

**Dated**

**20[ ]**

**[Client]**

and

**[Consultant]**

### **Consultant Appointment (Short-Form)**

in relation to the provision of **Engineering Inspection Services (EIS)**  
services to support [insert details of project]

# Form of Appointment

To : **[Consultant]** (Company no: [ ] ) whose registered office is at [ ] ("**Consultant**" or "**You**")

From : **[Client]** of [ ]

Date : [ ] 20[ ]

Dear [ ]

**Re: [insert title of project]**

We are pleased to confirm your appointment as [ ] in connection with the proposed [DESCRIBE PROJECT] (the **Project**) which has been instructed under the LHC Framework Alliance Contract dated [ ] (the **Framework Alliance Contract**). Your appointment will be governed by the terms and conditions set out in this appointment (the **Appointment**) and the annexed schedules (the **Schedules**).

## 1 Services

- 1.1 You shall perform the services set out in Schedule 3 (the **Services**) in connection with the Project in accordance with the terms and conditions of this Appointment. In the case of any conflict between the terms and conditions of this Appointment and those of the Framework Alliance Contract, this Appointment shall take precedence.

## 2 Duty of care

You warrant that in the performance of the Services you have exercised and shall exercise the reasonable skill care and diligence to be expected of a properly qualified and competent Person(s) experienced in the provision of services for projects of a similar size, scope, value, character and complexity to the Project.

## 3 Compliance with statute and codes of practice

- 3.1 You warrant that you have complied with and shall comply with all statutory requirements, legislation, codes of practice, British Standards, the Joint Code of Practice on the Protection from Fire on Construction Sites and Buildings Undergoing Renovation (8<sup>th</sup> edition published by the Fire Protection Association), environmental laws and good practice requirements (including without limitation health and safety requirements) in the performance of the Services.
- 3.2 You confirm that you are fully aware of your duties and obligations [as designer] [as principal designer] pursuant to and in accordance with the Construction (Design and Management) Regulations 2015 (the **CDM Regulations**) and that you possess the requisite level of skills, knowledge, experience and if an organisation, organisational capability to meet (and shall meet) the requirements of the CDM Regulations and shall at all times use reasonable endeavours to ensure that we as client do not breach our obligations under the CDM Regulations.

#### **4 Budget and programme**

- 4.1 In the performance of the Services you shall have due regard to our budget.
- 4.2 Programme dates and completion dates for the Project have been established or may be established and made known to you. Varied dates may be made known to you from time to time. You shall provide all drawings, details, specifications, information and services for which you are responsible under this Appointment so as not to cause such dates to be exceeded.

#### **5 Prohibited materials**

- 5.1 You warrant that you have exercised and shall continue to exercise the standard of skill care and diligence required by paragraph 2 to ensure that you have not and shall not [specify] authorise cause or allow to be used in the Project any products or materials which:
- 5.1.1 do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
  - 5.1.2 are generally known to members of your profession to be deleterious in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
  - 5.1.3 do not comply with the guidance set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council of Offices.
- 5.2 You shall as soon as reasonably practicable notify us if you become aware of any proposed or actual specification and/or use in the Project of any materials which do not comply with paragraph 5.1.

#### **6 Other agreements**

In the event that we supply you with details of any third party agreements before the date of this agreement (i.e. any agreement between us and another which relates to the Project which might include (this list not being exhaustive) any agreement relating to development, planning, agreement for lease/sale and/or any joint venture agreement) you shall carry out the Services (as from the date of notification of any such third party agreements) so as to comply with and so as not to, by any action or omission, cause or contribute towards a breach of the obligations under such agreements.

#### **7 Provision of information**

- 7.1 You shall keep us fully and properly informed on all aspects of progress and performance of the Services.
- 7.2 Without prejudice to paragraph 7.1 in the event that you become aware of any matter(s) which may detrimentally impact on the Project including (but without limitation) in terms of time, cost and/or integration of services and/or works you shall advise us accordingly and as soon as reasonably practicable.

7.3 If requested by you, we shall supply to you (in such time as may be reasonable having regard to the time and nature of any such request) any necessary and relevant data and information which is in our possession or which may only be obtained by us. For the avoidance of doubt we shall not be liable for any inaccuracy or discrepancy in any data or information we provide to you.

## 8 **Liaison with others**

8.1 We have appointed or propose to appoint those consultants listed below:

[ ] (collectively, the **Other Consultants**).

