

DATED 14th August 2025

METROPLITAN HOUSING TRUST LIMITED

and

Silver DCC Limited (t/a "Silver")

DEED OF PROFESSIONAL APPOINTMENT

Employer's Agent, Principal Designer CDM and Site Inspector
relating to a project at Lemsford Road, St Albans, AL10 0FG



30 Finsbury Circus
London,
EC2M 7DT

DATED _____

PARTIES

- | | | |
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| 1 | Client | METROPOLITAN HOUSING TRUST LIMITED (a registered society as defined in the Co-operative and Community Benefit Societies Act 2014 with registration number IPR 16337R) whose registered office is at the Grange, 100 High Street, Southgate N14 6PW |
| 2 | Consultant | Silver DCC Limited (company no 08952016) whose registered office is at 80 Cannon Street, London, EC4N 6HL |

RECITALS

- 1 The Client intends to carry out the Project.
- 2 The Client wishes to appoint the Consultant as Employer's Agent, Principal Designer (CDM) and Site Inspector in connection with the Project.
- 3 The Client has relied and will continue to rely upon the Consultant's reasonable skill and judgement in respect of all matters covered by this deed.

OPERATIVE PROVISIONS

1 Definition and interpretation

- 1.1 Unless the contrary intention appears, the following definitions apply:

<i>Brief</i>	the document set out at schedule 3 outlining the Client's requirements for the Project, as updated by the Client from time to time and notified to the Consultant;
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<i>Building Contract</i>	the contract between the Client and the Contractor for the design and construction of the Project, including any subsequent agreement varying or supplementing it;
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<i>Building Regulations</i>	the Building Regulations 2010 as amended or updated from time to time;
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Building Safety Laws

the Regulatory Reform (Fire Safety) Order 2005;

the Fire Safety Act 2021;

the Building Regulations;

the Building Safety Act 2022;

the Defective Premises Act 1972;

the Building Act 1984;

the HRB Procedures Regulations; and

as the same may be amended or updated from time to time, and any statutory instrument, regulation, rule, order, code of practice or guideline made under the Regulatory Reform (Fire Safety) Order 2005, the Fire Safety Act 2021, the Building Regulations, the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984, and the HRB Procedures Regulations which affects the Services or performance of any obligations under this Agreement; and any building safety laws and regulations now or from time to time in force which affects the Services or performance of any obligations under this Agreement;

Building Safety Regulator

means the Health and Safety Executive or such other body or individual as may be appointed from time to time to fulfil the role of building safety regulator for the purposes of the Building Safety Act 2022, which term shall include any registered building inspectors and any other specialists appointed to assist the Building Safety Regulator in the carrying out of its regulatory duties in relation to the Project;

CDM Regulations

the Construction (Design and Management) Regulations 2015;

Client

includes, except for the purposes of clause 6, any person to whom the benefit of this deed and any

rights under it have been validly assigned under clause 11.4;

Confidential Information

all information (written or oral) concerning the business and affairs of either party or the Project which is obtained or received as a result of the discussions leading up to, the entering into or the performance of this deed;

Consents

all permissions, consents, approvals, certificates, permits, licences, and authorisations of a relevant authority or regulatory body required for the Project or for any of the Consultant's obligations;

Contractor

the contractor appointed or to be appointed by the Client to carry out and complete the design and construction of the Project, including (where the context so admits) such contractor's employees, agents and Sub-Contractors;

Controller

has the meaning given in the Data Protection Legislation;

Data Breach

any event that results, or may result, in lack of availability of key systems, unauthorised access to Personal Data held by the Consultant under this Agreement, and/or any theft, accidental or unlawful dissemination, actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach in accordance with Data Protection Legislation;

Data Processing Operations

the processing of Personal Data relating to employees and officers of the Client, its service providers, service users and/or other third parties, as necessary for the provision of the Services and for such periods as are required for compliance with applicable Statutory Requirements, together with such ancillary processing of Personal Data relating to employees and officers of the Client, its service providers, service users and/or other third parties as

is necessary for the performance of the Consultant's obligations under this Agreement, or the administration of this Agreement, and as further set out at clause 21.16;

Data Protection Legislation all applicable data protection and privacy legislation in force from time to time in the United Kingdom including the (i) Data Protection Act 2018 (ii) the General Data Protection Regulations ((EU) 2016/679) (iii) Law Enforcement Directive (Directive (EU) 2016/680); (iv) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended and any applicable national implementing laws as amended from time to time and all applicable Statutory Requirements, guidance, codes of practice issued relating to data protection or issued by a supervisory authority in relation to the processing of Personal Data and privacy;

Data Protection Impact Statement an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Data Protection Officer has the meaning given in the Data Protection Legislation;

Data Subject has the meaning given in the Data Protection Legislation;

Data Subject Access Request a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

Dutyholder Skill Sets the competence and general duties referred to in Regulations 11E, 11F, 11J, and 11K of Part 2A of the Building Regulations as inserted by the Building Regulations etc. (Amendment)(England) Regulations

		2023 SI 2023/911, Regulation 6, as the same may be amended or updated from time to time;
<i>Fee</i>		the lump sum stated in schedule 1 or any adjusted sum agreed under clause 7.2 payable to the Consultant for the proper performance of the Services;
<i>Fund</i>		any person (acting for itself and, where it leads for a syndicate of persons, as agent and trustee for them) who agrees to provide finance to the Client in connection with the carrying out of the Project or any part of it;
<i>Group Company</i>		means any of the Client or its subsidiary or subsidiaries (of any tier) or holding company or companies (of any tier) or any subsidiary (of any tier) of any such holding company or companies and "subsidiary" shall bear the meanings given to it in section 1159 Companies Act 2006 but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a), and a group company shall include any entity which is a registered society as defined in the Co-operative and Community Benefit Societies Act 2014;
<i>HRB Regulations</i>	<i>Procedures</i>	the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 SI 2023/909, as the same may be amended or updated from time to time;
<i>Insolvent</i>		means if the Consultant suffers any of the events set out in this definition as follows: (a) becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company for the voluntary arrangements for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986; and/or

Non-Design Appointment

(b) has an application made under the Insolvency Act 1986 in respect of its company to the Court for the appointment of an administrative receiver or administrator; and/or

(c) has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed; and/or

(d) has a provisional liquidator receiver or manager of its business or undertaking duly appointed; and/or

(e) has an administrative receiver or administrator as defined in the Insolvency Act 1986 appointed; and/or

(f) has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge; and/or

(g) is in circumstances which entitle the court or a creditor to appoint or have appointed a receiver a manager or administrative receiver or administrator or which entitle the court to make a winding-up order; and/or

(h) suffers any event analogous to the events set out in (a) to (g) (inclusive) in this definition, in any jurisdiction in which it is incorporated or resident.

Key Person

the person so named in schedule 1 or any replacement appointed under clause 5.3 or clause 5.8 or clause 5.9;

Lead Designer

the person so named in schedule 1 or such other person notified by the Client;

Personal Data

has the meaning given in the Data Protection Legislation;

<i>Personal Data Breach</i>	has the meaning given in the relevant Data Protection Legislation;
<i>Practical Completion</i>	practical completion of the Project as certified pursuant to the terms of the Building Contract;
<i>Principal Designer</i>	the person(s) so named in schedule 1 or another person appointed by the Client to perform the functions of principal designer under the CDM Regulations for the Project, and the functions of the principal designer under the Building Regulations for the Project;
<i>Processor</i>	has the meaning given in the Data Protection Legislation and Process, Processed and Processing shall be construed accordingly;
<i>Programme</i>	the document set out at schedule 4 identifying the estimated time required for executing and completing each element of the Project and the Services, as may be updated by the Client from time to time in liaison with the Consultant, the Project Team and the Contractor;
<i>Project</i>	the proposed development of the Site, more particularly described in the Brief;
<i>Project Manager</i>	the person so named in schedule 1 or another person appointed by the Client to act in its place;
<i>Project Team</i>	collectively those consultants, sub-contractors or other parties listed in schedule 1 and any additional consultants appointed by the Client in connection with the Project, or other parties as may be appointed by others on the Project, and notified by the Client or Project Manager to the Consultant;
<i>Proprietary Material</i>	all drawings, details, plans, specifications, schedules, reports, calculations, software and other work (and any designs, ideas and concepts contained in them)

prepared, conceived or developed by or on behalf of the Consultant in the course of or as a result of performing the Services whether in existence or to be made or produced and including all amendments and additions to them including, but not limited to, all drawings, details, plans, models, specifications, schedules, reports, calculations and 2D and 3D BIM (Building Information Modelling) information produced at any time during the design process to completion of the design;

Protective Measures

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and the Consultant regularly assessing and evaluating the effectiveness of such measures adopted by it;

Purchaser

any purchaser of the Site or any part of it which, for the avoidance of any doubt, shall not include a residential purchaser of an individual unit;

Scheme

the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011;

Senior Person

the person so named in schedule 1 or any replacement appointed under clause 5.3 or clause 5.8 or clause 5.9;

Services

the services to be performed by the Consultant in connection with the Project as set out in schedule 2, any additional services instructed by the Client under clause 7.3, and any services reasonably incidental to such services

<i>Site</i>	the site defined and described in schedule 1, including any addition or omission to it as notified by the Client to the Consultant;
<i>Statutory Requirements</i>	any: (a) Act of Parliament; (b) subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978 (including the Building Regulations); (c) applicable European Community Law or European Directives to the extent having effect in English law; (d) regulation or bye-laws of any local authority, statutory undertaker or public or private utility or undertaking that are applicable to the Project; (e) other relevant regulations, consents, permissions, codes of conduct, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Consultant is bound to comply; and (f) Building Safety Laws;
<i>Sub-Contractor</i>	a sub-contractor or supplier (of any tier) employed or engaged on or in connection with the Project or any part of it;
<i>Sub-processor</i>	any third party appointed to process Personal Data on behalf of the Consultant related to this Agreement;
<i>Tenant</i>	any person who intends to enter or has entered into a lease or an agreement for the grant of a leasehold interest in the premises standing or to be constructed on the Site or any part of it which, for the avoidance of any doubt, shall not include a residential leaseholder of an individual unit.

Non-Design Appointment

- 1.2 Any reference to **party** shall mean either the Client or the Consultant as the context requires and any reference to **parties** shall mean the Client and the Consultant collectively.
- 1.3 An obligation on a party to this deed to do an act includes an obligation to procure that it is done.
- 1.4 If a party is placed under a restriction in this deed, the restriction includes an obligation on the party not to permit the infringement of the restriction by any person.
- 1.5 References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses, provided this interpretative clause is not to be construed as a waiver of any common law rights of the parties.
- 1.6 Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.
- 1.7 Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be constructed interchangeably in that manner.
- 1.8 The clause and paragraph headings in this deed are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.9 Unless the contrary intention appears, references:
- 1.9.1 to numbered clauses and schedules are references to the relevant clause in, or schedule to, this deed; and
- 1.9.2 to a numbered paragraph in any schedule are references to the relevant paragraph in that schedule.
- 1.10 References in this deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments, regulations and codes of practice made pursuant to it.
- 1.11 The word "including" means "...including but not limited to...".
- 1.12 Save where otherwise provided for in this deed, any reference to this deed or to any other document shall include any permitted variation, amendment or supplement to, or substitution, novation or assignment of, such document.

Non-Design Appointment

- 1.13 References to specific standards, codes of practice or other documents or instruments shall be construed as including all amendments, supplements and substitutes thereto.
- 1.14 References to the parties include their respective successors in title, and permitted assignees.
- 1.15 If the Consultant is two or more persons, the expression "the Consultant" includes the plural number and obligations in this deed expressed or implied to be made with or by the Consultant are to be treated as made with or by such persons jointly and severally.

