner to consider it and notify additions to the Developer and
  - (b) then deliver the schedule (with any additions notified to the Developer by the Owner) to the relevant Trade Contractor within the appropriate time limits for doing so under the relevant Trade Contract
- 9.5 The Developer shall procure that the Construction Manager issues the Certificate of Making Good at the earliest appropriate time
- 9.6 The Developer shall give prior notice (and use all his reasonable endeavours to give at least ten Working Days' notice) to the Owner of the pending issue of each of the Trade Contract Defects Certificate and the Certificate of Making Good in order to allow the Owner, the Owner's Monitoring Surveyor and his professional advisers the opportunity to inspect the Cat A Works and make reasonable representations to the Construction Manager as to the state and condition of the Cat A Works and whether the relevant Trade Contract Defects Certificate and the Certificate of Making Good should be issued
- 9.7 The Developer shall procure that the Construction Manager shall have due regard to any representations made by the Owner the Owner's Monitoring Surveyor and his professional advisers pursuant to paragraph 9.6
- 9.8 The Developer shall promptly notify the Owner in writing of any defect of which it is aware arising following the expiry of the Defects Liability Period and prior to the expiry of the period referred to in paragraph 10.1.

#### **10. LIMITATION OF THE DEVELOPER'S LIABILITY**

- 10.1 The liability of the Developer to the Owner in respect of any breach of obligation under this schedule (including for the avoidance of doubt any liability for any defects in the Cat A Works due to defective design, materials or workmanship or supervision of works) is to cease at the expiry of the period of 10 years after the Date of Practical Completion except for claims begun or defects which the Developer has (or should have) notified the Owner of pursuant to paragraph 9.8 of schedule 1, before the expiry of the period and for the purposes of this paragraph 10 references to the Owner shall be deemed to include successors in title of the Owner to the Premises and any other person who is at any time entitled to the reversion immediately expectant on the term of the Lease
- 10.2 The parties agree that paragraph 10.1 shall be disregarded for the purposes of any rent review under the Lease.
- 10.3 The Developer's liabilities and duties in respect of the design supervision carrying out completion and commissioning of the Cat A Works shall be expressly limited to the contractual obligations (express or implied) contained in this agreement and any other right of action by the Owner its successors in title and persons deriving title under it

against the Developer whether in tort or otherwise is hereby excluded in so far as the law allows

**11. DEFAULT BY THE DEVELOPER**

11.1 The Developer is to be treated for the purposes of this paragraph 11 as being in default under this agreement if it:

- (a) has not completed Cat A Works by the Cat A Long Stop Date or
- (b) the Lease is terminated by forfeiture due to the fact that an Act of Insolvency has occurred in respect of the Developer before the Date of Practical Completion

11.2 If the Developer is in default under paragraph 11.1 the Owner may:

- (a) assume the responsibility of the Developer to his exclusion for the continuation and completion of the Cat A Works on giving to the Developer not less than 15 Working Days written notice to that effect; and/or
- (b) reasonably and properly utilise the balance of any monies held in the Cat A Works Account to complete the Cat A Works; and/or
- (c) reasonably and properly require the Developer to pay to the Owner amounts up to in aggregate the amount of the Security Sum (which shall be drawn from the Security Account) to complete the Cat A Works

11.3 The exercise by the Owner of its rights under paragraph 11.2 does not affect or prejudice any other right or remedy of the Owner against the Developer for breach of obligation under this agreement or otherwise

11.4 Upon receiving notice that the Owner intends to exercise its step-in rights under paragraph 11.2, the Developer shall immediately (and on a continuing basis thereafter) provide the Owner such information as the Owner may reasonably request in respect of the Cat A Works (or any part), including but not limited to providing any necessary consents, information and materials in the possession of the Developer and providing reasonable access to the Premises

**12. FEES**

The Developer shall pay the reasonable and proper fees of the Owner's Monitoring Surveyor and any cost consultant appointed from time to time subject to receipt of reasonable written evidence of the fees and provided further that the Developer's liability under this clause 12 shall not exceed £12,000 (inclusive of VAT) in any Quarter

## **SCHEDULE 2**

### **Cat B Works**

#### **1. CONSENTS AND APPROVALS**

- 1.1 It is within the Developer's sole discretion as to whether or not it shall undertake the Cat B Works. If it elects to do so it shall do so in accordance with the provisions of this Schedule 2
- 1.2 Prior to commencing the Cat B Works the Developer shall
- (a) apply for and obtain all permissions consents licences and approvals of all statutory and regulatory authorities as may be necessary for the carrying out of the Cat B Works
  - (b) provide copies of the same to the Owner
- 1.3 Notwithstanding the terms of the Lease the parties hereby agree that the Developer may undertake the Cat B Works without the need to obtain the Owner's consent.
- 1.4 Within five Working Days of practical completion of the Cat B Works the Developer shall provide the Owner with two sets of plans showing the Cat B Works as built for the purpose of preparing engrossments of the Licence for Alterations
- 1.5 The parties shall enter into the Licence for Alterations on 10 Working Days after provision the plans as provided for in paragraph 1.3 above

#### **2. CDM REGULATIONS**

- 2.1 In relation to the Cat B Works the Developer hereby elects to be treated as the only client for the purposes of the CDM Regulations and the Owner hereby consents to such election
- 2.2 The Developer shall comply with its obligations as client under the CDM Regulations in relation to the Cat B Works

#### **3 CAT B WORKS OBLIGATIONS**

- 3.1 The Developer shall carry out and diligently complete the Cat B Works:
- (a) In a good and workmanlike manner and in accordance with good building practice
  - (b) with suitable good quality materials goods and equipment of their several kinds and
  - (c) In accordance with:
    - (i) all permissions consents licences and enactments obtained by the Developer pursuant to paragraph 1.2 of this Schedule
    - (ii) In compliance with all statutory orders and regulations made under or deriving validity from them and any requirements and codes of practice of local authorities and competent authorities affecting the Premises including (without limitation) the CDM Regulations
    - (iii) so that they are free of any Deleterious Materials

- (iv) without infringement of any rights reservations covenants restrictions stipulations or other encumbrances binding on or affecting the Premises

**3.2 The Developer shall**

- (a) permit the Owner and the Owner's Monitoring Surveyor at all reasonable times to inspect the progress of the Cat B Works and the quality of the materials and workmanship used in them and
- (b) maintain Insurance against all public and third party liability in relation to the carrying out of the Cat B Works

**3.3 The Developer shall procure the carrying out of the design of the Cat B Works using all the skill, care and diligence reasonably to be expected of a qualified and competent designer experienced in carrying out the design of works of a similar size, scope, complexity and nature to the Cat B Works**

**3.4 As between the Owner and the Developer all materials goods plant machinery equipment and other items used in connection with the Cat B Works shall be at the sole risk and responsibility of the Developer and the acts or omissions of all agents employees and contractors engaged in the Cat B Works shall be the responsibility of the Developer**

## SECTION 3 – GENERAL DESCRIPTION OF THE WORKS

### SCHEDULE 1 – BUILDING FABRIC

#### 1.1 Demolitions & Stripping Out

NB Any stripping out within toilets, staircases and plant rooms is dealt with separately under separate relevant sections of Scope of Works due to the specific nature of each of these elements.

Demolitions/Stripping out of Cat B Fit-out to 5<sup>th</sup>, 4<sup>th</sup>, 3<sup>rd</sup>, 2<sup>nd</sup>, 1<sup>st</sup>, ground & lower ground floors- 7 levels unless otherwise noted

1. Strip out existing fitted floors – take up carpets (tiles and/or broadloom), take down blinds, strip wallcoverings, retain oak skirtings/windowboards (NB 4<sup>th</sup> floor already stripped out)
2. Clean and clear any remaining paperwork/chattels left by tenant
3. Demolish existing office walls and partitions including doors & frames. (4<sup>th</sup> floor already stripped out)
4. Strip out existing suspended ceilings (Echophon on all floors except 4<sup>th</sup> & 5<sup>th</sup> floor which has a lay-in metal pan type ceiling). Electrician to make safe & lighting to come out with suspended ceiling, strip all suspension system, fixings, electrical containment etc back to structural soffit. Existing fibrous plaster margins to remain. Main ceiling to be stripped back to the line of existing perimeter grilles including removing grilles.
5. Carefully remove existing oak skirtings, window boards and other joinery 'trim' from 4<sup>th</sup> floor and Ground floor and set aside for use as 'spare' to replace any damaged sections on other floors.
6. Strip out Cat A oak doors and frames to floor entrances at South & North cores ready for new doors & frames
7. Strip existing oak lift entrance reveal linings
8. Strip out & demolish calorifier enclosure (4<sup>th</sup> floor only)
9. Make safe and strip out existing tea areas (4<sup>th</sup> floor already stripped out)
10. Strip out stainless steel fronted water cooling/hose reel housings, including condensers etc (all floors to North & South cores) and prepare/adapt opening for new riser doors (see also BWIC)
11. Remove any retained wall mounted boards, post room fittings etc (sundry general)

- 12 Take up raised floor pans including pedestals, clean off slab, make good any penetrations, seal floor with water based sealer, leave ready for new raised access flooring and pedestals.
13. Demolish existing enclosures including doors to North stairs and goods lift access

Alterations

14. Strip out existing electric riser doors and frames and adapt/prepare opening for new (NB Note Health & Safety requirements on Electrical Safety)
15. Strip out existing small square riser access doors and frames and enlarge openings for new riser doors and frames
- 16 Cut access openings at LGF, GF and 4<sup>th</sup> floor for dumb waiter installation

Ground floor reception strip out

- 17 Strip out existing stone floor, stone wall cladding to existing ground floor reception area
18. Strip up existing timber floor finish to existing ground floor reception area
19. Demolish existing reception desk and room forming rest area for security staff
- 20 Strip existing automatic sliding doors, side screens etc – depending upon new construction/temporary works

Loading bay works

21. Demolitions and alterations associated with altering parking bay included with that element of works (see Schedule 1.6).

'Special' strip out items

- 22 Strip out tenant's old AV installations
- 23 Strip out shower facilities in lower ground floor (male & female)
24. Strip out old post/print room benching and any equipment left from l.g. floor
25. Strip out old racking etc from l.g. floor
- 26 Strip out old comms room racking & the like



M&E Strip-out

27. Mechanical plant strip-out - by specialist contractors who will make safe, disconnect, disassemble/dismantle equipment into 'manhandleable' elements at designated points for site labour to take to loading bay for & including disposal.
28. Electrical installations/stripping out. Electricians will make safe and disconnect services. Main riser distribution boards will be stripped by electricians and left at designated points for site labour to take to loading bay for & including disposal
29. Lift Installations – dismantle & dispose by specialist lift engineers Site labour will attend on lift engineers as necessary
30. Fire Alarm installation – to be stripped and made safe by electricians at appropriate time

**1.2 Roof Works**

Sundry works

1. Clean and tidy roof, scrape off loose & flaking reflective coatings
2. Remove loose vegetation matter
3. Jet clean gutters and rainwater outlets, including CCTV survey where possible
4. Remove redundant plant & equipment
5. Sundry repairs to walls etc
6. Sundry joinery repairs to locks, hinges etc
7. Decorate 'painted' surfaces

New Roof Finishes

8. Allow for cleaning down, priming and 'smoothing' rippled asphalt prior to new finishes
9. New insulated roof finishes comprising 80mm Kemperol insulation with rigid board top surface and using cold applied liquid waterproof membrane all laid over existing insulated asphalt finishes (existing roof to be retained shown to be constructed in 25/30mm asphalt laid on 50mm polyisocyanurate insulation board on vapour barrier).

10. New roof finish will provide 0.18U value once re-proofing and additional insulation as described is completed
11. See drawn information for full 'Kemper' specification
12. Extend existing kee klamp type handrail to West elevation to extend for full length of roof
- 13 Check effectiveness of harness strapping system – obtain report from outgoing tenant & have re-tested prior to completion

### **1.3 External Walls & Parapets**

- 1 Clean parapets, clean out mastic joints and re-instate with new
- 2 Check dpc under parapets and repair as necessary
- 3 Replace damaged stone to front elevation (see Savills report)
4. Make good loose/defective rendering under parapet stones
5. Works to front entrance – see 1.7 later herein

### **1.4 Windows & External Doors**

- 1 Undertake survey to ensure no windows are failing. Particularly check windows to 5<sup>th</sup> floor mansard East elevation (no access to 5<sup>th</sup> floor prior to commencement)
- 2 Check operation of roller shutter to goods entrance and check maintenance regime – obtain details from outgoing tenant
- 3 Check external doors to roof and to rear open area to ensure all operating correctly, maintain and repair as required
- 4 Provide approved security to external door to Lackington Street to provide bicycle access for tenant use (Subject to adjoining owner's agreement)
5. Clean all windows on completion – general R&R/maintenance – see Section 9 of Cost Plan

**1.5 Staircases**

**South Core**

1. Thoroughly protect for the full duration of the works
2. Clean and revive oak joinery fronts to toilet entrances, cleaner's cupboards and adjacent panelling
3. Re-decorate walls and soffits with emulsion paint to prescribed colours
4. Install vision panels into retained doors off floors as drawn details
5. Clean, prepare prime and oil paint door and leaf (both sides) from fire lobby between staircase/floor (new door and leaf off floor included as part of Cat A works, new door & frame to 4<sup>th</sup> & Ground floors included with Cat A works also)
6. Remove knob furniture and install stainless steel push plates, pull handles, kick plates, and signage plates
7. Clean & revive window boards and associated oak finishes
8. Retain vertical lights to internal corners on main staircase
9. Strip up existing broadloom carpet, install Morley IIN5 undercut mill finish aluminium stair nosing with contrasting insert nosing to comply with Equality Act 2010 requirements
10. Install Milliken 10mm thick cushion back carpet tile finishes collection Juxtapose colour Wainscot to replace all previously carpeted areas to treads, risers and landings
11. Existing handrails, stone margins and glazed balustrades to be retained, protected & cleaned

**North Core**

Essentially same specification and proposed works as South Stairs but lesser extent of works

12. Protect thoroughly for the full duration of the works
13. Clean and revive oak joinery fronts to toilet entrances
14. Re-decorate walls and soffits with emulsion paint to prescribed colours
15. Install vision panels into retained doors off floors as drawn details

16. Clean, prepare prime and oil paint door and leaf (both sides) from fire lobby between staircase/floor (new door and leaf off floor included as part of Cat A works, new door & frame to 4<sup>th</sup> & Ground floors included with Cat A works also)
17. Remove knob furniture and install stainless steel push plates, pull handles, kick plates, and signage plates
18. Clean & revive window boards and associated oak finishes
19. Strip up existing broadloom carpet, install Morley HN5 undercut mill finish aluminium stair nosing with contrasting insert nosing to comply with Equality Act 2010 requirements
20. Install Milliken 10mm thick cushion back carpet tile finishes collection Juxtapose colour Wainscot to replace all previously carpeted areas to treads, risers and landings
21. Existing handrails, stone margins and glazed balustrades to be retained, protected & cleaned

#### **1.6 Loading Bay Works**

1. Clean and clear redundant goods and equipment
2. Protect area for full duration – including rigid board protection to floor and retained walls, doors etc
3. Demolish/alter & adapt walls at end of bay to provide parking facility as layout drawings
4. Retain existing pair oak doors for duration of works and redecorate loading bay side in dark grey paint and internally revive and re-polish including providing kick plates prior to completion.
5. Re-Asphalt loading bay floor including 'feathering' new asphalt to form shallow ramp into cant brick on edge threshold to access doors to inside (Provisional)
6. Renew loading bay shutters & entrance pass door (Provisional)

#### **1.7 Front Entrance Scheme Works**

1. Protect area for full duration – including rigid board protection to floor and retained walls, doors etc

2. Take out existing sliding doors and side escape doors to reception (both sets)
3. Provide temporary secure hoarding/protection to entrance area during replacement of the entrance scheme
4. Remove old fire panel, make good recess and form new recess for replacement panel in new location
- 5 Strip existing stone floor and wall finishes
6. Strip existing stone finishings from treads & risers to entrance steps and extend steps in situ concrete to form new step location to back edge of footpath
7. Provide new 30mm granite finishes to steps with non-slip inserts & contrasting nosings/leading edge
8. Porcelain tiles finishes to walls enclosing entrance to match interior tiles (600 x 600mm Matt Porcelain tile wall coverings Lurida Smooth by Solus Ceramics (3CME112) with 2mm joints fixed to solid wall faces
- 9 New finishes to retained bay (canopy) including MR plasterboard painted soffit lining
10. Boon Edam Crystal Tourniket Automatic revolving entrance doors (approx 2,400mm overall diameter) with motorised drive incorporated into 200mm canopy recessed into suspended ceiling and with side access escape doors providing 900mm clear opening width
11. New corporate signage to face of canopy and entrance doors
12. Adapt existing fire dry riser access if necessary for new entrance scheme
13. Provide 2 No new stainless steel handrails set into new steps to assist entry into building
14. Accessibility – there is an existing temporary ramp arrangement that will be retained. Existing temporary ramps will be stored in security room adjacent to the main entrance. Escorted level access through the loading bay is available and this should be considered as the primary entrance for wheelchair bound persons.
15. Provide call points to front entrance.

## SCHEDULE 2 - INFRASTRUCTURE WORKS

### 2.1 Mechanical Services

#### 2.1.1 Air Conditioning

The existing VAV system, supplementary 4 pipe fan coil systems and DX systems will be stripped out along with associated plant, air handling equipment, controls and power supplies.

Heat Recovery VRF air conditioning with ceiling mounted fan coil units serving a range of linear and swirl diffusers will replace the old systems throughout the building. Condensing units will be roof mounted. Independent temperature controls per zone/office will be available.

#### Design parameters

External design conditions	Summer Winter	29degC db 20degC wb -5degC/Saturated
Internal design conditions	Summer Nominally Winter Nominally Humidity Circulation/Toilets	22degC db+/- 2degC 21degC db+/- 2degC Uncontrolled 18degC min
Occupancy	1 person/10m2	
Cooling capacity (Heat gains)		
Lighting	12w/m2	
Small power	25w/m2	
Fresh air rate	12 litres/sec per person	
Ventilation rates	Toilets 10 air changes per hour	
VRF fan coil unit density	approx 40m2 per Fan Coil Unit	
Plant Noise Rating (Internal-Occupied)	NR38	
Spare Capacity	Ventilation risers 20% per floor Cooling 10% per floor	

### **2.1.2 Ventilation**

Heat recovery supply and extract ventilation will be provided from basement mounted air handling plant. Fresh air will be drawn and exhaust discharged via low level lightwell and via existing open extract area to North end of basement. Fresh air will be delivered to rear of each fan coil via range of ceiling void distribution ductwork. Extract will be via ceiling plenum

A separate ventilation system for toilet supply and extract will be provided.

### **2.1.3 General Heating**

Heating to landlords common parts and reheat for air handling plant will be from central gas fired condensing boilers mounted at roof level. Re-use existing gas intake and metering.

### **2.1.4 Hot and Cold Water Services**

Cold Water stored at basement level and boosted to each floor level with centralized hot water storage and pumped distribution will be installed. Drainage will be to existing soil/waste system. Existing water intake and metering will be re-used.

Leak detection/alarm systems to wet areas will be provided

### **2.1.5 Controls**

A BMS controlled and monitored installation will be provided for operation of the HVAC services for energy efficient use and auditing. Facility for off-site link and monitoring/response.

### **2.1.6 Mechanical Fire Protection**

Existing dry riser will be re-used subject to testing

### **2.1.7 Mains utility services**

The incoming mains water, gas and electric services and drainage will all be re-used.

## **2.2 Electrical Systems**

The existing electrical system will be stripped out.

### **2.2.1 Mains Distribution**

There is an existing UKPN sub-station located at lower ground level.

From this sub-station, an LV supply runs to a main electrical switch-room.  
It is proposed to retain the incoming service and new main distribution boards will be installed to serve the revised building services.

The electrical engineering services distribution is from busbars or cabling that will distribute electricity through the building by dedicated core risers.

There is an existing standby generator that will provide backup to essential small power services

### **2.2.2 Tenant Distribution Boards**

New split metered MCB / RCBO distribution boards shall be provided at each floor level for local lighting and small power loads

These boards will include for separate metered sections for lighting loads and small power services

Small loading power of 25w/m2 will be available

### **2.2.3 Lighting Installation**

A new recessed lighting installation shall be provided to all office areas which incorporate current CIBSE/SLL Guidelines for Office Schemes

Where possible LG7 compliant recessed fluorescent light fittings will be installed with illuminance of 350-400 lux at desk top

This lighting shall be controlled via a movement / daylight linkage sensors and shall include dimming function for maximum energy efficiency.

### **2.2.4 Emergency Lighting**

A system of emergency lighting shall be installed comprising LED down-lighters, designed to BS 5266

### **2.2.5 Small Power Installation for cleaners**

13A socket outlets will be provided to all areas to provide dedicated cleaner's power supplies

### **2.2.6 Fire Alarm**

A new analogue addressable fire alarm will be provided with full automatic detection to all areas as BS 5839 Type L2.



#### **2.2.7 Disabled WC Alarm**

Within each accessible WC an alarm system shall be provided comprising pull cord alarm, reset unit and over-door indicator/buzzer (Building Regulations part M).

#### **2.2.8 Door Entry System**

A new video entry intercom shall be provided to control the main entrance. Remote release video intercom units shall be provided at main reception.

#### **2.2.9 Access Control**

Full access control will be provided to secure all key circulation and floor levels and provide staff entry control to the main and side entrance doors. The system shall comprise programmable keycards, mag-locks and press to release controls.

#### **2.2.10 Mechanical Plant Supplies**

A new system of small power will be required to serve mechanical plant – ventilation, cooling, heating and water services.

Separate check meters will be provided for large items of plant to allow individual energy usage to be monitored.

#### **2.2.11 Incoming IT Services**

A fibre telephone main comes directly into an existing comms room. This will be retained and extended as required.

A 100 pair copper telephone cable enters the building in the vicinity of reception and is extended into the existing comms room. This will be retained and extended as required.

There is ample riser space for services to be brought from the lower ground floor to the upper floors.

A new Virgin incoming data service will be installed at tenant's cost direct for & on behalf of the incoming tenant.

## **2.3 Lift Engineering Services**

### **2.3.1 South Lift Core**

Two passenger lifts will be stripped out and renewed with new Schindler 6500 passenger lifts to current standards. The lift cars will be fitted out to a standard commensurate with a modern office building in the City of London. The lift fronts and reveal linings to each floor level will be in satin stainless steel. The Schindler 6500 is a MRL (motor room less) design and the control panel will be sited adjacent to the top floor entrance.

These lifts will carry 1000kg/13 people at 1.6m/sec and operate between all floor levels including the lower ground floor. The replacement lifts will operate on a frequency converter with selective collective control.

Landing doors will be brushed stainless steel with full height detection with light curtain. Entrances will be fire rated E120

### **2.3.2 North Lift Core**

A third lift, within the north core, will be stripped out and renewed with a new Schindler 6500 passenger lift to current standards. The lift car will be fitted out to a standard commensurate with a modern office building in the City of London. The fronts and reveal linings to each floor level will be in satin stainless steel. The Schindler 6500 is a MRL (motor room less) design and the control panel will be sited adjacent to the top floor entrance. This lift will be provided with facilities for temporary protection when in use for goods transportation.

This third lift will carry 2000kg/24 people at 1.6m/sec and operates between all floor levels including the lower ground floor. The replacement lifts will operate on a frequency converter with selective collective control

Landing doors will be brushed stainless steel with full height detection with light curtain Entrances will be fire rated E120.

### **2.3.3 Maintenance etc**

The new lift installations will include 1<sup>st</sup> year maintenance, 12 month warrantee.

### **2.3.4 Window cleaning cradle**

The existing window cleaning cradle will be retained and refurbished. It is currently maintained by Carter Cradles who have offered a conditional survey together with costs for overhauling, painting etc

Carter Cradles have scheduled works for 2014 onwards but this will be included in the scope of this project as follows.-

Luffing screw to be ND tested in 2014 – LG3 requirement

Clean down trolley and cradle and prep ready for complete repaint (possibly respraying on site with the appropriate screens in place to prevent over-spray)

Re-rope machine in 2014 (latest)

Hoist motor and traverse motor to be removed and overhauled (both motors)

Replace limit switches (approximately 6 No)

Oil change on gearbox units (2No)

Remove 4 no. secondary safety Skylocks for factory overhaul and bench test

#### Emergency Rescue:-

The window cleaning equipment is supplied with a Gotcha Rescue Kit (on the assumption that this has been passed over), including full training for the incumbent window cleaners and all Carter Cradle maintenance staff, plus one maintenance personnel from the incumbent FM company. If this needs to be included in the maintenance contract, Carters can forward the technical information relating to this product and copies of their engineers certification to use the rescue kit in its capacity

Carter Cradles have offered Annual Maintenance at the rate of £1,318 p a. available to be taken out separately by the tenant

#### **2.3.5 BWIC Lifts etc**

Existing shafts will be retained, cleaned and painted internally, existing buffers broken out, floor entrances altered and adapted as necessary

Builder's works in connection with lifts will be provided as required

#### **2.4 Security Services**

Full access control will be provided to secure all key circulation and floor levels and provide staff entry control to the main and side entrance doors. The system shall comprise programmable keycards, mag-locks and press to release controls.

Tenant's additional requirements will include relocating security installations internally to suit the tenant fit-out, alarms to specific areas, CCTV to specific areas (internally & externally)

#### **2.5 Communications Installations**

In addition to the incoming mains data services and 'backbone' wiring noted previously the Tenant will install underfloor cable distribution, comms room facilities etc for their own use.

#### **2.6 Generator Works**

The existing 335KVa generator will be retained and overhauled by Cummins-Power Generation (the original manufacturer) and left in full operation on completion of the overhaul

A condition survey and load bank test will be undertaken prior to overhauling works commencing and works required resulting from these tests will be undertaken by Cummins.

Until the survey & test is done it is not possible to exactly state the extent of the proposed refurbishment/overhauling works but these may include (but not limited to).-

- Common Engine repairs - supply & fit service exchange cylinder heads, service exchange injectors and to rework & recalibrate the fuel injection pump, replacement of fuel & cooling system hoses and a full service including fluids & filter changes. Also to replace the engine starting batteries together with the engine coolant system pre heater

- Replacement of the generator control panel - Incorporating a new control box fitted with a separate control module together with 2 separate circuit breakers and associated copperwork, CT's, battery charger etc including terminals control fuses and drawings etc

- Replacement of the radiator core

### **2.7 Builder's works in connection (BWIC)**

The following BWIC is listed to indicate anticipated elements of works requiring BWIC – this list is not intended to accurately define the extent of or limit the expected works, simply an indication of those likely to be required.

#### **2.7.1 Roof plant areas**

Cut away & dispose of arisings from redundant bases, plinths and make weathertight

Cap and make weathertight roof openings where old plant & equipment removed

Install grillages in open areas to carry new plant & equipment (including future access for roof finishes, r.w. outlets etc)

New access steps and the like

Extend existing roof 'keeklamp' type handrail to the full extent of the West elevation, alter and adapt to ensure retained 1100mm handrail after installation of new roof finishes

South roof plant room – the roof will be 'cut back' to the line of the portal near GL3. This will comprise stripping back existing felt roofing and removing the 'Durox' lightweight concrete beams spanning the portals for 2 bays to form an open roof area similar to the existing chiller enclosure.

New insulated metal cladding will be installed to the new 'North' end to the retained enclosed plant area

New rainwater outlet will be installed to the new 'open' plant area

Temporary handrails, protection and the like during the course of the works

#### **2.7.2 Riser works**

Mechanically machine saw cut new riser openings to form access for stripping out and for new riser installations

Break out existing riser floors etc for new access & re-instate on completion

Fire stopping, smoke sealing as required to new risers and at ingress/egress points to floors

Infill above riser doors in dry wall construction to maintain ½ hour fire integrity

Install 'frameless' pre-primed riser doors providing ½ hr fire protection complete with 'soss' hinges, hardware and applied 'fire door keep shut' signage

Touch up primer and paint riser doors in one undercoat and 2 full coats oil paint to match interior design

Cut away as required internally for dumb waiter shaft

#### 2.7.3 Lift shafts

See previous notes

#### 2.7.4 Sundry mechanical & electrical works

Sundry works to allow access – cut back oil feed pipes, gas pipes if required

New cable trays & make good after old removed

Matting under floors for IT cable distribution by cable installation team

#### 2.7.5 Lower ground floor (old chiller and AHU rooms)

Make good surfaces where plant etc removed

Re-instate access panels etc

New raised floor included in raised floor package

#### 2.7.6 Holes etc

Cutting holes, openings and the like for pipes, ductwork. Where possible holes will be cut using specialist cutting techniques (diamond drill, stitch drill, diamond cut etc)

Make good existing holes left after demolitions, stripping out etc

#### 2.7.7 Toilets

Make good wall faces where toilet pans/urinals removed

General works in toilets included within that scope

#### 2.7.8 Sundry metalworks

Cat ladders, access ladders, steps & the like

Flashings, weathering

Lifting beams

Extend roof edge protection (see kee klamp above)

Paint brackets & the like as required

#### **2.7.9 Electrical works**

Cut holes in ceiling tiles, floor pans for light fittings, floor boxes & the like

#### **2.7.10 Temporary works**

Sundry scaffold, hoisting, protection to roofs etc

Crane in new plant & equipment

Empty water tanks & the like

Provide temporary drain and water connections for site use

Cut away & make good for revolving door installations

Test roof , wash drains, scour risers etc

#### **2.7 11 Road closure**

Where required road closure may be necessary to enable plant & equipment to be extracted from roof and new plant hoisted to roof.

### **SCHEDULE 3 – OFFICE FLOORS (CAT A WORKS)**

#### **3.0 Office Floors Installations (Cat A Works)**

##### 3.1 Strip out and make good (General for ALL floors)

1. See OA Demolition & Strip Out drawings 05 Demo 01-04 – LG Demo 01-04 (7 sets in all), showing extent of partitioning removal, suspended ceilings, lighting and raised floor.
2. In short, with minor specific exceptions noted on the drawings, all existing walls, floors and ceilings and associated lighting, power etc will be removed from the lettable floors in readiness for re-fitting
- 3 All underfloor electrics, data cabling etc will be removed and discarded
4. All above ceiling cable ways, fire alarms, barriers, control cabling routes etc will be stripped and removed
5. Strip out and dispose of any retained louvre blinds or other type of blinds/window dressing.
- 6 Retain existing oak skirtings and window boards (except 4<sup>th</sup> & ground floors – these to be removed for replacement)
- 7 Make good sundry holes and any penetrations in the slab
- 8 Make good sundry holes and like where fixings removed from walls

##### 3.2 New Installations (general areas – see special areas for 'upgrades')

###### 3.2.1 Raised Flooring

- 9 Clean off old adhesive, seal existing retained concrete slab ready for new raised floor finishes
- 10 Install new medium duty (screw down) 600 x 600mm metal floor pan raised flooring system Kingspan Torlock TL3 Euro-ped II pedestals secured to existing floor. Foam abutment with external walls and fit raised floor fitted to underside of retained skirtings
- 11 30 Min fire barrier comprising encapsulated Rockwool stone wool slab ( as detailed on 'As Proposed' raised floor drawings)



**3.2.2 Walls & Doors**

12. Make good where walls removed, damage by others etc and prepare for redecoration
13. Redecorate to suit interior design scheme
14. Decorate plaster margins
15. Dry line walls to core to office areas where required
16. Clean revive & decorate retained joinery, replace/piece in as appropriate any damaged or missing sections – doors, frames, skirtings etc (NB 4<sup>th</sup> & Ground floor will be replaced as part of fitting out)
17. Deep clean and de-grease retained window frames internally
18. Remove existing leaf & ½ door & frames to South & North cores main doors to staircases and replace with new leaf & ½ door complete with vision panel and new frame to match interior design scheme

**3.2.3 Suspended Ceilings**

19. A new suspended ceiling will be provided as described below - subject to above ceiling services the proposed ceiling height will be set at 2,600mm on the upper floors (1-5 inclusive), 3,000mm in the ground floor and 2,600mm in the lower ground floor
20. Ceiling will be 600 x 600mm SAS system 130 modular white (RAL 9010 20% gloss) perforated metal tile suspended ceiling with exposed suspension grid with acoustic mat backing fitted to the back of the tiles as required (see drawings).
21. The system will be suspended using rigid angle hangers.
22. Existing fibrous plaster margins will be retained to the 'long' elevations and adapted to suit the new suspended ceiling
23. The existing plaster margins will be extended into the floor to accommodate a new continuous supply air grille and by a further 400mm to form a perimeter 50mm (approx) downstand margin in 12.7mm plasterboard taped & jointed for direct decoration. The North & South margins will be set at the main ceiling height level with an edge trim detail.
24. Above ceiling barrier to suit DS requirements (assumed to be a single barrier at mid point across width of building)

- 25 Thoroughly prepare, fill & patch prime bare/newly filled existing plaster surfaces with emulsion paint and apply 2 coats white emulsion paint throughout (Dulux). Any new plaster ceiling surfaces to have additional mist coat applied prior to decoration

**Other notes**

26. Deleted 25/9/13– item not used.

**SCHEDULE 4 - MAIN GROUND FLOOR RECEPTION**

**4.0 Redevelop Main Ground Floor Reception**

(NB this section includes some enhancements to be provided as part of the Fitting Out for owner occupation)

**4.1 Strip out and make good**

- 1 See OA Demolition & Strip Out drawings (G Demo 01-05) showing extent of raised floor, suspended ceilings (both tiled and plaster), lighting and partitioning removal.**
- 2 Demolish existing reception desk, security enclosure etc, remove existing stone cladding, skirtings, stone flooring etc**
- 3. All underfloor electrics, data cabling etc will be removed and discarded**
- 4 All above ceiling cable ways, fire alarms, barriers, control cabling routes etc will be stripped and removed**
- 5. Strip out and dispose of any retained louvre blinds or other blinds/window dressing.**
- 6 Make good any sundry holes and any penetrations in the slab**
- 7. Make good sundry holes and like where fixings removed from walls**

**4.2 Floor finishes**

- 8. Seal existing retained concrete slab ready for new floor finishes**
- 9. Install new medium duty (screw down) 600 x 600mm metal floor pan raised flooring system Kingspan Torlock TL3 Euro-ped II pedestals secured to existing floor Foam abutment with external walls and raised floor fitted to underside of retained skirtings**
- 10. 25mm WBP plywood (use 2 x 12mm sheets cross bonded) laid on raised flooring system and screwed at 200mm ccs to provide solid backing for porcelain tiled flooring**
- 11. 600 x 600mm Porcelain tile floor coverings Lurida Smooth by Solus Ceramics (3CME112) with 2mm joints laid in flexible adhesive on plywood**
- 12. Rugs – loose rugs included as part of Fitting Out**
- 13. Entrance matting – included in entrance scheme (see Schedule 1.7)**
- 14. Silicone pointing at all porcelain tiled abutments and as instructed to installation team in complimentary colour to finishes.**

**4.3 Walls & Doors**

15. Make good retained surfaces to suit interior design scheme
16. 600 x 600mm Matt Porcelain tile wall coverings Lurida Smooth by Solus Ceramics (3CME112) with 2mm joints fixed to plasterboard wall faces
17. Clean revive and re-finish retained joinery – doors, frames, skirtings etc or renew
18. Remove existing door & frame to South staircases and replace with new stained & polished cherry door with vision panel and new frame to match interior design scheme
19. Mastic pointing where required to porcelain abutments
- 20 Retain existing door & frame to security office next entrance doors and redecorate in paint finish to suit interior design scheme.

**4.4 Suspended Ceilings**

21. New MF plasterboard solid ceiling taped & jointed for direct decoration with cut outs for downlights as the proposal drawings with modular tiled areas for access as drawings
22. Form plasterboard feature downstand above reception desk
23. Modular Ceiling areas will be 600 x 600mm SAS system 130 white (RAL 9010 20% gloss) PLAIN metal tile suspended ceiling with exposed suspension grid with acoustic mat backing fitted to the back of the tiles as required (see drawings).
- 24 The system will be suspended using rigid angle hangers
- 25 Decorate plaster margins in white emulsion paint (RAL 9010)
- 26 Above ceiling barriers to suit DS requirements (assumed to be a single barrier at mid point across width of building)

**4.5 Fixtures & Fittings**

27. Deleted 25/9/13 – item not used
28. Deep clean and de-grease retained window frames internally
29. Remove riser access from behind new reception desk location

- 30. Stained and polished cherry veneer coats cupboards to suit interior design scheme (8 No Wardrobes) as part of Fitting Out
- 31. Stained and polished cherry veneer credenzas housing fridges (2 No Credenzas) as part of Fitting Out
- 32. Stained and polished cherry veneer credenzas (1 No Credenza) as part of Fitting Out
- 33. Stained & polished cherry feature screen to seating area as part of Fitting Out
- 34. Paint finish feature screen to security area as part of Fitting Out
- 35. Paint finish security desk as part of Fitting Out
- 36. Stained & polished cherry 760mm high reception desk as part of Fitting Out

**Lighting**

- 37. Provide arrangement of downlights and compact fluorescent lighting to reception area

**SCHEDULE 5 – TOILETS**

**5.0 Toilets (Including Cleaner's closets)**

5.1 South Core Toilets

Generally to ALL floors (with minor adjustments for 'non-standard' areas)

- 1 See OA 'as existing & as proposed' toilet drawings.