8.2 Without prejudice to your duties to us you shall liaise and co-operate at all times with the Other Consultants and/or contractor(s) and/or our sub-contractor(s), manufacturers, funding body or any other stakeholder, and have regard to any opinion or comments they may make.

## 9 **Compliance with instructions and limitations on authority**

9.1 You shall comply with all reasonable instructions given by us in writing under or in connection with this Appointment and/or the Services.

9.2 You shall not:

9.2.1 consent or agree to any waiver or release of any obligation of any or all of the Other Consultants and/or our contractor(s) and/or our sub-contractor(s) without our prior written approval;

9.2.2 make or approve any significant alteration (either in design or cost terms or in any way which would affect the lettable area or investment value or the period required for the completion of the Project) to any approved or settled design without our prior written approval.

## 10 **Insurance and indemnity**

10.1 You shall be liable for and shall indemnify us against all and any loss damage cost expense liability claims and/or proceedings whatsoever in respect of:

10.1.1 any personal injury to or death of any person whomsoever arising out of or in connection with your obligations under this Appointment and caused or contributed to by any negligence by you and/or any of your employees, agents and representatives; and

10.1.2 any loss of or injury or damage to any property whatsoever arising out of or in connection with the course of the performance of the Services and due to any caused or contributed to by any negligence or neglect or error or act or omission by you and/or any of your employees, agents and representatives.

10.2 Without prejudice to your liability under paragraph 10.1 you shall effect and maintain:

10.2.1 public liability insurance with a limit of indemnity of not less than ten million pounds (£10 million) for any one occurrence or series of occurrences;

10.2.2 cover which complies with the Employer's Liability (Compulsory Insurance) Act 1969 from the date of commencement of the Services until the date of completion of the Services;

10.2.3 professional indemnity insurance with a limit of indemnity of not less than ten million pounds (£10 million) [for each and every claim] / [for each occurrence or series of occurrences arising out of each and every event] [**provided that** such limit of indemnity may be [in the aggregate for each year of insurance] [[ ] pounds (£[ ]) in respect of claims for pollution and contamination] from the date of commencement of the Services and for a period expiring no earlier than [12] years from the date of completion of the Project **provided that** the insurance remains available to organisations of equivalent size and type to yourselves at commercially reasonable rates and on commercially reasonable terms.

10.2.4 The agreed levels of insurances are to be in accordance with those set out in the framework documents unless alternative levels are agreed by all parties at the time this agreement is entered into.

10.3 You shall maintain the insurances referred to in paragraph 10.2 with reputable insurance companies based in the UK and shall send us within five (5) working days of a request to do so evidence confirming your insurance details.

10.4 You shall inform us if the insurance referred to in paragraph 10.2 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and we shall agree the best means of protecting our respective interests and you shall carry out such actions as shall be necessary to implement any agreed actions.

## 11 **Reports and reliance**

11.1 In the event that, during the carrying out of the Services, you prepare or procure the preparation of any reports you shall procure that all and any such reports are prepared for the benefit of ourselves,

11.2 In the event that copies of any reports and/or findings produced as a result of any investigations carried out in respect of the Project and/or details of any preliminary works carried out in respect of the Project have been/are given to you, you shall have full regard to such reports, findings and preliminary works when complying with your duties under or in connection with this Appointment and/or carrying out the Services.

## 12 **Key personnel**

12.1 [ ] shall be appointed in connection with the Services and they shall have responsibility for the overall management, supervision and co-ordination of your services under this Appointment. [He] [She] shall not be replaced without our consent and any replacement is to be subject to our approval.

12.2 We shall have the right, after consultation with you, to request the removal of any person engaged in the performance of the Services if, in our reasonable opinion, their performance or conduct is or has been unsatisfactory. You shall promptly remove such person and replace them with a person we have previously approved.

### 13 **Copyright**

You hereby:

- 13.1 grant us an irrevocable royalty-free non-exclusive licence to use copy and reproduce all documents and information prepared by you or on your behalf in connection with the Project (whether in hard form or on computer aided disks or otherwise) (the **Documents**) for any purpose whatsoever connected with the Project including (without limitation) the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project **provided that** you shall not be liable for any such use by us of the Documents for any purpose other than that for which they were prepared or provided by you or on your behalf. Such licence shall carry the right to grant sub-licences, shall be transferable and shall survive any termination and/or suspension of your engagement/employment; and
- 13.2 warrant that the Documents do not and will not infringe any intellectual property rights of any third parties.