2 **Consultant's general obligations**

- 2.1 The Client appoints the Consultant and the Consultant agrees to perform the Services and comply with its obligations fully and faithfully in accordance with and subject to the terms of this deed. At the appropriate times the Consultant shall contact the Client in writing in order to recommend moving to the first and subsequent stages of the Services as defined in schedule 2 and is to obtain written approval from the Client prior to proceeding to such stages. Where the Consultant proceeds without the Client's written approval, this shall be at the Consultant's risk and cost. Where the Client approves further stages of the Services, the Fee shall not be subject to adjustment where the Fee for such further stages is included at schedule 1. If the Client does not provide written approval to proceed with any further stages of the Services, it shall be entitled to issue a notice of termination pursuant to clause 13.1. The Consultant shall not be entitled to any loss of profit, loss of contracts or any other loss, cost or expense if the Client does not proceed with further stages of the Services, however shall be entitled to direct demobilisation costs subject to the terms of clause 15.2.
- 2.2 The Consultant shall strictly comply with all reasonable instructions and directions given to it by the Client on any matter connected with the Project, save that if in the performance of the Services the Consultant has a discretion exercisable as between the Client and/or the Contractor or any other contractor, the Consultant shall exercise its discretion fairly.
- 2.3 The Consultant warrants to the Client that it has exercised and will continue to exercise, in the performance of the Services, all the reasonable skill, care and diligence to be expected of a properly qualified and competent Employer's Agent, Principal Designer (CDM) and Site Inspector experienced in the provision of like services to the Services in respect of projects of a similar type, size, scope, value, nature and complexity to the Project.

2.4 The Consultant warrants to the Client that it has exercised and shall continue to exercise the reasonable skill, care and diligence referred to in clause 2.3 to see that it has not specified or authorised for use, will not specify or authorise for use and that it has not and will not knowingly permit the use of in the Project:

2.4.1 any of the materials identified as potentially hazardous in the British Property Federation/British Council for Offices report *Good practice in the selection of construction materials* (current edition);

2.4.2 any other material which (or the use of which) does not comply with relevant British Standard specifications and codes of practice and good building practice current at the time of specification or authorisation or is otherwise generally known within the Consultant's profession at the time of specification or authorisation to be deleterious or harmful to health or to the durability of the Project in the circumstances in which it is proposed to be used;

2.4.3 any goods, products or materials that do not comply with the requirements of the Building (Amendment) Regulations 2018 or any other Statutory Requirements;

and the Consultant shall notify the Client promptly if he becomes aware of any proposed or actual use in the Project of any goods, products or which falls within clause 2.4.1 and/or 2.4.2 and/or 2.4.3 or if any British Standard or code of practice relevant or applicable to the Project or any part of it or any Statutory Requirements in relation to the specification of goods, products or materials is altered or amended following specification or authorisation but before Practical Completion.

2.5 Subject to exercising the duty of care at clause 2.3, the Consultant shall comply with the requirements of the Brief. The Consultant shall notify the Client as soon as reasonably practicable if he considers that any changes to the Brief are necessary or desirable in the interests of the Project.

2.6 The Consultant warrants to the Client that:

2.6.1 the Consultant will comply with the Statutory Requirements and the Consents in performing the Services; and

2.6.2 no act, omission or default of the Consultant in relation to the Services shall constitute, cause or contribute to a breach by the Client of its obligations under the Statutory Requirements or the Consents.

Non-Design Appointment

- 2.7 The Consultant shall co-operate with the Contractor and the Project Team for the purpose of the CDM Regulations and the Building Regulations and shall provide them with such information and assistance as they may reasonably require, but the Consultant shall not have authority to issue any instruction on the Client's behalf unless confirmed in writing by the Client.
- 2.8 The Consultant shall keep the Client and the Project Manager fully and properly informed on all aspects of the progress and performance of the Services and shall provide the Client and the Project Manager with all such other information in connection with the Project as the Client and/or the Project Manager may reasonably require.
- 2.9 The Consultant acknowledges the authority and responsibility of the Project Manager for the overall co-ordination and management of the Project and shall fully and properly co-operate and report to the Project Manager on all aspects of the Project relating to the Services.
- 2.10 The Consultant acknowledges the role of the consultant named in Schedule 1 as the Lead Designer in connection with the Project and shall fully co-operate with the Lead Designer and liaise directly as necessary with the other members of the Project Team, the Contractor and the Sub-Contractors to the intent that:
- 2.10.1 the design of the Project is fully integrated;
 - 2.10.2 the Project is able to proceed with all reasonable speed and economy in accordance with the Client's requirements and the Programme; and
 - 2.10.3 the cost of executing the Project will not exceed the financial limit which shall be concluded at the project tender stage.
- 2.11 The Consultant acknowledges the role of the Principal Designer and shall at all times provide such assistance to the Principal Designer as reasonably requested either by the Client or the Principal Designer.
- 2.12 [The Consultant shall have authority to act on behalf of the Client to the extent required for the proper performance of the Services, but the Consultant shall not without the prior written consent of the Client:
- 2.12.1 instruct or sanction a variation to the approved design of the Project or a substitution of goods, products or materials;

Non-Design Appointment

- 2.12.2 issue any instruction, notice, statement, consent or approval which will or is likely to delay completion of the Project or increase the cost of any element of the Project;
 - 2.12.3 do anything which will have the effect of compromising or waiving the Client's rights against the Contractor or any of the Project Team; or
 - 2.12.4 take any steps to amend or terminate the Building Contract or any of the appointments of the Project Team or to determine the employment of the Contractor or any of the Project Team under them.
- 2.13 The Consultant shall procure that all aspects of the Services are the subject of, and are conducted in accordance with a quality assurance system complying with ISO 9001 (or any updated standards where required by the Client). It is acknowledged that the Client may carry out periodic audits of such quality assurance system and the Consultant shall co-operate with the Client including providing all information and documentation which is reasonably required in connection with such audit.
- 2.14 The liability of the Consultant under this deed shall not be released, diminished or in any other way affected by:
 - 2.14.1 the appointment by the Client of any person to survey the Site or to monitor the carrying out of the Services and/or the Project or to inspect any documents relating to the Services and/or the Project or the failure to appoint such a person;
 - 2.14.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Client; or
 - 2.14.3 any other independent inquiry into any relevant matter which the Client may make or fail to make.
- 2.15 The Consultant shall hold electronic information in respect of the Client and the Project in a secure manner and in line with the Client's minimum requirements (as may be updated) and notified to the Consultant by the Client, and in accordance with all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, and sanctions, applicable to either party, relating to security of network and information systems and security breach and incident reporting requirements, including Data Protection Legislation, the Cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

- 2.16 The Consultant understands that the Project involves works to a residential development and shall, as an essential part of the Project, carry out the Services with reasonable skill and care so that all relevant fire safety standards, regulations and laws are adhered to such that any goods, products or materials specified or authorised by the Consultant (to the extent required in the course of undertaking the Services), the Services carried out by the Consultant and any reporting to the Client shall meet or exceed all fire safety standards required by Statutory Requirements, including any reasonably foreseeable fire safety standards that are to be implemented during the course of the Services. The parties further agree that the Client may require reasonable additional information from the Consultant to ascertain whether the Consultant is complying with this clause during the Project.
- 2.17 The Consultant shall co-operate, share information, and coordinate the Services with and seek approvals from the Building Safety Regulator as required by the Client and this requirement shall not entitle the Consultant to claim any adjustment to the Fee.
- 2.18 The Consultant shall co-operate and provide such other documents and information in relation to the Services (including in relation to the planning, design, construction and/or completion of the Project) and/or the Consultant as may be reasonably required by the Client to satisfy any Statutory Requirements, such documents and information to be provided within a reasonable time after a written request for the same by the Client (having regard to the nature of the request).
- 2.19 The Consultant warrants to the Client that it has not done, or permitted to be done, or will do or permit to be done, anything which is in breach, or is likely to have been in breach of any Building Safety Laws, or will result, or is likely to result, in the Client being in breach of any Building Safety Laws, and the Consultant shall comply, and shall procure compliance by each of its personnel and sub-consultants with the Building Safety Laws. The Consultant shall indemnify the Client in respect of any loss and/or damage which the Client incurs or suffers as a result of any breach by the Consultant of this clause or by any act, omission or default of the Consultant or any of its sub-consultants.

3 Third party obligations

- 3.1 The Consultant shall perform the duties ascribed to it under, and undertakes to the Client that no act, omission or default of the Consultant in relation to the Services shall constitute, cause or contribute to a breach by the Client of its obligations under, any agreement connected with the Site and/or the Project to which the Client is party and of which copies (or relevant extracts) have previously been provided by the Client to the Consultant.

- 3.2 The Consultant shall, as required by the Client, liaise and co-operate with the Fund, any Purchaser, any Tenant and any other person who has or may acquire an interest in the whole or any part of the Site and/or the Project (and their respective representatives) and provide them with all such information in connection with the Project as they may reasonably require. The Consultant shall notify the Client of any matter arising in the course of or relating to the Services which in its reasonable professional opinion may materially affect the respective interests of any such persons in the Site or the Project.
- 3.3 The Consultant shall, within 14 days of the Client's request to do so, execute deeds of warranty in favour of the Fund, any Purchaser, any Tenant or any Group Company and any other third party who has or may acquire an interest in the Project and/or the Site in the form set out in Schedule 8 or in such similar or varied terms as the parties may agree and shall deliver them to the Client. If the Consultant fails to deliver any deed of warranty validly requested under this clause within 14 days of the Client's request, the Client shall not be obliged to make any further payment to the Consultant under this deed until such deed of warranty is delivered to the Client.
- 3.4 Any Group Company may in its own right enforce any term of this deed. Otherwise, unless the right of enforcement is expressly granted, it is not intended that any third party should have the right to enforce any term of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.
- 3.5 The parties may rescind or vary this deed without the consent of any third party to whom an express right to enforce any of its terms has been granted.

4 The Client's obligations

- 4.1 The Client shall, if requested by the Consultant, supply to the Consultant in a reasonable time (having regard to the time and nature of the request) any necessary and relevant data and information in the possession of the Client, or which may only be obtained by the Client, and the Client shall provide or shall request the Project Team and the Contractor to provide the Consultant such assistance as the Consultant may reasonably require in the performance of the Services, provided this shall not limit the Consultant's obligation to liaise directly with the Project Team, the Contractor and Sub-Contractors in order to procure the production of information properly to be supplied by them and provided that the Client shall not be liable for any inaccuracy or discrepancy in data or information supplied to the Consultant under this clause.

- 4.2 The Client shall, if requested by the Consultant, in a reasonable time (having regard to the time and nature of the request) give its comments, decisions and instructions on any matter properly referred to the Client by the Consultant.

5 Consultant's team

- 5.1 The Senior Person has full authority to act on behalf of the Consultant for all purposes in connection with this deed and shall be available at such times and shall devote such time and attention as may be reasonably necessary to maintain the proper performance by the Consultant of the Services.
- 5.2 The services of the Key Person shall be available at such times and for as long as may be necessary, and the Key Person shall devote such time and attention as may be reasonably necessary to maintain the proper performance by the Consultant of the Services.
- 5.3 The Consultant shall not replace the Senior Person or the Key Person without the prior approval of the Client (such approval not to be unreasonably withheld or delayed) and shall only replace either of them with a person approved by the Client (such approval not to be unreasonably withheld or delayed). Save to the extent that it is not reasonably practicable due to an emergency situation, the Consultant shall see that there is an appropriate handover period between the person being replaced and their replacement.
- 5.4 The Consultant shall allocate to the Project sufficient and appropriate numbers of appropriately qualified personnel as may be necessary, who are suitably skilled and experienced to perform the tasks assigned to them, to maintain at all times the proper, effective and efficient performance of the Services.
- 5.5 The Consultant shall maintain that the persons undertaking Services and/or overseeing and supervising the delivery of Services maintain professional memberships and certifications as required by the Client and shall provide evidence to the Client upon request.
- 5.6 The Consultant warrants that it has and shall maintain that its organisation and the individuals and any sub-consultants it employs to carry out the Services have the necessary and appropriate organisational, technical and behavioural competence and capabilities, including the Dutyholder Skill Sets, to perform the Services for the Project, and as required by Statutory Requirements. Such judgement shall be made by reference to law/regulation and relevant industry standards and best practice on competence, and as required by Statutory Requirements, including the Dutyholder Skill Sets and Building Safety Laws. The Consultant shall provide evidence of such

competence to the Client upon request. To the extent that such information ceases to be an accurate and complete representation of such competence, the Consultant will immediately notify the Client of any material changes.

- 5.7 By accepting this appointment, the Consultant warrants to the Client that it has satisfied itself that it has the necessary competence to undertake the Services for the Project and in accordance with Statutory Requirements.
- 5.8 The Client may, after consultation with the Consultant, request the removal of any person engaged in the performance of the Services if, in the Client's reasonable opinion, such person's performance or conduct is or has been unsatisfactory and the Consultant shall promptly replace such person with a person approved by the Client (such approval not to be unreasonably withheld or delayed).
- 5.9 The Consultant shall, if required by the Client and at no cost to the Client, replace or procure the replacement within a reasonable period of any person who does not have the skills, knowledge, experience, behaviours and capabilities or Dutyholder Skill Sets required to properly and competently perform their respective duties and obligations in relation to the Services and in accordance with Statutory Requirements.