5.1.1 Preparatory works

2. Allow minor stripping out
3. Remove existing sanitaryware – toilet pans, cisterns, urinals, retain underslung basins
4. Retain underslung basins and worktops and remove taps (these to be re-used – remove to allow marble cleaning works to worktops). Existing tarnished waste fitting to be removed and replaced without removing basin
5. Option - If not possible replace underslung basin with new waste fittings.
6. Carefully take down existing fibrous plaster ceiling and associated lighting to allow works to ventilation system and new infrastructure electrical works. Prepare abutments for new ceiling.
7. Carefully remove all existing soap holders, toilet roll holders, hand towel dispensers air fresheners, remove sticky labels etc all prior to marble refurbishment.
8. Carefully remove redundant stainless steel roller towel dispenser 500 x 2055mm and protect opening to allow access for services works in riser behind and prepare opening for new replacement paper towel dispenser.
- 9 Generally retain existing finishes and protect for the duration of the works

5.1.2 Floor finishes

10. Chemically clean existing marble floor paying particular attention to the grout joints by hand brushing, dry, resurface using range of discs to honed finish, rinse and polish to a high glazed finish back to original finish.
11. NB it may be necessary to re-point floor but consideration has been given to potential damage to the edges of the stone so, unless absolutely necessary to re-grout, the grout will be left 'as cleaned' only.

**5.1.3 Walls**

12. Chemically clean existing marble tiled finishes paying particular attention to the grout joints by hand brushing – make good areas where small holes left by removal of previous fittings etc using 2 part epoxy resin and hardener to best colour match, lightly resurface with appropriate disc, rinse clean and wax polish and machine buff to a high glazed finish.
- 13 Existing access doors to be retained, refinished and re-filled as required.
14. Mirrors – retain existing mirrors (unless damaged or failing silver)

**5.1.4 Existing Joinery**

15. Strip and revive existing oak panels under vanity basins
16. Strip and revive existing Oak door and frame to inside face of toilet entrance door, lobby door and door to service riser cupboard in lobby.
- 17 Remove existing knob sets from entrance door and lobby door, provide stainless push plate and pull handle to replace existing hardware, kick plate on 'push' side of each door. Existing riser access door to be retained all as existing.
- 18 Strip & revive existing oak cubicle doors (b/s), retain existing locks, door hooks, perko closers etc, provide new stainless kick plate to 'outside' face of cubicle doors to conceal water staining
19. Existing oak cubicle frames (both sides) to be prepared and etch primed and painted to suit the marble wall finishes.
20. One door in each toilet to be handed to open out to provide ambulant dda provision, necessary adjustments will be required to the door frames and hardware
21. Overhaul existing door hardware and leave operable (allowed for elements of minor renewal)

**5.1.5 Ceilings**

22. Install new MF plasterboard suspended ceiling with channels etc supported on rigid hangers, provide suitable trim round perimeter and round areas of accessible ceilings (see drawn information) Tape & joint for direct decoration.
23. Install areas of plain 600 x 600mm chamfered edge metal suspended ceiling tiles with concealed 'sprung tee' suspension system to accessible areas as noted on drawings.

- 24. Install new LV downlighting (included in electrical services package)
- 25. Prepare & apply 3 coats emulsion paint (RAL 9010) to plaster margins

5.1.6 Fittings

- 26. Vanity unit, apron and rear upstand to be revived using chemical cleaner, resurface using range of discs, rinse, dry and finally polish with polishing powders to a high gloss finish (NB Replacement underslung basins are available to same size from Armitage Shanks should these be required))
- 27 Retain new taps to vanity units if possible (these only recently replaced)(3 taps per toilet suite)
- 28. Provide electrical connection for 'Dyson' blade hand drier
- 29. Stainless steel paper towel dispenser and waste bin (FW Frost) with allowance for hinged access behind to services in future with oversize bezel surround to cover edge of tiles etc.

5.1.7 Services

- 30. Supply & Extract ventilation to be renewed (see mechanical services package)
- 31. Existing taps to be refitted following marble refurbishment works – allowance made for some replacements)

New white sanitaryware :-

- 32. 3 No Toilet pans seats & covers including cisterns etc  
2 No Urinals (Male) including cisterns  
3 No Basins - retain existing basins but replace waste outlets (if possible)  
Retain existing taps but with new taps as necessary, chrome fittings etc.
- 33 New H&C pipework from mains/water heaters as required – where any existing pipework is retained it will be thoroughly flushed and rinsed through and tested (see mechanical services package)
- 34. Waste pipework will be fully replaced to urinals (see mechanical services package)
- 35 Flush and rod through all soil waste pipes (see mechanical services package)



5.2 North Core Half Landing Toilets

Generally to ALL floors (with minor adjustments for 'non-standard' areas)

36. See OA 'as existing & as proposed' toilet drawings.
37. The proposed works to the North Toilets essentially follow the style and extent of works proposed to the South Toilets. The following scope is described similarly to the South Toilets and is adjusted only where quantities etc vary.

5.2.1 Preparatory works

38. Allow minor stripping out
39. Remove existing sanitaryware – toilet pan, cistern, retain underslung basins
40. Retain underslung basin and worktop and remove taps (these to be re-used – remove to allow marble cleaning works to worktops. Existing tarnished waste fitting to be removed and replaced without removing basin
41. Option - If not possible replace underslung basin with new waste fittings.
42. Carefully take down existing fibrous plaster ceiling and associated lighting to allow works to ventilation system and new infrastructure electrical works. Prepare abutments for new ceiling.
43. Carefully remove all existing soap holder, toilet roll holder, hand towel dispenser air fresheners, remove sticky labels etc all prior to marble refurbishment
44. Carefully remove redundant stainless steel roller towel dispenser and protect opening to allow access for services works in riser behind and prepare opening for new replacement paper towel dispenser
45. Generally retain existing finishes and protect for the duration of the works

5.2.2 Floor finishes

46. Chemically clean existing marble floor paying particular attention to the grout joints by hand brushing, dry, resurface using range of discs to honed finish, rinse and polish to a high glazed finish back to original finish.
47. NB it may be necessary to repoint floor but consideration has been given to potential damage to the edges of the stone so, unless absolutely necessary to regrout, the grout will be left 'as cleaned' only.

5.1.3 Walls

48. Chemically clean existing marble tiled finishes paying particular attention to the grout joints by hand brushing – make good areas where small holes left by removal of previous fittings etc using 2 part epoxy resin and hardener to best colour match, lightly resurface with appropriate disc, rinse clean and wax polish and machine buff to a high glazed finish.
49. Existing access doors to be retained, refinished and re-filled as required.
50. Mirrors – retain existing mirrors (unless damaged or failing silver)

5.2.4 Existing Joinery

51. Strip and revive existing oak panels under vanity basins
52. Strip and revive existing Oak door and frame to inside face of toilet entrance door
53. Remove existing knob set from entrance door, provide stainless push plate and pull handle to replace existing hardware, kick plate on 'push' side of door.
54. Strip & revive existing oak cubicle door (b/s), retain existing lock, door hooks, perko closers etc, provide new stainless kick plate to 'outside' face of door to conceal water staining
55. Existing oak cubicle frame (both sides) to be prepared and etch primed and painted to suit the marble wall finishes.
56. Overhaul existing door hardware and leave operable (allowed for elements of minor renewal)

5.2.5 Ceilings

57. Install new MF plasterboard suspended ceiling with channels etc supported on rigid hangers, provide suitable trim round perimeter and round areas of accessible ceilings (see drawn information). Tape & joint for direct decoration.
58. Install areas of plain 600 x 600mm chamfered edge metal suspended ceiling tiles with concealed 'sprung tee' suspension system to accessible areas as noted on drawings.
59. Install new LV downlighting (included in electrical services package)
60. Prepare & apply 3 coats emulsion paint (RAL 9010) to plaster margins

**5.2.6 Fittings**

61. Vanity unit, apron and rear upstand to be revived using chemical cleaner, resurface using range of discs, rinse, dry and finally polish with polishing powders to a high gloss finish (NB Replacement underslung basins are available to same size from Armitage Shanks should these be required))
62. Retain new taps to vanity units if possible (these only recently replaced)(1 tap per toilet)
63. Provide electrical connection for 'Dyson' blade handdrier
64. Stainless steel paper towel dispenser and waste bin (FW Frost) with allowance for access behind to services in future with oversize bezel surround to cover edge of tiles etc.

**5.2.7 Services**

65. Supply & Extract ventilation to be renewed (see mechanical services package)
66. Existing taps to be refitted following marble refurbishment works – allowance made for some replacements)

New white sanitaryware :-

67. 1 No Toilet pan, seat & cover including cisterns etc  
1 No Basin - retain existing basins but replace waste outlet (if possible) Retain existing taps but with new taps as necessary, chrome fittings etc
68. New H&C pipework from mains/water heaters as required – where any existing pipework is retained it will be thoroughly flushed and rinsed through and tested (see mechanical services package)
69. Waste pipework will be fully replaced to urinals (see mechanical services package)
70. Flush and rod through all soil waste pipes (see mechanical services package)

**5.3 Cleaner's Closets (S Core)**

- 71. Retain existing closets, sanitaryware etc.
- 72. Provide new H&C water services as necessary (see mechanical services package)
- 73. Retain existing tiled floors (cleaning only as 'builder's clean on completion)
- 74 Re-decorate walls and ceiling
- 75. Retain existing lighting rewiring as required (see Electrical package)

## **SCHEDULE 6 – FITTING OUT (Cat B Works)**

### **6.0 Fitting Out to All Floors**

#### **6.1 Internal Walls**

##### **6.1.1 Partitions - generally**

Solid partitions will generally be nominal 100mm thick and constructed from 50mm metal studs with a double skin of 12.5mm tapered edge plasterboard each side and taped and filled ready for direct decoration. A 50mm rigid batt infill wedged between studs and into head and floor channel will be installed. Walls will be constructed with metal studs at 400mm centres to provide additional lateral support (i.e. but not intended to support furniture or shelving directly off the partitioning)

Office division walls, meeting rooms walls and other walls indicated on the partitioning layout plans will have a layer of 12mm plywood inner skin instead of plasterboard behind outer layer of plasterboard to allow mechanical fixing of timber panelling, pictures and the like. Plywood will extend minimum 2440mm up the face of the partition and the wall above the ply will have 12 7mm plasterboard skin up to the underside of the ceiling

A 25mm thick MDF head former will be bolted and washer fixed to the underside of the ceiling in the groove provided by the base building ceiling system, two strips of double sided compressible foam tape will be sandwiched between the trim and the ceiling to enhance acoustic performance at the abutment. Where partitioning runs perpendicular to the base building main support members the head track will be self-tap screw fixed to ceiling tiles which will be then fixed in position. All voids to be filled with acrylic joint filler to attenuate sound transmission

Abutments with core walls will be by use of double sided foam tape and mechanically fixed. The joints will be taped and jointed.

Abutments with external window mullions will be fixed with double sided foam tape and not mechanically fixed to the base building.

All abutments between partitioning components and base building will have two strips of double-sided foam tape and where necessary will be sealed by use of silicone seal to assist sound attenuation.

All new dry wall construction will be in tapered edge boarding, taped and jointed for direct decoration and sealed using one coat Gyproc sealer or equal prior to decoration.

Walls will be constructed to provide 1/2 hour fire protection where required by the DS.

Cavity barriers will be installed above the suspended ceiling and below the raised floor where required to comply with fire regulations.

Other than enhancing the acoustic attenuation of the 'Client' areas the Employer has requested that no special measures are taken to enhance acoustic performance of partitions beyond that provided by the inherent nature of the materials and construction of the partitions and the base building components. However, walls between offices will have above ceiling barriers to assist cross talk attenuation and will comprise foil wrapped rigid quilt barriers sealed at perimeters and abutments with foil tape.

Acoustic barriers will be installed above suspended ceiling as required to the Client areas as described above but installed as a double layer, the first layer being installed as above and with a second layer fixed tight against the initial barrier and sealed from one side only.

#### **6.1 2 Glazed Walls to office fronts etc - LGF, 1<sup>st</sup> - 3<sup>rd</sup> & 5<sup>th</sup> floors**

Glass walls will be formed using 12mm thick clear toughened safety glass panels in modular widths relative to the overall width of the elevations, panels will generally be approximately 800mm wide (panel widths will be sized appropriate to each elevation).

All visible timber in the partitions will be factory painted 20% gloss rum caramel 3 (Dulux 10YY 35/094) finished poplar or equal hardwood. This will include door frames, glazing beads, glazing frames/posts, architraves etc. In order to regularise the finished quality and appearance of the joinery it is intended using either veneered MDF, poplar or suitable hardwood backing where possible and any reference herein to painted hardwood will refer equally to solid or veneered product.

There will be no skirting where the glass is full height and glazing at floor level will be into 25 x 25mm milled aluminium channel screwed to the raised floor.

Head detail will be into 40 x 25mm channel finished in white (RAL 9010) screwed to the underside of the suspended ceiling including 2 strips of double sided white foam tape. All abutments/joints will be square/passing.

Glass to glass abutments will be made in clear silicone and unless specifically otherwise stated all glazing will be clear silicone glazed direct into timber frames or aluminium channel. Silicone joints will be approximately 3-4mm wide on face.

#### **6.1 3 Glazed vision panels to the side of office doors – Ground floor**

Glazed vision panels to the side of doors will be formed in a stained and 5-10% polished finish cherry frame with head detail, sill and wall abutments as indicated on detail drawings. Glazed panels will be about 500mm wide in 12mm thick toughened clear safety glass and will be provided to the side of

doors to all offices indicated on the design layout and to the detail design noted above. (see doors for overpanel associated with glazing)

6.1 4 Glazed vision panels to the side of office doors– 4<sup>th</sup> floor

Glazed vision panels to the side of doors will be formed in a stained and 5-10% polished finish **cherry** frame with head detail, sill and wall abutments as indicated on detail drawings. The glazed strip will be about 500mm wide in 12mm thick toughened clear safety glass and will be provided to the side of doors to all offices indicated on the design layout and to the detail design noted above.

Single glass panels (approx 750mm wide) not associated with doors will be similarly formed.

6.1 5 Manifestation to glazed areas

Manifestation will be installed as statutorily required and to an agreed style.

6.2 Doors & frames

6 2.1 Offices and meeting rooms - LGF, 1<sup>st</sup> - 3<sup>rd</sup> & 5<sup>th</sup> floors

Doors will be 44mm thick, generally 838 mm wide, crown cut ash veneered finish flush solid core factory **painted** 20% gloss rum caramel 3 (Dulux 10YY 35/094) set into ash factory **painted** finish frames (20% gloss rum caramel 3 - Dulux 10YY 35/094) and as described on the detail design proposals. 900mm long polished stainless steel back to back pull handles and with spring loaded roller catch with stainless forened and stainless keep will be provided to all office doors. Each leaf will be hung on 1½ pairs stainless steel washered butts.

Double doors and door and half leafs will be of similar construction and finish and provided with vision panels as indicated on the layout drawings

6 2 2 Offices and meeting rooms – Ground & 4th floors

4<sup>th</sup> floor Doors will be 44mm thick solid core, generally 900mm wide, crown cut stained & 5-10% polished **cherry** finish flush set into a stained and 5-10% polished finish **cherry** frame as indicated on detail drawings. 900mm long Polished stainless steel back to back pull handles and with spring loaded roller catch with stainless forened and stainless keep will be generally provided to all doors. Each leaf will be hung on 1½ pairs stainless steel washered butts.

Doors & frames to the Ground Floor will be similar to 4<sup>th</sup> floor BUT with a deep head architrave section as indicated on detail drawings and elevations.

Double doors and door and half leafs will be of similar construction and provided with vision panels as indicated on the layout drawings.

**6.2.3 Glass doors to lift lobby entrance to floor (1<sup>st</sup> - 3<sup>rd</sup> & 5<sup>th</sup> floors)**

Provide 12mm clear toughened safety glass pair of doors on patch fittings with self closing floor springs and top pivots complete with 900mm back to back handles as described above.

**6.2.4 Doors to 'core areas'**

Leaf & half double doors will be provided to the North & South Core exits to the stairs to match the relevant floor level doors (these form part of Cat A works)

**6.2.5 Doors and frames generally**

All door frames will be securely fixed to the raised access floor and each side will be braced above suspended ceiling

No door opening will be less than 750mm wide to comply with disabled access requirements.

Where in solid partitioning and where required to meet 1/2 hour fire resistance, door frames and architraves will be provided to suit.

Vision panels to doors will be clear long strip glass (approx 150 x 1500mm high) and glazed with clear glass to suit door fire rating.

Door closers have been allowed only where required by statutory regulations. Generally doors will not be lockable. Vision panels in doors are provided in accordance with the interior design scheme and to comply with Local Authority requirements glazed with clear safety glass. Generally vision panels will not be provided to offices as fire warning will be provided by smoke detection along the circulation routes

**6.3 Wall finishes and decorations**

Core wall finishes and wall surfaces prepared and redecorated to match the general adjacent cellular office finishes (core wall decorations part of Cat A works)

All new dry wall partitions will be decorated with mist coat and two full coats soft sheen emulsion paint finish.

Comms room and untiled areas will be finished in one mist and two full coats of emulsion paint.

All walls will be painted finishes unless otherwise noted.



Ground floor meeting rooms will be finished in Tektura vinyl wallcovering ref Tailor 52632.

4th floor meeting rooms & all office/meeting areas will be finished in Tektura vinyl wallcovering ref Lucas 52510.

Doors and other existing finishes will be retained as existing unless specifically noted.

Base building doors into the toilet areas and to the fire escape and goods lift – see details in relevant sections of scope of works

Glass splash backs will be installed between worktop and underside of wall cupboards to the kitchen and staff pantries as indicated on the approved colour boards.

#### **6.4 Ceiling finishes**

The existing SAS metal tile ceiling will be retained throughout where possible

Rooms within 4<sup>th</sup> floor and Ground Floor meeting areas will be constructed with plaster MF system margins with otherwise demountable ceilings (see suspended ceiling drawings for details)

Areas of demountable ceiling will be installed Within the MF comprising concealed grid 600 x 600mm plain flat metal suspended ceiling tiles with bevelled edges finished to RAL 9010 (20% gloss), tiles to have yokes installed to allow access to above ceiling services. Tiles will be the 'pull down' type.

The existing ceiling level (2600mm) and alignment will remain as existing and replacement of metal tiles and acoustic infill will be limited to the spares made available by setting aside material during the works

The lighting in the ceiling to the 'Client' corridor outside the meeting rooms and within meeting rooms will be supplemented or replaced with new architectural lighting

Barriers will be installed above partitions separating offices and separating meeting rooms to enhance acoustic attenuation between rooms

#### **6.5 Floor Finishes**

The existing raised floor will be retained in all areas. Replacement of tiles will be limited to any damaged during the course of fitting out Level, alignment and earth bonding of undisturbed areas will remain as existing.

The existing raised floor will be lifted and accessed for the under floor electrical installation, IT/voice cabling vendors and final connections to floor boxes for both power and IT cabling.

Stained & polished cherry skirtings will be provided to the 4<sup>th</sup> floor and Ground Floor Client areas to match the floor tiling. Skirtings will generally be 150mm high.

Elsewhere (i.e. 5<sup>th</sup>, 3<sup>rd</sup>-1<sup>st</sup> & LGF) aluminium clip on skirtings 150mm high will be installed. Aluminium will be factory finished to the same colour as general joinery.

Existing skirtings to the columns will be painted. Existing oak skirtings and window boards will be primed and painted to match the interior design scheme (see also Cat A works)

Aluminium skirtings to match the partitioning will be provided to the core walls on each floor

The raised floor will be lowered as necessary to allow the installation of the new porcelain tiled floors and the supporting formation thereof. The existing pedestals, where possible will be lowered, if not replacement lower pedestals will be provided, additional pedestals in the centre of floor pans will be installed to provide additional stiffening to the floor if necessary.

Areas of raised floors under proposed 'wet' areas will be lifted and the relevant area will be banded with a timber perimeter upstand mechanically fixed to the structural slab and a single layer of bituthene or 2 coats brush applied bitumastic paint applied to the face of the slab and dressed up the face of the timber retaining kerb. It is not intended to be a water retaining structure merely as an additional barrier to restrict seepage of any water and allow the leak detection system to operate. A leak detection system will be installed in each banded area (included in M&E scope)

#### **6.6 Carpets and other floor finishes**

General office floors (5<sup>th</sup>, 3<sup>rd</sup>-1<sup>st</sup> & LGF) - Carpet tiles manufactured by Milliken ref Out of the Shadows Collection, design – Scattergraph, colour SRG Wisp cushion backed loop pile tiles with Antron Brilliance Type 6,6 nylon pile will be supplied and laid throughout the general office areas and circulation routes as indicated on the design drawings. A small quantity of 'attic' stock (about 5%) will be left on completion.

Ground floor Client areas – Broadloom carpet with contrasting borders on and including underlay installed using 'durafit' carpet system will be installed throughout the meeting rooms on the ground floor. Carpet will be Iguazu by Christy carpets – colour to be confirmed.

4th floor Executive floor – Broadloom carpet with contrasting borders on and including underlay installed using 'durafit' carpet system will be installed

through out the 4th floor. Carpet will be Cozumel by Christy carpets – colour to be confirmed.

Allowance has been made for cutting carpet and carpet tiles and raised flooring to allow installation of floor boxes and grommets.

4mm ply sheeting with Gerflor Saga2 non-slip vinyl tile finish 5mm thick colour 0018 Kadina nature will be provided to the 4<sup>th</sup> floor tea point and staff tea points as noted on the interior design floor plans.

The 2<sup>nd</sup> floor comms room floor will be prefinished metal floor pans from Kingspan – FDeb Series – FDEB 30 vinyl finish – colour to be confirmed.

The reception floor, lift lobbies and lift car floors will be finished in off white polished porcelain tiles 600 x 600mm by Solus Ceramics ref Lurida polished finish with 2mm joints grouted in off white grout to match. The raised floor will be lowered to accommodate the deeper formation of the ceramic tiles finishes.

All abutments between differing floor finishes will be made using 2mm stainless steel division strips

#### 6.7 Fixtures and fittings

##### 6.7.1 Tea points 5<sup>th</sup> 4<sup>th</sup> 3<sup>rd</sup> 2<sup>nd</sup> 1<sup>st</sup> LGF.

Staff tea points will be provided in accordance with the agreed layouts and will comprise good domestic quality base and wall carcass units with doors with lacquer style finish doors and with melamine worktop as indicated on the interior design proposals. Stainless steel double bowl sinktop, mixer tap, and built in dishwasher and refrigerator have been allowed. Splashback to be in coloured glass to suit interior design scheme between worktops and underside of wall mounted cupboards.

Loose fitments such as waste bins, trolleys, coffee machines, vending machines, microwaves, toasters, water coolers etc will be brought by the Employer.

##### 6.7.2 Coats cupboards 5<sup>th</sup> 3<sup>rd</sup> 2<sup>nd</sup> 1<sup>st</sup>

Provide hat shelf in spray painted ash and chrome hanging rail for coats storage (2 No sets for each cupboard – door & frame included with general doors & frames)

6.7.3 Coats storage 4<sup>th</sup> floor

Provide hat shelf and chrome hanging rail within proposed coats storage cupboard to 4<sup>th</sup> floor lift lobby (1 set only required - door & frame included with general doors & frames))

6.7.4 Photocopy/shredding area next South core and next staff tea point (North end) 5<sup>th</sup> 3<sup>rd</sup> 2<sup>nd</sup> 1<sup>st</sup>

Provide domestic type tall wall mounted cupboards (4 x 1000 units) complete with 2 shelves per unit to be set above proposed equipment area. (North end)

Provide domestic type base units and tall wall mounted cupboards complete with shelving and melamine finish worktops will be provided to the copy/shredding area (South core end)

6.7.5 IT storage & Inergen storage cupboard doors 2<sup>nd</sup> floor

Provide 2 No pairs of fitted cupboards outside IT room on second floor comprising full height purpose made crown cut ash veneered finish flush solid core factory **painted** 20% gloss rum caramel 3 (Dulux 10YY 35/094) set into ash factory **painted** finish frames (20% gloss rum caramel 3 -Dulux 10YY 35/094) as indicated on the floor plans and with single full length shelf. The cupboard will be adapted to house the suppression gas bottles.

Provide 2 No pairs of fitted cupboards outside IT room on second floor comprising full height purpose made crown cut ash veneered finish flush solid core factory **painted** 20% gloss rum caramel 3 (Dulux 10YY 35/094) set into ash factory **painted** finish frames (20% gloss rum caramel 3 -Dulux 10YY 35/094) as indicated on the floor plans and with five levels of shelving as It storage

6.7.6 Cash transfer unit

Provide stainless steel bulk cash transfer unit to match existing unit at Arbuthnot House complete with security glass vision panel over (also see 'special' items of fitting out)

6.7.7 Ground floor

**See 'Reception Area' for details for Reception Desk, Coats cupboards, security desk, feature screens etc**

Install 3 No manually operated acoustically attenuated demountable walls in crown cut stained & polished (5-10% gloss) cherry finish flush set into a stained and polished (5-10% gloss) finish cherry frame as indicated on detail drawings in Meeting Area to subdivide meeting rooms 1,2,3 & 4 Flush ceiling track will be installed with above ceiling baffles installed to enhance the acoustic performance.

2 No Crown cut stained & polished (5-10% gloss) cherry finish credenzas outside Meeting room 6, each with single adjustable shelf and with black star galaxy granite top Sized to suit constructed recess.(units to be alarmed – included in Security Package)

2 No Full height fitted cupboards in crown cut stained & polished (5-10% gloss) cherry finish will be provided as indicated outside MR 6 comprising hardwood stained and polished doors to match the interior design scheme.

Areas of solid walls to the main circulation area will be hardwood panelled and finished in crown cut stained & polished (5-10% gloss) cherry wall panelling with the grain running vertically with panels book matched as indicated on the design proposals

#### **6 7.8 Fourth floor**

Areas of solid walls to the main circulation area and the lift front surround will be hardwood panelled and finished in crown cut stained & polished (5-10% gloss) cherry wall panelling with the grain running vertically with panels book matched as indicated on the design proposals

Within the main lift lobby an antique mirrored feature wall panel will be installed

Within the main executive circulation area a feature in crown cut stained & polished (5-10% gloss) cherry panelled area with pilaster feature at each end as indicated on the design proposals

To the North end of the main executive circulation area install a feature panelled area in crown cut stained & polished (5-10% gloss) cherry area as indicated on the design proposals

#### **6.7.9 Other fixtures and fittings**

Install re-used cot from existing premises in sick/first aid room

Work bench in IT Build room

Staff room F&F

Lockers for locker room – by Client direct

Roller storage

Sundry other f&f

Stools for shower room



## Appointment

Arbuthnot Latham & Co Limited (the Client)

and

Anthony Oliver plc t/a Oliver Associates (the  
Consultant)

for construction management, architectural, CDM co-ordinator  
and cost consultancy services in connection with the  
refurbishment and fit-out of 7-21 (odd) Wilson Street, London  
EC2M 2SN ("**the Project**")

2013

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**THIS DEED OF APPOINTMENT** is made on

2013.

**BETWEEN:**

- (1) **ARBUTHNOT LATHAM & CO LIMITED** (Company No: 00819519) whose registered office is at Arbuthnot House, 20 Ropemaker Street, London EC2Y 9AR (the "**Client**"); and
- (2) **ANTHONY OLIVER PLC t/a OLIVER ASSOCIATES** (Company No: 03982262) whose registered office is at 25 Cowper Street, London EC2A 4AP (the "**Consultant**").

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this appointment the following expressions shall have the following meanings.

**"Additional Fees"** means the fees calculated in accordance with clause 10;

**"Additional Services"** means any of the services set out in schedule 3 or any other services agreed between the Client and the Consultant;

**"Additional Organisation Cost"** means the additional Organisation Costs calculated in accordance with clause 10.3 and payable to the Consultant in respect of any Additional Services;

**"Additional Staff Cost"** means the additional Staff Costs calculated in accordance with clause 10.3 and payable to the Consultant in respect of any Additional Services;

**"Adjudicator"** means the person identified as such in schedule 1 or such replacement appointed in accordance with schedule 1,

**"Brief"** means the brief relating to the Project prepared by or on behalf of the Client, as the same may be amended or updated by the Client from time to time;

**"CDM Regulations"** means Construction (Design and Management) Regulations 2007;

**"Commencement Date"** means 1 October 2013 or such later date as the Client may require and notify to the Consultant, being the date on which the Client instructs the commencement of the works forming part of the Project;

**"Consultant's Representative"** means the person identified as such in schedule 1, or such replacement appointed in accordance with clauses 5.3 or 5.4;

**"Cost Plan"** means the cost plan for the Project prepared by or on behalf of the Client, as the same may be amended by the Client from time to time,

**"Effective Date"** means the effective date of this deed, being the earlier of 1 January 2013 and the date on which the Consultant first commenced performance of the Services;

**"Fee"** means the fees payable for the due and proper performance of the Services, as specified in part A of schedule 4;

**"Funder"** means any person who provides finance to the Client, a Purchaser or Landlord in connection with the Project,

**"Landlord"** means any person from whom the Client leases the land or premises on which the Project is being undertaken,



**"Material"** means all existing and future designs, drawings, models, plans, specifications and design details (if the Consultant has any responsibility for design), including any computer software developed by the Consultant and used to generate documents and any designs contained in them, all costings, budgets, estimates and valuations (if the Consultant has responsibility for cost-related issues), any photographs, brochures, reports, notes of meetings, CAD materials and any other materials provided by or prepared on behalf of the Consultant in connection with the Project and all amendments and additions to them and any works, designs or inventions of the Consultant incorporated or referred to in them,

**"Other Consultants"** means the other consultants and professionals involved in the Project including (if any) those identified in schedule 1 and such other professionals as the Client may from time to time engage in connection with the Project and notify in writing to the Consultant;

**"Organisation Cost"** means the sums incurred by the Consultant for the performance of the Organisation Services, and charged to the Client;

**"Organisation Services"** means the following services to be procured by the Consultant in order to secure the completion of the Project, as may be varied from time to time in accordance with the Client's instructions by agreement in writing between the Client and the Consultant

- (i) site welfare
- (ii) site establishment
- (iii) scaffolding
- (iv) cleaning
- (v) removal of rubbish
- (vi) external hoist
- (vii) telephone
- (viii) road closure(s)
- (ix) on-site security.

**"Programme"** means the programme set out or referred to in schedule 1 as may be amended by the Client from time to time;

**"Project"** means the Project described in schedule 1,

**"Project Agreements"** means those agreements entered into or to be entered into by the Client and any third party in relation to the Project, which are (if any) annexed at or referred to in schedule 6 and/or which the Client shall have notified in writing to the Consultant and/or of which the Consultant ought reasonably to be aware,

**"Purchaser"** means any first purchaser of the whole or any part of the Project;

**"Reimbursable Expenses"** means the reasonable and verified expenses incurred by the Consultant in performing, at the Client's specific prior written request, such activities as are listed in part B of schedule 4;

**"Services"** means the services listed in schedule 2 and any Additional Services;

**"Staff Cost"** means the costs payable by the Client to the Consultant for the Consultant's engagement of its employees on site in order to secure the completion of the Project, in accordance with the hourly rates set out in schedule 7, as may be varied from time to time in accordance with the Client's instructions by agreement in writing between the Client and the Consultant,

**"Statutory Requirements"** means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law or any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Project and any notices or permissions served or granted under any such statute, statutory instrument, regulation, rule or order, regulation or bye-law;

**"Sub-Consultant"** means any person to whom the Consultant sub-contracts the Services or any part thereof in accordance with clause 8.3;

**"Tenant"** means any first tenant of the whole or any part of the Project,

**"Third Party"** means any Funder, Purchaser, Tenant or Landlord;

**"Third Party Rights"** means the rights set out in part 1 of schedule 5;

**"Trade Contractors"** means the persons to be appointed by the Client to supply any goods and services in connection with the Project including any employee, agent, sub-contractor or supplier engaged or employed by any Trade Contractor;

**"Trade Contracts"** means the contracts to be executed by the Client and each Trade Contractor and shall include any variations or amendments to any Trade Contracts agreed between the Client and the Trade Contractors.

1.2 In this appointment, unless the context otherwise requires:

- (i) references in the singular number shall include references in the plural number and vice versa, words denoting natural persons shall include corporations and any other legal entity and vice versa, and words denoting any gender shall include every gender;
- (ii) the words "including", "includes" or "include" are to be construed without limitation,
- (iii) a reference to a particular clause, paragraph or schedule shall be a reference to that clause, paragraph or schedule in or to this appointment,
- (iv) headings are inserted for convenience only and are to be ignored for the purposes of construction; and
- (v) a reference to any statute or statutory instrument shall be construed as including a reference to any modification, extension or re-enactment of it and any orders, regulations, directions, schemes, guidance and rules made under it

1 3 This appointment shall constitute the entire agreement between the parties in relation to the Project and shall supersede and extinguish any previous agreements, representations and understandings

1 4 Any amendment to this appointment shall only be effective if in writing and signed by a duly authorised representative of each party

1 5 The parties agree that neither of them has been induced to enter into this appointment by any representation, warranty or undertaking, and that any pre-contractual

representations and warranties, whether made orally or in writing, are of no effect unless expressly incorporated into this appointment

- 1.6 If any provision in this appointment shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this appointment but the legality, validity and enforceability of the remainder of this appointment shall not be affected

## 2. **CONSULTANT'S OBLIGATIONS**

- 2.1 The Consultant shall perform the Services in accordance with the terms of this appointment and the Programme and in compliance with the Statutory Requirements and the Brief. The Consultant shall promptly notify the Client if it believes that amendment to the Brief is necessary to ensure that the Project complies with the provisions of this clause 2 or for any other reason. Nothing in the Brief shall relieve the Consultant from any of its obligations under this appointment.

- 2.2 In performing the Services, the Consultant shall exercise all the reasonable skill, care and diligence to be expected of an appropriately qualified construction manager and consultant in each of the disciplines to which the Services relate holding himself out as having the competence, experience and resources necessary for the proper performance of the Services for a Project of similar scope, complexity, purpose and size to the Project.

- 2.3 Without prejudice to clause 2.2, the Consultant warrants that it has used and shall continue to use the reasonable skill, care and diligence required by clause 2.2 to see that

- (i) It specifies materials for use in the Project in accordance with the guidelines contained in the edition of the publication **"Good Practice in Selection of Construction Materials"** (2011) (British Council for Offices) current at the date of specification and/or that it has used and shall continue to use reasonable skill, care and diligence in the course of performing the Services to see that materials as used in the Project shall be in accordance with such guidelines;

- (ii) there shall not be specified by it for use or used in the Project any materials which at the time of specification or use are generally considered by construction industry professionals as

(A) being deleterious in themselves,

(B) becoming deleterious when used in a particular situation or in combination with other materials;

(C) becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of comparable type, or

(D) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

- (iii) for the purpose of this clause 2.3, the word "deleterious" shall be deemed to include (without limitation) the use of materials or combinations of materials that would or might be hazardous to health or would or might have the effect of reducing the normal life expectancy:

(A) of the materials themselves,

(B) of any materials to which they are affixed,<sup>1</sup>

(C) of the structure in which they are incorporated or to which they are affixed;  
or



(D) to a period less than that which would normally be expected.

- 2.4 The Consultant shall comply at all times with the Client's lawful instructions in relation to the Project except that if, in the performance of the Services, the Consultant has a discretion exercisable as between the Client and any Trade Contractor, the Consultant shall exercise its discretion independently and fairly
- 2.5 The Consultant shall perform the Services in such manner as not to cause the Client to breach any of its obligations under the Trade Contractors or the Project Agreements unless prevented by circumstances beyond the Consultant's reasonable control.
- 2.6 The Consultant shall exercise the standard of care referred to in clause 2.2 to see that each element of the Project separately identified in the Cost Plan is designed so that such element can be constructed within the allowances for it contained in the Cost Plan. To the extent that all of the tenders for any Trade Contract or any part thereof exceeds the allowance therefor contained in the Cost Plan, the Consultant shall, if so required by the Client, amend and modify the design at no cost to the Client so that tenders are within such allowances, provided always that it continues to comply with the Brief.
- 2.7 As lead designer for the Project the Consultant shall co-ordinate and integrate the services to be provided by each of the Other Consultants in connection with the design of the Project with the Services. The Consultant shall give such direction as may be necessary to the Other Consultants in connection with such co-ordination and integration. The Consultant shall ensure that the arrangements made for co-ordinating and integrating the services provided by the Other Consultants are suitable to ensure that any structure designed for use as a workplace has been designed in accordance with Statutory Requirements.