### 14 **Confidentiality**

Save as may be necessary for the proper performance of the Services or as otherwise compelled by law you shall not during the performance of the Services or following termination of this Appointment divulge or communicate to any person, company, business entity or other organisation any trade secrets or confidential information relating to us. This restriction will not apply in respect of any information which has become available to the public generally otherwise than through the default of you, your agents or employees.

### 15 **Compliance with relevant requirements and mandatory policies**

15.1 For the purposes of this Appointment:

- 15.1.1 **Applicable Laws** means all applicable laws, statutes, regulations and codes of practice in force from time to time.
- 15.1.2 **Relevant Requirements** means all Applicable Laws in connection with:
- (a) anti-corruption, anti-bribery, anti-fraud, and anti-money laundering, including but not limited to the Bribery Act 2010 (the **Bribery Act**);
  - (b) discrimination, equal opportunities, slavery and human trafficking, and human rights; and
  - (c) any other Applicable Laws specified in writing by us from time to time.
- 15.1.3 **Mandatory Policies** means:
- (a) an *'Anti-Bribery and Anti-Corruption Policy'*;
  - (b) an *'Anti-Slavery and Human Trafficking Policy'*;
  - (c) an *'Equal Opportunities Policy'*, which is in line with the Client's Equal Opportunities Policy (as set out in the Framework Brief); and

(d) any other policy specified by us in writing from time to time.

15.2 You undertake to us that:

15.2.1 you have not and your current and former directors, officers and employees have not, breached any Relevant Requirements;

15.2.2 you shall at all times comply with the Relevant Requirements and shall have and maintain the Mandatory Policies and implement procedures in order to ensure compliance with the Relevant Requirements;

15.2.3 from time to time, at our reasonable request, you will confirm in writing that you have complied with the undertakings in this paragraph 15.2 and will provide any information reasonably requested by us in support of such compliance; and

15.2.4 you shall promptly notify us in writing on becoming aware of any breach of this paragraph 15.2 or any legal proceedings (whether civil or criminal), litigation, arbitration or formal investigation commenced or likely to be commenced against you in connection with the breach of any Relevant Requirements.

15.3 You shall indemnify us against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, us as a result of any breach of paragraph 15.2.

## 16 **Assignment, sub-letting and novation**

16.1 You shall not assign or transfer all or any rights under or arising out of this Appointment which you may have without our consent.

16.2 You shall not without our prior written consent sub-contract to any person the performance of any or all of the Services. If we agree at any time to any sub-contracting this shall be entirely without prejudice to and shall not derogate from your liabilities and obligations under this Appointment.

16.3 The Client ( with consent not to be unreasonably withheld ) shall be entitled to novate this deed to any third party acquiring an interest in the Project (including but not limited to the Contractor appointed for the Project) and the Consultant shall, within ten (10) Working Days of a request to do so, execute as a deed and deliver to the Client the Deed of Novation in the form set out at Schedule 6 to this Appointment.

## 17 **Warranties**

You will at our request from time to time and within [21 twenty one (ten)] working days of any such request, enter into warranties in favour of third parties [(which exclude owners/occupiers of an individual unit)] in the form enclosed with this Appointment.

## 18 **Payment**

18.1 Your remuneration for the proper performance of the Services in accordance with this Appointment (the **Fee**) will be [ ] pounds (£[ ]) plus applicable value added tax (credit being given for any sums paid to you in respect of the Services prior to the date of this Appointment). The Fee shall be deemed to be inclusive payment for the Services and all

costs, expenses and overheads of every kind incurred by you or on your behalf in connection with the Services .

18.2 We shall pay you in accordance with the schedule of fees set out in Schedule 2 and the provisions of Schedule 4.

18.3 If we wrongfully withhold any amount after the final date for payment that amount shall bear simple interest at the rate of 4% over the Bank of England bank rate for the time being from the final date for payment to and including the date on which such amount is paid or discharged. You acknowledge that this is a substantial remedy for late payment in compliance with the Late Payment of Commercial Debts (Interest) Act 1998.