6 Remuneration

- 6.1 The Client shall pay the Consultant the Fee as full remuneration for the satisfactory performance of the Services. The Fee shall be calculated and paid in instalments in accordance with the provisions of schedule 1 and in accordance with the provisions of Clause 6, provided that the Client shall be entitled to make a fair and reasonable adjustment to the amount and/or timing of such instalments to reflect any significant delay to the Project or the performance of the Services.
- 6.2 The Consultant shall submit to the Client an invoice for each instalment of the Fee, together with any supporting documents that are reasonably necessary to check the invoice, upon the dates or upon reaching the milestones set out in schedule 1 or (if no dates or milestones are specified) not more frequently than monthly. The invoice and supporting documents shall specify the sum that the Consultant considers will become due on the payment due date in respect of the instalment of the Fee, and the basis on which that sum is calculated. Invoices shall comply with Regulations 13 and 14 of the Value Added Tax Regulations 1995 (SI 2518) and shall be supported by all such documents vouchers and receipts as may be necessary for computing and verifying them.

Non-Design Appointment

- 6.3 The payment due date for each instalment of the Fee shall be 7 days after the later of (i) the date the Client receives each invoice, or (ii) the dates specified in schedule 1, or (iii) the completion of the stages/milestones specified in schedule 1.
- 6.4 No later than five days after payment becomes due, the Client shall notify the Consultant of the sum that the Client considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated.
- 6.5 The final date for payment shall be 28 days after the date on which payment becomes due.
- 6.6 Subject to clause 6.8 and unless the Client has served a notice under clause 6.7, it shall pay the Consultant the sum referred to in the Client's notice under clause 6.4 (or, if the Client has not served notice under clause 6.4, the sum referred to in the invoice referred to in clause 6.2) (the **notified sum**) on or before the final date for payment of each invoice.
- 6.7 Not less than five days before the final date for payment (in this clause 6, the **prescribed period**), the Client may give the Consultant notice that it intends to pay less than the notified sum (in this clause 6, a **pay less notice**). Any pay less notice shall specify:
- (a) the sum that the payer considers to be due on the date the notice is served; and
 - (b) the basis on which that sum is calculated.
- If the Client gives a pay less notice then the notified sum to be paid on or before the final date for payment shall be the sum stated in the pay less notice.
- 6.8 Notwithstanding clause 6.6 and clause 6.7, if the Consultant becomes Insolvent after the prescribed period, the Client shall not be required to pay the Consultant the notified sum on or before the final date for payment.
- 6.9 If:
- (a) subject to clause 6.8, the Client fails to pay in full the notified sum to the Consultant under this agreement by the final date for payment under clause 6; and
 - (b) the Client has not given a pay less notice complying with clause 6,

the Consultant may suspend the performance of any or all of its Services and other obligations under this agreement by giving not less than seven days' notice to the

Client of its intention to do so and stating the ground or grounds on which it intends to suspend performance. The right to suspend performance shall cease when the client makes payment in full of the amount due and any period during which performance is validly suspended under this clause shall be disregarded in computing the time taken by the Consultant to complete any of the Services affected by the suspension.

- 6.10 Any amount due under this deed which is not paid by the final date for payment under clause 6.5 shall carry interest at the rate of four (4) percent above the base rate from time to time of the Bank of England for the period between the final date for payment and the date upon which payment is made. The parties agree that such rate is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

7 Additions to the Fee and Additional Services

- 7.1 Subject to clauses 7.3 and 15.2, the Fee shall be deemed to be inclusive payment for the Services and all other matters relating to this deed and for all costs, disbursements, expenses and overheads incurred by the Consultant in connection with the Project.
- 7.2 If the nature and scope of the Project or of the Services is materially altered in accordance with the Client's requirements, the Client and the Consultant shall agree a fair and reasonable adjustment to the Fee (and a consequential adjustment to the instalments set out in schedule 1) to reflect any substantial increase or decrease in the work required of the Consultant resulting from the alteration. For the avoidance of doubt a delay to the Programme will only amount to a material alteration for the purpose of this clause where the Consultant demonstrates that the delay has resulted in a substantial increase in the work required of the Consultant.
- 7.3 In addition to the Services, the Consultant shall perform any other services in relation to the Project which the Client may reasonably instruct. Subject to clauses 7.4 and 7.5, the Client shall pay an additional fee to the Consultant in respect of any services so instructed, the amount and timing of payment of which shall be agreed between the parties or (if the Client in its sole discretion decides) calculated by reference to the hourly rates in schedule 6 or any other method of calculating costs as per the rates included in Schedule 1.
- 7.4 It is a condition precedent to the Consultant's right to payment under clause 7.3 that, prior to commencing any additional services, it shall notify the Client that it intends to seek additional payment and shall provide to the Client an estimate of such additional payment and that the Client has agreed to this.

Non-Design Appointment

- 7.5 Notwithstanding clauses 7.2 and 7.3, the Consultant shall not be entitled to any increase in the Fee nor to any additional payment to the extent that the need for such additional work and/or services results from any negligence, omission or default on the part of the Consultant in the performance of its obligations under this deed.

8 Insurance

- 8.1 Without limiting its other obligations under this deed or otherwise at law, the Consultant shall maintain professional indemnity insurance to cover its professional liability under this deed, with a limit of indemnity of not less than £10,000,000 any one claim, applicable in the annual aggregate in relation to claims relating to pollution, contamination or the fire retardant characteristics of external cladding systems and reduced to £250,000 in the annual aggregate for claims relating to asbestos, provided that such insurance continues to be available in the UK market from reputable insurers on reasonable terms and at commercially reasonable premium rates to consultants performing services substantially similar to the Services, and taking no account of the Consultant's claims record.
- 8.2 The insurance referred to in clause 8.1 shall:
- 8.2.1 be subject only to such conditions and excesses as may be usual in the UK market at the time; and
 - 8.2.2 be maintained with reputable insurers with a place of business in the United Kingdom, from the date of this deed and for a period expiring not less than 15 years from completion of the Services.
- 8.3 Without limiting its other obligations under this deed or otherwise at law, the Consultant shall maintain for the duration of the Services:
- 8.3.1 public liability insurance of not less than £10,000,000 for any one claim or series of claims arising from one event in the policy period and in the Aggregate in respect of Products and Pollution liability;

and
 - 8.3.2 employer's liability insurance of not less than £10,000,000 for any one occurrence in the policy period but £5,000,000 in respect of Terrorism or Asbestos
- 8.4 As and when he is reasonably required to do so by the Client, the Consultant shall produce documentary evidence in the form of a certified broker's certificate to demonstrate that the insurance required by this clause 8 is being properly maintained.

- 8.5 The Consultant shall promptly notify the Client if at any time he is unable to obtain, maintain or renew insurance as required by this clause 8 on reasonable terms and at commercially reasonable premium rates or at all and in that event shall continue to maintain insurance on such terms and with such a limit of indemnity as may then be available to the Consultant. The Consultant shall forthwith notify the Client in circumstances where there is any change to cover upon renewal or otherwise during the insurance period, including but not limited to the level and basis of cover and any addition or omission from the policy, in particular the conditions, terms and exclusions of the policy.
- 8.6 The Consultant shall not compromise, settle or waive any insurance claim which it may have in respect of any professional liability under this deed without the prior consent of the Client, provided that nothing in this clause shall preclude the Consultant's insurers from taking over (in the name of the Consultant) the defence of any claim made by the Client under this deed and (in that capacity) from conducting and settling it as they see fit.

9 The Proprietary Material

- 9.1 The copyright in the Proprietary Material shall remain vested in the Consultant, but the Consultant grants to the Client an irrevocable royalty-free non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with the Project and/or the Site, including (without limitation) the execution and completion of the Project and the subsequent use, operation, maintenance, letting, occupation, management, sale, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Site or any buildings or structures on the Site.
- 9.2 The licence referred to in clause 9.1 carries the right to grant sub-licences on the same terms and shall be transferable to third parties and shall subsist notwithstanding the expiry or termination (for any reason) of the Consultant's engagement under this deed.
- 9.3 The Consultant acknowledges and warrants that it is the author (as defined in the Copyright, Designs and Patents Act, 1988) of the Proprietary Material and waives any moral rights which it might otherwise be deemed to possess under Chapter IV of that Act in respect of the Proprietary Material and of the Project.
- 9.4 Notwithstanding that the copyright in the Proprietary Material remains vested in the Consultant, the Consultant shall not without the prior consent of the Client be entitled to use the Proprietary Material for any purpose connected with the Site other than for the purposes of this deed and the completion of the Project (notwithstanding the

expiry or termination of its engagement under this deed or the abandonment of the Project by the Client).

- 9.5 The Consultant shall, if requested by the Client, execute any documents and do anything required to assure to the Client the rights referred to in clauses 9.1 to 9.4.
- 9.6 The Client acknowledges that the Consultant shall not be liable for the consequences of any use of the Proprietary Material for any purpose which is inconsistent with that for which it was prepared by the Consultant.
- 9.7 The Consultant shall indemnify the Client against any liability which the Client may incur by reason of the Consultant or the Client infringing or being held to have infringed any copyright or other intellectual property rights of any person.
- 9.8 The Consultant shall, at the request of the Client, provide to the Client such copies of the Proprietary Material (in hard copy or electronic form) as he may reasonably require in connection with the Project, provided that where the Client requires the Consultant to provide in excess of ten hard copies of any of the Proprietary Material the Client shall pay the Consultant's reasonable photocopying charges incurred in providing such excess copies.

10 **Confidentiality**

- 10.1 The Consultant shall not, without the prior consent of the Client, take or authorise the taking of any photographs of the Site or the Project for use in any publicity or advertising nor publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Project or any part of it, nor shall the Consultant impart to any publication, journal or newspaper or any radio or television programme any information about the Project, or refer to the Project for marketing purposes.
- 10.2 During the term of this deed and after its expiry or termination for any reason, each of the parties undertakes to the other to keep the Confidential Information confidential and not to disclose it to any other person, except to the extent that:
- 10.2.1 the Confidential Information was already lawfully known, or became lawfully known to the relevant party independently;
- 10.2.2 the Confidential Information is in or comes into the public domain other than due to wrongful use or disclosure by the relevant party;
- 10.2.3 disclosure or use is necessary by the relevant party in connection with entry into this deed or for the proper and effective performance of its

obligations under this deed (including disclosure by either party to its insurers and professional advisers); or

10.2.4 disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign).

11 Assignment and sub-letting

11.1 The Consultant shall not assign its interest in this deed or any part of it, nor any right arising under it, to any person without the prior consent of the Client.

11.2 The Consultant shall not, without the prior consent of the Client, sub-contract the performance of any of the Services. The Consultant shall be fully responsible for any services sub-contracted as if it had performed such services itself and shall see that each sub-appointment contains a term that the Consultant will pay all undisputed sums due from the Consultant to the sub-consultant within no more than 30 (thirty) days from the receipt of a valid invoice under the sub-appointment. The Consultant shall procure collateral warranties for the benefit of the Client and any third party notified by the Client from any sub-consultant engaged in the Services, within 14 days of the Client's request to do so, in the form included at Schedule 8 and with such amendments as the Client may reasonably require to clarify that the warranty is being provided by the sub-consultant.

11.3 The Consultant shall not authorise the appointment of any specialist consultant or Sub-Contractor in relation to the Project without the prior written approval of the Client. No appointment under this clause shall in any event be made unless the Consultant has first confirmed to the Client in writing that, in its reasonable opinion, such specialist is in all respects qualified and competent to carry out such work, or that the Client has so confirmed to the Consultant.

11.4 The Client may at any time assign the benefit of this deed and any rights under it to any person (subject to a maximum of two such assignments) with the consent of the Consultant, not to be unreasonably withheld, and in addition may at any time assign the benefit of this deed by way of security to a Fund or assign the benefit of this deed to any Group Company without the consent of the Consultant being required. Assignment to a Fund or Group Company shall not count towards such two occasions.

12 Time for performance

12.1 The Consultant shall perform the Services regularly and diligently and (subject to clause 12.2) in accordance with the Client's requirements and the Programme and so as to enable the Project to proceed in accordance with the Programme.