### **3. HEALTH AND SAFETY**

- 3.1 The Consultant shall perform the Services in compliance with the Client's health and safety requirements and any health and safety policies produced by the Client and/or the Contractor, as well as any codes of practice, guidance notes and recommendations published by the Health and Safety Executive.
- 3.2 The Consultant shall observe the requirements of the current edition of the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation published by the Construction Confederation and the Fire Protection Association
- 3.3 The Consultant shall comply with and shall procure compliance on the Site and the Project by the Trade Contractors and by other persons with the Statutory Requirements and the provisions of any codes of practice, guidance notes and recommendations for the time being in force and approved by the Health and Safety Commission or published by the Health and Safety Executive.
- 3.4 The Consultant shall perform all the duties of a "designer" under the CDM Regulations and the Consultant warrants that it has the competence and resources to enable it to perform all the duties required of it under the CDM Regulations.
- 3.5 The Consultant shall perform all the duties of the CDM Co-ordinator and "the principal contractor" for the Project as defined in the CDM Regulations. The Consultant warrants that it has the competence and resources to act as CDM Co-ordinator and "the principal contractor" for the Project. The Consultant warrants that it shall give suitable and sufficient advice to the Client on undertaking all the measures the Client needs to take to comply with the CDM Regulations in relation to the Project and will ensure that suitable arrangements are made, implemented, maintained and reviewed throughout the duration of the Project for ensuring that the construction work can be carried out without risk to

health and safety, that the requirements of the CDM Regulations as to welfare facilities are complied with and that any structure designed for use as a workplace is designed taking into account the provisions of the Workplace (Health, Safety and Welfare) Regulations 1992

3.6 If in the reasonable opinion of the Client, the Consultant fails to perform the duties of the CDM Co-ordinator and "the principal contractor", the Client may employ a third party or parties to undertake such duties and may deduct the additional cost of employing such third party or parties together with any other damages, losses and expenses incurred by reason thereof from any amounts due to the Consultant under this appointment. On such instruction from the Client, the Consultant shall hand over all documents relating to the performance of the duties of the CDM Co-ordinator and "the principal contractor" as appropriate including, without limitation, the pre-construction information, the information for the construction phase plan and the health and safety files prepared in connection with the Project, to the Client or to any such third party

3.7 The Construction Manager shall procure that any temporary works required in or about the construction of the Project including, but not limited to, any temporary works which become part of the Project and any part of the Project used as temporary works during construction, whether provided by the Trade Contractors or otherwise, are adequate, safe, stable, and have no adverse effects on adjacent property and buildings

#### 4. FEES AND EXPENSES

4.1 From the Effective Date, the Client shall pay the Consultant:

- (i) the Fee by instalments in accordance with part A of schedule 4,
- (ii) the Reimbursable Expenses,
- (iii) the Organisation Cost, and
- (iv) the Staff Cost,

in accordance with the provisions of this clause 4, provided that if at any time the Services performed and/or the resources provided by the Consultant do not correspond to the Programme, the Client shall be entitled to re-schedule instalments of the Fee, to reflect the Programme.

4.2 All costs, fees and disbursements expressed to be payable or reimbursable to the Consultant are exclusive of Value Added Tax unless otherwise stated.

4.3 The Client shall be entitled to set off against monies otherwise due to the Consultant such sums as it may reasonably assess are due to it as a result of any breach by the Consultant of the terms of this appointment

4.4 The Consultant shall submit to the Client valid VAT invoices on or after the due dates set out in part D of schedule 4. Such invoices shall specify the sum that the Consultant considers will become due on the due date for each invoice and the basis on which that sum is calculated, namely the amount of the Fee, any Reimbursable Expenses, any Organisation Cost, the Staff Cost and any other amounts which the Consultant considers to be due and payable together with Value Added Tax thereon, less any sums previously invoiced. Invoices shall be accompanied by such other information (including details of the Services performed and the basis on which such amounts have been calculated) as may be necessary to allow the Client to verify the amounts claimed. Payment shall be due on the date of receipt of each such VAT invoice.

4.5 Subject to clause 4.9, the final date for payment of sums due shall be 30 days after receipt by the Client of a valid VAT invoice in accordance with clause 4.4. The sum due on

a final date for payment shall be the sum stated as due in the Consultant's invoice issued in accordance with clause 4.4 unless the Client serves a pay less notice in accordance with clause 4.6. If the Client serves a pay less notice, the sum notified in the pay less notice shall be the sum due

- 4.6 Where the Client intends to pay less than the sum stated in any Consultant invoice under clause 4.4, the Client shall give written notice to the Consultant (a "**pay less notice**") not later than three days before the final date for payment (the "**prescribed period**") The pay less notice shall specify the sum that the Client considers to be due on the date on which the pay less notice is served and the basis upon which that sum is calculated.
- 4.7 If the Client fails to pay the Consultant a sum due by the relevant final date for payment the Client shall pay the Consultant simple interest on that sum from the relevant final date for payment until the actual date of payment at the rate of five per cent per annum above the rate set from time to time by the Bank of England's Monetary Policy Committee or any successor to it. The parties agree that this provision constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.8 Subject to clause 4.9, if the Client fails to pay a sum due in accordance with clause 4.5 by the final date for payment, the Consultant may suspend performance of any or all the Services This right is subject to the Consultant first giving the Client not less than seven days' notice in writing of such intention stating the grounds for suspension. The right to suspend performance shall cease when the Client pays the amount properly due and the Consultant shall on such payment promptly recommence performance of its obligations under this appointment. Any period during which performance is validly suspended pursuant to clause 4.8 shall be disregarded in computing the time taken by the Consultant to complete any of the Services affected by the suspension
- 4.9 Notwithstanding any other provision of this appointment, if the Consultant becomes insolvent within the meaning of section 113 of the Housing Grants, Construction and Regeneration Act 1996 after the prescribed period, the Client shall not be required to pay the Consultant the sum due to the Consultant in accordance with clause 4.5 on or before the final date for payment
- 4.10 If the Client requests a delay to the Commencement Date beyond 1 October 2013, the Client shall pay to the Consultant a sum of £10,000 per calendar month for each calendar month that the Commencement Date is delayed (calculated pro rata in respect of any period of less than a calendar month) up to a maximum aggregate sum of £60,000.
- 4.11 Subject to clause 18.1, the sums payable pursuant to this clause 4 shall be the full and exclusive remuneration of the Consultant for the performance of the Services.

## **5. CONSULTANT'S PERSONNEL**

- 5.1 The Consultant shall at all relevant times engage an adequate number of competent, suitably qualified and experienced personnel to perform the Services properly The Client shall be entitled at any time to require the replacement of any persons employed by the Consultant whose performance or conduct is, in the reasonable opinion of the Client, unsatisfactory
- 5.2 The Consultant's key personnel are listed in schedule 1 The Consultant shall not remove or replace any of the persons listed in schedule 1 without the prior written consent of the Client except in the case of permanent incapacity, death, sickness or where a person leaves the employment of the Consultant

- 5.3 The Consultant shall ensure that any replacement person or persons (whether or not key personnel) shall be competent and shall have the necessary qualifications and experience to perform their role
- 5.4 The Consultant's Representative shall have full authority to act on the Consultant's behalf for all purposes in connection with the Project and shall not be replaced by the Consultant without the Client's prior written consent (such consent not to be unreasonably withheld or delayed).

## **6 THE CONSULTANT'S AUTHORITY**

- 6.1 Except where necessary in the case of an emergency, the Consultant shall not, without first obtaining the Client's written approval.

- (i) make or instruct any variation to the design of the Project as previously agreed and "signed off" by the Client,
- (ii) include in any bid list any contractor who does not have an established place of business within the EU, appoint any Trade Contractor or agree any amendment or variation to the Client's standard form of Trade Contract for the Project;
- (iii) issue an instruction to any Trade Contractor varying the design or specification of work, materials and/or goods or the quality or quantity thereof as shown or described in any Trade Contract;
- (iv) consent to or agree to any amendment to the terms of the agreed form of Trade Contract with any Trade Contractor nor consent to or agree to any waiver or release of any obligation of any Trade Contractor,
- (v) settle any claim of any kind under any Trade Contract nor consent to or agree to any waiver or release of any obligation of any Trade Contractor under and in connection with any Trade Contract;
- (vi) issue any instruction to the Trade Contractor which increases the cost of the Project to the Client by more than the amount previously agreed and "signed-off" by the Client,
- (vii) give notice of intention to terminate or terminate any Trade Contractor's employment,
- (viii) enter into any contractual or other commitment on behalf of the Client whether pursuant to a letter of intent or otherwise,
- (ix) permit any holding or subsidiary or associated company of the Consultant to appear on any bid list for any Trade Contract

- 6.2 No approval, review, comment or consent by the Client or any of the Other Consultants shall in any way relieve the Consultant of its obligations under this appointment

## **7 LIABILITY AND INSURANCE**

- 7.1 The Consultant shall be liable for and shall indemnify the Client against any cost, expense, liability, loss, claim or proceedings whatsoever
- (a) arising under any statute or at common law in respect of personal injury to or death of any person whomsoever, and
  - (b) in respect of any injury or damage to any property real or personal including, but without limitation, the property of the Client,



Insofar as such personal injury, death, injury or damage arises out of or in the course of or by reason of the carrying out of the Services and/or the Organisation Services and provided always and to the extent that the same is due to any negligence, omission or default of the Consultant, his employees, agents, sub-contractors or suppliers.

7.2 Without prejudice to his obligations under this Agreement, the Consultant shall take out and maintain:

- (a) employer's liability insurance in respect of claims for personal injury to or the death of any person under a contract of service or apprenticeship with the Consultant and arising out of and in the course of such person's employment and such insurance shall comply with any statutory provisions and shall be for not less than the sum of £10,000,000 for any one occurrence or series of occurrences arising out of any one event;
- (b) professional indemnity insurance with a limit of indemnity of not less than the sum of £2,000,000 for each and every claim, in respect of any negligence by the Consultant or his sub-contractors or suppliers in the performance of his obligations under the Agreement. The Consultant shall maintain such insurance throughout the duration of the Project. The Consultant shall subsequently maintain professional indemnity insurance in the sum stated (provided that such insurance is generally available in the market at reasonably commercial rates) with the same insurer or another reputable insurer for not less than 12 years following practical completion of the Project.

7.3 Whenever requested to do so by the Client, the Consultant shall produce documentary evidence that the insurance referred to in clause 7.2 is being maintained and the premiums have been paid

7.4 If the Consultant is in breach of any of its obligations under clause 7.2 or clause 7.3, the Client may procure similar cover on the Consultant's behalf and the Consultant shall indemnify the Client against the costs incurred in so doing.

7.5 [Without prejudice to the Consultant's liability to indemnify the Client under clause 7.1, the Client shall in the joint names of (inter alia) the Consultant and the Client take out and maintain insurance to cover the liability of the Consultant in respect of personal injury or death of any person or injury or damage to any property arising out of or in connection with the Project.]

## **8. ASSIGNMENT, AND SUB-CONTRACTING**

8.1 The Consultant shall not assign, charge or transfer any right or obligation under this appointment to any other person

8.2 The Client may assign to any person, without the consent of the Consultant, any or all of its rights under this appointment, including, the benefit of all or any of the Consultant's obligations under this appointment.

8.3 The Consultant shall not be permitted to delegate or sub-contract any part of the Services without the Client's written consent. Notwithstanding any such consent, the Consultant will remain fully responsible to the Client for the performance of the Services. The appointment of any Sub-Consultant shall be upon terms and conditions previously approved in writing by the Client and the Consultant shall not determine or vary the terms of appointment of any Sub-Consultant without the Client's written consent. The Client shall not be obliged to make any payment to the Consultant under this appointment in respect of any of the Services which are performed by a sub-consultant not appointed in accordance with this appointment.



**9. THIRD PARTY RIGHTS**

- 9.1 The rights set out in paragraphs 1-9 of part 1 of schedule 5 shall vest in the Funder on the date on which the Client issues a written notice to the Consultant identifying the Funder Rights set out in paragraphs 1-8 of part 1 of schedule 5 shall vest in the relevant Third Party on the date on which the Client issues a written notice to the Consultant identifying such Third Party and the nature of its interest in the Project. Notwithstanding any other provision of this appointment, the Client shall be entitled to send a notice under this clause 9.1 to the Consultant's registered office or principal place of business (as appropriate) and any such notice shall be deemed to be duly given if sent to such address.
- 9.2 No right of the Client and the Consultant to agree any amendment, variation, waiver or settlement in respect of this appointment or to terminate the Consultant's engagement under this appointment shall require the consent of any Third Party who has acquired Third Party Rights. Notwithstanding the foregoing, the Client and the Consultant shall not be entitled to amend or vary the express provisions of Part 1 of schedule 5 after the right to enforce such Third Party Rights has vested in any Third Party under clause 9.1 without the consent of such Third Party.
- 9.3 Alternatively, within 14 days of receiving a written request to do so by the Client, the Consultant shall enter into a deed or deeds of collateral warranty in the form set out in part 2 of schedule 5 in favour of any Third Party.
- 9.4 The Client acknowledges that the Consultant shall not be in breach of this appointment by complying with paragraphs 9.3, 9.4 and 9.5 of part 1 of schedule 5.
- 9.5 Subject to the provisions of clauses 8.2, 9.1 and 9.2, and schedule 5, nothing contained in this appointment shall confer on any person any benefit or right to enforce any term of this appointment whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

**10. ADDITIONAL SERVICES**

- 10.1 The Client may at any time instruct the Consultant in writing to perform any of the Additional Services. Except in the case of an emergency, the Consultant shall not perform any Additional Services unless and until so instructed by the Client in writing.
- 10.2 If requested to do so by the Client, the Consultant shall provide an estimate of the Additional Fees, Additional Organisation Cost, and Additional Staff Cost which it would require for performing any of the Additional Services and of the effect of such of the Additional Services on the Programme.
- 10.3 The Additional Fees, Additional Organisation Cost and Additional Staff Cost payable to the Consultant in respect of any of the Additional Services instructed by the Client shall be such sum as is agreed between the Client and the Consultant before the Additional Services are carried out or, failing such agreement in respect of Additional Fees and Additional Staff Costs, a sum calculated on the basis of the time wholly and necessarily expended by the Consultant in performing such Additional Services calculated at the hourly rates set out in part C of schedule 4. Such rates are inclusive of all fees, costs, expenses, disbursements and profits in connection with the Additional Services. In respect of Additional Organisation Cost, the additional payment shall be a sum calculated on the basis of any of the Organisation Services wholly and necessarily provided by the Consultant in performing such Additional Services.
- 10.4 No Additional Fees shall be payable to the Consultant to the extent that any of the Additional Services are necessitated, in whole or in part, by any negligence, omission or default on the part of the Consultant.

## **11 COPYRIGHT**

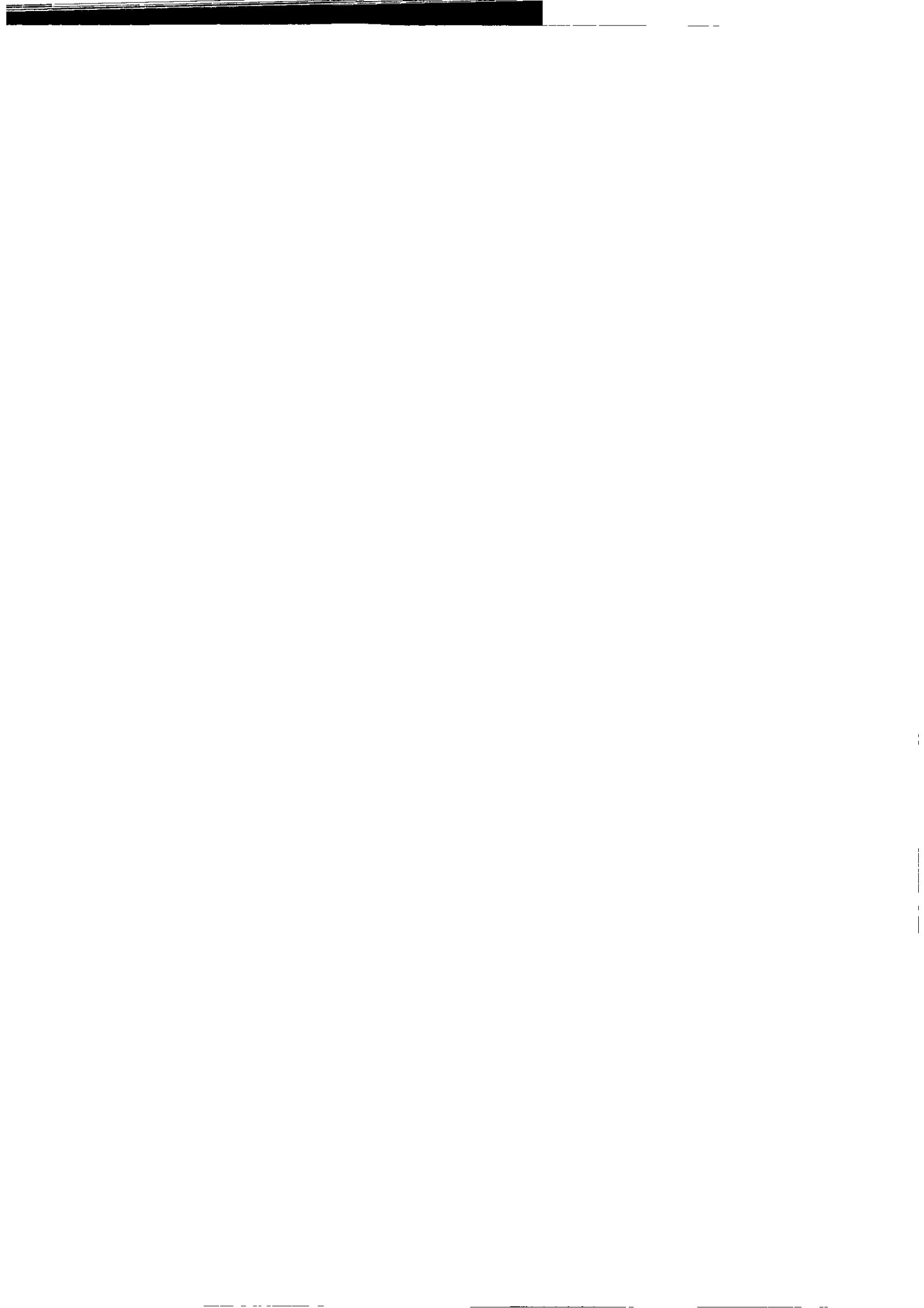
- 11.1 The copyright in the Material shall remain vested in the Consultant but the Consultant hereby grants to the Client an irrevocable, royalty-free, non-exclusive licence to copy and use the same and to reproduce the designs contained in it for all purposes relating to the Project including, but without limitation, the design, construction, completion, reconstruction, modification, extension, repair, reinstatement, refurbishment, redevelopment, maintenance, use, letting, promotion, advertisement of the Project, and/or the promotion or advertisement of the Client. The licence shall include the right to grant sub-licences on the same terms as this licence and shall be assignable.
- 11.2 The Consultant:
- (i) shall not assert against the Client or any other person who, with the permission of the Client, publishes commercially or otherwise copies or deals with any image of the Project or any of the Material, any right which the Consultant may have to be identified as author of the Project or of such Material pursuant to Section 77 of the Copyright, Designs and Patents Act 1988 (the "1988 Act"),
  - (ii) waives any rights it may have pursuant to Section 80 of the 1988 Act, and
  - (iii) shall obtain a written waiver of all rights any of its employees, agents or Sub-consultants from time to time may have under or pursuant to Chapter IV of the 1988 Act in relation to the Project or any of the Material
- 11.3 The Consultant warrants that it has not infringed any third party's intellectual property rights in carrying out the Services and shall indemnify the Client against any and all claims, liability, losses, damage, costs and expenses (including legal costs) arising out of a breach of this warranty.
- 11.4 The Consultant shall not be responsible for any loss resulting from use of the Material for any purpose which would have been beyond the reasonable contemplation of the parties at the time at which it was prepared

## **12 CONFIDENTIALITY**

- 12.1 The Consultant shall not, during the continuance of this appointment (except in the proper performance of the Services) or at any time after its expiry or termination, disclose to any person or use for any purpose any information which is by its nature or is marked confidential relating to the Client or the Project. This includes any information in relation to any actual or potential Purchaser or Tenant of the Project or any part of the Project.
- 12.2 The restrictions contained in clause 12.1 shall not apply to any disclosure made:
- (i) with the prior written authority of the Client, or
  - (ii) to the Consultant's professional advisers, or
  - (iii) as may be required by law or by the rules or regulations of the London Stock Exchange, the Financial Services Authority and any other competent authority.
- 12.3 The restrictions contained in this clause 12 shall continue to apply until the information in question enters the public domain without fault on the part of the Consultant

## **13. TERMINATION AND SUSPENSION**

- 13.1 The Client may terminate the Consultant's engagement under this appointment or suspend the performance of the Services under this appointment at any time immediately by giving notice in writing to the Consultant.



- 13.2 If the Client is in material or persistent breach of its obligations under this appointment and fails to remedy the same within 14 days of receiving a notice from the Consultant specifying the breach and requiring its remedy, then the Consultant shall be entitled immediately by notice in writing to the Client to terminate its engagement under this appointment.
- 13.3 Upon termination or suspension under clauses 13.1 or 13.2:
- (i) the Consultant shall proceed in an orderly and expeditious manner to take such steps as are necessary to terminate or, as the case may be, suspend the Services;
  - (ii) the Consultant shall, at the Client's request, deliver to the Client all Material and other items of any kind whatsoever relating to the Project in the Consultant's control, custody or possession, and
  - (iii) subject to clauses 4.3 and 13.5, the Client shall pay to the Consultant that part of the Fee properly due to the Consultant in connection with the provision of the Services up to the date of termination or suspension.
- 13.4 Upon termination under clause 13.1.
- (i) the Client shall pay the Consultant any additional expenses reasonably incurred by the Consultant in compliance with the notice under clause 13.1; and
  - (ii) the Client shall have no liability to the Consultant for any loss of profit, loss of contracts, loss of revenue, or any indirect or consequential losses arising out of or in connection with such termination or suspension.
- 13.5 Subject to clause 14.4, if the Consultant's engagement under this appointment is terminated in circumstances where the Consultant is in breach of this appointment or becomes insolvent, bankrupt, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, then the Client shall not be obliged to make any further payment to the Consultant until the Client's losses consequent upon such termination have been fully determined.
- 13.6 If the Services have been suspended, other than in accordance with clause 4.8, the Consultant shall promptly recommence the performance of the Services on receipt of a notice from the Client ending the suspension. If the Consultant does not receive a notice to recommence the performance of the Services within 12 months of suspension, the Consultant may terminate its engagement under this appointment by written notice to the Client.
- 13.7 Any termination or suspension of the Consultant's engagement under this appointment pursuant to this clause 13 is without prejudice to any other rights or remedies of the Client, and shall not prejudice or affect the accrued rights or claims of either party.

#### 14 **ANTI-CORRUPTION**

- 14.1 The Consultant shall, and shall ensure that its employees, agents, subsidiaries, sub-contractors and sub-consultants who perform services in relation to the Project (the "**Associated Persons**") shall (a) comply with, and (b) not through their acts or omissions put the Client in breach of, the UK Bribery Act 2010, the US Foreign Corrupt Practices Act of 1977 and all similar national laws intended to prevent corruption and bribery.
- 14.2 The Consultant shall at all times comply with either (a) the Client's Anti-Corruption Policies; or (b) the Consultant's own Anti-Corruption Policies to the extent they have been notified to the Client and offer a materially similar level of protection. The Consultant will

notify the Client immediately in writing if any violation or any suspicion of a violation of these policies arises

- 14.3 The Consultant shall notify the Associated Persons of the relevant policy and use all reasonable endeavours to ensure the Associated Persons comply with its provisions.

- 14.4 Where the Client terminates the Consultant's engagement in circumstances where the Consultant is in breach of this clause 14, the Client shall not be liable to make any further payments to the Consultant and shall not be liable for any loss or damage or other costs or expenses of any kind whatsoever that the Consultant may suffer as a result of such termination

## 15 **DISPUTE RESOLUTION**

- 15.1 This appointment shall be governed by English law.

- 15.2 Any dispute or difference arising under or in connection with this appointment may be referred to adjudication in accordance with the following provisions.

- (i) the Adjudicator shall be the person named in schedule 1,
- (ii) the Scheme for Construction Contracts SI 1998 No 649 shall apply; and
- (iii) the Adjudicator's decision shall be binding until the dispute or difference is finally determined by the Courts as provided in clause 15.3.

- 15.3 Subject to clause 15.2, any dispute or difference arising out of or under or in connection with this appointment shall be referred to the exclusive jurisdiction of the English courts, provided that either party may bring proceedings in any other court or jurisdiction for the purposes of the enforcement or execution of any judgment or settlement agreement.

## 16 **NOTICES**

- 16.1 Subject to clause 9.1, any notice provided for in accordance with this appointment shall be deemed to be duly given if it is delivered by hand or by courier at, or sent by registered post or facsimile transmission or by email to the relevant party at, the address of that party shown in this appointment or such other address as that party may by notice in writing nominate for the purpose of service. If sent by registered post, the notice shall be deemed to have been received not later than 48 hours after it has been posted. If sent by facsimile transmission, the notice shall be deemed to have been received not later than five hours after it has been transmitted. If sent by email, the notice shall be deemed to have been received when actually received by the intended recipient in readable form.

## 17. **DOCUMENT MANAGEMENT**

- 17.1 The Consultant shall use electronic means for circulating all documentation and information required for the Project save as referred to in clause 16.1. The Consultant shall enter into any necessary project licences and shall comply with any protocols, instructions and security procedures relating to the use of any document management system set up for the Project

## 18 **MISCELLANEOUS**

- 18.1 The Client may in its absolute discretion elect to pay to the Consultant a single fixed lump sum payment of £50,000 upon practical completion of the Project if the Project is completed in accordance with the Brief, the Cost Plan and the Programme

- 18.2 If the Consultant is a partnership, references in this appointment to the "Consultant" shall include reference to each and every present and future partner of such partnership and the liability of each and every such partner shall be joint and several.
- 18.3 The Consultant's obligations under clauses 7, 11 and 12 shall survive the termination of the Consultant's engagement under this appointment for any reason.
- 18.4 Where clause 4 requires an act to be done within a specified period after or from a specified date, the period begins immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales that day shall be excluded

**IN WITNESS** whereof this deed has been executed and delivered on the date first above written

Executed as a deed by **ARBUTHNOT** )  
**LATHAM & CO LIMITED** )  
acting by a director and its secretary/two )  
directors )

Director

Director/Secretary

Executed as a deed by **ANTHONY** )  
**OLIVER PLC t/a OLIVER ASSOCIATES** )  
acting by [a director and its secretary/two )  
directors]: )

Director

Director/Secretary



## **SCHEDULE 1**

### **1 PROJECT**

The refurbishment and fit-out of 7-21 (odd) Wilson Street, London EC2M 2SN.

### **2 OTHER CONSULTANTS**

Mechanical and electrical engineer	Status Design Associates LLP
Structural engineer	Lucking and Clark LLP

### **3. CDM CO-ORDINATOR (CLAUSES 3.5)**

The Consultant is required to act as CDM Co-ordinator under the CDM Regulations.

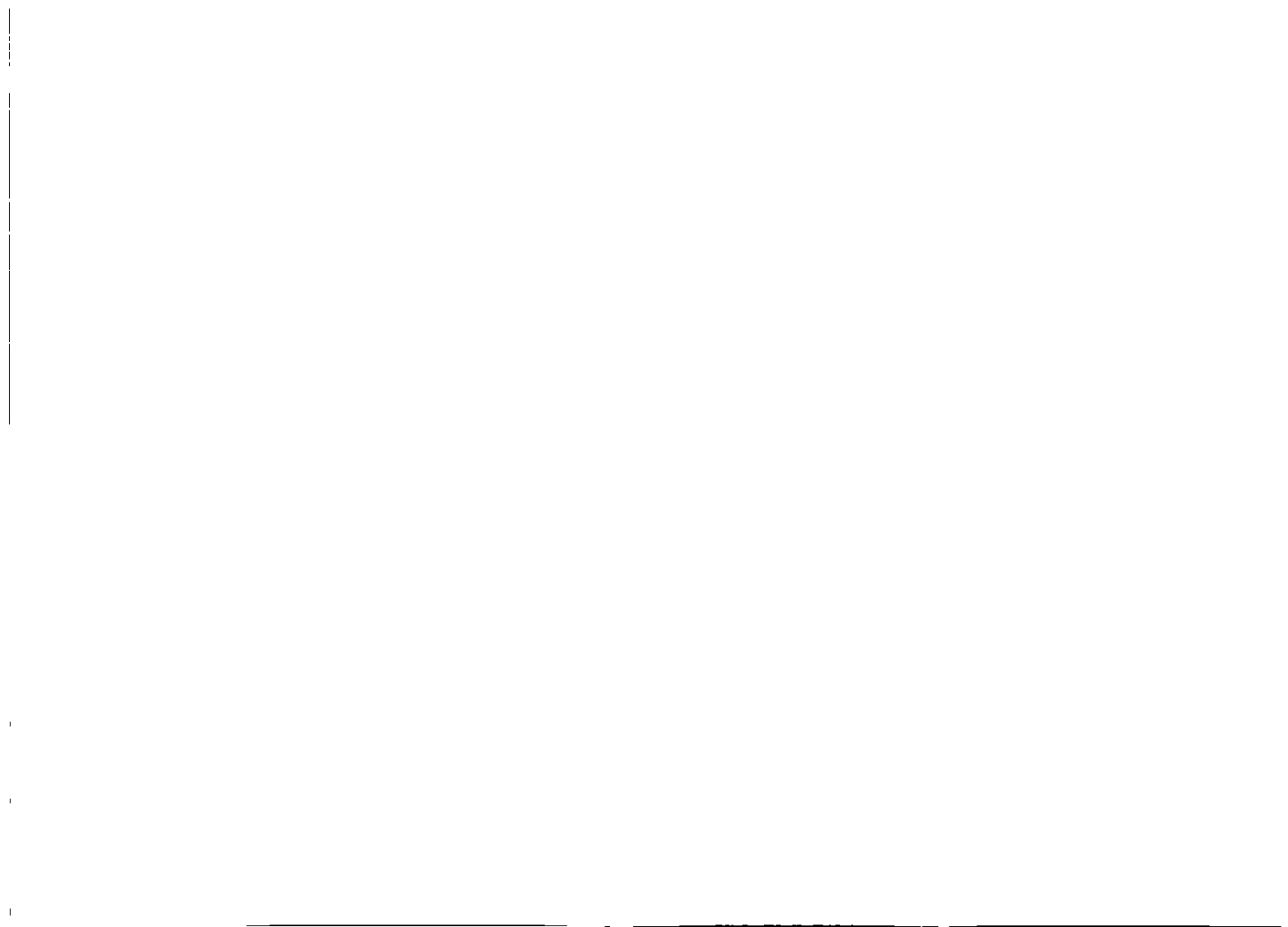
### **4 KEY PERSONNEL (CLAUSE 5.2)**

The Consultant's key personnel with responsibility for the Services are:

Consultant's Representative.	Tony Oliver
Director/Project Manager	Tony Oliver
Director/Interior Designer	Haideh Oliver
Senior Assistant	Gerald Kemp
Site Manager	Pat Brennan
Quantity Surveyor	Vernon Draper
Design Assistant	Barry Lampard

### **5. ADJUDICATOR (CLAUSE 15)**

The Adjudicator shall be the president or vice-president of the Royal Institution of Chartered Surveyors or where he is unable or unwilling to act, or fails to give a decision in accordance with the provisions of paragraph 20 of the Scheme, such other person as may be nominated by TeCSA



## **SCHEDULE 2**

### **Services**

For ease of reference the Services have been divided into various sections and stages, but such division is not intended to, and shall not, limit or affect the Consultant's obligation generally to provide the Services as and when may from time to time be necessary or appropriate for the proper and timely completion of the Project

#### **Services general to all stages of the Project**

- 1.1 Make all necessary submissions to local, planning and statutory authorities and conduct all related negotiations with the objective of obtaining on behalf of the Client all necessary approvals for the Project
- 1.2 Carry out site visits and inspect work and materials whenever and wherever any such visit or inspection is necessary or specifically requested by the Client, the Trade Contractors or any supplier
- 1.3 Lead and liaise with the Other Consultants and co-ordinate and integrate into the Project the services of all of the Other Consultants, and any trade contractors, Sub-Consultants or suppliers.
- 1.4 Draw the attention of the Client and the Other Consultants to any circumstances encountered or foreseen by the Consultant of which the Client or any of the Other Consultants may be unaware and which might imperil the efficient planning, programming, execution or completion of the Project or undermine the prevailing cost estimates.
- 1.5 Give the Client and the Other Consultants reasonable prior notice of and invitation to attend all meetings called by the Consultant in relation to the Project. Attend as required all meetings called by the Client in relation to the Project
- 1.6 Keep and circulate full and proper records of all meetings and negotiations attended or conducted by the Consultant and make the same available for inspection by the Client
- 1.7 Print, reproduce or purchase all documents, drawings, manuals, maps, models, photographs and other records necessary for the proper performance of the Services. Provide as many complete sets as the Client may reasonably require of as-built drawings of the Project by the date specified by the Client.
- 1.8 With the Other Consultants, consider the environmental impact of the Project and report to the Client
- 1.9 Advise the Client on the need for specialist surveys and investigations
- 1.10 Attend such team building and partnering workshops or events as are considered desirable by the Client as an aid to the successful completion of the Project
- 1.11 If one has been appointed, assist the Client's party wall surveyor in relation to party wall matters
- 1.12 Establish, implement and comply with formal risk management procedures for the Project.
- 1.13 Advise the Client and perform the Services in relation to any demolition as well as any construction which may be required
- 1.14 Perform such other duties as may reasonably be required by the Client to ensure the completion of the Project

[REDACTED]

## **Construction Management Services**

For ease of reference the Construction Management Services have been divided into various headings related to types of activity as hereinafter provided, but such division is not intended to and shall not limit or affect the Construction Manager's obligation generally to provide the Construction Management Services as and when from time to time may be necessary or appropriate for the proper and timely completion of the Project

### **Briefing and Value Engineering**

- 1.1 Obtain Information about the Site from the Client
- 1.2 Visit the Site and carry out an Initial appraisal.
- 1.3 Review with the Client and its aims and goals.
- 1.4 Assist with, monitor and administer any contracts made by the Client with any persons or firms carrying out special investigations and tests in relation to the Site.
- 1.5 Comply with the Client's manuals setting out his requirements relating to the Project as issued to the Construction Manager by the Client from time to time
- 1.6 Review alternative design and construction approaches and cost implications and review with them alternative phasing and programming approaches and the cost implications of them
- 1.7 Provide value engineering advice. Recommend economies in terms of cost and time which may be made to the proposals and Cost Plan, provided they are consistent with the Client's goals and requirements by reference to the Brief or any amendment thereto and sound construction practice and agree the same with the Client

### **Programme and Reporting**

- 2.1 Prepare a design programme including the incorporation of design work to be carried out by the Trade Contractors and monitor progress of the design against such Programme;
- 2.2 Prepare a procurement programme, which reflects the breakdown of trade elements and sequence of works and correlates with the design programme;
- 2.3 Prepare and maintain a fully logic-linked construction programme for the Project;
- 2.4 Advise upon the selection, availability and price of materials, methods of working, building systems and equipment; advise on the time required for construction and on all aspects of "buildability" in relation to the proposed design for each element of the Project and on the feasibility of construction tolerances,
- 2.5 Prepare information schedules giving dates for the release of Information including, in particular, the approvals for Trade Contractors' design information; expand, update or adapt the information schedules as may be necessary to reflect further information, Trade Contractors' detailed programmes or changed circumstances; manage the submission and approval of the Trade Contractors' design information,
- 2.6 Report and advise on the cost and time implications including, if appropriate, the time and cost implications on other Trade Contractors of proposed design changes and report to the Client;
- 2.7 Recommend to the Client adjustments to the procurement and construction, programmes as may be necessary in the light of progress on Site,

- 2.8 Report on progress against the programmes in use by the Construction Manager on the Project and keep the same up to date;
- 2.9 Monitor and prepare a report to the Client at [monthly] intervals until the issue of the Final Certificate under the last Trade Contract on expenditure and progress in relation to the Cost Plan and the Programme. Inform the Client immediately if the expenditure or progress has or may reasonably be anticipated as likely to exceed the Cost Plan and/or the Programme, generally endeavour to keep costs to a minimum consistent with the Client's requirements and good construction practice.