## 19 **Termination/suspension**

19.1 The Client may at any time by notice in writing to the Consultant with immediate effect terminate the Consultant's engagement under this deed in the event that:

19.1.1 the Consultant breaches paragraph 15.2;

19.1.2 an Associated Person (as defined in the Bribery Act (or anyone employed by or acting on behalf of an Associated Person) engages or has engaged in any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 Bribery Act or which could or would place the Client in breach of section 7(1) Bribery Act; and/or

19.1.3 the circumstances set out in regulation 73(1)(a), 73(1)(b) or 73(1)(c) of the Public Contracts Regulations 2015 apply.

19.2 Without prejudice to clause 19.1 we shall be entitled at any time in our absolute discretion to terminate your employment under this Appointment or may bring to an end any part or parts of the Services upon giving you [ ] working days written notice.

19.3 We may by [ ] working days written notice suspend the performance of all or part(s) of your services under this Appointment. If we have not required you to resume performance of the Services or any such part or parts so suspended within six months from the date of such notice of suspension you may request in writing that your services be resumed. Unless we give you written instructions to resume within 28 (twenty eight) days after receipt of your request your employment shall determine upon the expiry of the 28 (twenty eight) day period referred to above.

19.4 In the event that we exercise our rights of termination and/or suspension in accordance with paragraph 19.1, 19.2 or 19.3 or you terminate your engagement in accordance with paragraph 19.5:

19.4.1 on expiry of the notice period you shall cease such works and services and shall deliver to us copies of the Documents, in both printed and electronic form;

19.4.2 you shall be entitled to such proportion of the Fee as represents a fair and reasonable value of that part of the Services carried out up to the date of such termination and / or suspension **provided always:**



- (a) we reserve the right to deduct from any such sum or sums the amount of any claim we may have in respect of any breach and/or failure by you in any way to observe or perform your obligations under this Appointment;
- (b) we shall not be liable to reimburse you a sum greater than the sum which would have become due to you, pursuant to this Appointment, in the interim payment following the date of such termination and/or suspension;
- (c) you shall not be entitled to any payment or reimbursements of any loss of profit, loss of contract or other costs losses and/or expenses arising out of or in connection with the terms of this Appointment, and/or the Project.

19.5 If we are in breach of our obligations under this Appointment you may serve 28 (twenty eight) days written notice of your intention to terminate stating the grounds for termination. If in such 28 (twenty eight) day period we fail to rectify our breach you shall be entitled at the expiry of that period to serve further written notice terminating your employment under this Appointment with immediate effect.

## 20 **Data Protection**

For the purposes of this deed, the terms **Data Controller**, **Data Subject**, **Data Processor**, **Personal Data**, **Process** and **Processing** shall have the meaning prescribed under the General Data Protection Regulation 2016/679 (**GDPR**). References in this deed to the Data Protection Legislation shall be references to the GDPR or such other domestic legislation that supplements and / or implements the GDPR, along with any associated guidance and Codes of Practice as issued from time to time.

The parties will each act in the capacity of Data Controller in respect of the Personal Data processed under this appointment and each will Process the Personal Data as independent Data Controllers.

- 20.1.1 The parties (including their employees agents or officers) shall at all times during the period of this appointment comply with the provisions and obligations imposed by this clause 20 and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this appointment.
- 20.1.2 The parties warrant and represent that they each have in place appropriate technical and organisational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- 20.1.3 Each party shall notify the other without undue delay on becoming aware of any breach of the Data Protection Legislation in relation to the Personal Data Processed under this appointment.

- 20.1.4 Whilst each party shall be responsible for responding to any complaint in relation to the Personal Data Processed pursuant to this appointment, or any request by individuals to exercise the Data Subject's Rights, the parties will co-operate with each other and provide reasonable assistance with any request, proceedings or inquiry by any affected Data Subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with data processed under this appointment.
- 20.1.5 The provisions of this clause 20 shall apply during the continuance of the appointment and indefinitely after its termination.

## 21 **Freedom of Information Act and Environmental Information Regulations**

21.1 The Consultant acknowledges that the Client is subject to the requirements of the Freedom of Information Act 2000 (including any re-enactments, amendments and relevant regulations) (**FOIA**) and the Environmental Information Regulations 2004 (including any re-enactments, amendments and relevant regulations) (**EIR**) and is expected to abide by the Secretary of State's Code of Practice under Section 45 of FOIA (**FOIA Code**) and Secretary of State's Code of Practice under Regulation 16 of EIR (**EIR Code**). The Consultant shall assist and co-operate with the Client (at the Consultant's expense) to enable the Client to comply with these information disclosure requirements.