- 12.2 If at any time the Consultant is prevented or delayed in the performance of the Services for any reason, the Consultant shall promptly so notify the Client giving the specific reason for the delay or prevention, together with its best estimate of its effect on the Project and the Programme, and shall use all reasonable endeavours to resume and expedite the Services as soon as practicable. The Consultant shall not be treated as being in breach of this deed to the extent that it is delayed in the performance of the Services for reasons beyond its reasonable control.

13 Termination or suspension of Consultant's engagement by Client

- 13.1 The Client may at any time, by not less than seven days' prior notice to the Consultant, terminate the Consultant's engagement under this deed or the performance of any part of the Services without being required to prove default on the part of the Consultant or satisfy any requirement of reasonableness or good faith.
- 13.2 The Client may at any time, by notice to the Consultant, require the Consultant to suspend performance of the whole or any part of the Services.
- 13.3 If the Client requires the Consultant to suspend the performance of the whole or substantially the whole of the Services under clause 13.2, the Client may at any time within a period of 12 months from the date of such notice require the Consultant to resume performance of the Services. In that event the Consultant shall, as soon as reasonably practicable, resume performance of the Services in accordance with this deed and any payment made under clause 15.2 shall rank as payment on account towards the payments to be made to the Consultant under this deed. If the Client does not require the Consultant to resume the performance of the Services within the period of 12 months referred to in this clause, then either party may thereafter by notice to the other terminate the Consultant's engagement under this deed.
- 13.4 If the Consultant is Insolvent and/or is in breach of its obligations under clause 22 or clause 23 or clause 24, the Client may give immediate notice to the Consultant terminating the Consultant's engagement under this deed with immediate effect.
- 13.5 If the Consultant commits a material breach of its obligations, the Client may give notice to the Consultant specifying the breach and requiring its remedy. If the Consultant fails to remedy the breach within 7 days of such notice, the Client may give notice to the Consultant terminating the Consultant's employment under this deed with immediate effect.

14 Termination of Consultant's engagement by Consultant

In the event of a material breach by the Client of its obligations under this deed (such breach not being caused by any breach, negligence, omission or default on the part of the Consultant) the Consultant may give notice to the Client specifying the breach and requiring its remedy. If the Client fails to remedy the breach within 30 days of such notice, the Consultant may give notice to the Client terminating the Consultant's engagement under this deed with immediate effect.

15 Consequences of termination or suspension of Consultant's engagement

15.1 On termination of the Consultant's engagement under clause 13 or clause 14 or on suspension of the whole of the Services under clause 13.2, the Consultant shall take immediate steps to bring the Services to an end in an orderly manner (but with all reasonable speed and economy) and shall within 14 days deliver to the Client all the Proprietary Material (whether in the course of preparation or completed) provided that the Consultant shall be entitled to retain copies of them.

15.2 Without prejudice to any rights and remedies of the Client arising out of or in connection with termination of the Consultant's engagement, if the Consultant's engagement is terminated or the performance of the whole of the Services is suspended, the Client shall (subject to any withholdings, deductions or set-offs which the Client is entitled to make and to clauses 15.3, 15.4 and 15.5 and provided that in the event of termination pursuant to clause 13.4, the Consultant shall not be entitled to any payment until such time as the Services have been completed by a third party engaged by the Client) pay to the Consultant that part of the Fee and any other amounts arising under this deed which have already accrued due prior to the date of termination or suspension, plus a fair and reasonable proportion of the next instalment of the Fee having regard to the extent of the Services performed up to the date of termination or suspension, less the amount of any payments previously made by the Client to the Consultant under this deed. In addition the Client shall in the event of a termination (but not of a suspension) reimburse to the Consultant the direct demobilisation costs wholly and necessarily incurred by the Consultant resulting from the termination (provided the Consultant has submitted all such documents, vouchers, receipts and any other information reasonably required by the Client to evidence such demobilisation costs along with its account for payment under this deed to the Client on or within 7 days following the termination), and further provided that such termination and such costs have not arisen through any Insolvency, breach of contract, negligence, omission or default on the part of the Consultant.

Non-Design Appointment

- 15.3 On termination or suspension of the Consultant's engagement for whatever reason, the Client shall not (except as exclusively set out in clause 15.2) be liable to the Consultant for any loss of profit, loss of contracts or other costs, losses and/or expenses incurred by the Consultant in connection with such termination or suspension.
- 15.4 Termination of the Consultant's engagement for whatever reason shall not (subject to clause 15.3) limit the rights and remedies of either party in relation to any negligence, omission or default of the other party occurring prior to the termination.
- 15.5 In the event of termination pursuant to clauses 13.4 or 13.5, the Client shall be entitled to recover or set off against any monies due to the Consultant (subject, save where clause 6.8 applies, to issuing a pay less notice pursuant to clause 6.7)) any losses it has incurred as a result of terminating the Consultant's engagement pursuant to clauses 13.4 or 13.5.
- 15.6 The provisions of this deed shall continue to bind the parties for as long as may be necessary to give effect to their respective rights and obligations under it.

16 **Miscellaneous**

- 16.1 All additions, amendments and variations to this deed shall be binding only if in writing and signed by the duly authorised representatives of both the Client and the Consultant.
- 16.2 This deed supersedes any previous agreement or arrangement between the parties in relation to the Services (whether oral or written) and represents the entire understanding between the parties in relation to the Services.
- 16.3 The appointment of the Consultant shall commence on the terms set out in this deed from the time when the Consultant shall have begun to perform the Services or from the date of this deed, whichever is the earlier. Any Services carried out by the Consultant prior to the date of this deed shall be treated as having been performed pursuant to the terms of this deed. Any payments made by the Client to the Consultant prior to the date of this deed in respect of the Services shall be deemed to be payments made under this deed in respect of the Fee.
- 16.4 Notwithstanding anything to the contrary herein, the invalidity or unenforceability of any provision of this deed will not affect the validity and enforceability of any other provision of this deed; provided, however, that in the event the invalidity or unenforceability of any provision of this deed has a material adverse effect on any of the rights of the Client, the Consultant acknowledges and agrees that the Client will

have the right to terminate this deed immediately, without any further liability or obligation, by providing the Consultant with written notice of termination.

- 16.5 The Consultant shall allow the Client (and its auditors or advisors) to access the Consultant's relevant records, systems, employees or agents, and those of the Consultant's sub-consultants, as the Client may reasonably be required to do so in order to fulfil any request by any regulatory body or to demonstrate compliance with this Agreement or any of the Client's corporate policies.

17 **Notices**

Any notice or other communication given under this Agreement shall be in writing, delivered personally or sent by prepaid or registered post to the relevant party's address specified in schedule 1 or to such other address as either party may have last notified to the other. Any notice delivered personally before 17:00 on a working day is deemed delivered on the same working day or the following working day if delivered after 17:00. Any notice sent by prepaid or registered post is deemed to have been duly given on the second working day following the date on which it was sent by post. Either party may alternatively serve notice pursuant to any clause of this Agreement by email, except for notices relating to termination, and the Client may issue any instruction by email, provided such notice is issued to recipients listed at schedule 1 or such other persons as may be notified by either party. A notice permitted by email shall be deemed served on the same working day if issued before 17:00 on a working day or the following working day if issued thereafter.

18 **Disputes**

- 18.1 Notwithstanding any other provision of this agreement, either party may refer a dispute arising under this agreement to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations as amended, which Part shall take effect as if it was incorporated into this clause.
- 18.2 The adjudicator may be appointed on the request of either party by the President or Vice-President for the time being of the Royal Institution of Chartered Surveyors for a decision in accordance with the provisions of Part II of the Housing Grants, Construction and Regeneration Act 1996.
- 18.3 The adjudicator's decision shall be binding on the parties and they shall forthwith give effect to its terms, unless the parties agree otherwise or unless and until the dispute or difference is finally determined by the courts in accordance with clause 18.6.

Non-Design Appointment

- 18.4 The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of its functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator is similarly protected.
- 18.5 If any dispute or difference arising under this deed raises the same or parallel issues as a related dispute or difference between the Client and any third party which has already been referred to adjudication, the parties shall (wherever practicable) refer the dispute or difference under this deed to the same adjudicator for decision and that adjudicator shall be "the adjudicator" for the purposes of this deed in relation to the dispute or difference.
- 18.6 Subject to clauses 18.1 to 18.5, any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England and Wales.

19 **Governing law**

The application and interpretation of this deed shall in all respects be governed by English law.

20 **Limitation**

- 20.1 The Consultant's liability under this deed shall expire 12 years from completion of the Services or termination of this Agreement (whichever is later) ("**Limitation Date**"), save in respect of:
- 20.1.1 any claims notified before or on the Limitation Date; and
- 20.1.2 any claims arising from or in connection with a failure to comply with section 1 or section 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or section 148 or 149 of the Building Safety Act 2022, including any claim to a contribution in relation to liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978, provided that the Consultant's liability under this deed in respect of such claims shall expire on the expiry of the limitation period applicable in accordance with the Limitation Act 1980 to actions brought under that legislation or the Civil Liability (Contribution) Act 1978.
- 20.2 Subject to clause 20.3, no action or proceedings for any breach of this deed may be commenced against the Consultant after the Limitation Date.

- 20.3 Nothing in clause 20.2 shall limit the Client's right to commence an action or proceedings against the Consultant in respect of any claims arising from or in connection with a failure to comply with section 1 or section 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or section 148 or 149 of the Building Safety Act 2022, including any claim to a contribution in relation to liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978, provided that no such action or proceeding may be commenced against the Consultant after the expiry of the limitation period applicable in accordance with the Limitation Act 1980 to actions brought under that legislation or the Civil Liability (Contribution) Act 1978.

21 Data Protection

- 21.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Consultant is the Processor in respect of Personal Data. Unless otherwise agreed in writing, the Data Processing Operations (as reviewed from time to time) and as set out in clause 21.16 is the only processing that the Consultant is authorised to do by the Client.
- 21.2 The Consultant shall notify the Client immediately if it considers that any of the Client's instructions infringe Data Protection Legislation.
- 21.3 The Consultant shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:
- 21.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 21.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 21.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 21.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to maintain the protection of Personal Data.
- 21.4 The Consultant shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- 21.4.1 process that Personal Data only in accordance with the Data Processing Operations, unless the Consultant is required to do otherwise by any of the Statutory Requirements. If it is so required the Consultant shall promptly notify the Client before processing the Personal Data unless prohibited by any of the Statutory Requirements;
- 21.4.2 make certain that it has in place Protective Measures, which have been reviewed and approved by the Client as appropriate, to protect against a Data Breach, having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Breach;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
- 21.4.3 make certain that:
 - (a) the Consultant's staff and sub-consultants do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Operations);
 - (b) it takes all reasonable steps to maintain the reliability and integrity of any of the Consultant's staff and sub-consultants who have access to the Personal Data and see that they:
 - (i) are aware of and comply with the Consultant's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Consultant or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 21.4.4 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

- (a) the Client or the Consultant has provided appropriate safeguards in relation to the transfer (in accordance with Data Protection Legislation) as determined by the Client;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Consultant complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and
 - (d) the Consultant complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- 21.4.5 at the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of this Agreement unless the Consultant is required by any of the Statutory Requirements to retain the Personal Data.
- 21.5 Subject to clause 21.6, the Consultant shall provide written notice to the Client's Data Protection Officer (e-mail: Darren.Sullivan@mtvh.co.uk) immediately if it:
 - 21.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 21.5.2 receives a request to rectify, block or erase any Personal Data;
 - 21.5.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - 21.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 21.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by any of the Statutory Requirements; or
 - 21.5.6 becomes aware of a Data Breach.