#### **Scheme Design Report and Procurement**

- 3.1 Prepare a Scheme design report and provide written input where required.
- 3.2 Prepare a report for the Client on the procedures to be adopted in inviting tenders for the Trade Contractors for the construction of the Project, and the contract conditions to be used.
- 3.3 Advise on the pre-purchasing by the Client of items of plant, materials or goods which are on long delivery periods.
- 3.4 Advise upon the requirements for Trade Contractors to carry out off-Site design and off-Site manufacture of components
- 3.5 Prepare draft programme and "scope of works" for each Trade Contract for inclusion of the same in the invitations to tender; ensure that the trade Contracts reflect the requirements of any of the Project Agreements in relation to documentation to be provided for O&M manuals, as-builts and on-site training, prepare all other tender documents for review by the Client; check in particular (but without limitation) that it includes all matters relevant to health and safety, that the "scope of works" document is consistent with other documentation forming part of the invitation to tender and that the Contract Particulars are properly completed
- 3.6 Discuss and agree with the Client, the division of the trade elements and tender lists
- 3.7 Interview each proposed bidder to ascertain such bidder's suitability and to explain the scope of the works comprising the trade element and the nature of the Project and also the duties and functions for the Construction Manager
- 3.8 Monitor the content of the trade elements to ensure that all work comprising the Project (except work which forms part of Organisation Cost) is included in a trade element. Receive and take account of the comments of the Client on the invitation to tender documents and dispatch the invitation to tender documentation when finalised on behalf of the Client to the tenderers in the lists approved by the Client
- 3.9 Consider in the case of each contractor on each tender list whether a parent company guarantee or insolvency bond is required and make recommendations to the Client in the light of the financial standing of the trade contractor and/or the group of companies of which he is a member.
- 3.10 Interview tenderers and negotiate prices with the tenderers as authorised by the Client
- 3.11 Conduct any negotiations that may be appropriate to secure the Trade Contractors. Advise the Client of all meetings with bidders prior to the placing of a contract. Prepare and collate all documents comprising the trade contracts to ensure that such documents are complete. Produce drafts of the documents to be executed and to circulate them for comment to the Client. Take due account of all comments received



- 3.12 Analyse the tenders and programmes received and report to the Client with recommendations for acceptance; advise the Client as to whether it is appropriate for any Trade Contractor to be required to procure a performance bond or parent company guarantee as security for his obligations under any Trade Contract. Advise the Client specifically of any proposed amendments to the tender documents and seek his agreement to them.
- 3.13 Prepare trade contracts for signature by each of the Trade Contractors and the Client.
- 3.14 Ensure that each Trade Contractor executes a Trade Contract as a deed prior to commencement of work on the Project and all ancillary documents such as bonds and guarantees as referred to in the Trade Contract are executed at the time and in the manner required by the Trade Contract; check that the same are properly executed by any Trade Contractor, parent company or surety and secure legal opinions in the agreed form from overseas companies; keep proper records of when all such documents, deeds and bonds are despatched for execution and when they are returned. Provide certified copies of each Trade Contract as directed by the Client within 10 working days of execution.
- 3.15 Advise the Client of any materials or plant which should be ordered prior to securing of the appropriate trade contracts in order to achieve the Construction Programme. Prepare in consultation with the Client the necessary documentation and expedite delivery of the purchased items.
- 3.16 Provide for the receipt, review, co-ordination, logging and distribution of shop drawings, catalogues, samples, test reports and other like matters; ensure adequate procedures are included in the trade contracts in respect of the same.
- 3.17 Review Trade Contractor's shop drawings for the purpose of checking that there are no inconsistencies or conflicts of design among any of the mechanical and electrical services to be installed in the Project or between any of them and any parts of the structure of the Project and to check that they will all function together efficiently.
- 3.18 Reproduce all necessary copies of drawings issued for the purposes of construction and deliver the same to the Trade Contractors, local and statutory authorities and statutory undertakers, ensure that only drawings issued for the purposes of construction are used by the Trade Contractors, local authorities or statutory undertakers for manufacture or construction.

#### **Site Works**

- 4.1 Provide and maintain initial Site survey and establish all base line datums which may be required for the execution of any works, and co-ordinate and supervise any further setting-out carried out by the Trade Contractors and ensure the adequacy of the same.
- 4.2 Organise the Site during the period of construction with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment (including that of the Trade Contractors), control of pollution, maintenance of good personnel and labour/Industrial relations and general site services including, inter alia, the restriction of access to the Site to authorised persons only and the preparation and issue of a manual of rules and regulations appertaining to the Project to be observed by all persons having business upon the Site.
- 4.3 Provide management, control, administration and planning of the work of the Trade Contractors and to ensure co-operation occurs between the site works of each of the Trade Contractors, inspect Trade Contractors' methods of working and temporary works to see that the same are adequate and safe.



- 4.4 Make visits as necessary to the premises of the Trade Contractors and their suppliers, whether the same are located in the United Kingdom or overseas, and conduct regular meetings with the Trade Contractors to monitor all aspects of progress both on and off site relevant to the latest agreed programmes and to review all information requirements and provide monthly written reports thereon to the Client. Notify the Client of all such visits so that the Client can comply with any notification provisions pursuant to the project agreements.
- 4.5 Co-ordinate temporary works in relation to the Project
- 4.6 Provide such operatives, plant, equipment and services as may be approved by the Client on the advice of the Construction Manager to be provided at the Site, including temporary Site accommodation, furniture and office equipment and attendance for the Construction Manager and the Other Consultants.
- 4.7 Propose and agree testing, quality assurance and control procedures for the Project with the Client. Manage the implementation of these procedures
- 4.8 Ensure that the Trade Contractors provide project specific quality assurance plans as soon as reasonably practicable after the appointment of any such Trade Contractors. Check regularly that such quality assurance plans are being adhered to. Take appropriate steps if work is being carried out that is not compliant with such quality assurance plans to ensure compliance with such quality assurance plans.
- 4.9 Arrange and to chair Site Progress Meetings at agreed intervals with the Client prepare and circulate to all those present minutes of such meetings within two working days of each meeting, comply with and co-ordinate the Tenant site visits and inspections.
- 4.10 Provide such management services as the Client may require in the procurement, delivery and storage of materials ordered by the Client
- 4.11 Co-ordinate the work of Trade Contractors and co-ordinate with work of statutory undertakers (including gas, water, sewerage and electricity undertakings) with the work of the Trade Contractors.
- 4.12 Provide a reasonable estimate of the time required to reinstate the Project following the occurrence of an insured event.

#### **Administration of Trade Contracts**

- 5.1 Perform and discharge the duties and obligations of the Construction Manager from time to time as may be necessary and as required to be carried out by the Construction Manager in each Trade Contract but subject always to the limitations of the Construction Manager's authority set out in this Agreement
- 5.2 Issue instructions and directions to the Trade Contractors. All instructions including Tenant Changes must have cost and time effects agreed with the relevant Trade Contractors before they are issued by the Construction Manager; ensure that only "instructions" properly issued under the Trade Contract are issued on an instruction form.
- 5.3 Collect and check applications for payment from Trade Contractors, prepare valuations, as may be required by the provisions of the Trade Contract.
- 5.4 Check, collate and sign the Construction Manager's valuations; prepare and sign all certificates; promptly issue all certificates as required by the trade contracts, report to the Client on any claim or notice of a claim for payment made by any Trade Contractor for loss and/or expense or extension of time, identify and inform the Client as soon as practicable of any sums to be contra-charged against any of the Trade Contractors and conduct such negotiations as may be appropriate in connection therewith with the Trade

Contractors, advise the Client on the status of the Trade Contractors at the date of issue of interim and final certificates under the Trade Contracts for the purposes of Chapter 3 of Part 3 of Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005, or statutory modifications or any re-enactments thereof

- 5.5 Advise the Client on and issue on his behalf all notices required to comply with Part 11, Housing Grants of the Construction and Regeneration Act 1996
- 5.6 Provide such management, control, administration and planning of the work of the Trade Contractors so as to ensure full compliance by the Trade Contractors with all the requirements of the trade contracts; inspect Trade Contractor's methods of working and temporary works to see that the same are adequate and safe; ensure that the Client's directions in regard to handling of materials and goods at the Site are complied with by the Trade Contractors.
- 5.7 Advise on the desirability of making payment for off-Site goods and materials Assist in valuing the same
- 5.8 Negotiate and agree Interim and the final accounts under the trade contracts with the Trade Contractors
- 5.9 Keep proper accounts of all monies expended pursuant to the trade contracts: produce a final detailed cost statement of the Project broken down to work packages showing unit costs and the total cost of the Project.
- 5.10 Keep complete and accurate records of the Project.

#### **Pre completion inspection, Commissioning and "as built" Information**

- 6.1 Provide a completion plan for the Project This should include details of commissioning programmes methodology for snagging and de-snagging, collation of record drawings, O&Ms and health and safety file data, preparations for training facilities management staff, methodology for maintenance of mechanical and electrical systems once complete and prior to hand-over
- 6.2 Examine and manage the Trade Contractor's detailed proposals for carrying out commissioning procedures and performance testing; programming the activities of other Trade Contractors to reflect the commissioning procedures and performance testing
- 6.3 Having inspected the Project take such action as may be appropriate to correct defects in workmanship and/or materials; secure the prompt remedying of all defects by Trade Contractors.
- 6.4 Carry out duties and obligations of the Construction Manager in relation to defects as required by and in accordance with the provisions and procedures of any agreement for lease to be entered into by the Client with tenants of all or any part of the Project (relevant extracts of which shall be supplied to the Construction manager by the Client in advance)
- 6.5 Obtain in good time from each Trade Contractor full operating and maintenance manuals, manufacturers' warranties and instructions and procure "record" and "as-built" drawings as required under any Trade Contract; check and collate the same against the requirements of the respective trade contracts, where requested by the Client, to assist in the preparation of an operations manual for the building user Comply with the provisions of the project agreements in relation to the delivery of the same.

### **Completion**

- 7.1 Advise the Client of the anticipated date for the issue of each of the Certificates of Sectional Completion (if applicable) and the Certificates of Practical Completion and provide assistance throughout the [six] week period prior to the anticipated date for issue of such certificates.
- 7.2 Give to the Client [ten] working days' notice of any inspections prior to the issue of any certificates, such notice to be accompanied by a copy of the then current snagging list. Provide as much notice as reasonably possible of any postponement of the inspection.
- 7.3 Issue and sign a certificate of practical completion of the Works as required by the Trade Contracts.
- 7.4 Issue a certificate of practical completion as required by and in accordance with the provisions and procedures of any agreement for lease to be entered into by the Client with tenants of all or any part of the Project (relevant extracts of which shall be supplied to the Construction Manager by the Client in advance). The Construction Manager shall act fairly and independently between the landlord and tenant under any such agreements for lease when carrying out this duty.

### **Post Completion**

- 8.1 Actively progress and co-ordinate the making good of all defects in the Project which appear within one year of practical completion,
- 8.2 Carry out the duties and obligations of the Construction Manager in relation to defects as required by and in accordance with the provisions and procedures of any agreement for lease to be entered into by the Client with tenants of all or any part of the Project (relevant extracts of which shall be supplied to the Construction Manager by the Client in advance).
- 8.3 When requested by the Client, prepare a remedial plan containing the Construction Manager's proposals for remedying any defect, the programme for doing so and the access required to the Project. Liaise with the Client, and the Trade Contractors as necessary to produce and complete the remedial plan.

### **Insurance**

- 9.1 Advise on all insurance matters arising in relation to the Project.
- 9.2 Assist the Client in the preparation, submission and negotiation of all Insurance claims including claims arising under policies maintained by the Client under this Agreement and provide such information in connection therewith as may be required.



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## **Architectural Services**

### **1.1 Design**

- (a) Coordinate the design of the Project and manage, control and coordinate the design activities of the Other Consultants.
- (b) Where specialist suppliers and/or contractors design part or parts of the Project, check that the design of such part or parts is consistent with the Brief and other parts of the Project and integrate such specialist designs into the Project as a whole.
- (c) Establish and comply with standards for the form and content of design outputs and interfaces. Implement a verification procedure to ensure consistency of format.
- (d) Execute the architectural design within the parameters of the Brief, the Cost Plan and the Master Programme as approved by the Client. Keep the Brief under review and advise the Client of any departures from those documents that are desirable and/or necessary.
- (e) Fulfil the duties of a "designer" under the CDM Regulations.

### **1.2 Timing/progress:**

- (a) Prepare, in collaboration with the Other Consultants, a coordinated Programme (the "**Master Programme**") for the Project and such detailed design programmes as may be required for different stages of the Project. Issue the Master Programme and any updates of the Master Programme to the Client.
- (b) Report to the Client at regular (at least monthly) intervals concerning the progress of the Project by reference to the Client's budget and to the Master Programme.

### **1.3 Client/third party issues:**

- (a) Where required, consult and communicate with any existing or prospective Third Parties, including attending meetings, inviting them and their advisers to attend meetings called in connection with the Project and providing copies of any existing information and/or documentation.
- (b) Provide assistance in resolving disputes arising between the Client and any Trade Contractors.
- (c) Assist the Client in negotiation with public service providers.

### **Stage 1 – Feasibility**

- 1.1 Obtain information about the Site from the Client
- 1.2 Visit the Site and carry out initial appraisal.
- 1.3 Receive an initial statement of the Client's aims and goals including his draft brief and determine the feasibility of the same, receive information prepared by the Other Consultants in respect of the Project; check and adopt the same and satisfy himself that the Project may proceed on the basis of that information

- 1 4 Advise on the need for the appointment of other Consultants for the Project ; attend interviews with applicants if required by the Client
- 1.5 Assist in the preparation of the preliminary financial appraisal
- 1.6 Assist the Client in preparation of the Client's requirements
- 1 7 Advise the Client on procuring methods of construction.
- 1.8 Confirm the suitability of the Site for the Project taking into account information relating to the Site prepared by or for the Client which has been made available to the Consultant; arrange for surveys of the Site and existing services if required.
- 1.9 Advise on the need for specialist contractors, sub-contractors and suppliers to design and execute part of the Project
- 1 10 Undertake a preliminary technical appraisal of the Project sufficient to enable the Client to decide whether and in what form to proceed, to include an approximation of the cost of meeting the Client's requirements, an outline timetable and suggested contract procedure.
- 1.11 Advise on the need to obtain planning permission, approvals under the Buildings Acts and/or Regulations and other statutory requirements
- 1.12 Prepare proposals and agree the same with the Client for outline planning application.
- 1 13 Apply for and negotiate outline planning application.
- 1.14 Project the Client's requirements.
- 1 15 Review with the Client alternative design and construction approaches and cost implications.
- 1 16 In consultation with the Client and the Other Consultants, assist the Client in settling a final Brief after any alternative solutions have been investigated
- 1 17 Provide relevant information to the CDM Co-ordinator for inclusion in the pre-construction Information pack for the Project
- 1 18 Prepare outline proposals for the design and construction of the works (including details of mass, height, bulk, overall appearance, basic materials, floor areas) and assist the Quantity Surveyor in preparing an outline Cost Plan Submit outline proposals and outline Cost Plan for the Project for the Client's preliminary approval and agree the same with the Client

#### **Stage 2 – Scheme Design**

- 1 1 Prepare a scheme design (the "**Scheme Design**") in collaboration with the Other Consultants consisting of drawings, Project plans and an outline specification, sufficient to indicate spatial arrangements, materials and appearance
- 1 2 Direct, co-ordinate and integrate into the Scheme Design work prepared by the Other Consultants.
- 1 3 Consult with planning authorities, building control authorities, fire authorities, environmental authorities, licensing and statutory undertakers on all matters connected with the Project.

- 1 4 Prepare and apply for all necessary planning permissions and agree the same with the Client.
- 1 5 Negotiate the planning applications
- 1 6 Revise and re-submit planning applications as necessary
- 1.7 Keep the Client fully advised of all planning matters and obtain his consent before departing from agreed proposals.
- 1 8 Make amendments to the Scheme Design to comply with requirements of planning authorities
- 1.9 Keep the Brief under review and advise the Client of any departures from the Brief which the Consultant believes are desirable.
- 1 10 Receive and incorporate into the Scheme Design any amendments to the Brief that may be instructed by the Client and advise upon any consequential effects upon the scope, cost or timing of the Project
- 1 11 Where permitted by the Client, make arrangements with specialist contractors and/or suppliers for the design of parts of the Project
- 1.12 Coordinate and integrate within the Scheme Design the designs prepared by specialist contractors and/or suppliers whose use has been permitted by the Client.
- 1.13 With the Other Consultants, make a formal presentation of the Scheme Design to the Client, including confirmation of the scope, cost and timing of the Project.
- 1.14 Receive and incorporate the Client's comments into the Scheme Design.
- 1.15 Coordinate the preparation of a single coordinated design report (the **"Design Report"**) addressing matters of scope, cost and timing and submit to the Client
- 1.16 Obtain the Client's approval to the Design Report.
- 1.17 With the Client, determine the procurement method and form of contract to be used for the Project
- 1 18 Prepare any special drawings, models etc., as required
- 1.19 Provide design input to the Quantity Surveyor in relation to the preparation of the Cost Plan for the Scheme Design. Assist the Quantity Surveyor in revising the Cost Plan to reflect any amendments made to the Scheme Design to incorporate the Client's comments.

### **Stage 3- Detailed Design**

- 1 1 In co-operation with the Other Consultants, develop from the approved Scheme Design a detailed design (**"Detailed Design"**) for the Project.
- 1 2 Keep the Brief and approved Scheme Design under review and advise the Client of any departures from either the Brief or the approved Scheme Design that are identified as desirable
- 1.3 Receive and incorporate into the Detailed Design any amendments to the Brief or approved Scheme Design that may be instructed by the Client and advise upon any consequential effects upon the scope, cost or timing of the Project.

- 1.4 Make all necessary submissions to local, planning and statutory authorities and conduct all related negotiations with the objective of obtaining all necessary approvals for the completion of this Stage.
- 1.5 Make any additional submissions necessary to ensure that all reserved matters and conditions forming part of any relevant planning consent are satisfactorily addressed
- 1.6 Make and negotiate with statutory undertakers all approvals, agreements, leases and consents necessary for the installation, removal and/or relocation of their services and for the provision of supplies
- 1.7 Prepare any special drawings, models or technical information for use of the Client or as required in connection with the approvals and consents referred to in the foregoing paragraph or for negotiations with adjoining owners, public authorities, licensing, authorities, financing bodies and others.
- 1.8 Provide information and make and negotiate all other applications and approvals necessary for the Project such as those for licences, negotiations in connection with party walls, grant aids, land dedications and road widening schemes.
- 1.9 Make and assist in negotiations of any necessary submissions to relevant societies and groups and town planning appeals. Providing assistance in connection with public enquiries.
- 1.10 Obtain the Client's approval of the type of construction, quality of materials and standard of workmanship
- 1.11 Advise on the pre-purchasing by the Client of items of plant, materials or goods which are on long delivery periods
- 1.12 Check and integrate within the Detailed Design any designs prepared by specialist contractors and/or suppliers whose use has been permitted by the Client
- 1.13 With the Other Consultants, make a formal presentation of the Detailed Design to the Client, including confirmation of the scope, cost and timing of the Project
- 1.14 Receive and incorporate the Client's comments into the Detailed Design.
- 1.15 Prepare any special drawings and models as required.
- 1.16 Provide input to the Quantity Surveyor in relation to the Project of the Cost Plan and assist the Quantity Surveyor in revising the Cost Plan to reflect any amendments made to the Detailed Design to reflect the Client's comments.
- 1.17 If required by the Client, provide advice on the selection of furniture, fittings and works of art.

#### **Stage 4 – Procurement**

- 1.1 Advise on appropriate procedures for tendering and provide designs and other information to assist the Quantity Surveyor in the preparation of tender documents for the trade contracts
- 1.2 With the Other Consultants, identify potential contractors and specialists from whom tenders may be sought
- 1.3 Agree with the Quantity Surveyor a list of tenderers to be recommended to the Client.



- 1.4 Assist the Quantity Surveyor in responding to queries raised by tenderers during the tender period.
- 1.5 Assist the Quantity Surveyor in the analysis of tenders received
- 1.6 Assist the Quantity Surveyor in post tender negotiations.
- 1.7 Consider any alternatives proposed by tenderers and advise the Client as to their desirability or acceptability.
- 1.8 Prepare revised designs as necessary in order to achieve a tender that is within the cost allowed by the Brief and/or approved Design Report.
- 1.9 Agree with the Quantity Surveyor which tender (if any) is to be recommended to the Client for acceptance.

#### **Stage 5 - Construction**

- 1.1 Act as lead design consultant, manage and co-ordinate the activities of the Other Consultants and provide information to the Other Consultants from time to time as may be necessary to enable them to, carry out their respective duties
- 1.2 Develop the Detailed Design in collaboration with the Trade Contractors and the Other Consultants.
- 1.3 Provide all such instructions and information as the Trade Contractors may reasonably require to enable it to pre-plan, procure and construct the Project.
- 1.4 Make regular visits to the Site (at least once weekly) to inspect the progress and quality of the work being executed by the Trade Contractors.
- 1.5 Report to the Client at monthly intervals upon the progress and quality of work and any matters that may prevent completion of the Project in accordance with the terms of the trade contracts. Notify the Client immediately of any breach or anticipated breach of the trade contracts
- 1.6 Keep the Client fully informed as to any matters that may affect the satisfactory achievement of the Brief and/or the satisfactory completion of the trade contracts.
- 1.7 Recommend to and agree with the Client adjustments to the Master Programme from time to time as may be necessary in the light of progress of the Project on Site
- 1.8 Instruct sample taking and carrying out tests of materials, components, techniques and workmanship and examine the conduct and results of such tests whether on or off Site.
- 1.9 Instruct the opening up of completed work to determine that it is generally in accordance with the trade contracts.
- 1.10 Visit the sites of the extraction and fabrication and assembly of materials and components to inspect such methods and workmanship before delivery to the Site.
- 1.11 Inspect and advise on the compliance of materials delivered to Site and off-site goods and materials with the terms of the trade contracts in relation thereto from time to time as the Consultant may consider desirable or as may be requested by the Client.
- 1.12 Notify the Client four weeks prior to the date when it is anticipated that practical completion will be achieved

- 1.13 Consult with the Client, the Other Consultants and any Third Parties prior to certifying practical completion of the trade contracts
- 1.14 Assist the Quantity Surveyor with the implementation of post contract cost control and reporting procedures
- 1.15 Prepare in respect of the works executed under the trade contracts defects and/or snagging lists and issue them to the Trade Contractor.
- 1.16 Provide to the Client information for use by Third Parties.
- 1.17 If so required by the Client, review and comment upon drawings prepared by Third Parties in respect of works they may wish to undertake
- 1.18 If requested by the Client, advise. on the commissioning or selection of the furniture and fittings for the Project , obtain tenders and supervise their installation
- 1.19 Advise the Client on items of work which may be omitted from the trade contracts for completion by others and review the drawings and specifications prepared by those others and their advisers in relation to such works to see that they do not affect the design and performance of the Project and that they integrate with the design of the remainder of the Project

**Stage 6 – Post Practical Completion**

- 1.1 Advise the Client and any Third Parties upon the use and maintenance of the Project and respond to any queries that may be raised.
- 1.2 Assist the Quantity Surveyor with the implementation of post completion cost reporting procedures

### **CDM Co-ordinator Services**

- 1.1 Perform the functions and duties of a "CDM co-ordinator" under the Construction (Design and Management) Regulations 2007 ("**CDM Regulations**") including:
- (a) notifying the Project to the Health and Safety Executive on behalf of the Client;
  - (b) giving suitable and sufficient advice and assistance to the Client on undertaking all the measures the Client needs to take to comply with the CDM Regulations, including, in particular, reasonable steps to ensure that the arrangements made for managing the Project (including the allocation of sufficient time and other resources) by the Client, the Other Consultants and the Trade Contractors are suitable to ensure that:
    - (i) the construction work can be carried out so far as is reasonably practicable without risk to the health and safety of any person;
    - (ii) the requirements as to welfare facilities are complied with; and
    - (iii) any structure designed for use as a workplace has been designed to comply with the provisions of the Workplace (Health, Safety and Welfare) Regulations 1992 relating to the design of, and materials used in, the structure,
  - (c) giving suitable and sufficient advice and assistance to the Client in relation to reasonable steps to ensure that the arrangements referred to in (b) above are maintained and reviewed throughout the duration of the Project;
  - (d) advising the Client in relation to the competence of designers and potential contractors and the adequacy of the resources they propose to allocate to the Project,
  - (e) ensuring that suitable arrangements are made and implemented for the co-ordination of health and safety measures during planning and preparation for the construction phase, including facilitating co-operation and co-ordination between all persons concerned in the Project and the application of the statutory principles of prevention;
  - (f) liaising with the Construction Manager regarding:
    - (i) the contents of the health and safety file;
    - (ii) the information which the Construction Manager needs to prepare the construction phase plan; and
    - (iii) any design development which may affect planning and management of the construction work,
  - (g) taking all reasonable steps to identify and collect the pre-construction information, including information about or affecting the site or the construction work and concerning the proposed use of any structures as a workplace, including any such information in any existing health and safety file(s), which is relevant to the Other Consultants and the Trade Contractors for the following purposes:
    - (i) to secure so far as is reasonably practicable the health and safety of those engaged in the construction work, those liable to be affected by the way in which it is carried out and those who will use the structure(s) as a workplace, and

- (li) to assist the Other Consultants and the Trade Contractors to perform their duties under the CDM Regulations and to determine the adequacy of the resources to be allocated by them,
  - (h) promptly providing such of the pre-construction information as is relevant to them in a convenient form to designers and all potential contractors,
  - (i) advising the Client as to the amount of time before the construction phase begins which should be allowed to the Trade Contractors for planning and preparation for construction work,
  - (j) taking all reasonable steps to ensure that designers comply with their duties under the CDM Regulations,
  - (k) co-ordinating design work, planning and other preparation for construction where relevant for health and safety;
  - (l) giving suitable and sufficient advice and assistance to the Client to ensure that the construction phase does not start unless.
    - (i) the Construction Manager has prepared a construction phase plan which complies with the CDM Regulations, and
    - (ii) the Consultant is satisfied that the requirements as to welfare facilities will be complied with throughout the construction phase.
  - (m) seeking the co-operation of, and co-operating with, all other persons involved in the Project to enable the Consultant and those persons to perform their statutory obligations; and
  - (n) advising on the suitability and compatibility of designs in relation to health and safety.
- 1.2 Report to the Client immediately anything of which he is aware that is likely to endanger the health or safety of any person
  - 1.3 Advise the Client of the duties of a 'client' under the CDM Regulations
  - 1.4 Report to the Client monthly concerning the compliance of the Other Consultants, the Trade Contractors and the Project with the requirements of the CDM Regulations
  - 1.5 Advise the Client of any non-compliance by any of the Other Consultants or the Trade Contractors with their obligations under the CDM Regulations.
  - 1.6 Perform such other duties as may reasonably be required by the Client which are customarily basic services within the professional expertise of the Consultant to secure the completion of the Project.



## **Quantity Surveyor Services**

### **Services general to all stages of the Project**

- (a) Liaise with the Other Consultants and with the Trade Contractor, and any sub-contractors, Sub-Consultants or suppliers.
- (b) Keep the design of the Project under review from a cost point of view.
- (c) Implement procedures for cost planning, cost control and cost reporting.
- (d) Prepare and update cash flow forecasts for the Project.
- (e) Advise on capital allowances against items requested and listed by the Client and, if specifically requested and listed by the Client, provide the Client with information, advice and assistance in connection with any other tax considerations in relation to the Project.
- (f) Liaise with the Client's surveyors if requested in order to advise on rebuilding costs for Insurance purposes.

### **Stage 1 - Feasibility**

- 1.1 Undertake a preliminary financial appraisal of the Project sufficient to enable the Client to decide whether and in what form to proceed to include an approximation of the cost of meeting the Client's requirements and suggested contract procedure.
- 1.2 Review with the Client alternative design and construction approaches and cost implications
- 1.3 Advise the Client in general terms upon procurement options for the Project.
- 1.4 Prepare an estimate of the cost of each of the feasibility options presented to the Client
- 1.5 Assist the Client and the Other Consultants in conducting negotiations concerned with the Site; assist with and monitor the administration of any contracts made by the Client with any persons or firms carrying out special investigations and tests in relation to the Site.
- 1.6 Provide cost information to the Client and the Other Consultants for their consultations with local or other authorities on matters of principle in connection with the Project.
- 1.7 Prepare an outline Cost Plan for the Project for the Client's approval. Assist the Architect in preparing procedures for the cost planning and control of the Project in conjunction with the Other Consultants
- 1.8 Provide cost information to the Other Consultants for the purposes of establishing a scheme design

### **Stage 2 - Scheme Design**

- 1.1 Prepare an estimated construction Cost Plan for the scheme design, including any alternative solutions proposed by the Client or the Other Consultants.
- 1.2 Prepare a report for the Client on the procedures to be adopted in inviting tenders for trade contracts for the construction of the Project and the contract conditions to be used
- 1.3 Prepare the Cost Plan for the Project based on the design prepared by the Other Consultants in a form to be approved by the Client, agree the Cost Plan with the Client

- 1 4 Assist in the preparation and updating of a cash flow forecast for the construction of the Project on the Site
- 1 5 Provide cost information to the Other Consultants for the purposes of consultation and liaison with planning authorities, building control authorities, fire authorities, environmental authorities, licensing authorities and statutory undertakers.
- 1 6 Comment on design documents prepared by the Other Consultants in respect of the cost of alternative design and construction approaches and in respect of the design of each element in relation to the allowances therefor contained in the Cost Plan or any drafts thereof.
- 1 7 Assist with the preparation of a single coordinated scheme design report (the "**Design Report**") addressing matters of scope, cost and timing.

### **Stage 3 - Detailed Design**

- 1 1 Update the Cost Plan and cash flow forecast as necessary in the light of the scheme design for the Project and advise the Client of any changes to the Cost Plan
- 1 2 Assist by the provision of cost advice in making and negotiating all necessary applications for and giving all notices required to be given for planning permissions, Building Act/Regulations and fire regulations approvals and all other statutory approvals and consents required for the Project.
- 1.3 Assist as requested by the Client in making and negotiating with statutory undertakers all approvals, agreements, leases and consents necessary for the installation, removal and/or relocation of their services and for the provision of supplies, keep the Client constantly informed of the cost involved in any such negotiations, applications including approvals
- 1.4 Provide cost advice and assist as required by the Client in making and negotiating all other applications and approvals necessary for the Project such as those for licences, negotiations in connection with party wall and grant aids, land dedications and road widening schemes.
- 1 5 Advise on the pre-purchasing by the Client of items of plant, materials or goods which are on long delivery periods
- 1 6 With the Other Consultants identify potential contractors and specialists (if applicable) from whom tenders may be sought

### **Stage 4 - Procurement**

- 1 1 Discuss and agree with the Client draft terms and conditions, programme and "preliminaries" for the trade contracts for the inclusion of the same in the invitation to tenders
- 1.2 Prepare schedules of rates and other pricing documents for inclusion in the invitation to tender
- 1 3 Agree with the Client the list of tenderers to be recommended to the Client
- 1 4 Check the final draft of the invitations to tender to ensure that they are adequate and complete and comment on the same
- 1.5 Respond to queries raised by tenderers during the tender period
- 1 6 Consider any alternatives proposed by tenderers and advise the Client as to their desirability or acceptability

- 1 7 Interview tenderers where appropriate in conjunction with the Other Consultants as appropriate and assist in the negotiation of prices with the Trade Contractor as authorised by the Client
- 1 8 Analyse the tenders and programmes received in collaboration with the Other Consultants and report to the Client with recommendations for acceptance

#### **Stage 5 - Construction**

- 1 1 Make such visits to the Site as may be necessary for the proper performance of the Services, in particular to be fully informed of all matters in relation to the cost of the Project.
- 1 2 Check the Trade Contractor's payment applications under the trade contracts; prepare interim valuations
- 1.3 Advise on the cost implications of any proposed variations and instructions as requested by the Client and, where the Client decides to implement a variation, advise the Client of the cost implications of the same.
- 1 4 Ensure that all "daywork" claims under the trade contracts are properly settled and agreed
- 1.5 Calculate and approve all fluctuations and other amounts in respect of increases in costs to be certified pursuant to the terms of the trade contracts.
- 1 6 Keep proper accounts of all monies expended pursuant to the trade contracts. Assist the Architect in the valuation and settlement of any claims arising under the trade contracts and in the agreement of a final statement or account in respect of the Trade Contractor
- 1 7 Monitor and report to the Client at monthly intervals on expenditure in relation to the Cost Plan. Inform the Architect and the Client immediately if the expenditure has or may reasonably be anticipated as likely to exceed the Cost Plan.
- 1.8 Advise on the desirability of making payment for off-site goods and materials. Assist in valuing the same
- 1.9 Do all that may reasonably be required by the Client to monitor the costs of work to be executed by others which is omitted from the trade contracts and provide advice and assistance to the Client as and when requested by the Client in connection with the calculation and negotiation of cash allowances to be paid to any prospective Tenants or Purchaser of any part of the Project in respect of their fitting out works.
- 1.10 Negotiate and agree the interim and final accounts under the trade contracts with the trade contractors.
- 1.11 Attend regular site meetings as required by the Client

#### **Stage 6 - Post Practical Completion**

- 1 1 Advise the Client and any Third Parties upon the use and maintenance of the Project and respond to any queries that may be raised.
- 1.2 Advise the Client of any issues that may become apparent (including the investigation of building failures), and which may affect the use or operation of the Project
- 1 3 Implement post completion cost reporting procedures and report the final cost of the Project to the Client



### **SCHEDULE 3**

#### **Additional Services**

Provide assistance in connection with planning appeals or public enquiries.

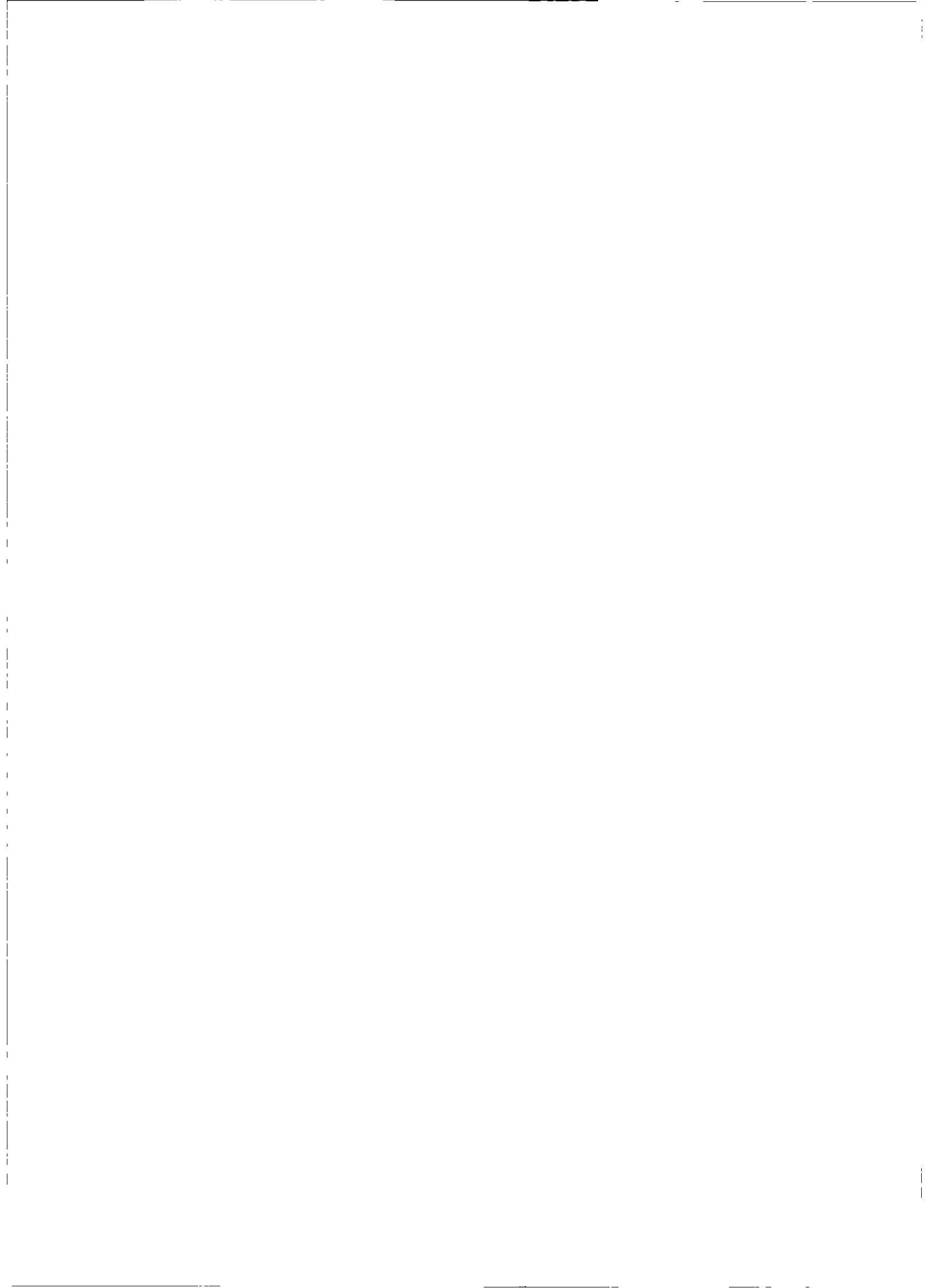
Substantially modify any design prepared by the Consultant and agreed by the Client following any instructions from the Client. Provided that the modification of design in discussion with the Client before it is finally agreed by the Client and the preparation of alternatives shall not constitute Additional Services.

Provide advice and assist the Client in the submission of and settlement of any substantial claims pursuant to the insurances for the Project.

Provide such services as may be necessary if at any time before the completion of the Project or any part thereof any materials, plant or equipment whether incorporated in the Project or not shall be materially damaged or destroyed.

Carry out any additional work consequent upon the liquidation of any Trade Contractor.

Provide such assistance as the Client may reasonably require in pursuing each and every remedy which the Client may have against the Contractor or any sub-contractor and/or in defending any claim which may be made against the Client by any Trade Contractor or any sub-contractor following the issue of a notice of adjudication and/or a claim form and provided the Consultant is not otherwise a party to such proceedings



## **SCHEDULE 4**

### **Fees and Expenses**

#### **Part A: Fee**

The Consultant's Fee shall be a lump sum of £450,000 exclusive of VAT

Following the Effective Date, the Fee shall be paid by way of 21 (twenty-one) monthly instalments, comprising an initial instalment of £20,000 followed by 20 (twenty) instalments of £21,500 in accordance with the provisions of clause 4.

The Consultant has at the date of this appointment been paid the sum of £90,000 on account of the Fee, safe receipt of which the Consultant hereby acknowledges.

#### **Part B: Reimbursable Expenses**

The Consultant shall be entitled to reimbursement in accordance with clause 4 of the reasonable and verified actual expenses incurred by the Consultant in performing, at the Client's specific prior written request, the following activities:

The engagement of the following personnel listed in part 2 of schedule 7,

#### **Part C: Additional Fees**

Hourly rates for.

Director/Project Manager	£145
Director/Interior Designer	£95
Senior Assistant	£65
Site Manager	£90
Quantity Surveyor	£65
Design Assistant	£65

The above rates are inclusive of all fringe benefits, mark-ups, overheads and profit but exclusive of VAT.

#### **Part D: Due Dates**

The following are the due dates for submission of invoices:

The first working day of each calendar month

## **SCHEDULE 5**

### **Part 1 - Third Party Rights**

In this schedule, unless otherwise defined or a contrary intention appears, words shall have the meanings ascribed to them in the appointment.

#### **1. CONSULTANT'S WARRANTY**

- 1.1 The Consultant warrants and undertakes to the Third Party that it has performed and will continue to perform its obligations under the Appointment in accordance with all its terms and conditions.
- 1.2 In the event of breach of the warranty in paragraph 1.1, the Consultant's obligations shall not be released or diminished by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Third Party nor by any act or omission of any party carrying out such enquiry.
- 1.3 The Consultant shall be entitled in any action or proceedings by the Third Party to raise equivalent rights in defence of liability (save in relation to set-off and counterclaim) as it would be entitled to raise if the Third Party had been named as joint client under the Appointment.
- 1.4 The Consultant's liability to the Third Party shall be limited to the proportion of the Third Party's losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same, on the following assumptions, namely that:
- (i) the Other Consultants have provided third party rights to the Third Party as regards the performance of their services in connection with the Project on terms no less onerous than this paragraph 1,
  - (ii) the Trade Contractors have provided third party rights to the Third Party as regards the performance of their works in connection with the Project on terms no less onerous than this paragraph 1 (save in respect of the Services), and,
  - (iii) the Other Consultants have paid to the Third Party such proportion of the Third Party's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Third Party's losses,

save that the assumption at sub-paragraph (ii) above shall be disregarded in respect of any Trade Contractor who has not provided third party rights to the Third Party as regards the performance of their work in connection with the Project on terms no less onerous than this paragraph 1

#### **2. PROHIBITED MATERIALS**

- 2.1 The Consultant warrants that it has used and shall continue to use all reasonable skill, care and diligence to see that:
- (i) It specifies materials for use on the Project in accordance with the guidelines contained in the edition of the publication "**Good Practice in Selection of Construction Materials**" (2011) (British Council for Offices) current at the date of specification and/or that it has used and shall continue to use reasonable skill, care and diligence in the course of performing the Services to see that materials as used in the Project shall be in accordance with such guidelines,

- (ii) there shall not be specified by it for use or used in the Project any materials which at the time of specification or use are generally considered by construction industry professionals as:
  - (A) being deleterious in themselves;
  - (B) becoming deleterious when used in a particular situation or in combination with other materials;
  - (C) becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of comparable type, or
  - (D) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed;
- (iii) for this purpose the word "deleterious" shall be deemed to include (without limitation) the use of materials or combinations of materials that would or might be hazardous to health or would or might have the effect of reducing the normal life expectancy:
  - (A) of the materials themselves;
  - (B) of any materials to which they are affixed;
  - (C) of the structure in which they are incorporated or to which they are affixed; or
  - (D) to a period less than that which would normally be expected.

### 3. **COPYRIGHT AND CONFIDENTIALITY**

- 3 1 The copyright in the Material shall remain vested in the Consultant but the Consultant hereby grants to the Third Party an irrevocable, royalty-free, non-exclusive licence to copy, use and reproduce the same for all purposes relating to the Project including, but without limitation, the design, construction, completion, reconstruction, modification, extension, repair, reinstatement, refurbishment, project, maintenance, use, letting, promotion, advertisement of the Project, and/or the promotion or advertisement of the Third Party. The licence shall include the right to grant sub-licences on the same terms as this licence and shall be assignable. The Consultant irrevocably waives any moral rights in the Material and in the Project.
- 3 2 The Consultant warrants that it has not infringed any third party's Intellectual property rights in carrying out the services under or in connection with the Appointment, and shall indemnify the Third Party against any and all claims, liability, losses, damage, costs and expenses (including legal costs) arising out of a breach of this warranty.
- 3 3 Save as may be necessary for the proper performance of the services under or in connection with the Appointment and as stated in the Appointment, the Consultant may not during the Appointment or following its termination disclose to any third party or make use of any information of any kind whatsoever relating to the Project or the Third Party.
- 3 4 The rights set out in this paragraph 3 shall survive the termination of the Appointment for any reason.

4. **PROFESSIONAL INDEMNITY INSURANCE**

- 4.1 The Consultant shall maintain professional indemnity insurance in the amount stated and in accordance with the Appointment.
- 4.2 The Consultant shall produce documentary evidence that the insurance cover referred to in paragraph 4.1 of this schedule is being maintained and that premiums have been paid whenever requested to do so by the Third Party. The Consultant shall immediately notify the Third Party in writing if it ceases to hold such insurance.

5. **ASSIGNMENT**

The rights conferred by this schedule may be assigned twice by the Third Party without the consent of the Consultant being required. Any further assignment shall be subject to the prior written consent of the Consultant such consent not to be unreasonably withheld or delayed

6 **LIMITATION**

- 6.1 No action or proceedings for any breach of these Third Party Rights shall be commenced against the Consultant after the expiry of 12 years following practical completion of the Project

7. **NOTICES**

- 7.1 Any notice provided for hereunder shall be deemed to be duly given if it is delivered by hand at, or sent by registered post or facsimile transmission to the relevant person at the registered office or principal business address of that person or such other address as that person may by notice in writing nominate for the purpose of service, and if sent by registered post shall be deemed to have been received not later than 48 hours after the same shall have been posted

8. **DISPUTE RESOLUTION**

- 8.1 Any dispute or difference arising under or in connection with Schedule shall be resolved in accordance with clause 15 of the Appointment as though the Third Party were a party to the Appointment
- 8.2 This Schedule shall be governed by English law.

9 **STEP-IN**

- 9.1 This paragraph 9 of this schedule only applies to Third Parties who are Funders.
- 9.2 The Consultant acknowledges that the Third Party has no liability to the Consultant in respect of fees and expenses under the Appointment unless and until the Third Party has given notice under paragraph 9.3 or 9.4 of this schedule
- 9.3 The Consultant agrees that, if so required by notice in writing given by the Third Party and subject to paragraph 9.5 of this schedule, it will accept the instructions of the Third Party or its appointee to the exclusion of the Client in respect of the carrying on and completion of its obligations under the Appointment. The Client acknowledges that the Consultant shall be entitled to rely on such a notice as conclusive evidence for the purposes of this appointment that the Third Party was entitled to give such a notice.
- 9.4 The Consultant further agrees that it will not, without first giving to the Third Party not less than 21 days' notice in writing, exercise any right it may have to terminate the Appointment or to treat the same as having been repudiated by the Client or to discontinue the performance of any services to be performed by the Consultant pursuant

thereto. Prior to the expiry of such notice period the Third Party may give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Third Party or its appointee to the exclusion of the Client in respect of the carrying on and completion of the Project upon the terms and conditions of the Appointment

9.5 Subject to the conditions in paragraph 9.6 of this schedule, upon the issue of any notice by the Third Party under paragraph 9.3 or 9.4.

- (i) the Appointment shall continue in full force and effect,
- (ii) the Consultant shall be liable to the Third Party or its appointee under the Appointment in lieu of its liability to the Client, and
- (iii) the Client shall have no further liability to the Consultant or obligations under the Appointment with respect to any matters or circumstances arising out of or in connection with the Appointment after the date of such notice.

9.6 Any notice given by the Third Party under paragraphs 9.3 or 9.4 of this schedule shall include:

- (i) an undertaking by the Third Party and/or its appointee to accept liability for payment of any fees and expenses payable to the Consultant under the Appointment and to be bound by the obligations of the Client; and
- (ii) if such notice requires the Consultant to accept the instructions of the Third Party's appointee, an undertaking by the Third Party to be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Third Party's appointee





## SCHEDULE 5

### Part 2 - Deed of Collateral Warranty with Purchaser/Tenant/Funder/Landlord

THIS DEED is made on

20●

#### BETWEEN:

- (1) [**Insert name of the Beneficiary**] whose registered office is at [●] (the "**Beneficiary**", which expression shall include its successors in title or assigns); [and]
- (2) [**Insert name of Consultant**] whose [registered office] [principal place of business] is at [●] (the "**Consultant**"); [and]
- (3) [**Insert name of Client**] whose registered office is at [●] (the "**Client**" which expression shall include its successors in title or assigns)

#### RECITALS

- (A) [The Beneficiary has entered into an agreement (the "**Sale Agreement**") with the Client [**Insert name of client** (the "**Client**")]] under which the Beneficiary has agreed to purchase [a part of/the whole of] the property known as [●] (the "**Project**").]
- (A) [The Beneficiary has entered into an agreement (the "**Finance Agreement**") with [**Insert name of client** (the "**Client**")]] the Client under which the Beneficiary has agreed to provide finance for the whole or any part of the property known as [●] (the "**Project**").]
- (A) [The Beneficiary has entered into an agreement (the "**Lease Agreement**") with [**Insert name of client** (the "**Client**")]] the Client under which the Beneficiary has agreed to lease [a part of/the whole] of the property known as [●] (the "**Project**") from the Client.]
- (A) [The Beneficiary has entered into an agreement (the "**Lease Agreement**") with [**Insert name of client** (the "**Client**")]] the Client under which the Beneficiary has agreed to lease [a part of/the whole] of the property known as [●] (the "**Project**") to the Client ]
- (B) The Consultant has been appointed by the Client under an appointment (the "**Appointment**") [**Insert Date**] to provide professional services for the Project.
- (C) [The Client has agreed to be a party to this deed to acknowledge the rights of the Consultant and the Beneficiary should the Beneficiary take over the Client's position under the Appointment ]

**IN CONSIDERATION OF PAYMENT BY THE BENEFICIARY TO THE CONSULTANT OF £1 (ONE POUND) ON DEMAND, NOW THIS DEED WITNESSES AS FOLLOWS:**

#### 1 DEFINITIONS

In this deed, unless otherwise defined or a contrary intention appears, words shall have the meanings ascribed to them in the Appointment

#### 2. CONSULTANT'S WARRANTY

- 2.1 The Consultant warrants and undertakes to the Beneficiary that it has performed and will continue to perform its obligations under the Appointment in accordance with all its terms and conditions

- 2.2 In the event of breach of the warranty in clause 2.1, the Consultant's obligations shall not be released or diminished by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Beneficiary nor by any act or omission of any party carrying out such enquiry
- 2.3 The Consultant shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (save in relation to set-off and counterclaim) as it would be entitled to raise if the Beneficiary had been named as joint client under the Appointment
- 2.4 The Consultant's liability to the Beneficiary shall be limited to the proportion of the Beneficiary's losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same, on the following assumptions, namely that:
- (i) the Other Consultants have provided contractual undertakings to the Beneficiary as regards the performance of their services in connection with the Project on terms no less onerous than this clause 2;
  - (ii) the Trade Contractors have provided contractual undertakings to the Beneficiary as regards the performance of their works in connection with the Project on terms no less onerous than this clause 2 (save in respect of the Services), and
  - (iii) the Other Consultants have paid to the Beneficiary such proportion of the Beneficiary's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Beneficiary's losses,

save that the assumption at sub-clause (ii) above shall be disregarded in respect of any Trade Contractor who has not provided contractual undertakings to the Beneficiary as regards the performance of their work in connection with the Project on terms no less onerous than this clause 2.

### 3 PROHIBITED MATERIALS

- 3.1 The Consultant warrants that it has used and shall continue to use all reasonable skill, care and diligence to see that:
- (i) it specifies materials for use on the Project in accordance with the guidelines contained in the edition of the publication **"Good Practice in Selection of Construction Materials" (2011) (British Council for Offices)** current at the date of specification and/or that it has used and shall continue to use reasonable skill, care and diligence in the course of performing the Services to see that materials as used in the Project shall be in accordance with such guidelines,
  - (ii) there shall not be specified by it for use or used in the Project any materials which at the time of specification or use are generally considered by construction industry professionals as:
    - (A) being deleterious in themselves;
    - (B) becoming deleterious when used in a particular situation or in combination with other materials;
    - (C) becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of comparable type, or

- (D) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,
- (iii) for this purpose the word "deleterious" shall be deemed to include (without limitation) the use of materials or combinations of materials that would or might be hazardous to health or would or might have the effect of reducing the normal life expectancy
  - (A) of the materials themselves,
  - (B) of any materials to which they are affixed;
  - (C) of the structure in which they are incorporated or to which they are affixed; or
  - (D) to a period less than that which would normally be expected.

#### **4 COPYRIGHT AND CONFIDENTIALITY**

- 4.1 The copyright in the Material shall remain vested in the Consultant but the Consultant hereby grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to copy, use and reproduce the same for all purposes relating to the Project including, but without limitation, the design, construction, completion, reconstruction, modification, extension, repair, reinstatement, refurbishment, project, maintenance, use, letting, promotion, advertisement of the Project, and/or the promotion or advertisement of the Beneficiary. The licence shall include the right to grant sub-licences on the same terms as this licence and shall be assignable. The Consultant irrevocably waives any moral rights in the Material and in the Project
- 4.2 The Consultant warrants that it has not infringed any third party's intellectual property rights in carrying out the Services under or in connection with the Appointment, and shall indemnify the Beneficiary against any and all claims, liability, losses, damage, costs and expenses (including legal costs) arising out of a breach of this warranty
- 4.3 Save as may be necessary for the proper performance of the Services under or in connection with the Appointment and as stated in the Appointment, the Consultant may not during the Appointment or following its termination disclose to any third party or make use of any Information of any kind whatsoever relating to the Project or the Beneficiary.
- 4.4 The rights set out in this clause 4 shall survive the termination of the Appointment for any reason

#### **5 PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Consultant shall maintain professional indemnity insurance in the amount stated and in accordance with the Appointment. Whenever requested to do so by the Beneficiary, the Consultant shall produce documentary evidence that the Insurance cover is being maintained and that premiums have been paid. The Consultant shall immediately notify the Beneficiary in writing if it ceases to hold such insurance.

#### **6 INSTRUCTIONS**

- 6.1 [Save as provided in clause 12, the] [The] Beneficiary has no authority to issue any direction or instruction to the Consultant in relation to the Consultant's duties under the Appointment

7       **ASSIGNMENT**

7.1       The Consultant shall not assign, charge or transfer any right or obligation under this deed to any other person

7.2       This deed may be assigned twice by the Beneficiary without the consent of the Consultant being required. Any further assignment shall be subject to the prior written consent of the Consultant such consent not to be unreasonably withheld or delayed

8       **LIMITATION**

8.1       No action or proceedings for any breach of this deed shall be commenced against the Consultant after the expiry of 12 years following practical completion of the Project.

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

9.1       Subject to the provisions of clause 7.2, nothing in this deed is intended to confer on any person any right to enforce any of the provisions of this deed whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

10       **GOVERNING LAW AND DISPUTES**

10.1       The provisions of this deed shall be governed by and construed in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

11.       **MISCELLANEOUS**

11.1       If the Consultant is a partnership references in this deed to the "Consultant" shall 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 shall be joint and several.

11.2       Any notice provided for in accordance with this deed shall be deemed to be duly given if it is delivered by hand at, or sent by registered post or facsimile transmission to the relevant party at, the address of that party shown in this deed or such other address as that party may by notice in writing nominate for the purpose of service, and if sent by registered post shall be deemed to have been received not later than 48 hours after the same shall have been posted

12       **[STEP-IN**

12.1       The Consultant acknowledges that the Beneficiary has no liability to the Consultant in respect of fees and expenses under the Appointment unless and until the Beneficiary has given notice under clause 12.2 or 12.3 of this deed.

12.2       The Consultant agrees that, if so required by notice in writing given by the Beneficiary (copied to the Client and subject to clause 12.4 of this deed), it will accept the instructions of the Beneficiary or its appointee to the exclusion of the Client in respect of the carrying on and completion of its obligations under the Appointment. The Client acknowledges that the Beneficiary shall be entitled to rely on such a notice as conclusive evidence for the purposes of this appointment that the Beneficiary was entitled to give such a notice.

12.3       The Consultant further agrees that it will not without first giving to the Beneficiary not less than 21 days' notice in writing exercise any right it may have to terminate the Appointment or to treat the same as having been repudiated by the Client or to discontinue the performance of any services to be performed by the Consultant pursuant thereto. Prior to the expiry of such notice period the Beneficiary may give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Beneficiary or its appointee to the exclusion of the Client in respect of the carrying on and completion of the Project upon the terms and conditions of the Appointment.

12.4 Subject to the conditions in clause 12.5 of this deed, upon the issue of any notice by the Beneficiary under clauses 12.2 or 12.3:

- (i) the Appointment shall continue in full force and effect,
- (ii) the Consultant shall be liable to the Beneficiary or its appointee under the Appointment in lieu of its liability to the Client, and
- (iii) the Client shall have no further liability to the Consultant or obligations under the Appointment with respect to any matters or circumstances arising out of or in connection with the Appointment after the date of such notice

12.5 It shall be a condition to the operation of any notice given under clause 12.2 or 12.3 that:

- (i) the Beneficiary or its appointee accepts liability for payment of any fees and expenses payable to the Consultant under the Appointment and for performance of the Client's obligations; and
- (ii) if such notice requires the Consultant to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Beneficiary's appointee

12.6 The Client has agreed to be a party to this deed for the purpose of acknowledging that the Consultant shall not be in breach of the Appointment by complying with the obligations imposed on it by clauses 12.2 and 12.3.]

**IN WITNESS** whereof this deed has been executed and delivered on the date first above written

## **SCHEDULE 6**

### **Project Agreements**

Development Agreement dated  
GMS Bricks s à r l relating to the Project.

between the Client and

## **SCHEDULE 7**

### **Staff Costs**

The Client shall pay the Consultant's site management costs and the costs of the Consultant's handyman at the hourly rates set out below

#### **Hourly rates for:**

Site Manager	£90
Handyman	£25

Dated

2013

**(1) GMS BRICKS S.À R.L.**

**- and -**

**(2) ARBUTHNOT LATHAM & CO LIMITED**

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**LICENCE FOR ALTERATIONS  
RELATING TO 7-21 (ODD) WILSON STREET,  
LONDON EC2M 2SN**

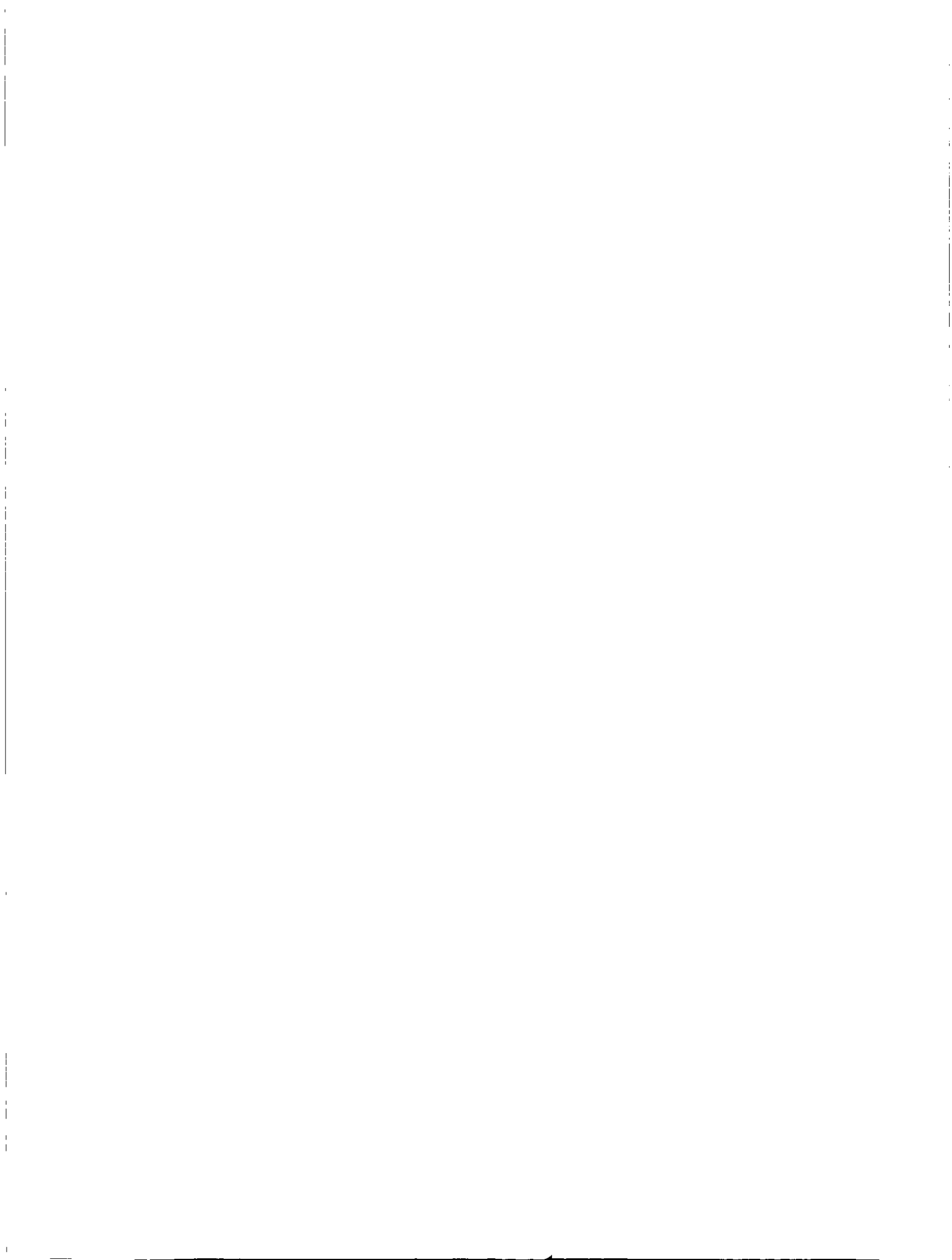
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Mishcon de Reya  
Summit House  
12 Red Lion Square  
London WC1R 4QD  
Tel: 020 7440 7000  
Fax: 020 7404 5982  
Ref. IP/EHP/20413 217  
E-mail: [edward.hughes-power@mishcon.com](mailto:edward.hughes-power@mishcon.com)



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THIS LICENCE dated [    ] 201[    ] is made between (1) the Landlord and (2) the Tenant

## 1 INTERPRETATION AND GENERAL PROVISIONS

1.1 The following definitions apply -

- |                                |   |
|--------------------------------|---|
| <b>"Landlord"</b>              | · <b>GMS BRICKS S.à r.l.</b> , a private limited liability company (société à responsabilité limitée) incorporated under Luxembourg law registered with the Luxembourg Trade and Companies Register number B165661) whose registered office is at 1 Place du Théâtre, L-2613 Luxembourg, with a share capital of GBP 12,500 |
| <b>"Tenant"</b>                | · <b>ARBUTHNOT LATHAM &amp; CO LIMITED</b> (No 00819519) whose registered office is at Arbuthnot House 20 Ropemaker Street London EC2Y 9AR  |
| <b>"Lease"</b>                 | · the Lease described in Schedule 1 together with any deeds and documents supplemental thereto  |
| <b>"Premises"</b>              | : the premises comprised in and demised by the Lease and briefly known as 7-21 (odd) Wilson Street, London EC2M 2SN   |
| <b>"Works"</b>                 | · the works briefly described in Schedule 2   |
| <b>"Development Agreement"</b> | the development agreement relating to the Premises dated [    ] 2013 and made between (1) <b>GMS Bricks S.à r.l.</b> and (2) <b>Arbuthnot Latham &amp; Co Limited</b>   |

1 2 The expression **"the Architect"** means such architects surveyors and engineers as the Landlord may instruct in connection with the Works

1 3 The expression **"the Landlord"** includes the person or persons for the time being entitled to the reversion immediately expectant upon the term of the Lease and the expression **"the Tenant"** includes the Tenant's successors in title and underlessees

1 4 The expression **"the CDM Regulations"** means the Construction (Design and Management) Regulations 2007 as amended or replaced from time to time

1.5 The singular includes the plural and vice versa person includes corporation the neuter includes the masculine and the feminine and covenants by a party which comprises two or more persons shall be joint and several

## 2 GRANT OF LICENCE

IN consideration of the covenants by the Tenant the Landlord grants its retrospective licence to the Tenant for the Works that have been carried out upon the Premises in accordance with the conditions contained in this deed

### **3. TENANT'S COVENANTS**

THE Tenant covenants with the Landlord that -

- 3.1 The Works have been completed in a good and workmanlike manner using good quality materials and in accordance with the annexed drawings and specifications previously approved by or on behalf of the Landlord and in accordance with the Development Agreement
- 3.2 The Tenant has obtained all necessary permissions consents and approvals under any relevant enactment regulation or bye-law and has complied with their terms and conditions and with all applicable statutory requirements in the execution of the Works
- 3.3 If the CDM Regulations apply to the Works
  - 3.3.1 the CDM Regulations were observed and performed in the execution of the Works,
  - 3.3.2 to supply a copy of the health and safety file (prepared in accordance with the CDM Regulations) to the Landlord on completion of the Works
- 3.4 To pay and indemnify the Landlord against all claims actions proceedings demands and costs arising out of any breach of the terms of this Licence and against all taxes duties and impositions that have or may become payable by virtue of the execution of the Works
- 3.5 To permit the Landlord and the Architects on reasonable prior written notice to inspect (but not interfere with) the execution of the Works and the materials used in the Works
- 3.6 To provide the Landlord with two sets of as built drawings of the Works
- 3.7 At the end or sooner determination of the term granted by the Lease or any extension or renewal of it to reinstate the Premises at the Tenant's own expense in accordance with the provisions of the Lease

### **4 LIMITS ON THIS LICENCE**

- 4.1 THIS Licence shall not be deemed to permit the Tenant or its contractors servants or agents to enter upon any premises other than the Premises without the further consent of the Landlord and of any persons entitled to possession of such other premises and shall not be deemed to authorise any other works or actions than have been expressly hereby authorised
- 4.2 Nothing herein contained shall release or in any way lessen the liability of the Tenant to the Landlord in respect of the Tenant's covenants contained in the Lease or the liability of any other party to the Landlord under the Lease in respect of any breaches committed prior to the date of this Licence (other than any breaches arising from the Works now authorised by this Licence) and the lessee's covenants and all other provisions in the Lease shall apply to the Premises in their altered or (on the completion of any reinstatement) reinstated state (as the case may be)

**5 REMEDIES FOR BREACH**

The conditions for re-entry contained in the Lease shall be exercisable as well on breach of any covenants by the Tenant and the stipulations contained in this deed as on the happening of the events mentioned in the Lease and the Lease is hereby varied to the extent necessary to give effect to this clause

**6 MISCELLANEOUS**

6.1 The provisions of this deed apply not only during the term granted by the Lease but also during any extension or continuation by statute, common law agreement or otherwise

6.2 Nothing contained in this deed shall be or be deemed to be a representation that there are no subsisting breaches of the Tenant's covenants in the Lease

**7 GOVERNING LAW AND JURISDICTION**

7.1 This deed and any dispute controversy proceedings or claim of whatever nature arising out of or in any way relating to this deed or its formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

7.2 Each party to this deed irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit action or proceedings and/or to settle any disputes which may arise out of or in any way relate to this deed or its formation (including any non-contractual disputes or claims) and for these purposes each party irrevocably submits to the exclusive jurisdiction of the courts of England.

7.3 The Landlord appoints Mishcon de Reya of Summit House 12 Red Lion Square London WC1R 4QD or such other firm of solicitors in England as may be notified in writing to the Tenant or its agents to accept service of proceedings on its behalf.

The parties have executed and delivered this document as a deed on the date stated at the beginning of it



# **SCHEDULE 1 - THE LEASE**

<b>DATE</b>	<b>PARTIES</b>	<b>TERM</b>
[ ]	(1) GMS Bricks S à r l	16 years from [ ]
	(2) Arbuthnot Latham & Co Limited	

## **SCHEDULE 2 - THE WORKS**

The works set out in the attached plans numbered [    ]

***[Note: Plans and specification to be added once as-built plans are available following completion of the Tenant's Category B works, as per paragraph [1.4] of Schedule 2 of the Development Agreement]***



Signed as a deed by **ARBUTHNOT LATHAM & )**  
**CO LIMITED** acting by [a director and its secretary] )  
[two directors]

Director

[Secretary] [Director]

**SIGNED** as a deed on behalf of **GMS**  
**BRICKS S.À R.L.** a private limited  
liability company incorporated in  
Luxembourg by

*Signature*

\_\_\_\_\_  
and

*[Signature]*

\_\_\_\_\_  
being [a] person[s] who, in accordance  
with the laws of that territory, [is] [are]  
acting under the authority of the  
company



# Schedule of Amendments to JCT Construction Management Trade Contract 2011

This is the Schedule of Amendments referred to  
in Article 10 of the Contract dated  
in connection with  
at 7-21 (odd) Willson Street, London EC2M 2SN

2013



[The main body of the document contains multiple paragraphs of text that have been completely redacted, appearing as large white spaces.]

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## Schedule of Amendments to JCT Construction Management Trade Contract 2011

Amend as follows

Recital/Article/Clause	Amendment
------------------------	-----------

Thirteenth Recital	Delete the first sentence and replace with:  "the Contractor has examined the Employer's Requirements and confirms that it is satisfied that the Trade Contractor's Proposals appear to meet them."
--------------------	---

Article 10	Insert a new Article 10 into JCT document <b>in manuscript</b> :  "The amendments to the JCT Construction Management Trade Contract 2011 set out in the Schedule of Amendments annexed hereto are hereby incorporated into this Trade Contract and the provisions of the Articles of Agreement and the Conditions will have effect as so amended. If there is any discrepancy or conflict between the Articles and/or the Conditions and the Schedule of Amendments, the wording of the Schedule of Amendments shall prevail "  <b>[Note: this article must be handwritten into the Contract to ensure that the amendments are incorporated]</b>
------------	--

Article 11	Insert a new Article 11 as follows:  "Where it is stated in the Trade Contract Particulars that a parent company guarantee is required, the Contractor shall obtain and deliver to the Employer upon execution of this Trade Contract a guarantee of his obligations hereunder duly executed by the Trade Contractor's Guarantor in the form set out in Schedule 9, and the Employer shall not be liable to make any payment under this Contract until the Contractor has complied with this Article 11 "
------------	---

Article 12	Insert a new Article 12 as follows:  "Where it is stated in the Contract Particulars that a performance bond is required, the Trade Contractor shall provide a performance bond in the amount stated in the Contract Particulars and executed by the surety identified in the Contract Particulars in the form set out in Schedule 10 on the date of this Trade Contract The Employer shall not be liable to make any payment under this Trade Contract until the Trade Contractor has complied with this Article 12."
------------	--

Contract Particulars	The following items shall be completed in the order in which they appear in the Contract
----------------------	--

Clause, etc.	Subject
--------------	---------

Part 1	
--------	--

Ninth Recital and Schedule 8	Supplemental Provisions (Where neither entry against an item below is deleted, the relevant paragraph <u>does not</u>
------------------------------	--



apply)

	Collaborative Working	Paragraph 1  *applies/does not apply
	Health and safety	Paragraph 2  *applies/does not apply
	Cost savings and value improvements	Paragraph 3  *applies/does not apply
	Sustainable development and environmental considerations	Paragraph 4  *applies/does not apply
	Performance Indicators and monitoring	Paragraph 5  *applies/does not apply
	Notification and negotiation of disputes	Paragraph 6  *applies/does not apply
	Where paragraph 6 applies, the respective nominees of the Parties are	Employer's nominee .....  Trade Contractor's nominee .....  .....  or such replacement as each Party may notify to the other from time to time
<b>Article 8</b>	Arbitration	Article 8 and clauses 9.3 to 9.8 do not apply
<b>Article 11</b>	Parent Company Guarantee	A parent company guarantee [is] [is not] required.
	Identity of Contractor's Guarantor.	.....
<b>Article 12</b>	Performance Bond	A Performance Bond [is] [is not] required
	Identity of bondsman	.....
	Amount of performance bond	£.....
<b>Clause 1.1.</b>	Development Agreements	..... .....



	CDM Planning Period	<p>shall mean the period of _____ *days/weeks</p> <p>* ending on the Date of Possession/ * beginning/ending on _____</p> <p>20 _____</p>
<b>Clause 2.8.1.2</b>	Master Programme	Critical paths are required to be shown.
<b>Clause 2.18.3</b>	Contractor's Designed Portion, limit of Contractor's liability for loss of use, etc. (if any)	Delete clause 2.18.3 and insert "not used"
<b>Clause 2.36</b>	[Final Release Date]	[12 months from the date of practical completion of the final trade contract for the Works]
	[Sections: Rectification Periods]	<p>[Insert for all Sections</p> <p>"The period running from the date of practical completion of each Section and expiring 12 months after the date of practical completion of the last Section "]</p>
<b>Clause 4.22 and Schedule 7</b>	Fluctuations Options	Delete clause 4.21 and Schedule 7 and insert "not used".
<b>Clause 6.11</b>	Trade Contractor's Designed Portion (TCDP)	
	Professional Indemnity Insurance	
	Level of cover	<p>Amount of indemnity required relates to claims or series of claims arising out of one event and is</p> <p>£ _____</p>
	Level of cover for pollution/contamination claims	£ _____
	Expiry of required period of TCPD Professional Indemnity Insurance	12 years
<b>Clause 7.2</b>	Assignment/grant by Employer of rights under clause 7.2	Delete clause 7.2 and insert "not used".
<b>Clause 9.2.1</b>	Adjudication	The Adjudicator is
	Nominator of Adjudicator where	.....

	the named adjudicator is unwilling or unable to act and the parties have not agreed a replacement in accordance with clause 9 2A	..... ..... ..... .....
<b>Clause 9.4.1</b>	Arbitration/Appointment of Arbitrator (and of any replacement)	Delete clause 9 4 1 and insert "not used"
<b>Part 2</b>	Delete all of the entries for Part 2 and replace with.	
<b>"Clause 7: Third Party Rights/Collateral Warranties"</b>	Clause 7[A/C] applies to the Owner, Purchasers and Tenants Clause 7[B/D] applies to a Funder	
<b>Net Contribution (Third Party Rights/Collateral Warranties from the Contractor): Consultant(s)</b>	For the purposes of Parts 1 and 2 of Schedule 5 and Schedules 11 and 12, "Consultant(s)" means:	..... ..... ..... .....
<b>Net Contribution (Third Party Rights/Collateral Warranties from the Contractor): Sub-Contractor(s)</b>	For the purposes of Parts 1 and 2 of Schedule 5 and Schedules 11 and 12, "Sub-Contractor(s)" means:	..... ..... ..... .....
<b>Attestation</b>	The Articles of Agreement shall be executed as a deed.	
<b>Conditions</b>		
<b>Clause 1.1</b>	In the definition of Adjudicator after "Clause 9.2" add "or Clause 9 2A"	
	In the definition of "Agreement", insert at the end "as amended by the Schedule of Amendments referred to in Article 10".	
	In the definition of "Conditions", insert the following after the words "these Conditions". "as amended by the Schedule of Amendments referred to in Article 10" Also add at the end "including Schedules [9-14]"	
	[Delete the definition of "Trade Contractor's Design Documents" and replace with "all existing and future plans, drawings, specifications, schedules, reports, calculations, models, correspondence and other documents (including any computer software developed by the Trade Contractor and used to generate them and any designs contained in them) prepared or provided by the Trade Contractor for or in connection with the Works".]	
	Delete the definition of "Fluctuations Options A, B and C"	
	Delete the definition of "Funder" and replace with. "any person who provides finance in connection with the Works including any person who	

provides finance to the Owner."

Delete the definition of "Funder Rights Particulars".

Delete the definition of "P&T Rights Particulars"

Delete the definition of "Purchaser" and replace with "any and all first purchasers of all or any part of the Works"

Delete the definition of "Tenant" and replace with "any and all first tenants of all or any part of the Works".