Non-Design Appointment

- 21.6 The Consultant's obligation to notify under clause 21.5 shall include the provision of further information to the Client in phases, as details become available.
- 21.7 Taking into account the nature of the processing, the Consultant shall provide the Client with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 21.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:
- 21.7.1 the Client with full details and copies of the complaint, communication or request;
 - 21.7.2 such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 21.7.3 the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 21.7.4 assistance as requested by the Client following any Data Breach;
 - 21.7.5 assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.
- 21.8 The Consultant shall maintain, and provide to the Client upon request, complete and accurate records and information to demonstrate its compliance with this clause 21 (Data Protection).
- 21.9 The Consultant shall allow for audits of its Data Processing activity, including security and other organisational and technical measures by the Client or the Client's designated auditor.
- 21.10 The Consultant shall designate a data protection officer if required by the Data Protection Legislation.
- 21.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Consultant must:
- 21.11.1 notify the Client in writing of the intended Sub-processor and Processing;
 - 21.11.2 obtain the written consent of the Client;

Non-Design Appointment

- 21.11.3 enter into a written agreement with the Sub-processor which are equivalent to and give effect to the terms set out in this clause 21 such that they apply to the Sub-processor; and
- 21.11.4 provide the Client with such information regarding the Sub-processor as the Client may reasonably require.
- 21.12 The Consultant shall remain fully liable for all acts or omissions of any Sub-processor.
- 21.13 The Client may, at any time on not less than 30 days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (in either case in accordance with Data Protection Legislation which shall apply when incorporated by attachment to this Agreement).
- 21.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than 30 days' notice to the Consultant amend this Agreement to see that they comply with any guidance issued by the Information Commissioner's Office.
- 21.15 The Consultant shall indemnify the Client against all liabilities, costs, expenses, damages, and losses (and all other reasonable professional costs and expenses) suffered or incurred by the Client arising out of or in connection with:
- 21.15.1 any breach of the obligations contained within this clause 21 (Data Protection) by the Consultant or any Sub-processor; or
- 21.15.2 any failure by the Consultant to comply with its obligations as a Processor under the Data Protection Legislation.
- 21.16 The following Data Processing Operations shall apply to this Agreement:

Subject Matter of Processing:	the Consultant will process Personal Data for the purpose of providing the Services in accordance with this Agreement.
Duration of Processing:	the Consultant will process the Personal Data until the completion of the Services or earlier termination of this Agreement.
Nature and Purpose of the Processing:	to maintain records required to allow the Consultant to fulfil its duties under this Agreement.

Type of Personal Data:	Personal Data to include: Name, address, contact telephone numbers, email address, employees job title, family, lifestyle, social circumstances, complaint details, behaviour.
Special Category Data:	health, disability, and gender information, and information pertaining to a person's culture. Further information may be provided during the Consultant undertaking Services.
Categories of Data Subject:	employees of the Client, other consultants, Contractor, Sub-Contractors and their employees.
Specific Processing Instructions:	Data will be shared between the Client and the Consultant via a secure data interface. The Consultant will see that any information is shared securely between itself and any Sub-processor.

22 Anti-Bribery Obligations

22.1 The Consultant shall and shall procure that any of its officers, employees, agents, advisers, suppliers, sub-consultants or other persons associated with it shall:

- .1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption (and for this purpose the UK's Bribery Act 2010 **(the Bribery Act)** shall be deemed to apply **(Relevant Laws)**).
- .2 not do, or omit to do, any act that will cause or lead the Client or any of its group companies to be in breach of any of the Relevant Laws or the Client's anti-bribery policy (the **Policy**) – a copy of which will be provided to the Consultant on request;
- .3 have and shall maintain in place during the term of this deed its own policies and procedures, including adequate procedures under the Bribery Act, to maintain compliance with the Relevant Laws and the Policy, and will enforce them where appropriate;
- .4 promptly report to the Client (in writing) any breach of the Relevant Laws or the Policy by it or any of its officers, employees, agents, advisers, suppliers, sub-consultants or other persons associated with it;

Non-Design Appointment

- .5 promptly report to the Client (in writing) any request or demand for any undue financial or other advantage of any kind received by the Consultant (or any of its officers, employees, agents, advisers, suppliers, sub-consultants or other persons associated with it) in connection with the performance of this agreement; and
 - .6 if requested, provide the Client with any reasonable assistance, at the Client's reasonable cost, to enable the Client to perform any activity required for the purpose of compliance with any of the Relevant Laws or the Policy.
- 22.2 The Consultant shall indemnify the Client or any of its group companies against any losses, damages, claims or expenses incurred by, or awarded against, the Client or any of its group companies as a result of any breach of this clause 22 by the Consultant or any of its officers, employees, agents, advisers, suppliers, sub-consultants or other persons associated with it.
- 22.3 The Consultant warrants and represents to the Client that neither the Consultant nor any of its officers, employees, agents, advisers, suppliers, sub-consultants or other persons associated with it:
 - .1 has been convicted of any offence involving bribery or corruption, fraud or dishonesty;
 - .2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Laws; or
 - .3 has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.
- 22.4 The Consultant shall promptly notify the Client if, at any time during the term of this agreement, its circumstances, knowledge or awareness or that of its officers, employees, agents, advisers, suppliers, sub-consultants or other persons associated with it, changes such that it (or they) would not be able to repeat the warranties set out in clause 22.3 at the relevant time.
- 22.5 Without prejudice to the provisions of clause 22.4, the Client may terminate this agreement with immediate effect upon written notice to the Consultant if at any time after entry into this agreement the Consultant or any of its officers, employees, agents, advisers, suppliers, sub-consultants or other persons associated with it:

Non-Design Appointment

- .1 breaches clause 22.1;
 - .2 is unable to repeat the warranties set out in clause 22.3;
 - .3 pleads guilty to or is convicted of any offence involving bribery or corruption, fraud or dishonesty;
 - .4 is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Laws; and/or
 - .5 is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.
- 22.6 If the Client terminates this agreement for breach of this clause 22, the Consultant shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

23 Modern Slavery

- 23.1 The Consultant shall (and shall procure compliance by its sub-consultants and suppliers as appropriate), at its own cost, comply with its obligations under the Modern Slavery Act 2015 ("**MSA 2015**").
- 23.2 The Consultant shall respond promptly to any questionnaire or due diligence enquiries put to it by the Client or its representatives relating to the subject of modern slavery and human trafficking and the Consultant warrants that any such information provided shall be true and accurate in all material respects having made such internal enquiries as would be expected by a reasonably prudent and diligent consultant.
- 23.3 The Consultant warrants to the Client that:
- .1 none of its officers, employees or other persons associated with it have been convicted of any offence involving slavery and human trafficking; and
 - .2 none of its officers, employees or other persons associated with it has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking,

Non-Design Appointment

and the warranties so provided by the Consultant shall be deemed repeated to the Client on each anniversary of the date of this Agreement until completion of the Services.

23.4 The Consultant undertakes that it shall:

- .1 implement due diligence procedures for its own suppliers and other participants in its supply chains, to make certain that there is no slavery or human trafficking in its supply chains; and
- .2 undertake such training as may be reasonably required to procure that its business and supply chain are and remain free of any human trafficking or slavery.

24 Criminal Finances Act

- 24.1 The Consultant shall not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence or a foreign tax evasion facilitation offence under the Criminal Finances Act 2017.

25 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

Delivered as a deed on the date of this document.

Executed as a deed by affixing the
Common Seal of **Metropolitan Housing**
Trust in the presence of:

Authorised Signatory.....

Print Name..... LUKE WILLE

Position/Title..... DIRECTOR OF FIRE REMEDIATION
& MAJOR WORKS

Authorised Signatory.....

Print Name..... GUY BURNETT

Position/Title..... DEVELOPMENT DIRECTOR.
=



Non-Design Appointment

Director

Director/Secretary

Executed as a deed by **Silver DCC Ltd**
acting by:

)
)

Director

Executed as a deed by **PARTNER OF**
Silver DCC Ltd

Director/Company Secretary

in the presence of:



Witness name

Ashley Curre

Witness address

80 Cannon Street
London, E14 6HL

Witness occupation

Chief Delivery officer

SCHEDULE 1

- 1 *The Site* is the area of land situated at Lemsford Road, St Albans, AL10 0FG and shown for identification purposes only on the plan attached as Schedule 7.
- 2 *The Senior Person* is Ashley Coull.
- 3 *The Key Person(s)* is Stephen Hoad.
- 4 *The Project Manager* is Michelle Collins
- 5 *The Project Team* includes:
 - 5.1 Architect – TBC
 - 5.2 Principal Designer (CDM Regulations) – Lydia Edwards, Silver DCC Ltd
 - 5.3 Principal Designer (Building Regulations) – TBC
 - 5.4 Structural and Civil Engineer – TBC
 - 5.5 Mechanical and Electrical Engineer – TBC
 - 5.6 Building Services Engineer – TBC
 - 5.7 Quantity Surveyor – [add name of individual(s) and practice where known].
 - 5.8 Lead Designer – TBC
 - 5.9 Employer's Agent – Stephen Hoad, Silver DCC Ltd
 - 5.10 Clerk of Works (i.e. Quality Control Inspector) – Silver DCC Limited
 - 5.11 Fire Engineer – TBC
 - 5.12 Monitoring Consultant (to advise the Client and monitor the principal designer and principal contractor appointed under the Building Regulations 2010) - TBC
 - 5.13 Planning and Conservation Consultant - TBC

Non-Design Appointment

- 6 *The Fee* is the lump sum of £136,849.96 (excl VAT) inclusive of disbursements and exclusive of value added tax. There is a provisional allowance of £10,000.00 for assisting with the contractor negotiations associated with the settlement costs.
- 7 Instalments of the Fee shall be payable in accordance with clause 6.2 and shall be as follows:

Pre-Construction period - Employers Agent (June 2025 to November 2025 inclusive)	£21,931.25 excl VAT	Invoiced at £3,655.21/month for 6-months
Pre-Construction period - Principal Designer (CDM) (June 2025 to November 2025 inclusive)	£5,400.00 excl VAT	Invoiced at £900/month for 6-months
Construction period – Employer's Agent (December 2025 – May 2027 inclusive)	£67,285.00 excl VAT	Invoiced at £3,570/month for 18-months, followed by £3,025.00 upon issue of the CoMGD
Construction period – Site Inspection (December 2025 – May 2027 inclusive)	£32,233.71 (excl VAT)	Invoiced at £1,790.76/month for 18-months
Provisional Allowance for Contractor negotiations associated to the settlement costs (to be instructed if/when required by MTVH and drawn down on a time charge basis in accordance with the hourly rates below).	£10,000 (excl VAT)	(Invoiced monthly and opened to a monthly timesheet showing breakdown of tasks / time spent)

Non-Design Appointment

- 8 No abortive fees shall become payable to the Consultant unless agreed by the Client.
- 9 Disbursements shall only become payable to the Consultant with the prior approval of the Client.
- 10 The following addresses are provided for the purpose of serving notice under clause 17:

Client address: MTVH. The Johnson Building. 77 Hatton Garden Holborn London EC1N 8JS

Client email address: calum.harman@mtvh.co.uk

Consultant address: 80 Cannon Street, London, EC4N 6HL

Consultant email address: Ashley.coull@silverdcc.com

SCHEDULE 2
The Services

[to be annexed]

8



MTVH

9

Scope of Services

Employer's Agent, Site Inspector and CDM Principal Designer – Regen including Fire Safety Works

Dixon, Clayton and Forum House, Lemsford Road, AL10 OFG

Core Services

The Appointed Consultant will be expected to:

1. Maintain that the services are carried out in accordance of the Royal Institution of Chartered Surveyors (RICS) Rules of Conduct for Firms and Members.
2. Prepare a high-level cost estimate of the works utilising the existing information provided at Enquiry Stage. ***URGENT TASK***
3. Review, comment and advise on the anticipated commercial settlement proposal being prepared by the original Contractor and assist MTVH in negotiations if required. *Note - the original contractor was engaged with MTVH to undertake the fire remediation works. Going forward, MTVH have agreed in principle and without prejudice that the original Contractor will not be undertaking the works and will instead propose a commercial settlement.*

4. PCSA

a. Management of Contractor procurement:

- i. Advise on Contractors and Frameworks
- ii. Prepare and issue tender documents inc solicitor liaison on contract terms
- iii. Prepare and issue ITT
- iv. Manage clarification responses and arrange and chair mid-bid meetings if required (online meeting)
- v. Prepare and issue Tender Report
- vi. Manage the contract terms agreement, engrossment, print, bind and issue for execution
- vii. Arrange and chair pre start meeting (in person meeting)

b. PCSA contract period:

- i. Review the PCIP and CPP to check alignment.
- ii. Arrange a chair weekly progress meetings (online) including management of agendas, minutes, trackers
- iii. Arrange a chair weekly/fortnightly design team meetings (online) including management of agendas, minutes, trackers
- iv. Prepare, issue and manage Risk register
- v. Prepare and issue monthly cost reports – design matters, instructions,

Non-Design Appointment

anticipated instructions, cashflow and programme

- vi. Review Contractors scope of works and price for agreement at JCT Design & Build main works contract, confirming value for money assessment
- vii. Prepare and issue contract documents for engrossment and execution

5. Main Works – JCT DB

- i. Arrange a chair weekly (for 1st month; monthly thereafter) progress meetings on site for including management of agendas, minutes, risk registers, planning/design trackers
- ii. Prepare, issue and manage Risk register
- iii. Prepare and issue monthly cost reports, inclusive of but not limited to design matters, instructions, anticipated instructions, cashflow and programme
- iv. Review Contractors scope of works and price for agreement at JCT Design & Build main works contract, confirming value for money assessment

General Services

- 6. Provide evidence of their professional indemnity liability insurance, which shall be sufficient to meet any one claim, applicable in the annual aggregate in relation to claims relating to pollution, contamination or the fire retardant characteristics of external cladding systems and reduced to £250,000 in the annual aggregate for claims relating to asbestos of not less than £10,000,000.
- 7. Maintain that the project team member undertaking Employers Agent duties is a Chartered Member of the RICS or similar approved.
- 8. Be familiar with all the Regulatory Standards and requirements that registered affordable housing providers such as MTVH are required to satisfy and comply with.
- 9. Have a working and relevant knowledge of affordable housing regulation and an understanding of the required assessments and certifications.
- 10. Attend Client, Design, Project, Construction and other meetings as provided under this Appointment.