Insert the following new definitions:

"Affiliate" any person, company, corporation, partnership, joint venture or other entity which, directly or indirectly, controls, is controlled by, or is under common control with, the Employer. The word "controls" in this context means the ability or entitlement to exercise, directly or indirectly, at least fifty per cent (50%) of the voting rights attributable to the shares or other interest of the controlled person, company, corporation, partnership, joint venture or other entity and the words "control" and "controlled" should be construed accordingly

"Contractor's Guarantor". the person identified in the Contract Particulars.

"Development Agreements": the Development Agreement and those agreements entered into or to be entered into by the Employer and any third party in relation to the Works, which are (if any) identified in the Contract Particulars

"Owner" means the Owner of the land or premises on which the Works are being undertaken

**Clause 1.4.5** Delete ", and including corresponding legislation in any other relevant part of the United Kingdom".

**Clause 1.8** Delete clause 1.8.1.1 and insert "not used"

**Clause 1.9** Delete "Save as stated in clause 1.8" in line 1 and capitalise the "n" of the subsequent "no"

**Clause 2.1** At the end of clause 2.1 add an additional sentence at the end as follows:

The Trade Contractor shall perform his obligations under this Trade Contract in such a way as not to cause or contribute to any breach of the obligations of the Employer pursuant to the Development Agreements."

**Clauses 2.3.7, 2.3.8 and 2.3.9** Insert new clauses 2.3.7, 2.3.8 and 2.3.9 as follows:

"2.3.7 For the purposes of clauses 2.3.6 and 2.3.7, material is "prohibited" if, in the context of its use in the Works (whether alone or in combination with other materials):

2.3.7.1 it poses a hazard to the health and safety of any person who may come into contact with the Works (whether during their construction or after their completion);



- 2 3 7 2 either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or
- 2 3.7 3 It poses a threat to the structural stability or performance or the physical integrity of the Works or any part or component of the Works
- 2 3 8 The Contractor shall not specify or authorise for use or permit to be used any materials which at the time the Works are being carried out are generally accepted or reasonably suspected of
  - 2 3 8 1 being prohibited in themselves;
  - 2 3 8 2 becoming prohibited when used in a particular situation or in combination with other materials;
  - 2.3 8 3 becoming prohibited with the passage of time;
  - 2.3 8 4 becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction, or
  - 2.3.8 5 being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed
- 2 3 9 Without prejudice to his obligations under this Contract, the Contractor warrants that he shall specify materials for use in the Works in accordance with the guidelines contained in the publication "Good Practice in the Selection of Construction Materials 2011" and/or that materials as used in the construction of the Works shall be in accordance with such guidelines "

**Clause 2.15.1** In clause 2.16.1 delete "other than the Employer's Requirements" in line 2.

**Clause 2.15.3** Insert new clause 2 15.3

"The Trade Contractor accepts entire responsibility for the Trade Contractor's Proposals and for any mistake, inaccuracy or omission in the Trade Contractor's Proposals Any mistake, inaccuracy or omission in the Contractor's Proposals or in any of the Contractor's Design Documents shall be corrected by the Trade Contractor without cost to the Employer even if the Employer issues an instruction in respect of a correction The Trade Contractor shall not have or make any claim for an extension of time under clause 2 28 or for loss and expense under clause 4 24, and clause 8 9 shall not have effect where and to the extent that the cause of the progress of the Works having been delayed, effected or suspended is any mistake, inaccuracy, discrepancy or omission or any failure by the Trade Contractor to provide necessary drawings or documents in due time."

**Clause 2.16.2.1** Insert after "Portion" in line 4, "which could not have been foreseen by an

experienced Trade Contractor at that date".

**Clause 2.18**

Delete clause 2.18 and insert

"2.18 Where there is a Trade Contractor's Designed Portion:

2.18.1 Insofar as the design of the Works is comprised in the Contractor's Proposals and in what the Contractor is to complete under clause 2 and in accordance with the Employer's Requirements and the Conditions (including any further design which the Trade Contractor is to carry out as a result of a Variation), the Trade Contractor warrants and undertakes to the Employer that:

.1 he has exercised and will continue to exercise in such design all the skill, care and diligence to be expected of a professionally qualified and competent architect, engineer or other appropriate consultant taking into account the size, scope, nature, type and complexity of the Works;

2 the Works will, when completed, comply with any performance specification or requirement included or referred to in the Employer's Requirements or the Trade Contractor's Proposals;

.3 the Works comprise or will comprise only materials, goods, systems and equipment which are new and of satisfactory quality and which are fit for their intended purpose, and

.4 the Works will, when completed, comply with the Statutory Requirements.

2.18.2 The warranties and undertakings contained in clause 2.19.1 shall be without prejudice to any warranties implied by common law or statute. The Trade Contractor acknowledges that the Employer will rely exclusively upon the Trade Contractor exercising its skill and judgment in the design of, and specification of materials for, the Trade Contractor's Designed Portion

2.18.3 Any reference to the design which the Trade Contractor has prepared or shall prepare or issue for the Works includes a reference to any design which the Trade Contractor has caused or shall cause to be prepared or issued by others, whether before or after the date of this Trade Contract."

**Clause 2.27.6.5**

Add new sub-clause as follows.

".5 the Trade Contractor shall not be entitled (except in the circumstances referred to in clause 2.29.9) to any extension of time in respect of any delay attributable to any negligence, omission or default by the Trade Contractor or any of the Trade Contractor's Persons "

**[Clause 2.28.2.1**

After "3.15," insert "or" and delete "or 5.3.2".]

**Clause 2.28.2.2**

Insert new wording at the end of clause 2.28.2.2, as follows:

"or unless the Construction Manager had reasonable grounds, based on a previous opening-up or testing, for suspecting that such materials or goods may not be in accordance with this Contract".

**Clause 2.28.8** Delete clause 2.29.8 and insert "not used".

**Clause 2.28.11** In line 3, after "In the preparation for the design of the Works", insert, "provided that no extension of time shall be granted in respect of any strike or lock-out which is restricted solely to the employees of the Trade Contractor or to employees of any sub-contractor or supplier engaged in respect of the Works"

**Clause 2.29.13** Delete clause 2.29.13 and insert "not used".

**[Clause 2.31** Delete "3.23 4" in line 2 and replace with "3.23.7".]

**Clause 2.38** Delete from line 13 the words "a reasonable time after receipt of" and insert "the period specified in".

**Clause 2.36.2** Insert after "shall at no cost to the Employer be made good by the Trade Contractor" in line 12 the words "(together with any physical damage to the Works caused by such defects, shrinkages or other faults or the remedy thereof) and in accordance with programmes and methods of wording reasonably required by the Employer"

**Clause 2.40.2** Delete the words "Subject to all sums due and payable under this Trade Contract to the Trade Contractor having been paid," in line 1 of clause 2 40 2 and capitalise the "t" of the word "the"

Insert at the end of clause 2 40 2:

"The Trade Contractor agrees that the Employer may grant sub-licences to other persons to use and to reproduce the Trade Contractor's Design Documents and the designs and content of them for any purposes relating to the Works. To the extent that the Trade Contractor does not have ownership of the copyright in any of the Trade Contractor's Design Documents, the Trade Contractor shall procure from the copyright holder a licence with full title guarantee to the Employer in respect of that Trade Contractor's Design Document in the same terms as set out above."

Delete in clause 2 40 3 the words "other than that for which they were prepared" and insert, "outside of the scope of the licence granted by the Contractor to the Employer in clause 2.40 2."

**Clause 3.2** Insert after "either of them" in line 1, "including, without limitation, the representatives of the Owner, any Funder, Purchaser or Tenant"

**Clause 3.6** Insert at the beginning of clause 3 6 1 "subject to clauses 3 7 [and 7F,]"

Insert in clause 3.6.2 after the words "Trade Contractor's Designed Portion". "subject to clauses [3.7 and 7F,]"

Delete clause 3.6.3 and insert "not used".

**[Clause 3.9** In line 1, after the words "Where considered appropriate", insert "and subject to clauses 3.8 and 7.F" Insert at the beginning of clause 3.9 1 "Subject to clause 8.7.2,."]

- Clause 3.8** Delete clauses 3.8 1 and 3.8.3 and insert "not used".
- Clause 3.12** Delete clause 3.12.2 and insert "not used".
- Clause 3.15** Insert new wording at the end of clause 3 15 as follows.
- "or unless the Employer had reasonable grounds, based on a previous opening-up or testing, for suspecting that such materials or goods may not be in accordance with this Trade Contract".
- Clause 3.16.2** Delete In clause 3.16.2 the words "(except those which are part of the Trade Contractor's Designed Portion)".
- Clause 3.16.4** Delete in clause 3 16.4 the full stop and last sentence and Insert:
- "and no addition shall be made to the Contract Sum and no extension of time shall be given in respect of compliance by the Trade Contractor with such instruction."
- Clause 3.22** Delete and substitute:
- "The Trade Contractor hereby warrants that:
- .1 at the date hereof he is and for the duration of the Works he shall continue to be competent to act as "principal contractor" and "designer" for the Works (as defined in the CDM Regulations),
  - .2 he has allocated and he shall continue to allocate adequate resources to enable him to perform all the functions and duties of the "principal contractor" and "designer" under the CDM Regulations for the Works;
  - .3 he shall perform all the duties of a principal contractor and designer under the CDM Regulations in relation to the Works;
  - .4 he has put in place, and will maintain for the duration of the Works, arrangements for managing the carrying out and completion of the Works (including the allocation of sufficient time and resources) which are suitable to ensure that the Works can be carried out so far as is reasonably practicable without risk to the health and safety of any person;
  - .5 [he shall ensure that the Construction Phase Plan is prepared and received by the Employer before construction work under this Contract is commenced, that it is properly implemented and that any subsequent amendment to it by the Contractor is notified to the Employer, the CDM Co-ordinator and (where not the CDM Co-ordinator) the Construction Manager;]
  - 6 he shall ensure that welfare facilities complying with Schedule 2 of the CDM Regulations are provided from the commencement of construction work until the end of the construction phase; and
  - 7 promptly upon the written request of the CDM Co-ordinator, he shall provide, and ensure that any sub-contractor provides, to the CDM Co-ordinator such information as the CDM Co-ordinator reasonably requires for the preparation of the health and safety file "



- [Clause 4.3.3.7]** Insert "ascertained as" after the words "amounts" and delete the reference to "clause 4 14.2" and replace with "clause 4 14 3" ]
- Clause 4.7** Insert at the end of clause 4 7.1 "subject to the Trade Contractor first providing the Employer with the corresponding VAT invoice "
- Clause 4.8** Insert the following sentence at the end of clause 4 8.
- "The Employer shall not be obliged to make any payment to the Trade Contractor unless the Trade Contractor has provided the Employer with the Trade Contractor's unique taxpayer reference number and company registration number in accordance with the requirements of the CIS in respect of verification of registration "
- Clause 4.12A** Insert a new clause 4 12A as follows.
- "In respect of the amount stated as due to the Trade Contractor in an Interim Certificate issued in accordance with clause 4 11.1, the Trade Contractor shall, within 2 days of the date of the Interim Certificate, issue a valid and corresponding VAT invoice to the Employer."
- Clause 4.12B** Insert a new clause 4.12B as follows:
- "If an Interim Certificate is not issued in accordance with clause 4 11.1 and the Trade Contractor's Interim Application constitutes an Interim Payment Notice in accordance with clause 4.12 2, the Trade Contractor shall, within 2 days of the date on which the Interim Certificate should have been issued under clause 4.11 1, issue an appropriate VAT invoice to the Employer Where the Trade Contractor has not made an Interim Application and issues an Interim Payment Notice in accordance with clause 4 12 2.2, the Contractor shall give the Employer a corresponding VAT invoice at the same time."
- Clause 4.13.1** After "Subject to clause 4 13 4" insert "and clause 4 13A" and delete "14" and insert "28".
- Clause 4.13.4** Insert at the beginning: "Subject to clause 4.13A" and change "Where" to "where".
- Clause 4.13A** Insert a new clause 4.13A as follows
- "If the Trade Contractor fails to issue a VAT invoice in accordance with clause 4 12A or 4 12B, whichever is applicable, the final date for payment of the sum to be paid by the Employer in accordance with clause 4 13.2 or 4.13.3, whichever is applicable, shall be deferred until the final date for payment of the following Interim payment provided that the Trade Contractor complies with clause 4.12A or 4 12B in respect of all payments If the payment relates to a payment under Section 8 it shall be deferred until 7 days after the date on which such VAT invoice is issued "
- Clause 4.14.3** Delete "Notwithstanding the fiduciary interest of the Employer in the Retention as stated in clause 4 19" and capitalise the "t" of the subsequent "the".
- Insert "or at common law or in equity" after "this Contract" in line 2

- Clause 4.16.3** In line 3, after "clause 4 16.6", insert "and clause 4.16A".
- Clause 4.16A** Insert new clause 4 16A as follows:
- "Where the Final Statement shows a balance due to the Contractor or where the Contractor gives a Final Payment Notice in accordance with clause 4 16.6 1, the Contractor shall within 2 days of the date of the Final Certificate or on the same date and at the same time as the Contractor gives a Final Payment Notice, whichever is applicable, issue a valid and corresponding VAT invoice. If the Contractor fails to issue such a VAT invoice, the final date for payment in accordance with clause 4.16 3 or 4.16.6.2, whichever is applicable, shall be deferred until 7 days after the date on which the VAT invoice is issued."
- Clause 4.18.2** In clause 4.18 2.1, after the word "Trade Contractor" insert: "so that under clause 2 24, after the amount in respect thereof included in an Interim Certificate as properly due to the Contractor has been paid by the Employer, such Listed Items shall become the property of the Employer".
- Clause 4.19** Delete and insert a new clause 4.19 as follows.
- "4.19 The Retention shall be subject to the following rules:
- .1 the Employer shall have the full and unencumbered beneficial interest in the Retention. Neither the Contractor nor any sub-consultant, sub-contractor and/or supplier shall have any proprietary right or other interest (whether at law or in equity) in or over the Retention except as unsecured creditor and the Employer shall owe no fiduciary obligation to the Trade Contractor in relation to the Retention,
  - .2 the Employer shall have no obligation to segregate the Retention or any part thereof in a separate banking account, or in any other manner whatsoever. The Employer shall be entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no duty to account for any such interest to the Trade Contractor "
- Clauses 4.22 and 4.23** Delete clauses 4.22 and 4.23 and insert "not used".
- Clause 4.24** Add new sub-clause as follows:-
- "4 not be entitled to recover any loss and/or expense incurred by reason of any negligence, omission or default by the Trade Contractor or any of the Trade Contractor's Persons".
- Clause 4.25.2.1** Delete "or 3.14"
- Clause 4.25.2.2** Insert new wording at the end of clause 4 25.2.2 as follows:
- "or unless the Construction Manager had reasonable grounds, based on a previous opening-up or testing, for suspecting that such materials or goods may not be in accordance with this Trade Contract".
- Clause 5.3** Insert after the word "Information" in line 3 "prepare at its own cost and".
- Delete the comma and all the other words after the word "provisions" in

line 4 of clause 5.3.1 until the end of the sentence. Add a full stop after "provisions"

Delete clause 5.3.2 and insert "not used"

**Clause 6.1** Insert after "Works" in line 3 "(including the performance of the Trade Contractor's obligations under clause 2.36)". Insert after "any Statutory Undertaker" in line 5, "provided such Statutory Undertaker is not a sub-contractor"

**Clause 6.2** Insert after "Works" in line 6 "or of any obligation pursuant to clause 2.36".

**Clause 6.2A** Insert the following new clause 6.2A:

"Without prejudice to the generality of clause 6.2, the Trade Contractor shall at all times take all reasonably practical precautions to prevent any public or private nuisance (including such nuisance caused by noxious fumes, noisy working operations or the deposit of any materials or debris) or other interference with the rights of any permitted occupier of the site or the Works and/or any adjoining or neighbouring landowner, tenant or occupier or any Statutory Undertaker arising out of the Works or of any obligation pursuant to clause 2.36 and the Trade Contractor shall indemnify the Employer against any expense, liability, loss, claim or proceedings to the extent that the same arises or results from any such nuisance or interference save only where such nuisance or interference is the result of the carrying out of the Works in accordance with the Contract and which could not have been avoided by the Trade Contractor using all reasonably practical precautions in accordance with this clause 6.2A."

**Clause 6.7** [In line 1 of the definition of "Joint Names Policy" insert "the Funder" after the word "Trade Contractor" ]

**Clause 7.1** " The Employer may, without the consent of the Trade Contractor, assign or transfer the benefit of all or any of his rights arising under or out of this Trade Contract. Without prejudice to the generality of the foregoing, the Trade Contractor hereby consents to an assignment or transfer by the Employer of all or any of his rights in or under this Trade Contract to any Funder and/or to any Affiliate,"

**Clause 7.3** Insert the following at the end.

"Notwithstanding which address is stated in the Contract Particulars, the Employer shall be entitled to send a notice under clauses 7A – 7D either to the Trade Contractor's registered office or the address stated in the Trade Contract Particulars and any such notice shall be deemed to be duly given if sent to either address."

**Clause 7A.1** Delete: "a Purchaser or Tenant", and insert "the Owner, Purchasers and Tenants"

Replace the first "that" in line 2 with "a"

**Clause 7C** Delete "a Purchaser or Tenant" and replace with "the Owner, Purchasers and Tenants".

Delete "Cwa/P&T, completed in accordance with the P&T Rights

Particulars" and Insert "of Schedule 11 hereto".

**Clause 7D**

Delete "Cwa/F, completed in accordance with Funder Rights Particulars" and insert "of Schedule 12 hereto".

**Clause 8.6**

Insert new clauses 8.6.1 – 8.6.3 as set out below and renumber the original clause as 8.6.4.

"8.6.1 The Trade Contractor shall, and shall ensure that its employees, agents, subsidiaries, sub-contractors and sub-consultants who perform services in relation to the Works (the "Associated Persons") shall: (a) comply with, and (b) not through their acts or omissions put the Employer in breach of, the UK Bribery Act 2010, the US Foreign Corrupt Practices Act of 1977 and all similar national laws intended to prevent corruption and bribery

8.6.2 The Trade Contractor shall at all times comply with either: (a) the Employer's Anti-Corruption Policies, or (b) the Contractor's own Anti-Corruption Policies to the extent they have been notified to the Employer and offer a materially similar level of protection. The Trade Contractor will notify the Employer immediately in writing if any violation or any suspicion of a violation of these policies arises

8.6.3 The Trade Contractor shall notify the Associated Persons of the relevant policy and use all reasonable endeavours to ensure the Associated Persons comply with its provisions."

In clause 8.6.4:

In line 2, after the word "Employer", insert the word "forthwith".

In line 4, insert after "Bribery Act 2010": ", or if the Trade Contractor is in breach of any of clauses 8.6.1, 8.6.2 or 8.6.3 "

Insert at the end of clause 8.6, after the words "Local Government Act 1972".

"and as a result the Employer shall not be liable to make any further payments to the Trade Contractor and shall not be liable for any loss or damage or other costs or expenses of any kind whatsoever that the Trade Contractor may suffer as a result of such termination".

**Clause 8.7.5**

Insert at the beginning: "subject to the provisions of clause 8.6.4,".

**Clause 8.9.3**

Delete "14 days" in lines 1 and 2 and insert "28 days".

**Clause 8.12.3**

Delete the first sentence and replace with:

"where the Trade Contractor's employment is terminated under clause 8, the Trade Contractor shall promptly provide the Employer with all relevant receipts and documents as the Employer may reasonably require in order for the Employer to prepare an account."

**Clause 9.2**

Insert new clause 9.2A as follows:

"9.2A If the Adjudicator dies or becomes ill or is unavailable for some other cause and is thus unable to adjudicate on a dispute or difference referred to him, the parties may either agree an

individual to replace the Adjudicator or either party may apply to the Nominator named in the Contract Particulars."

**Schedule 2**

**Part 2 Paragraph 1.1** Delete the second sentence

**Part 2 Paragraph 2.4** Delete and Insert "not used".

**Part Paragraph 3.1** Delete "and 2.4 refer" and insert "refers"

**Schedule 3** Delete paragraph 4.4. and Insert:

"The Employer may terminate the Trade Contractor's employment under this Trade Contract within 28 days of the occurrence of such loss or damage by written notice. Upon the giving of such notice, clauses 8.12.2 to 8 12.5 (except clause 8 12 3 5) shall apply".

In paragraph 4 5 delete "or if the notice of termination is disputed and is not upheld,"

**Schedule 5, Part 1**

**Preliminary – Definitions** After the word "purposes", insert: "of Parts 1 and 2" Delete the words "the P&T Rights Particulars or the Funder Rights Particulars, as the case may be" and insert "Contract Particulars"

**Paragraph 1.1** Delete "as at and with effect from practical completion of the Works (or, where there are Sections, practical completion of the relevant Section)" and "or, as the case may be, that Section," from the first sentence Delete the second sentence, including paragraphs 1.1 1 and 1.1 2.

**Paragraph 1.2** Delete paragraph 1 2 and insert "Not used".

**Paragraph 1.3** Delete paragraph and insert "Not used"

**Paragraph 1.4** After the words "equivalent rights in defence of liability" insert "except for any rights of set-off or deduction"

**Paragraph 4** Delete "and subject to the Trade Contractor having been paid all monies due and payable to [sic] under this Trade Contract" in lines 3 4.

**Part 2**

**Paragraph 1.1** Delete paragraph 1 1 and insert "Not used"

**Paragraph 1.2** After the words "equivalent rights in defence of liability" insert "except for any rights of set-off or deduction".

**Paragraph 8** Delete "and subject to the Trade Contractor having been paid all monies due and payable to [sic] under this Trade Contract" in lines 1-2.

## **SCHEDULE 9**

### **Form of Parent Company Guarantee**

**THIS DEED** is made on

20[●]

#### **BETWEEN:**

- (1) [●] (No. ●) whose registered office is at (the  
"Guarantor"), and
- (2) [●] (No. ●) whose registered office is at (the  
"Employer").

#### **RECITALS**

- (A) By an agreement made between the Employer and [●] (the "**Trade Contractor**") on [●] (the "**Contract**"), as amended or varied from time to time, the Trade Contractor has agreed to execute certain works in accordance with the terms of the Trade Contract (the "**Works**"), as more particularly specified and defined in the Trade Contract.
- (B) The Guarantor has agreed with the Employer, at the request of the Trade Contractor, to guarantee the due and proper performance of the Trade Contractor's obligations under the Contract upon the terms and conditions of this guarantee.

#### **THE PARTIES AGREE AS FOLLOWS:**

##### **1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this guarantee, words and phrases commencing with capital letters will, unless a contrary intention appears, have the same meaning ascribed to them under the Contract.
- 1.2 In the event of any conflict between the Trade Contract and this guarantee, the latter will prevail.

##### **2. GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees to the Employer the due and punctual performance by the Trade Contractor of each and all of its duties and obligations (whether express or implied) under the Trade Contract (the "**Obligations**") when they or any part of them become due and performable according to the terms of the Trade Contract.
- 2.2 The Guarantor, as principal obligor and as separate and independent obligations and liabilities from its obligations and liabilities under clause 2.1, agrees to indemnify the Employer against all loss, debt, damage, interest, liability, cost and expense (including legal expenses) incurred or suffered by the Employer by reason of:
- (a) a failure by the Trade Contractor to perform any or all of the Obligations when they are due and performable, and/or
  - (b) the termination of the Trade Contract or the employment of the Trade Contractor under the Contract by reason of default by the Trade Contractor, and/or
  - (c) the Trade Contractor going into liquidation, administration or receivership or having an administrator appointed or becoming subject to any other form of insolvency or similar proceedings or procedure or arrangement for the protection of creditors or the winding-up of the Trade Contractor (together the "**Indemnified Liabilities**")

and undertakes to pay to the Employer immediately on the Employer's first written demand the amount(s) of that loss, debt, damage, interest, liability, cost and expense without set-off or counterclaim and free and clear of, and without deduction for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever.

2 3 The Guarantor agrees to satisfy and discharge any adjudicator's award made against the Trade Contractor in favour of the Employer

2 4 The Guarantor irrevocably authorises the Employer and the Trade Contractor to make any amendment or variation to the terms of the Trade Contract in their absolute discretion and the Guarantor shall be bound by and shall guarantee all of the Trade Contractor's Obligations under the Trade Contract as amended or varied

### 3 PRESERVATION OF RIGHTS

3 1 The obligations of the Guarantor under this guarantee are in addition to and independent of any other security which the Employer may at any time hold in respect of the Obligations

3.2 The Guarantor's obligations and liabilities under this guarantee will remain in full force and effect and are not to be discharged, diminished or affected in any way by reason of any of the following:

- (a) the insolvency, bankruptcy, liquidation, winding-up, dissolution, administration, receivership, incapacity, amalgamation, reconstruction, re-organisation or any analogous proceeding relating to the Trade Contractor or the Guarantor,
- (b) any change in the status, function, constitution, control or ownership of the Trade Contractor, the Guarantor or the Employer;
- (c) any variation to or amendment of the Trade Contract (including, without limitation, any extension of time for performance, or any concession or waiver by the Employer in respect of the Trade Contractor's obligations under the Trade Contract) so that references to the Trade Contract in this guarantee shall include each such variation or amendment;
- (d) any provision of the Trade Contract being or becoming illegal, invalid, void, voidable or unenforceable for any reason whatsoever;
- (e) any failure of supervision or detection or prevention of any default of the Trade Contractor under or in connection with the Trade Contract,
- (f) any additional or advance payment to the Trade Contractor under or in connection with the Trade Contract,
- (g) the suspension or termination of the Trade Contract or of the employment of the Trade Contractor under the Trade Contract for any reason whatsoever,
- (h) any indulgence, forbearance or waiver of any right of action or remedy of the Employer against the Trade Contractor or negligence by the Employer in enforcing any such right of action or remedy,
- (i) any compromise of any dispute with the Trade Contractor arising out of or in connection with the Trade Contract, and
- (j) any other fact, circumstance, act, event, omission or provision of statute or law or otherwise which but for this clause might operate to discharge, impair or otherwise



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affect any of the obligations of the Guarantor under this guarantee or any of the rights, powers or remedies conferred on the Employer by this guarantee or by law

#### **4 NO COMPETITION**

4.1 The Guarantor must not (so long as the Trade Contractor has any actual or contingent obligations pursuant to the Contract) by reason of performance by it of its obligations under this guarantee or on any other ground

- (a) claim or recover by the institution of proceedings or the threat of proceedings or otherwise any sum from the Trade Contractor or claim any set-off or counterclaim against the Trade Contractor; or
- (b) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Employer under the Trade Contract or otherwise, or
- (c) claim or prove in a liquidation or other insolvency proceeding of the Trade Contractor in competition with the Employer in respect of any payment by the Guarantor under this guarantee or otherwise be entitled in competition with the Employer to claim or have the benefit of any security which the Employer has or may hold for any monies or liabilities due or incurred by the Trade Contractor to the Employer and in case the Guarantor receives any sums from the Trade Contractor in respect of any payment of the Guarantor under this guarantee the Guarantor must hold such monies in trust for the Employer so long as any sums are payable (contingently or otherwise) under this guarantee

4.2 The Guarantor undertakes to the Employer that it has not taken and will not take any security from the Contractor in respect of the Guarantor's obligations under this guarantee and any security taken and all monies received by the Guarantor in breach of this provision will be held in trust for the Employer as security for the obligations of the Guarantor.

#### **5. IMMEDIATE RECOURSE**

5.1 The Employer will not be obliged, before enforcing any of its rights or remedies conferred upon it by this guarantee or by law, to take any step or action, including (without limitation)

- (a) the taking of any legal proceedings or action or the obtaining of any judgment against the Trade Contractor in any court, arbitration or adjudication,
- (b) the making or filing of any claim in bankruptcy, liquidation, winding-up or dissolution of the Trade Contractor; or
- (c) the pursuance or exhaustion of any other right or remedy against the Trade Contractor,

and the liabilities of the Guarantor under this guarantee may be enforced irrespective of whether any legal proceedings are being or have been taken against the Contractor. The Guarantor hereby waives any right it may have of first requiring the Employer to proceed against or enforce any rights or security or claim payment from any person before claiming it under this guarantee

#### **6 CONTINUING OBLIGATION**

6.1 This guarantee is a continuing guarantee and will remain in full force and effect until each and every part of the Obligations have been discharged and performed in full

**7. WAIVER OF RELEVANT RIGHTS**

- 7.1 For the benefit of the Employer and the Trade Contractor, the Guarantor waives any right or remedy that it has or may have to subrogation, indemnification or payment on any other basis by the Contractor and any other remedy against the Trade Contractor (each a "**Relevant Right**") by reason of or in connection with the performance of the Guarantor's obligations under this guarantee in circumstances where the Trade Contractor promotes, enters into, or implements a voluntary arrangement (under Part 26 of the Companies Act 2006). Damages shall not be an adequate remedy for the Employer or the Contractor in respect of a breach of this clause and the parties shall consent to any application brought by the Employer or the Trade Contractor for injunctive relief to prevent any such Relevant Right being enforced.

**8. ASSIGNMENT**

- 8.1 The Employer may assign the benefit of, and its rights under, this guarantee to any person providing finance in connection with the Works or any person to whom the Trade Contract is assigned without having to obtain the consent of the Guarantor.

**9. THIRD PARTY RIGHTS**

- 9.1 Except for the Contractor's rights under clause 7.1 of this guarantee, a person who is not a party to this guarantee has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this guarantee.

**10. PARTIAL INVALIDITY**

- 10.1 If any provision of this guarantee is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

**11. GOVERNING LAW**

- 11.1 This guarantee and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this guarantee or its formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law

**12. JURISDICTION**

- 12.1 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this guarantee or its formation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England. Nothing in this clause shall affect the ability of the Employer to enforce any judgment against the Guarantor in any jurisdiction

**13. NOTICES**

- 13.1 All demands and notices to be given under this guarantee must be in writing and sent by hand or courier or prepaid first-class post or recorded delivery or facsimile to the address of the relevant party set out in clause 13.2 or such other address as that party may by notice in writing nominate for the purpose of service and:
- (a) any demands or notices sent by prepaid first-class post or recorded delivery will be deemed (in the absence of evidence of earlier receipt) to have been delivered at 9.00 a.m. on the second business day (which expression means a day (excluding

Saturdays) on which banks generally are open in the City of London for the transaction of normal banking business) after posting;

- (b) any demands or notices sent by courier will be deemed to have been delivered on the date and at the time that the courier's delivery receipt is signed; and
- (c) any demands or notices sent by facsimile will be deemed to have been delivered on the date of dispatch.

13.2 Unless notified otherwise, all demands and notices shall be addressed to the parties as follows

~~-----~~  
[The Guarantor]

Address.      ●

Facsimile:      ●

Attention:      ●

[The Employer]

Address.      ●

Facsimile:      ●

Attention:      ●

**IN WITNESS** whereof this deed has been executed and delivered on the date first above written.

## **SCHEDULE 10**

### **Form of Performance Bond**

**THIS BOND** is made on 20[●]

#### **BETWEEN:**

- (1) [●] (No. ●) whose registered office is at (the  
"Bank"); and
- (2) [●] (No. ●) whose registered office is at (the  
"Employer")

#### **RECITALS**

- (A) By an agreement made between the Employer and [●] (the "**Trade Contractor**") on [●] (the "**Trade Contract**"), as amended or varied from time to time, the Trade Contractor has agreed to execute certain works in accordance with the terms of the Trade Contract (the "**Works**"), as more particularly specified and defined in the Trade Contract
- (B) Under the Trade Contract, the Trade Contractor is obliged to procure, in favour of the Employer, a performance bond
- (C) The Bank has agreed with the Employer, at the request of the Trade Contractor, to provide this performance bond in satisfaction of the Trade Contractor's obligation referred to in Recital (B) (this "**Bond**")

#### **THE PARTIES AGREE AS FOLLOWS:**

- 1 The Bank irrevocably and unconditionally undertakes to pay to the Employer or its assigns, immediately on receipt of the first and all subsequent written demands to the Bank, the sum stated in each such demand, without proof or conditions. The Employer may make any number of demands under this Bond provided that the maximum aggregate liability of the Bank under this Bond shall not exceed the sum of [●], excluding interest and legal costs (the "**Maximum Amount**").
- 2 The Bank's obligation to make payment under this Bond shall be a primary, independent and absolute obligation and it shall not be entitled to delay or withhold payment for any reason whatsoever
- 3 A demand shall be conclusive evidence of the Bank's liability and of the amount of the sum or sums which it is liable to pay to the Employer, notwithstanding any objection made by the Trade Contractor or any other person
- 4 All payments under this Bond shall be in pounds sterling and shall be made free and clear of, and without any set-off, counterclaim or deduction on account of, any liability whatsoever including, without limitation, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed
5. This Bond is a continuing obligation and shall remain in full force and effect until the earlier of.
- (a) the payment by the Bank to the Employer of a sum or sums in aggregate which equals or equal the Maximum Amount, or



1

2

3

4

(b) [the date of issue of the Final Certificate under the Trade Contract],

when it shall expire and cease to be valid whether or not this Bond is returned to the Bank except in respect of any demand made by the Employer in accordance with clause 1 of this Bond on or before the [date of issue of the Final Certificate under the Trade Contract]

- 6 All demands to be made in accordance with clause 1 of this Bond must be in writing and be sent by hand or courier or prepaid first class-post or recorded delivery or facsimile to the Bank at ●<sup>1</sup> (marked for the attention of ●), and:
- (a) any demands sent by prepaid first-class post or recorded delivery will be deemed (in the absence of evidence of earlier receipt) to have been delivered at 9.00 a.m. on the second business day (which expression means a day (excluding Saturdays) on which banks generally are open in the City of London for the transaction of normal banking business) after posting,
  - (b) any demands sent by courier will be deemed to have been delivered on the date and at the time that the courier's delivery receipt is signed;
  - (c) any demands sent by facsimile will be deemed to have been delivered on the date of dispatch; and
  - (d) the Bank may by five days' written notice to the Employer change its postal or facsimile address or addressee for receipt of such demands.
7. The Employer may assign the benefit of, and its rights under, this Bond to any person to whom the Trade Contract is assigned without having to obtain the consent of the Bank
- 8 A person who is not a party to this Bond has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Bond.
9. This Bond and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Bond or its formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
10. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this Bond or its formation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England. Nothing in this clause shall affect the ability of the Employer to enforce any judgment against the Bank in any jurisdiction.

**IN WITNESS** whereof this Bond has been executed as a deed on the date first above written.

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<sup>1</sup> Insert address and fax number of Bank

## **SCHEDULE 11**

### **Form of Contractor's Collateral Warranty in favour of the Owner, Purchasers and Tenants**

**THIS DEED** is made on 20{●}

#### **BETWEEN:**

- (1) **[insert name of the Purchaser or Tenant]** whose registered office is at  
(the "**Beneficiary**"), which expression shall include its successors in title or assigns, and
- (2) **[insert name of Trade Contractor]** whose registered office is at  
(the "**Trade Contractor**")

#### **RECITALS**

- (A) The Beneficiary has entered into [an agreement to purchase] [an agreement to lease] [a lease] with [●] (the "**Employer**") relating to [●] forming [a part of/the whole of] [●] (the "**Works**").
- (B) The Trade Contractor has been appointed by the Employer under a Trade Contract (the "**Trade Contract**") dated [●] to carry out and complete the Works
- (C) Under the Trade Contract the Trade Contractor has agreed to give the Beneficiary the warranties set out in this deed.

#### **THE PARTIES AGREE AS FOLLOWS:**

1. In this deed, unless otherwise defined or a contrary intention appears, words shall have the meanings ascribed to them in the Trade Contract.
2. The Trade Contractor warrants that it has carried out the Works in accordance with the Trade Contract. In the event of any breach of this warranty:
  - (a) the Trade Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any term in the Trade Contract and to raise the equivalent rights in defence of liability (except for any rights of set-off or deduction) as it would have against the Employer under the Trade Contract; and
  - (b) the obligations of the Trade Contractor under or pursuant to this clause 2 shall not be released or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any relevant matter
3. The Trade Contractor further warrants that unless required by the Trade Contract or unless otherwise authorised in writing by the Employer or by the Architect/Contract Administrator named in or appointed pursuant to the Trade Contract (or, where such authorisation is given orally, confirmed in writing by the Trade Contractor to the Employer and/or the Architect/Contract Administrator) he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of "Good Practice in Selection of the Construction Materials (Ove Arup & Partners)" current as the date of the Trade Contract. In the event of breach of this warranty the provisions of clause 2 shall apply.