Non-Design Appointment

11. Issue instructions, on behalf of the Client, to the Professional Team and Contractor in accordance with the terms of their Appointments and the Building Contract.
12. Agree Project reporting and recording procedures with the Client, the Professional Team and the Contractor.
13. Monitor the performance of the Professional Team and the Contractor. Report to the Client no less than once per month.
14. Liaise with the Professional Team and prepare regular monthly quality, cost and programme reports. Advise the Client of any decisions required and obtain authorisation.
15. Check applications for payment from the contractor. Recommend payments to the Client.
16. Comply with the MTVH variation reporting and approval procedures.
17. Liaise with the Client and the Professional Team to determine the Client's initial requirements and to develop the Client's Brief.
18. Advise the Client on the selection, the terms of appointment and fee structures for the Professional Team. Advise the Client on design services required under the Building Contract.
19. Liaise with the Professional Team and advise the Client of its obligations under the CDM Regulations.
20. Comply with the CDM Regulations insofar as they relate to this Appointment.
21. Liaise with the Professional Team and advise the Client on statutory approvals required and fees due in respect of the Project.
22. Facilitate, set up, confirm timescales, manage and provide value for money assessment and report based on initial estimate.
23. Visit the Site. Advise the Client on any factors likely to affect cost, time or method of implementation.
24. Liaise with the Professional Team and compile information required for the MTVH Fire Safety Audit Tracker and EWS1 Form Tracker.

Design – RIBA Stage 2 (Concept Design)

1. Liaise with the Client and the Professional Team to determine the Client's initial requirements and to develop

the Client's Brief. Prepare recommendations for the Client's approval, and secure confirmed Client's Brief.
2. Liaise with the Client and the Professional Team and prepare the Employer's Requirements.
3. Establish review, approval, variation and reporting procedures in accordance with the MTVH variation reporting and approval procedures. Prepare recommendations for the Client's approval.
4. Liaise with the Professional Team and advise the Client on structural, building, measured and other surveys and site investigations including condition reports, soil reports etc.
5. Establish the roles and responsibilities of the Client, the Professional Team, the Contractor and specialist/design sub-contractors.
6. Advise the Client on specialist services, including consultants, contractors, sub-contractors and suppliers, required in connection with the Project
7. Liaise with the Professional Team and prepare reports summarising the Project design, cost, programme and risk register. Prepare recommendations for the Client's approval.
8. Confirm the scope of the Building Contract to the Client and advise on additional works required by third parties.
9. Liaise with the Professional Team and identify any long delivery building components and systems. Prepare recommendations for the Client's approval.
10. Liaise with the project team and advise on the cost of the Project. Advise on the cost of alternative design and construction options. Prepare a preliminary cost plan and cash flow forecast.
11. Prepare project Handover Strategy, Risk Assessments and Project Execution Plan.

Pre Construction

1. Prepare and maintain a Project execution plan, or similar management tool, identifying the roles and responsibilities of the Client, the Professional Team, the Contractor and specialist sub- contractors/suppliers.
2. Prepare for the Client a procurement report providing advice on the use of the MTVH standard contract amendment to suit the project requirements. Include advice and recommendations on the most appropriate tendering process for the Client's approval.
3. Advise on suitable tenderers for the Building Contract in accordance with the MTVH procurement policy. Prepare recommendations for the Client's approval.
4. Obtain tender drawings and specifications from the Client and the Professional Team. Monitor and report to the Client on the procurement process.
5. Liaise with the Professional Team and prepare a preconstruction report summarising the Project design, cost, programme and fully priced risk register. Prepare recommendations for the Client's approval.
6. Attend and minute all tender interviews (virtual).
7. Liaise with the Professional Team and advise on errors, omissions, exclusions, qualifications and inconsistencies between the employer's requirements and the tenders received. Prepare recommendations for the Client's approval.
8. Facilitate, set up and manage value engineering exercises.
9. Advise on the tenderers' design, construction programmes, method statements and project execution plan.
10. Liaise with the Professional Team and obtain cost and design studies to assess alternative contractor's proposals. Prepare recommendations for the Client's approval.
11. Liaise with the Professional Team and prepare a tender report. Prepare recommendations for the Client's approval.
12. Conduct negotiations with tenderers. Prepare documentation to confirm adjustments to the tender sums. Prepare recommendations for the Client's approval
13. Liaise with the Client and the Professional Team and advise on methods of progressing design

Non-Design Appointment

and/or construction works prior to the execution of the Building Contract.

14. Obtain confirmation that required insurances are in place prior to commencement of works on the site.
15. Obtain contract drawings and specifications from the Client and the Professional Team. Liaise with the Client's legal advisers, prepare the Pre-Contract Services Agreement and/or Contract Documents and deliver to the Client and the Contractor for execution. (to include a project cashflow, agreed schedule of payments, all collateral warranties, Performance Bond, product guarantees and contract sum analysis,

Construction – RIBA Stages 5 & 6 (Construction & Handover)

On Site

- Arrange and chair the pre-start meeting.
- In collaboration with the other members of the Project Team, administer the terms of the Building Contract during operations on Site and relating to the completion of the Works through to the end of the rectification period, the settlement of the final account and any claims.
- Prepare a Project Team Directory, distribute to the Project Team, maintain, update and continue to distribute to all parties throughout the project.
- Develop and agree the agenda for monthly progress meetings with the MTVH Team.
- Arrange and chair formal monthly progress meetings with the Contractor and other members of the Project Team as necessary in order to monitor the progress of the Works and the production of design information by the Contractor.
- Prepare minutes for all meetings and distribute to all stakeholders. Minutes must be issued within 5 working days of the meeting to all parties present together with any other party as instructed by the Member. Minutes must record the title of the meeting, project, works, date time and location of the meeting; all attendees, apologies for absence; all paragraphs must be numbered; action points and owners clearly marked.
- Provide support to MTVH as needed to assist with the successful delivery of the program.
- Identify and manage programme risks and issues, developing strategies to mitigate them and keeping stakeholders informed of progress.
- Provide brief weekly email updates to the MTVH Project Team throughout the project.
- Monitor the construction programme throughout the project and inform

MTVH of any anticipated delays that may affect the completion date.

- Obtain authorisation from MTVH for changes to the contract and see that the Contractor only accepts instructions via the Contract Administrator in accordance with normal contract procedure. Any instructions to be issued to be discussed and agreed with MTVH in advance.
 - See that change control protocols are agreed and adopted by all stakeholders.
 - Inform MTVH of any contractual difficulties which may arise during the Building Contract and obtain MTVH's instructions.
 - Inform the Project Manager four weeks prior to the anticipated date of completion of the Works.
1. Obtain confirmation that required insurances, performance bond and parent company guarantee are in place before the commencement of works on the Site.
 2. Obtain a detailed construction phase programme from the Contractor and periodical revisions to the construction phase programme as the Project progresses. Monitor the construction phase programme against actual progress and inform the Client as to progress.
 3. Administer the terms of the Building Contract including the preparation and issue of all required notices, certificates, instructions and the like. Agree approvals required from the Professional Team under the Building Contract.
 4. Convene and chair weekly site meetings for the first four weeks, and monthly site meetings thereafter, with the Client, the Professional Team, the Contractor and, where appropriate, sub-contractor(s) or supplier(s). Take minutes of the matters discussed and issue copies of minutes to the client, the Professional Team, the Contractor and such other persons attending the meeting within one week of that meeting. Follow up on actions as required.
 5. Review for compliance and conformity with the Employer's Requirements all design information (including drawings) and the like issued during the course of the Project.
 6. Prepare or see that the contractor prepares an 'Activity Log' to monitor the progress of the clearance of all outstanding planning matters, Building Regulations approvals, Building Guarantee's, Statutory Services, Site Waste Management, sub-consultant and sub-contractor warranty's and the like.
 7. Advise the Client of any risk of delay to the completion of the Project, advising on any programme and sequence of work implications. Facilitate, set up and manage early warning and risk reduction meetings as required.

Non-Design Appointment

8. Liaise with the Client and the Professional Team and conduct negotiations with the Contractor. Prepare documentation to confirm the agreements reached.
9. Obtain advice on quality, cost and programme effect of variations prior to the issue of instructions under the Building contract. Prepare recommendations for the client's approval.
10. Obtain authorisation from the Client for changes to the contract and see that the Developer / Contractor only accepts instructions via the Employer's Agent.
11. Obtain progress and quality reports from site staff representing the Client, the Professional Team and the Contractor. Prepare a comprehensive report in line with the monthly site meeting and an interim summary report between meetings and present to the Client.
12. Liaise with the Professional Team and make recommendations for the interim payments to the Contractor. Advice on any deductions due and see that these are removed from interim payments including liquidated damages.
13. Agree all test certificates and statutory and non-statutory approvals required from the Professional Team and the Contractor. Prepare recommendations for the Client's approval.
14. Lead the Professional Team and the Contractor and prepare and maintain a handover plan, or similar management tool, identifying the roles and responsibilities of the Client, the Professional Team and the Contractor.
15. Ahead of Handover, carry out snag and de-snag inspections on behalf of the Client of all units (in conjunction with the Client's Project Management and Quality teams as required).
16. Produce a tracker to monitor progress and collation of all requisite documentation required prior to and at Handover and confirm to the Client that they are in order prior to issuing practical completion certification. This includes but is not limited to all required certification, planning discharge requirements and operation and maintenance manual.
17. Facilitate Handover in line with the Client's requirements. See that that defects are dealt with promptly and effectively. Establish review, approval, variation and reporting procedures as required.
18. Assess whether completion has been achieved, then issue or recommend the issue of the certificate of completion or similar. Prepare schedules listing any outstanding or snagging works as and when required.
19. Advise on the rights and obligations of the parties to the Building Contract.

20. Advise on the Contractor's entitlement to extensions of time. Analyse and report on the Contractor's application(s) for extensions of time. Prepare recommendations for the Client's approval.
21. Advise on Client liability regarding any/ Extension of Time claims from the Contractor. Prepare recommendations for the Client's approval.

Completion

- In collaboration with the other members of the Project Team, administer the terms of the Building Contract to the completion of the Works and issue all appropriate certificates in a timely and accurate manner.
- In liaison with the other members of the Project Team, provide MTVH with a set of record drawings and guidance on the operation and maintenance of the Building and its services.
- Issue a list of defects to the Contractor at the appropriate time in accordance with the terms of the Building Contract.
- Monitor the Contractor during the Rectification period on the rectification of any defects that are identified during the works in accordance with the works agreement and issue a statement of completion to the Contractor when all defects have been made good.

Post Completion and Rectification Period

- Monitor Defects reported and assist MTVH with ensuring the Contractor complies with their obligations under the Building Contract.
- Issuing a completion certificate on handover of agreed documentation in accordance with the terms of the contract and any MTVH requirements set out in the pre- contract phase.
- Carry out End of Defect Liability Period inspections and, in accordance with the Building Contract, see that any defects are resolved in a timely manner.
- Issue confirmation once Making Good Defects has been completed by the Contractor as per the works agreement.