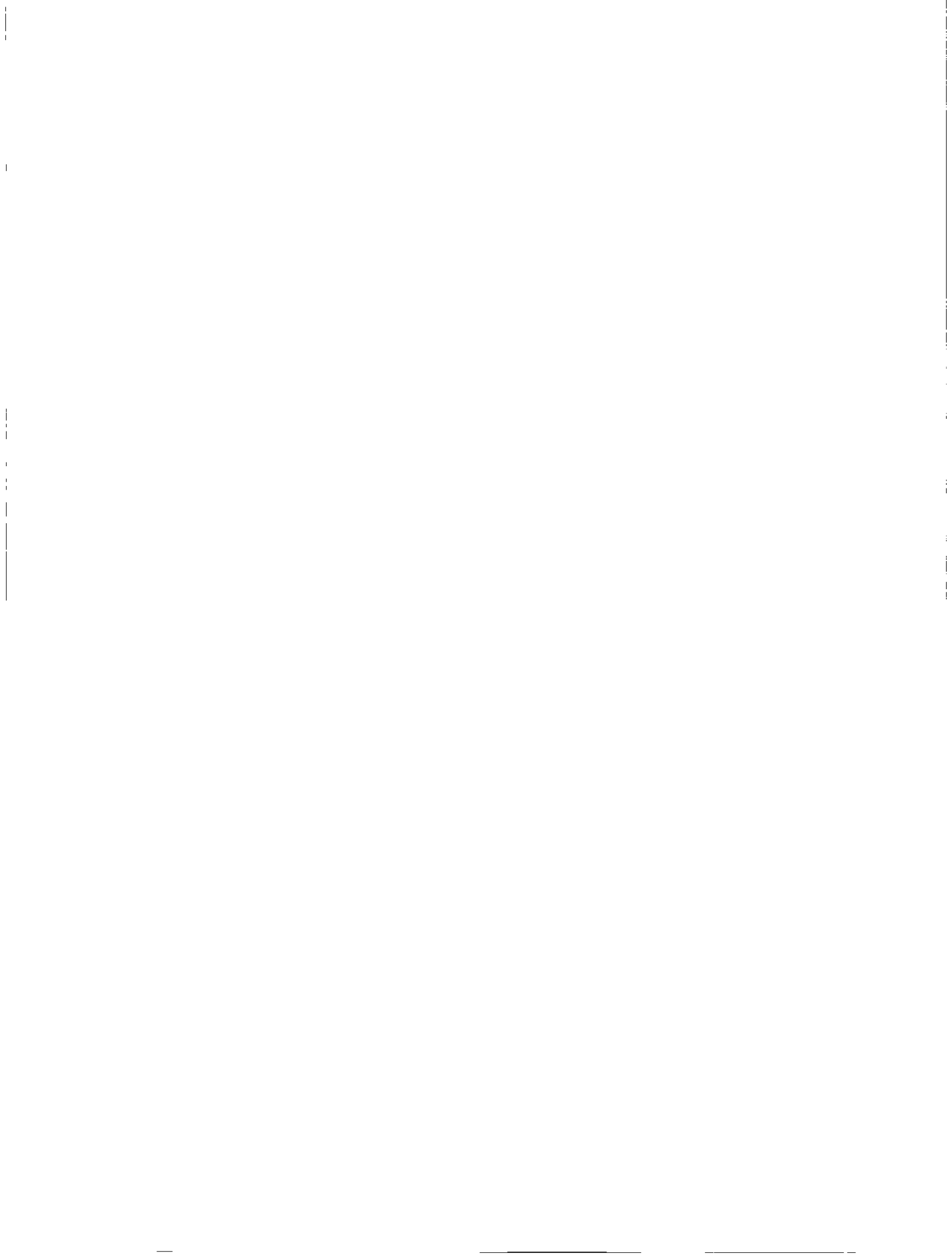
4. The Beneficiary has no authority to Issue any direction or instruction to the Trade Contractor in relation to the Trade Contract.
5. Where the Works include a Trade Contractor's Designed Portion, and the Beneficiary is a purchaser or tenant of any part(s) of the site falling within the Trade Contractor's Designed Portion, the Trade Contractor grants to the Beneficiary an Irrevocable, royalty-free, non-exclusive licence to copy and use all existing and future plans, drawings, specifications, schedules, models, reports, calculations, correspondence and other documents (including any computer software developed by the Trade Contractor and used to generate them and any designs contained in them) (the "**Material**") prepared or provided by or for the Trade Contractor for or in connection with the Works and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. Such licence shall enable the Beneficiary to copy and use the Material for the extension of the Works but shall not include a licence to reproduce the designs contained in them for any extension of the Works. The Trade Contractor shall not be liable for the consequences of any use which would have been beyond the reasonable contemplation of the Employer or the Trade Contractor at the time the Material was originally prepared or produced. The Beneficiary shall be permitted to assign the licence and/or grant sub-licences without the consent of the Trade Contractor.
6. Where the Works include a Trade Contractor's Designed Portion and the Trade Contract so provides, the Trade Contractor warrants that he has and shall maintain professional indemnity insurance in and on the terms and for the period referred to in the Trade Contract. The Trade Contractor shall immediately give notice to the Beneficiary if such insurance ceases to be available at commercially reasonable rates in order that the Trade Contractor and the Beneficiary can discuss the means of best protecting their respective positions in the absence of such insurance. As and when it is reasonably requested to do so by the Beneficiary, the Trade Contractor shall produce for inspection documentary evidence that his professional indemnity insurance is being maintained.
7. The rights of the Beneficiary under this deed may be assigned without the Trade Contractor's consent by the Beneficiary by way of absolute legal assignment to another person (P1) and by P1, by way of absolute legal assignment, to another person (P2). In such cases the assignment shall only be effective upon written notice of it being given to the Trade Contractor. No further or other assignment of the Beneficiary's rights under the Trade Contract will be permitted and in particular P2 shall not be entitled to assign the rights under this deed.
8. Any notice to be given by the Beneficiary to the Trade Contractor or by the Trade Contractor to the Beneficiary shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as it may from time to time notify to the sender or (if no such address is then current) its last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
9. No action or proceedings for any breach of the warranties contained in this deed shall be commenced against the Trade Contractor after the expiry of 12 years from the date of practical completion of the Works or the relevant Section (if applicable), whichever is the earlier.
10. For the avoidance of doubt, the Trade Contractor shall have no liability to the Beneficiary under this deed for delay in completion of the Works.





11. This deed shall be governed and construed in accordance with the laws of England and the English courts shall have jurisdiction over any dispute or difference between the Trade Contractor and the Beneficiary that arises out of or in connection with this deed

**IN WITNESS** whereof this deed has been executed and delivered on the date first above written.



## SCHEDULE 12

### Form of Contractor's Collateral Warranty in favour of a Funder

THIS DEED is made on

20[●]

#### BETWEEN:

- (1) [insert name of the Funder] whose registered office is at  
(the "Funder"), which expression shall include its  
successors in title or assigns;
- (2) [insert name of Trade Contractor] whose registered office is at  
(the "Trade Contractor"); and
- (3) [insert name of Employer] whose registered office is at  
(the "Employer"), which expression shall include  
its successors in title or assigns.

#### RECITALS

- (A) [The Funder has entered into an agreement (the "Finance Agreement") with the Employer for the provision of finance in connection with [●] (the "Works").]

OR

- (A) [The Funder has entered into an agreement with the Owner for the provision of finance.]
- (B) The Trade Contractor has been appointed by the Employer under a Trade Contract (the "Trade Contract") dated [●] to carry out and complete the Works.
- (C) [The Employer is a party to this deed to acknowledge the rights of the Trade Contractor and the Funder should the Funder take over the Employer's position under the Trade Contract.]<sup>2</sup>

#### THE PARTIES AGREE AS FOLLOWS:

- 1 In this deed, unless otherwise defined or a contrary intention appears, words shall have the meanings ascribed to them in the Trade Contract
2. The Trade Contractor warrants that it has complied and will continue to comply with the Trade Contract In the event of any breach of this warranty
  - (a) the Trade Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in the Trade Contract and to raise the equivalent rights in defence of liability (except for any rights of set-off or deduction) as it would have against the Employer under the Trade Contract; and
  - (b) the obligations of the Trade Contractor under or pursuant to this clause 2 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.

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<sup>2</sup> Rectal C will only apply to a Funder of the Employer. The Employer is not required to be a party to a warranty in favour of the Owner's Funder



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3. The Trade Contractor further warrants that unless required by the Trade Contract or unless otherwise authorised in writing by the Employer or by the Architect/Contract Administrator named in or appointed pursuant to the Trade Contract (or, where such authorisation is given orally, confirmed in writing by the Trade Contractor to the Employer and/or the Architect/Contract Administrator) he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of "Good Practice In Selection of Construction Metals (Ove Arup & Partners)" current at the date of the Trade Contract. In the event of breach of this warranty the provisions of clause 2 shall apply.
4. The Funder has no authority to issue any direction or instruction to the Trade Contractor in relation to the Trade Contract unless and until the Funder has given notice under clause 6 or clause 10.
5. The Funder has no liability to the Trade Contractor in respect of amounts due under the Trade Contract unless and until the Funder has given notice under clause 6 or clause 10.
6. [The Trade Contractor agrees that, in the event of the termination of the Finance Agreement by the Funder, the Trade Contractor shall, if so required by written notice given by the Funder and subject to clause 11, accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of the Trade Contract. The Employer acknowledges that the Trade Contractor shall be entitled to rely on a notice given to the Trade Contractor by the Funder under this clause 6 as conclusive evidence for the purposes of the Trade Contract of the termination of the Finance Agreement by the Funder and further acknowledges that such acceptance of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Trade Contractor's obligations to the Employer under the Trade Contract.
7. The Trade Contractor shall not exercise any right of termination of its employment under the Trade Contract without having first
  - (a) copied to the Funder any notices required by the Trade Contract to be sent to the Architect/Contract Administrator or to the Employer prior to the Trade Contractor being entitled to give notice under the Trade Contract that its employment under the Trade Contract is terminated, and
  - (b) given to the Funder written notice that it has the right under the Trade Contract forthwith to notify the Employer that its employment under the Trade Contract is terminated
8. The Trade Contractor shall not treat the Trade Contract as having been repudiated by the Employer without having first given to the Funder written notice that it intends so to notify the Employer.
9. The Trade Contractor shall not.
  - (a) issue a notice to the Employer to which clause 7(b) refers, or
  - (b) notify the Employer that it is treating the Trade Contract as having been repudiated by the Employer as referred to in clause 8,before the lapse of 14 days from receipt by the Funder of the notice by the Trade Contractor which the Trade Contractor is required to give under clause 7(b) and clause 8.
10. The Funder may, not later than the expiry of the 14 days referred to in clause 9, require the Trade Contractor by written notice and subject to clause 11 to accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works

upon the terms and conditions of the Trade Contract. The Employer acknowledges that the Trade Contractor shall be entitled to rely on a notice given to the Trade Contractor by the Funder under this clause 10 and that acceptance by the Trade Contractor of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Trade Contractor's obligations to the Employer under the Trade Contract. Provided that, subject to clause 11, nothing in this clause 10 shall relieve the Trade Contractor of any liability he may have to the Employer for any breach by the Trade Contractor of the Trade Contract.

11. It shall be a condition of any notice given by the Funder under clause 6 or clause 10 that the Funder or its appointee accepts liability for payment of the sums due and payable to the Trade Contractor under the Trade Contract and for performance of the Employer's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Funder under clause 6 or clause 10, the Trade Contract shall continue in full force and effect as if no right of termination of the Trade Contractor's employment under the Trade Contract, nor any right of the Trade Contractor to treat the Trade Contract as having been repudiated by the Employer, had arisen and the Trade Contractor shall be liable to the Funder and its appointee under the Trade Contract in lieu of its liability to the Employer. If any notice given by the Funder under clause 6 or clause 10 requires the Trade Contractor to accept the instructions of the Funder's appointee, the Funder shall be liable to the Trade Contractor as guarantor for the payment of all sums from time to time due to the Trade Contractor from the Funder's appointee ]<sup>3</sup>
12. Where the Works include a Trade Contractor's Designed Portion, the Trade Contractor grants to the Funder an irrevocable, royalty-free, non-exclusive licence to copy and use all existing and future plans, drawings, specifications, schedules, models, reports, calculations, correspondence and other documents (including any computer software developed by the Trade Contractor and used to generate them and any designs contained in them) (the "Material") prepared or provided by or for the Trade Contractor for or in connection with the Works and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. Such licence shall enable the Funder to copy and use the Material for the extension of the Works but shall not include a licence to reproduce the designs contained in them for any extension of the Works. The Trade Contractor shall not be liable for the consequences of any use which would have been beyond the reasonable contemplation of the Employer or the Trade Contractor at the time the Material was originally prepared or produced. The Funder shall be permitted to assign the licence and/or grant sub-licences without the consent of the Trade Contractor.
13. Where the Works include a Trade Contractor's Designed Portion, the Trade Contractor warrants that he has and shall maintain professional indemnity insurance in and on the terms and for the period referred to in the Trade Contract. The Trade Contractor shall immediately give written notice to the Funder if such insurance ceases to be available at commercially reasonable rates in order that the Trade Contractor and the Funder can discuss the means of best protecting their respective positions in the absence of such insurance. As and when it is reasonably requested to do so by the Funder, the Trade Contractor shall produce for inspection documentary evidence that his professional indemnity insurance is being maintained.
14. The rights of the Funder under this deed may be assigned without the Trade Contractor's consent by the Funder, by way of absolute legal assignment, to another person (F1) and by F1, by way of absolute legal assignment, to another person (F2). In such cases the assignment shall only be effective upon written notice of it being given to the Trade

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<sup>3</sup> Clauses 6 to 11 will only apply to a Funder of the Employer

Contractor. No further or other assignment of the Funder's rights under the Trade Contract will be permitted and in particular F2 shall not be entitled to assign the rights under this deed.

15. Any notice to be given by one party to another pursuant to this deed shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as it may from time to time notify to the sender or (if no such address is then current) its last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
16. No action or proceedings for any breach of the warranties contained in this deed shall be commenced against the Trade Contractor after the expiry of 12 years from the date of practical completion of the Works or the relevant Section (if applicable), whichever is the earlier.
17. Notwithstanding the provisions of this deed, the Trade Contractor shall have no liability to the Funder under this deed for delay in completion of the Works unless and until the Funder serves notice pursuant to clause 6 or 10. For the avoidance of doubt, the Trade Contractor shall not be required to pay liquidated damages in respect of the period of delay where the same has been paid to or deducted by the Employer.
18. This deed shall be governed and construed in accordance with the laws of England and subject to clause 19 the English courts shall have jurisdiction over any dispute or difference between the Trade Contractor and the Funder that arises out of or in connection with this deed.
19. Following the giving of any notice by the Funder pursuant to clause 7 or clause 11, any dispute or difference which shall arise between the Trade Contractor and the Funder (including any appointee or permitted assignee) shall be subject to the provisions of Article 7 of the Trade Contract.

**IN WITNESS** whereof this deed has been executed and delivered on the date first above written



**ARBUTHNOT LATHAM & CO LIMITED**

**(Company No. 00819519)**

**Arbuthnot House**

**20 Ropemaker Street**

**London EC2Y 9AR**

Lucking and Clark LLP

(Company No. OC300494)

31 Cowcross Street

London

EC1M 6DQ

2013

Dear Sirs

The refurbishment and fit-out of offices (the "**Project**") at 7-21 (odd) Wilson Street, London EC2M 2SN (the "**Site**")

We are writing to confirm your appointment as structural engineer for the Project with effect from the date when you first commence performance of the Services. This appointment is on the following terms

**1 The Services**

You shall perform the services listed in schedule 1 (the "**Services**") in compliance with our Instructions from time to time, our brief for the Project and all relevant statutory requirements.

**2. Standard of Care**

You warrant to us that you have exercised and you will continue to exercise in the performance of the Services all the reasonable skill, care and diligence to be expected of an appropriately qualified consultant in each of the disciplines to which the Services relate holding itself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project.

**3 Health and Safety**

You shall co-operate with the **CDM Co-ordinator** for the Project and perform all the duties of a "**designer**" under the Construction (Design and Management) Regulations 2007

**4 Other Consultants**

You shall consult and liaise regularly and as necessary with the Construction Manager and the other consultants for the Project as referred to in schedule 2 ("**Other Consultants**"). You shall keep them and us fully informed of all matters relating to the Services and you shall consider and have regard to any comments made in relation to the Services by the Other Consultants. You shall co-operate with the Construction Manager in its co-ordination of all our consultants for the Project.

5. **Consultant's Personnel**

You shall use the following people who will be available whenever we reasonably require in connection with the Services

- John Lucking. Partner

You shall not remove or replace any of these people without first obtaining our written consent. All of these people shall have full authority to act on your behalf for all purposes.

6. **Copyright**

For the purposes of this appointment, the expression "**Materials**" mean any designs, drawings, models, plans, design details, sketches, specifications, photographs, brochures, reports, notes of meetings and any other materials (whether in existence or to be made) which you may produce for us and all amendments, updates and additions to them and any designs incorporated or referred to in them

As beneficial owner with full title guarantee, you hereby grant us an irrevocable, royalty-free, non-exclusive licence to use and reproduce the Materials for all purposes relating to the Project, including but without limitation, the design, execution, completion, use, maintenance, letting and/or sale, advertisement, extension, reinstatement and repair of the Project

This licence shall include the right to grant sub-licences and shall be assignable

You shall not be liable for any misuse of the Materials for any purposes other than those for which the same were provided by you provided that you have not knowingly condoned and/or permitted such misuse

You hereby waive your rights under Sections 77 to 80 of the Copyright, Designs and Patents Act 1988 in relation to the Materials as against us, our successors in title, assignees and licencees

7. **Authority**

You shall not have any authority whatsoever to act on our behalf or purport to bind us to third parties without first obtaining our written consent to do so

8 **Confidentiality**

You shall not do any of the following without first obtaining our written consent.

- (a) disclose any information relating in any way to this Project or us, or your Services for it, to any third party (other than those who we have confirmed in writing are assisting us or our solicitors),
- (b) take or permit to be taken any photographs of the Project for use in any publicity or advertising,
- (c) publish, alone or in connection with any other person, any articles, photographs or other illustrations relating to the Project or any part thereof;
- (d) impart to any publication, journal or newspaper or any radio or television programme any information regarding the Services, the Project or us;
- (e) save as may be reasonably necessary in the proper performance of your duties, disclose to any person or otherwise make use of any of the Materials;

- (f) use the Materials or the contents of them in relation to the design of any building or structure similar in overall design, appearance or features to the Project; or
- (g) become engaged or perform any services in connection with any development scheme which competes with the Project

These restrictions shall continue to apply unless and until the information and/or Materials which you are prohibited from disclosing come properly into the public domain through no fault of your own

**9. Programme**

You shall proceed with the Services regularly and diligently and in accordance with any programme agreed between us, as the same may be revised and re-issued by us from time to time

**10. Fee**

We shall pay you for the performance of the Services the fee calculated at the hourly rates as set out in schedule 2 to this appointment. The hourly rates shall be deemed to be inclusive payment for the Services and for all costs and expenses wholly and necessarily incurred by you in the performance of them. Payments shall be made by monthly instalments as set out in schedule 2.

Where there is a change to the scope of the brief for the Services, or if you are required to provide additional services, we shall pay you an additional fee to be agreed between us or, failing agreement, a fair and reasonable additional fee commensurate with the additional work performed

**11. Reimbursable Expenses**

Subject to our prior written agreement, the following shall be reimbursed:

- the reproduction, printing and manufacturing costs of special reports, presentation materials and models

**12. Payment**

You shall submit valid VAT invoices to us on or after the dates set out in schedule 2. These invoices must specify the sum that you consider will become due to you on the date we receive the invoice from you and the basis on which that sum is calculated. Payment shall be due on the date we receive a valid VAT invoice from you.

We shall pay the amounts due to you on or before the final date for payment which shall be 28 days from receipt by us of your valid VAT invoice. You shall provide such documents, vouchers and receipts as are necessary for confirming the amounts payable.

We may give notices of intention to pay less under Section 111(3) of the Housing Grants, Construction and Regeneration Act 1996 (as amended) not later than three days before the final date for payment. If we do give you such a notice, the amount due to you on or before the final date for payment shall be the sum stated in the notice.

If we fail to pay any amount properly due to you on or before the final date for payment, we shall pay simple interest on such amount from the final date for payment until the actual date of payment calculated at the rate of four per cent in excess of the rate set from time to time by the Bank of England's Monetary Policy Committee or any successor of it.

**13. Professional Indemnity Insurance**

You shall maintain professional indemnity insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to each and every claim in respect of any negligent act or omission or default by you in the performance of the Services (but subject to separate aggregate limits of indemnity for all claims relating to asbestos, pollution or contamination) for not less than 12 years from completion of the Services, provided that such insurance is available in the market at reasonable premium rates.

You shall inform us immediately if the Insurance ceases to be available at reasonable premium rates or if you believe that you will otherwise be unable to maintain such insurance

You shall produce documentary evidence that the Insurance referred to above is being properly maintained as and when requested by us.

**14. Assignment**

You are not entitled to assign, charge or transfer any right or obligation under this appointment or to sub-contract any of the Services without first obtaining our written consent.

We may assign any or all of our rights under this appointment, including the benefit of all or any of your obligations under this appointment, at any time without having to obtain your consent.

**15 Termination and Suspension**

We may terminate your engagement under this appointment or suspend the performance of the Services (or any of them) at any time by giving you notice in writing. If following a suspension, performance of the Services is not required to be resumed within six calendar months from the date of such suspension, either of us may terminate your engagement under this appointment by giving the other written notice of such termination

If we are in material or persistent breach of our obligations under this letter and fail to remedy such breach within 14 days of written notice from you specifying the breach and requiring its remedy, you may terminate your engagement under this appointment by giving us written notice of such termination

Upon any such termination or suspension, you will take immediate steps to bring to an end the Services in an orderly and efficient manner. You shall cause to be delivered to us all the Materials, whether in the course of preparation or completed by you at the date of termination or suspension

We shall pay any amounts which have accrued due under the terms of this appointment prior to the date of such termination or suspension but without prejudice to our rights and remedies in relation to any negligence or default prior to such date.

The provisions of this appointment shall continue to bind both parties, notwithstanding such termination, so far as may be necessary to give effect to our respective rights and obligations.

**16 Anti-corruption**

You shall comply with the provisions of the Bribery Act 2010 and ensure that your employees, agents, subsidiaries and sub-consultants who perform services in relation to the Project (the "**Associated Persons**") also comply with it

Notwithstanding any other provision of this letter, where we terminate your engagement under this appointment in circumstances where you are in breach of this paragraph 16, we shall not be liable to make any further payments to you and shall not be liable for any

loss or damage or other costs or expenses of any kind whatsoever that you may suffer as a result of such termination

**17. Previous Agreements**

The terms of this appointment supersede any previous agreements or arrangements between us in respect of the Services.

**18 Warranties**

On the date that you countersign this letter, you shall execute a deed of collateral warranty in favour of the Landlord in the form set out in schedule 3. We may also request you to provide further collateral warranties in favour of a Funder, Purchaser or Tenant in the same form and you shall deliver them to us, executed, within 14 days of our written request.

For the purposes of this paragraph 18:

"Funder" means any person who provides finance to the Client, Funder or Landlord in connection with the Project,

"Purchaser" means any first purchaser of the whole or any part of the Project;

"Tenant" means any first tenant of the whole or part of the Project; and

"Landlord" means any person from whom we lease the land or the premises on which the Project is being undertaken.

**19. Contracts (Rights of Third Parties) Act 1999**

Subject to paragraph 14 nothing in this appointment is intended to confer on any person any right to enforce any of the provisions of this appointment which such person would not have had but for the Contracts (Rights of Third Parties) Act 1999

**20 Governing Law**

This appointment shall be governed by and construed in accordance with English law and all disputes and differences shall be referred to the non-exclusive jurisdiction of the English Courts

Any dispute or difference between us may be referred to adjudication under the Scheme for Construction Contracts 1998 SI No 649 (as amended) (the "**Scheme**") The adjudicator shall be the president or vice-president of the Royal Institution of Chartered Surveyors or where he is unable or unwilling to act, or fails to give a decision in accordance with the provisions of paragraph 20 of the Scheme, such other person as may be nominated by TeCSA

Any reference in this appointment to any statute or statutory instrument shall be construed as including a reference to any modification, extension or re-enactment of it and any orders, regulations, directions, schemes, guidance and rules made under it.

**21 Limitation of Liability**

Notwithstanding anything to the contrary contained elsewhere in this appointment, your liability in respect arising out of under or in connection with this appointment for the acts or omissions of any of your partners, employees, agents or any consultants and/or subcontractors of whatever nature (whether in contract, in tort, in negligence or for breach of statutory duty or otherwise) shall not exceed the sum of £5,000,000 (five million pounds) in respect of each and every claim.

Nothing in this appointment shall limit or exclude your liability for:

- (a) death or personal injury resulting from negligence, or
- (b) any damage or liability incurred by us as a result of fraud or fraudulent misrepresentation by you.

Please deliver to us the copy of this letter which is enclosed, executed on your behalf as a deed and dated

**IN WITNESS** whereof this agreement has been executed as a deed and delivered on the date first above written

Executed as a deed by **ARBUTHNOT** )  
**LATHAM & CO LIMITED** )  
acting by a director and its )  
secretary/two directors: )

Director

Director/Secretary

Executed as a deed by )  
**LUCKING AND CLARK LLP** )  
acting by two members )

Member

Member

## **SCHEDULE 1**

### **The Services**

In this Schedule 1, we are referred to as "the Client" and you as "the Consultant".

#### **Services general to all stages of the Project**

- 1.1 Make all necessary submissions to local, planning and statutory authorities and conduct all related negotiations with the objective of obtaining on behalf of the Client all necessary approvals for the Project
- 1.2 Carry out site visits and inspect work and materials whenever and wherever any such visit or inspection is necessary or specifically requested by the Client, the Trade Contractors or any supplier.
- 1.3 Lead and liaise with the Other Consultants and co-ordinate and integrate into the Project the services of all of the Other Consultants, and any trade contractors, Sub-Consultants or suppliers.
- 1.4 Draw the attention of the Client and the Other Consultants to any circumstances encountered or foreseen by the Consultant of which the Client or any of the Other Consultants may be unaware and which might imperil the efficient planning, programming, execution or completion of the Project or undermine the prevailing cost estimates.
- 1.5 Give the Client and the Other Consultants reasonable prior notice of and invitation to attend all meetings called by the Consultant in relation to the Project. Attend as required all meetings called by the Client in relation to the Project
- 1.6 Keep and circulate full and proper records of all meetings and negotiations attended or conducted by the Consultant and make the same available for inspection by the Client.
- 1.7 Print, reproduce or purchase all documents, drawings, manuals, maps, models, photographs and other records necessary for the proper performance of the Services. Provide as many complete sets as the Client may reasonably require of as-built drawings of the Project by the date specified by the Client
- 1.8 With the Other Consultants, consider the environmental impact of the Project and report to the Client.
- 1.9 Advise the Client on the need for specialist surveys and investigations.
- 1.10 Attend such team building and partnering workshops or events as are considered desirable by the Client as an aid to the successful completion of the Project
- 1.11 If one has been appointed, assist the Client's party wall surveyor in relation to party wall matters
- 1.12 Establish, implement and comply with formal risk management procedures for the Project
- 1.13 Advise the Client and perform the Services in relation to any demolition as well as any construction which may be required
- 1.14 Perform such other duties as may reasonably be required by the Client to ensure the completion of the Project.

### **Structural Engineer Services**

Provide professional advice relating to the following items.

- 1 supporting loadings on floors from the new VRF units
- 2 formation of a new grillage on the roof to the Site inside the existing chiller enclosure to carry the new VRF units
3. cutting openings in the risers for new riser doors



## **SCHEDULE 2**

### **Hourly Rates**

<b>Position</b>	<b>Rate per hour (excluding VAT)</b>
Partner	£105
Associate	£90
Senior Project Engineer	£75
Project Engineer	£70
Intermediate Engineer	£65
Graduate Engineer	£55
Senior Technician	£65
Technician	£55
Intermediate Technician	£45
Junior Technician	£35

Dates for submission of VAT invoices the first working day of each calendar month

### **Other Consultants**

Construction Manager, Architect, CDM Co-ordinator and Quantity Surveyor	Anthony Oliver plc t/a Oliver Associates
Mechanical and electrical services engineer	Status Design Associates LLP

### SCHEDULE 3

#### Deed of Collateral Warranty

**THIS DEED** is made on

20●.

#### **BETWEEN:**

- (1) **[Insert name of the Beneficiary]** whose registered office is at [●] (the "**Beneficiary**", which expression shall include its successors in title or assigns), [and]
- (2) **[Insert name of Consultant]** whose [registered office] [principal place of business] is at [●] (the "**Consultant**"); [and]
- (3) **[Insert name of Client]** whose registered office is at [●] (the "**Client**" which expression shall include its successors in title or assigns).<sup>1</sup>

#### **RECITALS:**

- (A) The Beneficiary has entered into an agreement with the Client in relation to the Project.
- (B) The Consultant has been appointed by the Client under an appointment (the "**Appointment**") dated **[Insert Date]** to provide professional services for the Project
- (C) [The Client has agreed to be a party to this deed to acknowledge the rights of the Consultant and the Beneficiary should the Beneficiary take over the Client's position under the Appointment ]<sup>2</sup>

#### **NOW THIS DEED WITNESSES AS FOLLOWS:**

##### **1. DEFINITIONS**

In this deed, unless otherwise defined or a contrary intention appears, words shall have the meanings ascribed to them in the Appointment.

##### **2 CONSULTANT'S WARRANTY**

- 2.1 The Consultant warrants and undertakes to the Beneficiary that it has performed and will continue to perform its obligations under the Appointment in accordance with all its terms and conditions.
- 2.2 In the event of breach of the warranty in clause 2.1, the Consultant's obligations shall not be released or diminished by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Beneficiary nor by any act or omission of any party carrying out such enquiry.
- 2.3 The Consultant shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (save in relation to set-off and counterclaim) as it would be entitled to raise if the Beneficiary had been named as joint client under the Appointment
- 2.4 The Consultant's liability to the Beneficiary shall be limited to the proportion of the Beneficiary's losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same, on the basis that the Other Consultants referred to in schedule 2 of the Appointment have provided contractual undertakings to the Beneficiary as regards the performance of their services in

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<sup>1</sup> Only use where the Beneficiary has step-in rights under clause 11 (ie usually where the Beneficiary is a Funder)

<sup>2</sup> Only use where the Beneficiary shall have step-in rights under clause 11

connection with the Project on terms no less onerous than this clause 2 and be deemed to have paid to the Beneficiary such proportion of the Beneficiary's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Beneficiary's losses.

### **3 COPYRIGHT AND CONFIDENTIALITY**

3.1 The copyright in the Material shall remain vested in the Consultant but the Consultant hereby grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to copy, use and reproduce the same for all purposes relating to the Project including, but without limitation, the design, construction, completion, reconstruction, modification, extension, repair, reinstatement, refurbishment, redevelopment, maintenance, use, letting, promotion, advertisement of the Project, and/or the promotion or advertisement of the Beneficiary. The licence shall include the right to grant sub-licences on the same terms as this licence and shall be assignable. The Consultant irrevocably waives any moral rights in the Material and in the Project

3.2 Save as may be necessary for the proper performance of the Services under or in connection with the Appointment and as stated in the Appointment, the Consultant may not during the Appointment or following its termination disclose to any third party or make use of any information of any kind whatsoever relating to the Project or the Beneficiary

3.3 The rights set out in this clause 3 shall survive the termination of the Appointment for any reason.

### **4 PROFESSIONAL INDEMNITY INSURANCE**

4.1 The Consultant shall maintain professional indemnity insurance in the amount stated and in accordance with the Appointment. Whenever requested to do so by the Beneficiary, the Consultant shall produce documentary evidence that the insurance cover is being maintained and that premiums have been paid. The Consultant shall immediately notify the Beneficiary in writing if it ceases to hold such insurance

### **5. INSTRUCTIONS**

[Save as provided in clause 11 the]<sup>3</sup> [The] Beneficiary has no authority to issue any direction or instruction to the Consultant in relation to the Consultant's duties under the Appointment.

### **6. ASSIGNMENT**

This Deed may be assigned twice by the Beneficiary without the consent of the Consultant being required. Any further assignment shall be subject to the prior written consent of the Consultant such consent not to be unreasonably withheld or delayed

### **7. LIMITATION**

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 completion of the Services.

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

Subject to the provisions of clause 6, nothing in this deed is intended to confer on any person any right to enforce any of the provisions of this deed whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

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<sup>3</sup> Section in square brackets only to be included where the Beneficiary is to have step-in rights

**9. GOVERNING LAW AND DISPUTES**

The provisions of this deed shall be governed by and construed in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

**10. MISCELLANEOUS**

10.1 If the Consultant is a partnership references in this deed to the "Consultant" shall 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 shall be joint and several

10.2 Any notice provided for in accordance with this deed shall be deemed to be duly given if it is delivered by hand at, or sent by registered post or facsimile transmission to the relevant party at, the address of that party shown in this deed or such other address as that party may by notice in writing nominate for the purpose of service, and if sent by registered post shall be deemed to have been received not later than 48 hours after the same shall have been posted.

**11. [STEP-IN<sup>4</sup>**

11.1 The Consultant acknowledges that the Beneficiary has no liability to the Consultant in respect of fees and expenses under the Appointment unless and until the Beneficiary has given notice under clause 11.2 or 11.3 of this deed

11.2 The Consultant agrees that, if so required by notice in writing given by the Beneficiary (copied to the Client and subject to clause 11.4 of this deed), it will accept the instructions of the Beneficiary or its appointee to the exclusion of the Client in respect of the carrying on and completion of its obligations under the Appointment. The Client acknowledges that the Beneficiary shall be entitled to rely on such a notice as conclusive evidence for the purposes of this Appointment that the Beneficiary was entitled to give such a notice.

11.3 The Consultant further agrees that it will not without first giving to the Beneficiary not less than 21 days' notice in writing exercise any right it may have to terminate the Appointment or to treat the same as having been repudiated by the Client or to discontinue the performance of any services to be performed by the Consultant pursuant thereto. Prior to the expiry of such notice period the Beneficiary may give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Beneficiary or its appointee to the exclusion of the Client in respect of the carrying on and completion of the Project upon the terms and conditions of the Appointment.

11.4 Subject to the conditions in clause 11.5 of this deed, upon the issue of any notice by the Beneficiary under clauses 11.2 or 11.3

- (a) the Appointment shall continue in full force and effect,
- (b) the Consultant shall be liable to the Beneficiary or its appointee under the Appointment in lieu of its liability to the Client, and
- (c) the Client shall have no further liability to the Consultant or obligations under the Appointment with respect to any matters or circumstances arising out of or in connection with the Appointment after the date of such notice.

11.5 It shall be a condition to the operation of any notice given under clause 11.2 or 11.3 that:

- (a) the Beneficiary or its appointee accepts liability for payment of any fees and expenses payable to the Consultant under the Appointment and for performance of the Client's obligations, and

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<sup>4</sup> Clause 11 is only to be used where the Beneficiary is to have step-in rights



- (b) if such notice requires the Consultant to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Beneficiary's appointee.

11.6 The Client has agreed to be a party to this deed for the purpose of acknowledging that the Consultant shall not be in breach of the Appointment by complying with the obligations imposed on it by clauses 11.2 and 11.3.]

**IN WITNESS** whereof this deed has been executed and delivered on the date first before written.

**ARBUTHNOT LATHAM & CO LIMITED**

**(Company No. 00819519)**

**Arbuthnot House**

**20 Ropemaker Street**

**London EC2Y 9AR**

Status Design Associates LLP

(Company No. OC30066)

1 Holgate Court

Western Road

Romford

Essex RM1 3JS

2013

Dear Sirs

The refurbishment and fit-out of offices (the "**Project**") at 7-21 (odd) Wilson Street, London EC2M 2SN (the "**Site**")

We are writing to confirm your appointment as mechanical and electrical services engineer for the Project with effect from the date when you first commence performance of the Services. This appointment is on the following terms:

1. **The Services**

You shall perform the services listed in schedule 1 (the "**Services**") in compliance with our instructions from time to time, our brief for the Project and all relevant statutory requirements.

2. **Standard of Care**

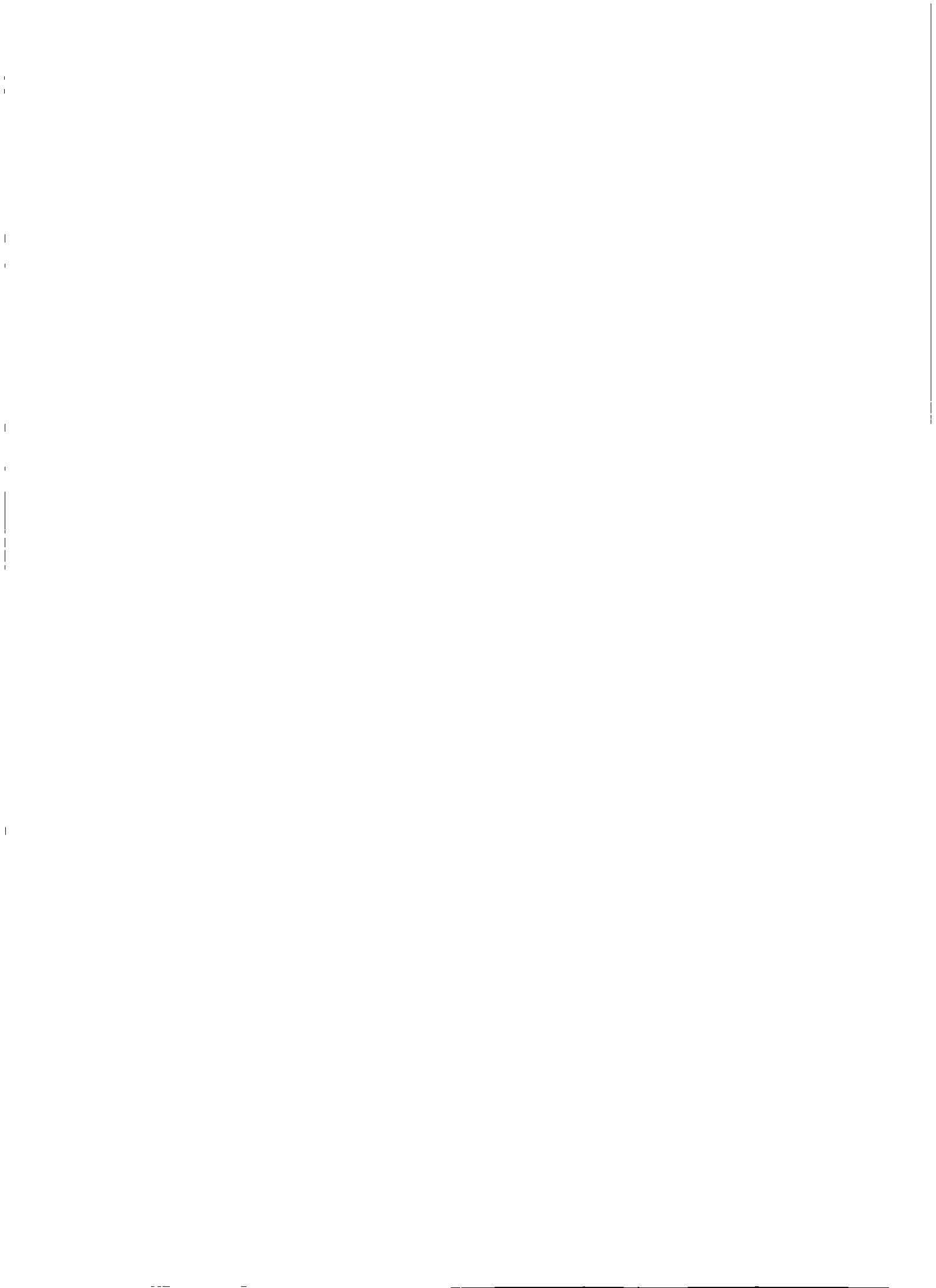
You warrant to us that you have exercised and you will continue to exercise in the performance of the Services all the reasonable skill, care and diligence to be expected of an appropriately qualified consultant in each of the disciplines to which the Services relate holding itself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project

3 **Health and Safety**

You shall co-operate with the **CDM Co-ordinator** for the Project and perform all the duties of a "**designer**" under the Construction (Design and Management) Regulations 2007

4. **Other Consultants**

You shall consult and liaise regularly and as necessary with the Construction Manager and the other consultants for the Project as referred to in schedule 2 ("**Other Consultants**"). You shall keep them and us fully informed of all matters relating to the Services and you shall consider and have regard to any comments made in relation to the Services by the





Other Consultants You shall co-operate with the Construction Manager in its co-ordination of all our consultants for the Project

**5 Consultant's Personnel**

You shall use the following people who will be available whenever we reasonably require in connection with the Services:

- Nigel Maguire Partner (Mechanical Services)
- Bill Lawler Partner (Electrical Services)

You shall not remove or replace any of these people without first obtaining our written consent. All of these people shall have full authority to act on your behalf for all purposes.

**6 Copyright**

For the purposes of this appointment, the expression "**Materials**" mean any designs, drawings, models, plans, design details, sketches, specifications, photographs, brochures, reports, notes of meetings and any other materials (whether in existence or to be made) which you may produce for us and all amendments, updates and additions to them and any designs incorporated or referred to in them.

As beneficial owner with full title guarantee, you hereby grant us an irrevocable, royalty-free, non-exclusive licence to use and reproduce the Materials for all purposes relating to the Project, including but without limitation, the design, execution, completion, use, maintenance, letting and/or sale, advertisement, extension, reinstatement and repair of the Project.

This licence shall include the right to grant sub-licences and shall be assignable.

You shall not be liable for any misuse of the Materials for any purposes other than those for which the same were provided by you provided that you have not knowingly condoned and/or permitted such misuse.

You hereby waive your rights under Sections 77 to 80 of the Copyright, Designs and Patents Act 1988 in relation to the Materials as against us, our successors in title, assignees and licencees.

**7 Authority**

You shall not have any authority whatsoever to act on our behalf or purport to bind us to third parties without first obtaining our written consent to do so.

**8 Confidentiality**

You shall not do any of the following without first obtaining our written consent.

- (a) disclose any information relating in any way to this Project or us, or your Services for it, to any third party (other than those who we have confirmed in writing are assisting us or our solicitors);
- (b) take or permit to be taken any photographs of the Project for use in any publicity or advertising,
- (c) publish, alone or in connection with any other person, any articles, photographs or other illustrations relating to the Project or any part thereof,

- (d) impart to any publication, journal or newspaper or any radio or television programme any information regarding the Services, the Project or us;
- (e) save as may be reasonably necessary in the proper performance of your duties, disclose to any person or otherwise make use of any of the Materials,
- (f) use the Materials or the contents of them in relation to the design of any building or structure similar in overall design, appearance or features to the Project; or
- (g) become engaged or perform any services in connection with any development scheme which competes with the Project.

These restrictions shall continue to apply unless and until the information and/or Materials which you are prohibited from disclosing come properly into the public domain through no fault of your own

**9. Programme**

You shall proceed with the Services regularly and diligently and in accordance with any programme agreed between us, as the same may be revised and re-issued by us from time to time.

**10. Fee**

We shall pay you for the performance of the Services the fee as set out in schedule 2 to this appointment (the "Fee"). The Fee shall be deemed to be inclusive payment for the Services and for all costs and expenses incurred by you in the performance of them. Payments shall be made by monthly instalments as set out in schedule 2.

If at any time the Services are suspended or delayed, we shall be entitled to adjust these instalments to reflect the actual progress of the Services

Where there is a change to the scope of the brief for the Services, or if you are required to provide additional services, we shall pay you an additional fee to be agreed between us or, failing agreement, a fair and reasonable additional fee commensurate with the additional work performed.

**11 Reimbursable Expenses**

Subject to our prior written agreement, the following shall be reimbursed:

- the reproduction, printing and manufacturing costs of special reports, presentation materials and models.

**12. Payment**

You shall submit valid VAT invoices to us on or after the dates set out in schedule 2. These invoices must specify the sum that you consider will become due to you on the date we receive the invoice from you and the basis on which that sum is calculated. Payment shall be due on the date we receive a valid VAT invoice from you.

We shall pay the amounts due to you on or before the final date for payment which shall be 28 days from receipt by us of your valid VAT invoice. You shall provide such documents, vouchers and receipts as are necessary for confirming the amounts payable

We may give notices of intention to pay less under Section 111(3) of the Housing Grants, Construction and Regeneration Act 1996 (as amended) not later than three days before the final date for payment. If we do give you such a notice, the amount due to you on or before the final date for payment shall be the sum stated in the notice

If we fail to pay any amount properly due to you on or before the final date for payment, we shall pay simple interest on such amount from the final date for payment until the actual date of payment calculated at the rate of four per cent in excess of the rate set from time to time by the Bank of England's Monetary Policy Committee or any successor of it

**13 Professional Indemnity Insurance**

You shall maintain professional indemnity insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to each and every claim in respect of any negligent act or omission or default by you in the performance of the Services for not less than 12 years from completion of the Services, provided that such insurance is available in the market at reasonable premium rates

You shall inform us immediately if the insurance ceases to be available at reasonable premium rates or if you believe that you will otherwise be unable to maintain such insurance

You shall produce documentary evidence that the insurance referred to above is being properly maintained as and when requested by us.

**14 Assignment**

You are not entitled to assign, charge or transfer any right or obligation under this appointment or to sub-contract any of the Services without first obtaining our written consent

We may assign any or all of our rights under this appointment, including the benefit of all or any of your obligations under this appointment, at any time without having to obtain your consent

**15 Termination and Suspension**

We may terminate your engagement under this appointment or suspend the performance of the Services (or any of them) at any time by giving you notice in writing. If following a suspension, performance of the Services is not required to be resumed within six calendar months from the date of such suspension, either of us may terminate your engagement under this appointment by giving the other written notice of such termination.

If we are in material or persistent breach of our obligations under this letter and fail to remedy such breach within 14 days of written notice from you specifying the breach and requiring its remedy, you may terminate your engagement under this appointment by giving us written notice of such termination.

Upon any such termination or suspension, you will take immediate steps to bring to an end the Services in an orderly and efficient manner. You shall cause to be delivered to us all the Materials, whether in the course of preparation or completed by you at the date of termination or suspension

We shall pay any amounts which have accrued due under the terms of this appointment prior to the date of such termination or suspension but without prejudice to our rights and remedies in relation to any negligence or default prior to such date

The provisions of this appointment shall continue to bind both parties, notwithstanding such termination, so far as may be necessary to give effect to our respective rights and obligations



**16 Anti-corruption**

You shall comply with the provisions of the Bribery Act 2010 and ensure that your employees, agents, subsidiaries and sub-consultants who perform services in relation to the Project (the "**Associated Persons**") also comply with it

Notwithstanding any other provision of this letter, where we terminate your engagement under this appointment in circumstances where you are in breach of this paragraph 16, we shall not be liable to make any further payments to you and shall not be liable for any loss or damage or other costs or expenses of any kind whatsoever that you may suffer as a result of such termination

**17. Previous Agreements**

The terms of this appointment supersede any previous agreements or arrangements between us in respect of the Services

**18. Warranties**

On the date that you countersign this letter, you shall execute a deed of collateral warranty in favour of the Landlord in the form set out in schedule 3. We may also request you to provide further collateral warranties in favour of a Funder, Purchaser or Tenant in the same form and you shall deliver them to us, executed, within 14 days of our written request.

For the purposes of this paragraph 18:

"Funder" means any person who provides finance to the Client, Funder or Landlord in connection with the Project,

"Purchaser" means any first purchaser of the whole or any part of the Project;

"Tenant" means any first tenant of the whole or part of the Project; and

"Landlord" means any person from whom we lease the land or the premises on which the Project is being undertaken.

**19 Contracts (Rights of Third Parties) Act 1999**

Subject to paragraph 14 nothing in this appointment is intended to confer on any person any right to enforce any of the provisions of this appointment which such person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

**20. Governing Law**

This appointment shall be governed by and construed in accordance with English law and all disputes and differences shall be referred to the non-exclusive jurisdiction of the English Courts.

Any dispute or difference between us may be referred to adjudication under the Scheme for Construction Contracts 1998 SI No 649 (as amended) (the "**Scheme**"). The adjudicator shall be the president or vice-president of the Royal Institution of Chartered Surveyors or where he is unable or unwilling to act, or fails to give a decision in accordance with the provisions of paragraph 20 of the Scheme, such other person as may be nominated by TeCSA

Any reference in this appointment to any statute or statutory instrument shall be construed as including a reference to any modification, extension or re-enactment of it and any orders, regulations, directions, schemes, guidance and rules made under it.

21 **Limitation of Liability**

Notwithstanding anything to the contrary contained elsewhere in this appointment, your liability in respect arising out of under or in connection with this appointment for the acts or omissions of any of your partners, employees, agents or any consultants and/or subcontractors of whatever nature (whether in contract, in tort, in negligence or for breach of statutory duty or otherwise) shall not exceed the sum of £5,000,000 (five million pounds) in respect of each and every claim

Nothing in this appointment shall limit or exclude your liability for:

- (a) death or personal injury resulting from negligence; or
- (b) any damage or liability incurred by us as a result of fraud or fraudulent misrepresentation by you.

Please deliver to us the copy of this letter which is enclosed, executed on your behalf as a deed and dated.

**IN WITNESS** whereof this agreement has been executed as a deed and delivered on the date first above written.

Executed as a deed by **ARBUTHNOT** )  
**LATHAM & CO LIMITED** )  
acting by a director and its )  
secretary/two directors' )

Director

Director/Secretary

Executed as a deed by )  
**STATUS DESIGN ASSOCIATES LLP** )  
acting by two members )

Member

Member



## **SCHEDULE 1**

### **The Services**

In this Schedule 1, we are referred to as "the Client" and you as "the Consultant".

#### **Services general to all stages of the Project**

- 1.1 Make all necessary submissions to local, planning and statutory authorities and conduct all related negotiations with the objective of obtaining on behalf of the Client all necessary approvals for the Project.
- 1.2 Carry out site visits and inspect work and materials whenever and wherever any such visit or inspection is necessary or specifically requested by the Client, the Trade Contractors or any supplier.
- 1.3 Lead and liaise with the Other Consultants and co-ordinate and integrate into the Project the services of all of the Other Consultants, and any trade contractors, Sub-Consultants or suppliers.
- 1.4 Draw the attention of the Client and the Other Consultants to any circumstances encountered or foreseen by the Consultant of which the Client or any of the Other Consultants may be unaware and which might imperil the efficient planning, programming, execution or completion of the Project or undermine the prevailing cost estimates
- 1.5 Give the Client and the Other Consultants reasonable prior notice of and invitation to attend all meetings called by the Consultant in relation to the Project. Attend as required all meetings called by the Client in relation to the Project.
- 1.6 Keep and circulate full and proper records of all meetings and negotiations attended or conducted by the Consultant and make the same available for inspection by the Client.
- 1.7 Print, reproduce or purchase all documents, drawings, manuals, maps, models, photographs and other records necessary for the proper performance of the Services. Provide as many complete sets as the Client may reasonably require of as-built drawings of the Project by the date specified by the Client.
- 1.8 With the Other Consultants, consider the environmental impact of the Project and report to the Client.
- 1.9 Advise the Client on the need for specialist surveys and investigations.
- 1.10 Attend such team building and partnering workshops or events as are considered desirable by the Client as an aid to the successful completion of the Project.
- 1.11 If one has been appointed, assist the Client's party wall surveyor in relation to party wall matters.
- 1.12 Establish, implement and comply with formal risk management procedures for the Project.
- 1.13 Advise the Client and perform the Services in relation to any demolition as well as any construction which may be required
- 1.14 Perform such other duties as may reasonably be required by the Client to ensure the completion of the Project





## **Building Services**

For ease of reference the Services have been divided into various sections and stages, but such division is not intended to, and shall not, limit or affect the Consultant's obligation generally to provide the Services as and when may from time to time be necessary or appropriate for the proper and timely completion of the Project.

### **Services general to all stages of the Project**

#### **1 1 General/administration:**

- (a) Provide information to assist the Architect in making all necessary submissions to local, planning and statutory authorities and conducting all related negotiations with the objective of obtaining on behalf of the Client all necessary approvals for the Project
- (b) Liaise with the Other Consultants and with the trade contractors, and any sub-contractors, Sub-Consultants or suppliers
- (c) Provide Information to the Other Consultants and the trade contractors from time to time as may be necessary to enable them to carry out their respective duties
- (d) Attend as required all meetings called by the Client in relation to the Project.
- (e) Advise the Client on the need for specialist surveys and investigations
- (f) Attend such team building and partnering workshops or events as are considered desirable by the Client as an aid to the successful completion of the Project
- (g) Perform such other duties as may reasonably be required by the Client to ensure the completion of the Project

#### **1 2 Design:**

- (a) Provide Information to assist the Architect in coordinating the design of the Project
- (b) Comply with the standards established for the form and content of design outputs and interfaces.
- (c) Execute the building services design within the parameters of the Brief, the Cost Plan and the Master Programme as approved by the Client. Keep the Brief under review and advise the Client of any departures from those documents that are desirable and/or necessary
- (d) Fulfil the duties of a "designer" under the CDM Regulations
- (e) Participate in value engineering exercises and provide all necessary information to enable alternative design solutions to be posted and to enable budgets and cost plans to be prepared and updated.

#### **1 3 Timing/progress:**

- (a) Discuss and agree with the Architect and the trade contractors procedures for and timing of the release of information during the progress of the Trade Contract

- (b) Prepare and update detailed programmes of activities to be carried out by the Consultant.
- (c) Where requested to do so, review any detailed programmes prepared by the Other Consultants.

**1.4 Cost:**

- (a) Provide information to the Quantity Surveyor for cost planning, cost control, cost reporting and cash flow forecasting.
- (b) Assist the Quantity Surveyor in implementing procedures for cost planning, cost control and cost reporting
- (c) Assist the Quantity Surveyor in preparing and updating cash flow forecasts for the Project.
- (d) Assist the Quantity Surveyor in analysing the cost in use and life cycle cost of the Project

**1.5 Client/third party issues:**

- (a) Where required, consult and communicate with any existing or prospective third parties, including attending meetings and providing copies of any existing information and/or documentation.
- (b) Provide assistance in resolving disputes arising between the Client and the trade contractors and/or any of the Other Consultants.
- (c) Where requested, assist the Client in negotiation with public service providers.

**Stage 1 - Feasibility**

- 1.1 Review with the Client and the Architect alternative design and construction approaches and cost implications.
- 1.2 In conjunction with the Architect, arrange any necessary surveys of the existing services to the Site and undertake such studies as may be necessary in order to submit proposals on building services.
- 1.3 In conjunction with the Architect, consult with planning, building control authorities, fire authorities, environmental authorities, licensing and statutory undertakers on all matters connected with the building services for the Project.
- 1.4 Assist the Architect in making application for any outline planning permissions, and advise on the need to obtain planning permission, approvals under Building Acts and/or Regulations under the Statutory Requirements
- 1.5 Provide relevant information to the CDM Co-ordinator for inclusion in the pre-construction information pack for the Project
- 1.6 Prepare a report on the outline building services design, together with options and recommendations, an anticipated programme and details of operational costs
- 1.7 Provide information to and assist the Architect and the Quantity Surveyor in the preparation of outline proposals and an outline Cost Plan for the Project for the Client's preliminary approval to be agreed with the Client

## **Stage 2 - Scheme Design**

- 1 8 Having agreed the basis of the outline building services design with the Architect and the Client, develop the building services design and assist the Architect in incorporating it into a scheme design (the "**Scheme Design**") for the Project
- 1.9 Receive and incorporate into the building services design any amendments to the Brief that may be instructed by the Client and advise upon any consequential effects upon the scope, cost or timing of the Project.
- 1 10 Where permitted by the Client, make arrangements with specialist building services trade contractors and/or suppliers for the design of parts of the Project.
- 1 11 Provide relevant information to the CDM Co-ordinator for inclusion in the health and safety file for the Project.
- 1.12 Prepare a report on the building services aspects of the Scheme Design and assist the Architect with the preparation of a single coordinated scheme design report (the "**Design Report**") addressing matters of scope, cost and timing for the Client's approval.

## **Stage 3 - Detailed Design**

- 1.13 Develop the building services design beyond that contained in the Scheme Design to produce a detailed building services design for the Project
- 1.14 Provide information to the Other Consultants, suitable for use in the preparation of a detailed design, of the architectural and structural implications of the proposed building services works.
- 1.15 Liaising with and assisting the Architect, ensure that the building services design is fully integrated with the overall detailed design ("**Detailed Design**") for the Project.
- 1.16 Assist the Architect in making and negotiating all necessary applications and giving all notices required to be given for Building Act/Regulations approvals and all other statutory approvals and consents required for the Project.
- 1.17 Prepare any drawings or technical information for use of the Client or as required in connection with the approvals and consents referred to in the foregoing paragraph or for negotiations with adjoining owners, public authorities and licensing authorities.
- 1 18 Identify major items of plant and equipment and investigate its suitability and availability.
- 1 19 If approved by the Client, invite pre-tender quotations for plant and equipment.
- 1.20 Make recommendations to the Client as to the pre-ordering of plant and equipment and comply with any instructions issued by the Client.

## **Stage 4 - Procurement**

- 1.21 Provide information for the production of tender documentation.
- 1 22 Advise on appropriate procedures for tendering and assist in the preparation of tender documents for the Trade Contracts
- 1 23 With the Other Consultants identify potential trade contractors and specialists (if applicable) from whom tenders may be sought.
- 1 24 Agree with the Quantity Surveyor list(s) of tenderers to be recommended to the Client



- 1.25 Assist the Quantity Surveyor in responding to queries raised by tenderers during the tender period.
- 1.26 Assist the Quantity Surveyor in the analysis of tenders received.
- 1.27 Consider any alternatives proposed by tenderers and advise the Client as to their desirability or acceptability
- 1.28 Assist the Quantity Surveyor with any post tender negotiations.
- 1.29 Agree with the Quantity Surveyor which tender (if any) is to be recommended to the Client for acceptance.
- 1.30 In conjunction with the Architect, consult with planning, building control, fire, environmental, licensing and statutory authorities.

#### **Stage 5 - Construction**

- 1.31 In collaboration with the Other Consultants, develop the Detailed Design of the Project.
- 1.32 Provide all, necessary information required to enable the Project to proceed, including all such information as the trade contractors may require to enable him to pre-plan and construct the Project.
- 1.33 Advise the Client on the need for any special tests or inspections arising during the design or construction of the Project, monitor any such tests and report to the Client.
- 1.34 Make regular visits to the Site (at least fortnightly) and report to the Client at monthly intervals upon the progress of building services design activities and any matters that may prevent completion of the Project in accordance with the terms of the Trade Contracts. Notify the Client of any breaches or anticipated breaches of the Trade Contracts immediately.
- 1.35 Attend regular Site meetings as required
- 1.36 Closely monitor the commissioning activities of the trade contractors and verify that the results of tests are recorded are in accordance with the requirements of the Trade Contract.
- 1.37 If any commissioning tests fail to meet the requirements of the Trade Contracts, in conjunction with the Construction Manager, ensure that the trade contractors rectifies any defects at no cost to the Client and arrange for further tests to be undertaken until satisfactory results are obtained
- 1.38 Coordinate and integrate within the design any designs prepared by specialist trade contractors and/or suppliers engaged by the trade contractors.
- 1.39 Assist in preparing lists of defects and/or snagging lists.

#### **Stage 6 - Post Practical Completion**

- 1.40 Advise the Client and any third parties upon the use and maintenance of the Project and respond to any queries that may be raised.
- 1.41 Advise the Client of any issues (to the extent that such issues relate to the Services) that may become apparent (including the investigation of building failures), and which may affect the use or operation of the Project.

## **SCHEDULE 2**

### **Fees**

#### **Instalments**

<b>Milestone</b>	<b>Maximum Milestone Figure (£)</b>	<b>Cumulative Total (£)</b>
Completion of Scheme Design	£38,750	£38,750
Completion of Detailed Design	£62,000	£100,750
Completion of Construction Issue drawings	£15,500	£116,250
Practical Completion	£34,875	£151,125
End of Defects Liability Period	£155,000	£155,000
		<b>£155,000</b>

Dates for submission of VAT invoices: the first working day of each calendar month

#### **Other Consultants**

Construction Manager, Architect, CDM Co-ordinator and Quantity Surveyor :	Anthony Oliver plc t/a Oliver Associates
Structural Engineers	Lucking and Clark LLP

### SCHEDULE 3

#### Deed of Collateral Warranty

THIS DEED is made on

20●

#### BETWEEN:

- (1) **[Insert name of the Beneficiary]** whose registered office is at [●] (the "**Beneficiary**", which expression shall include its successors in title or assigns); [and]
- (2) **[Insert name of Consultant]** whose [registered office] [principal place of business] is at [●] (the "**Consultant**"); [and]
- (3) **[Insert name of Client]** whose registered office is at [●] (the "**Client**" which expression shall include its successors in title or assigns) <sup>1</sup>

#### RECITALS:

- (A) The Beneficiary has entered into an agreement with the Client in relation to the Project.
- (B) The Consultant has been appointed by the Client under an appointment (the "**Appointment**") dated **[Insert Date]** to provide professional services for the Project
- (C) [The Client has agreed to be a party to this deed to acknowledge the rights of the Consultant and the Beneficiary should the Beneficiary take over the Client's position under the Appointment.]<sup>2</sup>

#### NOW THIS DEED WITNESSES AS FOLLOWS:

##### 1. DEFINITIONS

In this deed, unless otherwise defined or a contrary intention appears, words shall have the meanings ascribed to them in the Appointment

##### 2. CONSULTANT'S WARRANTY

- 2.1 The Consultant warrants and undertakes to the Beneficiary that It has performed and will continue to perform its obligations under the Appointment in accordance with all its terms and conditions
- 2.2 In the event of breach of the warranty in clause 2.1, the Consultant's obligations shall not be released or diminished by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Beneficiary nor by any act or omission of any party carrying out such enquiry.
- 2.3 The Consultant shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (save in relation to set-off and counterclaim) as it would be entitled to raise if the Beneficiary had been named as joint client under the Appointment
- 2.4 The Consultant's liability to the Beneficiary shall be limited to the proportion of the Beneficiary's losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same, on the basis that the Other Consultants referred to in schedule 2 of the Appointment have provided contractual undertakings to the Beneficiary as regards the performance of their services in

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<sup>1</sup> Only use where the Beneficiary has step-in rights under clause 11 (ie usually where the Beneficiary is a Funder)

<sup>2</sup> Only use where the Beneficiary shall have step-in rights under clause 11



connection with the Project on terms no less onerous than this clause 2 and be deemed to have paid to the Beneficiary such proportion of the Beneficiary's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Beneficiary's losses

**3 COPYRIGHT AND CONFIDENTIALITY**

3.1 The copyright in the Material shall remain vested in the Consultant but the Consultant hereby grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to copy, use and reproduce the same for all purposes relating to the Project including, but without limitation, the design, construction, completion, reconstruction, modification, extension, repair, reinstatement, refurbishment, redevelopment, maintenance, use, letting, promotion, advertisement of the Project, and/or the promotion or advertisement of the Beneficiary. The licence shall include the right to grant sub-licences on the same terms as this licence and shall be assignable. The Consultant irrevocably waives any moral rights in the Material and in the Project

3.2 Save as may be necessary for the proper performance of the Services under or in connection with the Appointment and as stated in the Appointment, the Consultant may not during the Appointment or following its termination disclose to any third party or make use of any information of any kind whatsoever relating to the Project or the Beneficiary.

3.3 The rights set out in this clause 3 shall survive the termination of the Appointment for any reason

**4. PROFESSIONAL INDEMNITY INSURANCE**

4.1 The Consultant shall maintain professional indemnity insurance in the amount stated and in accordance with the Appointment. Whenever requested to do so by the Beneficiary, the Consultant shall produce documentary evidence that the insurance cover is being maintained and that premiums have been paid. The Consultant shall immediately notify the Beneficiary in writing if it ceases to hold such insurance.

**5. INSTRUCTIONS**

[Save as provided in clause 11 the]<sup>3</sup> [The] Beneficiary has no authority to issue any direction or instruction to the Consultant in relation to the Consultant's duties under the Appointment

**6 ASSIGNMENT**

This Deed may be assigned twice by the Beneficiary without the consent of the Consultant being required. Any further assignment shall be subject to the prior written consent of the Consultant such consent not to be unreasonably withheld or delayed.

**7 LIMITATION**

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 completion of the Services.

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

Subject to the provisions of clause 6, nothing in this deed is intended to confer on any person any right to enforce any of the provisions of this deed whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

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<sup>3</sup> Section in square brackets only to be included where the Beneficiary is to have step-in rights



**9. GOVERNING LAW AND DISPUTES**

The provisions of this deed shall be governed by and construed in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

**10. MISCELLANEOUS**

10.1 If the Consultant is a partnership references in this deed to the 'Consultant' shall 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 shall be joint and several.

10.2 Any notice provided for in accordance with this deed shall be deemed to be duly given if it is delivered by hand at, or sent by registered post or facsimile transmission to the relevant party at, the address of that party shown in this deed or such other address as that party may by notice in writing nominate for the purpose of service, and if sent by registered post shall be deemed to have been received not later than 48 hours after the same shall have been posted

**11. [STEP-IN]**

11.1 The Consultant acknowledges that the Beneficiary has no liability to the Consultant in respect of fees and expenses under the Appointment unless and until the Beneficiary has given notice under clause 11.2 or 11.3 of this deed

11.2 The Consultant agrees that, if so required by notice in writing given by the Beneficiary (copied to the Client and subject to clause 11.4 of this deed), it will accept the instructions of the Beneficiary or its appointee to the exclusion of the Client in respect of the carrying on and completion of its obligations under the Appointment. The Client acknowledges that the Beneficiary shall be entitled to rely on such a notice as conclusive evidence for the purposes of this Appointment that the Beneficiary was entitled to give such a notice.

11.3 The Consultant further agrees that it will not without first giving to the Beneficiary not less than 21 days' notice in writing exercise any right it may have to terminate the Appointment or to treat the same as having been repudiated by the Client or to discontinue the performance of any services to be performed by the Consultant pursuant thereto. Prior to the expiry of such notice period the Beneficiary may give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Beneficiary or its appointee to the exclusion of the Client in respect of the carrying on and completion of the Project upon the terms and conditions of the Appointment.

11.4 Subject to the conditions in clause 11.5 of this deed, upon the issue of any notice by the Beneficiary under clauses 11.2 or 11.3

- (a) the Appointment shall continue in full force and effect;
- (b) the Consultant shall be liable to the Beneficiary or its appointee under the Appointment in lieu of its liability to the Client; and
- (c) the Client shall have no further liability to the Consultant or obligations under the Appointment with respect to any matters or circumstances arising out of or in connection with the Appointment after the date of such notice.

11.5 It shall be a condition to the operation of any notice given under clause 11.2 or 11.3 that:

- (a) the Beneficiary or its appointee accepts liability for payment of any fees and expenses payable to the Consultant under the Appointment and for performance of the Client's obligations, and

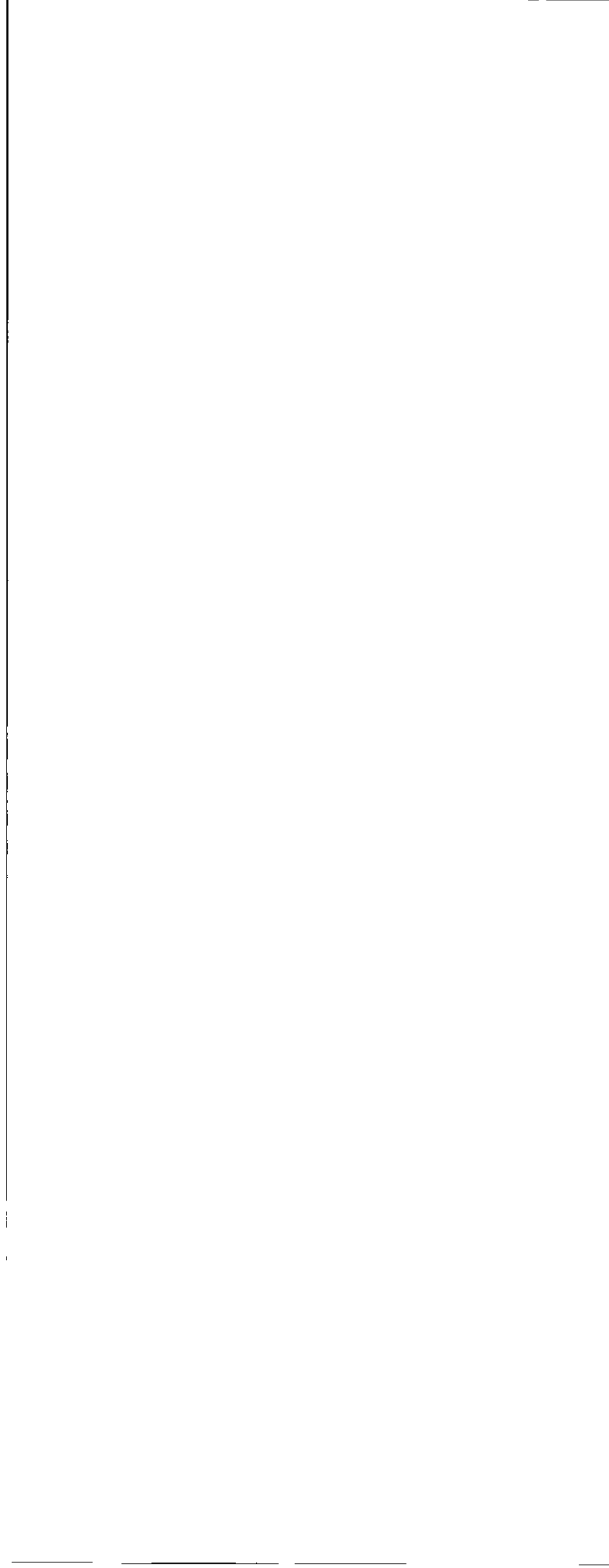
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<sup>4</sup> Clause 11 is only to be used where the Beneficiary is to have step-in rights

- (b) If such notice requires the Consultant to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Beneficiary's appointee.

11.6 The Client has agreed to be a party to this deed for the purpose of acknowledging that the Consultant shall not be in breach of the Appointment by complying with the obligations imposed on it by clauses 11.2 and 11.3.]

**IN WITNESS** whereof this deed has been executed and delivered on the date first before written.



Dated

201[ ]

(1) [COVENANTOR]

- and -

(2) ARBUTHNOT LATHAM & CO LIMITED

Draft 2 30/09/13

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**STEP-IN DEED RELATING TO DEVELOPMENT  
AGREEMENT DATED [ ] 2013 MADE BETWEEN (1)  
GMS BRICKS S.À.R.L. AND (2) ARBUTHNOT  
LATHAM & CO LIMITED**

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Mishcon de Reya  
Summit House  
12 Red Lion Square  
London WC1R 4QD  
Tel. 020 7440 7000  
Fax 020 7404 5982  
Ref IP/ECHP/41869.1  
E-mail edward.hughes-  
power@mishcon.com

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**THIS DEED** dated  
(1) the [Covenantor] and (2) the Developer

201[ ] is made between

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this deed, the following definitions apply

**[Covenantor]** [name] registered in [England and Wales] with company registration number [registration number] whose registered office is at [registered office address] of [address]

**Developer** **Arbuthnot Latham & Co Limited** registered in England and Wales with company registration number 00819519 whose registered office is at Arbuthnot House 20 Ropemaker Street London EC2Y 9AR

**Property** 7-21 (odd) Wilson Street, London, EC2M 2SN

**Development Agreement** the development agreement relating to the Property dated [ ] made between (1) GMS Bricks S à r l and (2) the Developer

1.2 The headings are for ease of reference only and do not affect the interpretation of this deed

1.3 A reference to a **party** or the **parties** is to a party or the parties (as the case may be) to this deed

1.4 Unless otherwise specified any gender includes the other genders, referred to the singular include the plural and the plural includes the singular

1.5 References to **persons** include firms, corporations and unincorporated associations and bodies

1.6 Any covenant by a party which includes two or more persons can be entered against those persons jointly or separately

1.7 The parties to this deed do not intend any of its terms to be enforceable by a third party (as defined in section 1 of the Contracts (Rights of Third Parties) Act 1999.

1.8 Unless the context otherwise requires, capitalised terms used in this deed shall have the same meanings as in the Development Agreement.

**2 BACKGROUND**

2.1 Pursuant to the Development Agreement, the Developer and the Owner have agreed that the Developer shall undertake the Cat A Works to the Property and that the Developer may at its sole discretion undertake the Cat B Works

2.2 The Owner has agreed under the Development Agreement to pay to the Developer the Capital Contribution in connection with undertaking the Cat A Works, up to but



not exceeding the Capital Contribution, as provided for in the Development Agreement

- 2 3 The Owner is entitled to assign by way of security the benefit of the Development Agreement to a Lender pursuant to clause 20.2 of the Development Agreement
- 2 4 [The Covenantor is a Lender within the meaning of that term in the Development Agreement] [OR] [The Covenantor was appointed by *[insert Lender details]* (a Lender within the meaning of that term in the Development Agreement) on *[insert appointment details]* as a *[receiver etc]* over the Property]
- 2 5 Pursuant to clause 20.4 of the Development Agreement, the Covenantor has agreed to enter into this deed to covenant with the Developer to carry out as from the date of this deed the obligations of the Owner remaining to be performed under the Development Agreement

### 3 COVENANTOR'S COVENANTS

The Covenantor covenants with the Developer to carry out as from the date of this deed the obligations of the Owner remaining to be performed under the Development Agreement and to remedy any outstanding breaches of the obligations on the part of the Owner contained in the Development Agreement (but not further or otherwise) as if the Development Agreement had been entered into between the Covenantor and the Developer

IN WITNESS whereof the Covenantor has executed and delivered this document as a deed on the date stated at the beginning of it

EXECUTED as a deed by

[NAME OF COVENANTOR]

acting by a director, in the presence of

Signature

Director

Print name

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

Name (in BLOCK CAPITALS) \_\_\_\_\_

Address \_\_\_\_\_


\_\_\_\_\_

\_\_\_\_\_

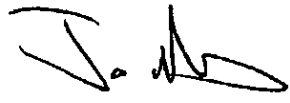
\_\_\_\_\_

Signed as a deed by **ARBUTHNOT LATHAM & CO** )  
**LIMITED** acting by [a director and its secretary] [two )  
directors]:

Director

  
ANDREW SALMON  
DIRECTOR.

[Secretary] [Director]

  
JAMES LOBB DIRECTOR.