Supplementary Services (upon request – fees to be agreed if required):

- Assess the scheme against current Funding Standards and advise of any breaches, together with suggestions for changes to the scheme to confirm compliance. Facilitate the assessment of the design against funding requirements at feasibility, start on site, and Practical Completion and submit to the Client.
- Prepare and report on adherence with funding requirements
- Advise on Client liability regarding any Loss and Expense claims from the Contractor. Prepare recommendations for the Client's approval

Site Inspection Service

The main responsibility of the Site Inspector will be to make sure that work is carried out to the client's standards and specification as defined by the building contract and relevant schedules, method statements and construction health and safety plan. The Site Inspector will make sure that the correct materials and level of workmanship is applied and maintained at all stages of the works, that building, health and safety, statutory and best practice regulations are adhered to and that the client is given quality work and value for money.

The main anticipated duties are as follows:

- Familiarise contract documents and drawings.
- Report against the contractor's anticipated building programme and on the performance of contractors and sub-contractors.
- - Undertake once per week site visits when the project is in contract, attending site meetings (where required), advising of difficulties being encountered or likely to be encountered. Visit site during the construction phase at weekly intervals in order to inspect the quality of the work and to monitor progress and see that the Works are completed fully in accordance with the Building Contract documents and be sufficiently competent in their knowledge and experience to offer advice on fire safety and construction specific installations e.g., corroborating manufacturers installation information, and advising MTVH immediately where any deviations occur. Visit to be followed up with a short report on progress to include photos. Report must include:
 - Date, time
 - Weather conditions
 - Operatives on site
 - Health & safety issues including any actions taken on issues noted
 - Progress against programme
 - Quality issues and any action taken on issues noted
 - Information required by contractor
 - Report to be provided to MTVH within 2 days of the site visit.
- - Check that progress is maintained according to the building programme and advise on any likely cause for delay to the Employers Agent and MTVH project manager. Monitor the construction programme throughout the project and inform MTVH of any anticipated delays that may affect the

Non-Design Appointment

completion date.

- - Monitor work on site in accordance with the contract documents and construction health and safety plan. Promptly report breaches to the contractor and client orally and in written form.
 - - Advise in writing about aspects of the works including quality, which do not conform to the plans, specifications or schedules of works and other documentation, or that might be unsatisfactory for any other reasons of design and workmanship. See that rigorous quality management procedures are in place throughout the construction phase to be agreed with MTVH in advance.
- Where approval samples are available, compare work carried out against samples and see that it remains at all times, consistent with the original.
- Report on any observations during site visits where the work does not comply with relevant Building Regulations, health and safety legislation, statutory requirements and industry best practice. - Monitor management arrangements of the contractor.
- - Maintain and issue weekly site inspection reports for all visits. See that rigorous safety policies are in place and are implemented by the Contractor and sub-contractors working on the site and that there is adequate protection for the public and others and that all Health and Safety Statutory Requirements or Regulations are fully observed.
 - Provide weekly site inspection reports to MTVH until completion of the Project and help oversee inspections in relation to BCAI
- Assist the Employers Agent in certifying the works completed in line with the interim payment process.
- Attend monthly site/progress meetings with the contractor (as required). Provide a weekly progress report to the MTVH Project Manager, Main Contractor, and Employers Agent that includes, but is not limited to:
- o Progress and any existing or anticipated delays (including a photographic record).
 - o Quality and workmanship issues (including a photographic record).
 - o The number and type of workers employed on site (and general resources available).
 - o Weather conditions.
 - o Visitors to the site.

Non-Design Appointment

o Drawings received.

o Details of any significant events while on site (including a photographic record).

Prepare and attend snagging and de-snagging inspections prior to the Employers Agent issuing Practical Completion. All external wall snagging and de-snagging to be undertaken prior to any scaffolding being struck, and in accordance with the golden thread procedure detailed in the contract.

CDM Principal Designer Schedule of Services (6 months – Pre Construction)

Outlined below are the responsibilities of the Principal Designer under Regulations 11 & 12 of the CDM Regulations 2015:

- Plan, manage, and monitor the pre-construction phase, ensuring health and safety risks are minimized.
- Consider general prevention principles and relevant Construction Phase Plans and Health and Safety Files.
- Identify and mitigate foreseeable health or safety risks during construction, maintenance, cleaning, or workplace use.
- See that designers adhere to their duties and cooperate in the pre-construction phase.
- Assist the Client with Pre-Construction Information and provide this information to all designers and contractors.
- Produce the Pre-Construction Information pack for tender purposes.
- Liaise with the Principal Contractor and share relevant planning, management, and monitoring information.
- Support the Principal Contractor in preparing the Construction Phase Plan with all pertinent information.
- Review and provide updates on the Health and Safety File, as necessary.

Note: MTVH confirmed that the Principal Contractor will undertake the role of Building Regulations Principal Designer (BRPD).

SCHEDULE 3

Brief

Not Used

SCHEDULE 4
Programme

[to be annexed]

SCHEDULE 5
Exclusions from the Fee

"Not Used"

SCHEDULE 6

Hourly Rates

Grade	Hourly rate (£ excluding VAT)
Board Director / Director	£172.00
Head of Service	£150.00
Project Director	£130.00
Senior Professional	£120.00
Professional	£110.00
Graduate / Trainee / Clerical	£60.00

SCHEDULE 7

Plan of the Site

[to be annexed, insert a red line site location plan]

SCHEDULE 8
Pro forma deed of warranty

DATED

20

[CONSULTANT]

[BENEFICIARY]

[EMPLOYER]

DEED OF COLLATERAL WARRANTY
(insert consultant's discipline)

in respect of a project at

[]

DATED

PARTIES

1 Consultant [] (company no []) whose registered office is at []

or

[insert list of partners] (carrying on business together in partnership []) whose principal place of business is at []¹³

2 Beneficiary [] (company no []) whose registered office is at []

3 Employer [] [(a registered society as defined in the Co-operative and
Community Benefit Societies Act 2014 with registration
number [])] **or** [(company no []) whose registered office is
at []]⁴

RECITALS

A By the Appointment, the Employer has employed the Consultant to perform the Services.

B [The Beneficiary has agreed to provide finance for the Development.

or

The Beneficiary has agreed to purchase [*part of*] the Property.

or

The Beneficiary has agreed to take a lease of [part of] the Property.

or

The Beneficiary has agreed to take an interest in [*part of*] the Property.⁵

C As a condition of and in consideration of the Beneficiary's agreement and £1 (one pound) (receipt of which is hereby acknowledged by the Consultant) the Consultant

³ Delete as appropriate subject to whether the consultant is a limited company or a partnership. If a partnership, list all the partners where prompted.

⁴ Delete if Beneficiary does not have step-in rights – which would be the case if the project and services have been completed, or if the Beneficiary does not require them.

⁵ Delete and/or amend as appropriate.

has agreed to enter into this deed for the benefit of the Beneficiary.

OPERATIVE PROVISIONS

1. Definitions and interpretation

1.1 Unless the contrary intention appears, the following definitions apply:

<i>Appointment</i>	the contract dated [] between the Employer (1) and the Consultant (2) (and any further agreement varying or supplementing it) under which the Consultant has agreed to perform the Services;
<i>Beneficiary</i>	includes any person to whom the benefit of this deed and/or any rights under it have been validly assigned in accordance with clause [7];
<i>Development</i>	the development of the Property as more particularly described in the Appointment;
<i>Employer</i>	[[insert name of Employer] and] ⁶ includes any person to whom the benefit of the Appointment has been validly assigned; ⁷
<i>Practical Completion</i>	practical completion of the construction of the Development as defined in the Appointment;
<i>Property</i>	the property at [];
<i>Proprietary Material</i>	all drawings, details, plans, specifications, schedules, valuations, certificates, reports, calculations, software and other work (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Consultant in the course of or as a result of performing the Services whether in existence or to be made or produced and including all amendments and additions to them including, but not limited to, all drawings, details, plans, models, specifications, schedules, reports, calculations and 2D and 3D BIM

⁷ Insert if Employer is not a party to the warranty. The Employer will only be a party to the warranty where the Beneficiary has step in rights.

(Building Information Modelling) information produced at any time during the design process to completion of the design; and

Services

the services performed or to be performed by the Consultant in respect of the Development as more particularly described in the Appointment.

- 1.2 Any obligation on a party to this deed to do an act includes an obligation to procure that it is done.
- 1.3 If a party is placed under a restriction in this deed, the restriction includes an obligation on the party not to permit the infringement of the restriction by any person.
- 1.4 References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses, provided this interpretative clause is not to be construed as a waiver of any common law rights of the parties.
- 1.5 Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.
- 1.6 Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be construed interchangeably in that manner.
- 1.7 The clause headings in this deed are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.8 Unless the contrary intention appears, references in this deed to numbered clauses are references to the relevant clause in this deed.
- 1.9 References in this deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments, regulations and codes of practice made under it.
- 1.10 If the Consultant is two or more persons, the expression "the Consultant" includes the plural number and obligations in this deed expressed or implied to be made with or by the Consultant are to be treated as made with or by such persons jointly and severally.

1.11 If the Consultant is a partnership, the expression "the Consultant" includes any person who may become a partner of the Consultant after the date of this deed.

1.12 References in this deed to the Employer include any person to whom the benefit of the Appointment has been validly assigned.

2. **Consultant's warranties**

2.1 The Consultant warrants to the Beneficiary that it has observed and performed and will continue to observe and perform all its obligations under or arising out of the Appointment in accordance with the terms of the Appointment, provided always that:

2.1.1 the Consultant shall owe no greater obligations to the Beneficiary under this deed than it would have had if in lieu of this deed the Beneficiary had been named as joint employer with the Employer under the Appointment; and

2.1.2 the Consultant shall be entitled in any proceedings under this deed to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (but excluding set-offs or counterclaims) as it would have had against the Beneficiary if in lieu of this deed the Beneficiary had been named as a joint employer with the Employer under the Appointment.

2.2 The Consultant warrants to the Beneficiary that, in the performance of the Services, it has exercised and will continue to exercise all the reasonable skill, care and diligence which may reasonably be expected of a properly qualified and competent *[insert consultant's discipline]* experienced in the provision of like services to the Services in respect of projects of a similar type, size, scope, value, nature and complexity to the Development.

2.3 The Consultant warrants to the Beneficiary that it has exercised and shall continue to exercise the reasonable skill, care and diligence referred to in clause 2.2 to see that it has not specified or authorised for use, will not specify or authorise for use in the construction of the Development and has not and will not knowingly permit the use of in the Development:

2.3.1 any of the materials identified as potentially hazardous in the British Property Federation/British Council for Offices report *Good practice in the selection of construction materials* (current edition);

2.3.2 any other material which (or the use of which) does not comply with relevant British Standard specifications and codes of practice and good building practice or is otherwise generally known within the Consultant's profession at the time of specification or authorisation to be deleterious or harmful to health or to the durability of the Property in the particular circumstances in which it is proposed to be used;

2.3.3 any goods, products or materials that do not comply with the requirements of the Building (Amendment) Regulations 2018 or any other Statutory Requirements (as defined in the Appointment); and

the Consultant shall notify the Beneficiary promptly if it becomes aware of any proposed or actual use in the construction of the Development of any such goods, products or materials.

2.4 The Consultant extends to the Beneficiary the benefit of all warranties on the part of the Consultant contained in the Appointment.

2.5 The Consultant acknowledges that the Beneficiary shall be deemed to have relied and shall continue to rely upon the warranties given by the Consultant under this clause 2.

2.6 The Consultant acknowledges to the Beneficiary that, at the date of this deed, the Appointment remains in full force and effect and the Employer has paid all sums properly due to the Consultant under the Appointment.

3. **[Obligations prior to determination of the Consultant's engagement⁸**

3.1 The Consultant shall not exercise nor seek to exercise any right to determine its engagement or suspend the performance of any of the Services under the Appointment for any reason, including any breach on the part of the Employer, without giving to the Beneficiary not less than 21 days' notice of its intention to do so and specifying the grounds for the proposed determination.

3.2 Any period stipulated in the Appointment for the exercise by the Consultant of a right of determination shall be extended, as necessary, to take account of the period of notice required under clause 3.1.

3.3 Compliance by the Consultant with clause 3.1 shall not be treated as a waiver of any

⁸ Clauses 3 and 4 are to be included only if Beneficiary has step-in rights.

breach on the part of the Employer giving rise to the right of determination, nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice, unless the right of determination shall have ceased under the provisions of clause 4.

4. "Step-in" right

4.1 The right of the Consultant to determine its engagement or suspend the performance of any of the Services under the Appointment shall cease if, within the period of 21 days referred to in clause 3.1, the Beneficiary [(which expression shall for the purposes of this clause 4 include any receiver, administrative receiver or other appointee (in each case a "Nominee") appointed by the Beneficiary)]⁹ shall give notice to the Consultant:

- 4.1.1 requiring it to continue its obligations under the Appointment;
- 4.1.2 acknowledging that the Beneficiary is assuming all the obligations of the Employer under the Appointment; and
- 4.1.3 undertaking to the Consultant to discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment and to pay to the Consultant within 21 days any sums which have become due and payable to it under the Appointment but which remain unpaid.

[provided that:

- 4.1.4 in this proviso and in clause [4.8] Fund Warranty means a deed made or to be made between the Consultant, the Fund and the Employer in respect of the Development under which the Fund has a right equivalent (with the appropriate changes) in all material respects to the right granted by clause 4.1 to the Beneficiary, save that the period for the exercise of that right by the Fund shall expire 14 days after service of the Consultant's simultaneous notices on the Beneficiary and the Fund of its intention to determine its engagement under the Appointment;
- 4.1.5 any notice served by the Consultant on the Beneficiary pursuant to clause 3.1 shall be invalid unless a similar notice has been

⁹ Include only where Beneficiary is a bank providing finance.

simultaneously served upon the Fund;

4.1.6 the Beneficiary shall have no power to give notice to the Consultant under clause 4.1 within the period of 14 days referred to in clause 4.1.4 unless the Fund shall previously have notified the Beneficiary that it will not exercise its equivalent right under the Fund Warranty;

4.1.7 the Beneficiary shall have no power to give notice to the Consultant under clause 4.1 in response to a notice under clause 3.1 if the Fund has already exercised its equivalent right under the Fund Warranty in response to the Consultant's simultaneous notice to the Fund; and

4.1.8 any notice given by the Beneficiary which is in breach of clause 4.1.6 or clause 4.1.7 shall be invalid.]¹⁰

4.2 Upon compliance by the Beneficiary with the requirements of clause 4.1, the Appointment shall continue as if the right of determination on the part of the Consultant had not arisen and as if the Appointment had been entered into between the Consultant and the Beneficiary to the exclusion of the Employer.

4.3 Notwithstanding that as between the Employer and the Consultant the Consultant's right of determination of its engagement or suspension of the Services under the Appointment may not have arisen, the provisions of clause 4.2 shall apply if the Beneficiary gives notice to the Consultant and the Employer to that effect and the Beneficiary complies with the requirements on its part under clause 4.1[, provided that the Beneficiary may only give notice under this clause 4.3 if it shall first have given the Fund and the Consultant notice of its intention to do so and the Fund has consented expressly to the exercise of such right by the Beneficiary]¹¹.

4.4 [Any notice given by the Beneficiary which is in breach of clause 4.3 shall be invalid.]¹²

4.5 The Consultant shall be bound to assume that, as between the Employer [, the Fund]¹³ and the Beneficiary, circumstances have occurred which permit the Beneficiary to give notice under clause 4.3.

4.6 The Consultant, acting in accordance with the provisions of this clause 4, shall not incur any liability to the Employer.

¹⁰ Include if Beneficiary has step-in rights which are sub-ordinated to the Fund.

¹¹ Include if Beneficiary has step-in rights which are sub-ordinated to the Fund.

¹² Include if Beneficiary has step-in rights which are sub-ordinated to the Fund.

¹³ Include if Beneficiary has step-in rights which are sub-ordinated to the Fund.

- 4.7 [If the Beneficiary appoints a Nominee to exercise its rights under this clause 4, the Nominee shall act on behalf of the Beneficiary and shall have no personal liability to the Consultant, but 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 Nominee.]¹⁴
- 4.8 [If the Fund exercises its equivalent right under clause 4.1 or clause 4.3 of the Fund Warranty, the provisions of clauses 3 and 4 shall have effect as if all references to the Fund and the Fund Warranty had been deleted and as if all references to the Employer were references to the Fund]¹⁵
- 4.9 [The Consultant acknowledges that, where the Consultant has given rights pursuant to a collateral warranty similar to those contained in clauses 3 and 4 to any other person, then if both the Beneficiary and any such person exercise such rights the priority of such exercise shall be as follows:
- 4.9.1 []; then
- 4.9.2 []; then
- 4.9.3 any other beneficiary.]¹⁶

5. **Use of Proprietary Material**

- 5.1 The copyright in the Proprietary Material shall remain vested in the Consultant, but the Consultant grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with the Development and/or the Property, including (without limitation) the execution and completion of the Development and the subsequent use, operation, maintenance, letting, occupation, management, sale, promotion, advertisement, extension, alteration, reinstatement, refurbishment and repair of the Property.
- 5.2 The licence referred to in clause 5.1 carries the right to grant sub-licences on the same terms and shall be transferable to third parties and shall subsist notwithstanding the expiry or determination (for any reason) of the Consultant's engagement under the Appointment.
- 5.3 The Consultant acknowledges that it is the author (as referred to in the Copyright, Designs and Patents Act 1988) of the Proprietary Material and waives any moral rights

¹⁴ Include only where Beneficiary is a bank providing finance.

¹⁵ Include if Beneficiary has step-in rights which are sub-ordinated to the Fund.

¹⁶ Include if numerous parties will have step-in rights and list the parties in order of priority.

which it might otherwise be deemed to possess under Chapter IV of that Act in respect of the Proprietary Material and of the Development.

5.4 The Consultant shall provide a complete set of copies of the Proprietary Material to the Beneficiary without charge on request and shall provide further copies of any or all of the Proprietary Material to the Beneficiary on request and upon payment by the Beneficiary of the Consultant's reasonable copying charges.

5.5 The Consultant shall not be liable for the consequences of any use of the Proprietary Material for any purpose other than that for which it was prepared or provided by the Consultant.

6. **Insurance**

6.1 Without limiting its other obligations under this deed or otherwise at law, the Consultant shall maintain professional indemnity insurance to cover each and every professional liability which it may incur under this deed, with a limit of indemnity of not less than £[]¹⁷ in respect of each and every claim [but such limit may apply in the aggregate in any year of insurance in relation to claims arising out of pollution and/or contamination]¹⁸, provided that such insurance continues to be available in the United Kingdom market from reputable insurers on reasonable terms and at commercially reasonable premium rates to consultants performing services substantially similar to the Services, and taking no account of the Consultant's claims record.

6.2 The insurance referred to in clause 6.1 shall:

6.2.1 be subject only to such conditions and excesses as may be usual in the United Kingdom market at the time; and

6.2.2 be maintained with reputable insurers with a place of business in the United Kingdom, from the date of this deed and for a period expiring not less than 15 years [from completion of the Services] [after Practical Completion]¹⁹ and notwithstanding the expiry or determination (for any reason) of the Consultant's engagement under the Appointment.

6.3 As and when reasonably required to do so by the Beneficiary, the Consultant shall produce documentary evidence in the form of a certified broker's certificate to

¹⁷ Level and scope of PI to be no less than as stated in the Consultant's Appointment, clause 8.1

¹⁸ To be amended for consistency with clause 8.1 of the Appointment.

¹⁹ Refer to the footnote at clause 20.1 of the Appointment and amend for consistency.

demonstrate that the insurance required by this clause 6 is being properly maintained.

- 6.4 The Consultant shall promptly notify the Beneficiary if at any time it is unable to obtain, maintain or renew insurance as required by this clause 6 on reasonable terms and at commercially reasonable premium rates or at all or if there is any material reduction in the scope or level of cover offered by such insurance. The Consultant shall forthwith notify the Beneficiary in circumstances where there is any change to cover upon renewal or otherwise during the insurance period, including but not limited to the level and basis of cover and any addition or omission from the policy, in particular the conditions, terms and exclusions of the policy.
- 6.5 The Consultant shall not compromise, settle or waive any insurance claim which it may have in respect of any professional liability under this deed without the prior consent of the Beneficiary, provided that nothing in this clause precludes the Consultant's insurers from taking over (in the name of the Consultant) the defence of any claim made by the Beneficiary under this deed and (in that capacity) from conducting and settling it as they see fit.

7. **Assignment**

The Beneficiary may at any time assign the benefit of this deed and/or any rights arising under it by way of absolute legal assignment to any subsequent purchaser of the Beneficiary's interest in the Property or to any third party (subject to a maximum of two such assignments without the Consultant's consent being required) or to any further person providing finance or re-finance in connection with the Development or by way of charge to any mortgagee of the Property or to any group company of the Beneficiary on notice to the Consultant, without the consent of the Consultant being required. Assignment to a party providing finance or a group company of the Beneficiary shall not count towards such two occasions. The Consultant shall not be permitted to assign this deed to a third party.

8. **Third parties**

- 8.1 Any holding or subsidiary company of the Beneficiary or any company associated with it may in its own right enforce any term of this deed.
- 8.2 Except as provided in clause 8.1, it is not intended that any third party should have the right to enforce a provision of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

- 8.3 The parties may rescind or vary this deed without the consent of a third party to whom an express right to enforce any of its terms has been provided.

9. **[Warranties in favour of others]**

The Consultant shall, within 14 days of being requested so to do by the Beneficiary, execute and deliver to the Beneficiary a deed of collateral warranty (in terms substantially similar to this deed but excluding clauses 3, 4 and 9) in favour of any person who acquires an interest in the Property from the Beneficiary and/or any first person who has entered into a lease or an agreement for lease for any part of the Property, provided that a collateral warranty in favour of such person has not already been requested by the Employer under the Appointment, and the Consultant's obligations under this clause 9 shall not apply to individual purchasers or tenants of a single unit or dwelling.]²⁰

10. **Other remedies**

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

- 10.2 The liability of the Consultant under this deed shall not be released, diminished or in any other way affected by:

10.2.1 the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Services and/or the Development or to inspect any documents relating to the Services and/or the Development or the failure to appoint such a person;

10.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary; or

10.2.3 any other independent inquiry into any relevant matter which the Beneficiary may make or fail to make.

11. **Limitation**

- 11.1 The Consultant's liability under this deed shall expire 12 years [from completion of the Services] [following Practical Completion]²¹, or termination of the Appointment

²⁰ Consider for inclusion if Beneficiary is a fund or purchaser and where these parties will require the right to request further collateral warranties.

²¹ Amend as per clause 20.1 of the Appointment.

(whichever is later) ("**Limitation Date**"), save in respect of:

- 11.1.1 any claims notified before or on the Limitation Date; and
- 11.1.2 any claims arising from or in connection with a failure to comply with section 1 or section 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or section 148 or 149 of the Building Safety Act 2022, including any claim to a contribution in relation to liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978, provided that the Consultant's liability under this deed in respect of such claims shall expire on the expiry of the limitation period applicable in accordance with the Limitation Act 1980 to any actions brought under that legislation or the Civil Liability (Contribution) Act 1978.

11.2 Subject to clause 11.3, no action or proceedings may be commenced against the Consultant after the Limitation Date.

11.3 Nothing in clause 11.2 shall limit the Beneficiary's right to commence an action or proceedings against the Consultant in respect of any claims arising from or in connection with a failure to comply with section 1 or section 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or section 148 or 149 of the Building Safety Act 2022, including any claim to a contribution in relation to liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978, provided that no such action or proceedings may be commenced against the Consultant after the expiry of the limitation period applicable in accordance with the Limitation Act 1980 to actions brought under that legislation or the Civil Liability (Contribution) Act 1978.

12. **Notices**

Any notice or other communication required under this deed shall be given in writing and shall be deemed to have been properly given if compliance is made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

13. **Governing law and disputes**

13.1 If any dispute or difference arises under this deed a party may refer it to adjudication and the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended) shall apply, in which event the adjudicator shall be nominated by the

13.2 The application and interpretation of this deed shall in all respects be governed by English law and, subject to clause 13.1, any dispute or difference arising under this deed shall be subject to the exclusive jurisdiction of the English courts. Delivered as a deed on the date of this document.

Executed as a deed by **[CONSULTANT]**)
acting by :)

Director

Director/Company Secretary²²

Executed as a deed by **[BENEFICIARY]**)
in the presence of:)

Director

Director/Company Secretary

Add attestation for Employer where Beneficiary has step-in rights.

²² Insert appropriate execution clause for Consultant as a limited company or LLP or a partnership (in the case of a partnership, repeating the clause as often as necessary for each partner). Consider if the partnership has in place a power of attorney allowing one or more partners to sign on behalf of the partnership; if not, all the partners must execute the appointment and any associated documents. ALSO, add execution block for the Employer where the Beneficiary has step-in rights.

SCHEDULE 9

Social Value

Not Used

SCHEDULE 10

Not used