21.2 The Consultant shall, and shall ensure that their sub-consultant/sub-constructors shall:

21.2.1 provide the Client with a copy of all 'information' as defined in Section 84 FOIA and/or 'environmental information' as defined in Regulation 2 EIR (**Information**) in their possession, power or control in the form that the Client requires within five (5) Working Days (or such other period as the Client may specify) of the Client requesting that Information; and

21.2.2 provide all necessary assistance as is reasonably requested by the Client to enable the Client to respond to a Request for Information within the time for compliance set out in Section 10 FOIA or Regulation 5 EIR (**Request for Information** has the meaning set out in the FOIA or any apparent request for information under the FOIA, the EIR, the FOIA Code or the EIR Code);

and the Consultant shall be liable for and hereby indemnify the Client from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Client where and to the extent that the same arise in connection with any breach of this special term by the Consultant, their employees, agents and/or sub-consultant/sub-constructors and/or their employees and agents.

21.3 If the Consultant considers that all or any Information provided to the Client under clause 22.2 is a "trade secret" in accordance with Section 43(1) FOIA or is commercially sensitive information disclosure of which would be likely to prejudice the commercial interests of any party in accordance with Section 43(2) FOIA, or a duty of confidentiality applies under Section 41(1) FOIA, or is exempt by the operation of any other provision of FOIA or any exception in the EIR, the Consultant shall ensure that the relevant Information, the claimed exemption or exception and if a qualified exemption, their views on where the public interest lies, is clearly identified to the Client. Notwithstanding any such identification, the

Client shall be solely responsible for determining at its absolute discretion whether such Information and/or any other information:

21.3.1 is exempt from disclosure in accordance with the provisions of the FOIA Code and the FOIA or the EIR Code and the EIR; or

21.3.2 is to be disclosed in response to a Request for Information.

21.4 In no event shall the Consultant respond directly to any requests for information from members of the public.

21.5 The Consultant acknowledges that the Client may, acting in accordance with the recommendations set out in the FOIA Code and/or EIR Code, be obliged under the FOIA and/or the EIR to disclose Information:

21.5.1 without consulting with the Consultant; or

21.5.2 following consultation with the Consultant and having considered their views.

21.6 The Consultant acknowledges and agrees that, in line with the Government's expectations on all local authorities in terms of public accountability, the Client shall publish on its website:

21.6.1 Copies of the tender documents and this deed; and

21.6.2 All invoice items valued at over [£500.00] in relation to this deed,

such information to be available for viewing on the Client's website for twelve (12) months after the date of first publication and to be retained by the Client for a maximum period of seven (7) years after the date of publication.

## 22 **Local Government Ombudsman**

22.1 The Consultant acknowledges that the Clients is subject to the Local Government Act 1974 (as amended) and be required to cooperate with the Local Government Ombudsman.

22.2 The Consultant shall fully co-operate with any enquiry or investigation made by the Local Government Ombudsman which in any way concerns, affects or relates to the services performed by the Consultant under this deed, or relates to any individual receiving services (of whatever nature and in whatever capacity) under this deed.

22.3 Such co-operation shall include (but not be limited to) the following:

22.3.1 providing access to or copies of such files, documents, letters, notes, minutes, records or any other information (whether held or stored electronically, in hard copy format or otherwise) which relate to the subject or service under investigation;

22.3.2 providing access to the premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Consultant in the performance of the Services;

- 22.3.3 providing access to the Consultant's staff (of whatever seniority) involved in the performance of the deed (including management or supervision) or who may be the subject of, or be named in, any enquiry or investigation by the Local Government Ombudsman (including providing suitable facilities for interviewing such staff).
- 22.4 The Consultant shall use reasonable endeavours to ensure that the terms of any sub-contract include identical provisions to this clause 22.
- 22.5 Where the Local Government Ombudsman in its report:
- 22.5.1 clearly identifies the Consultant as being wholly or partly responsible for any maladministration or other failure, or
- 22.5.2 clearly identifies any employees, agents or sub-contractors of the Consultant as being wholly or partly responsible for any maladministration
- then any compensation paid or the value of any other benefit given by the Client to any person arising from such report may be deducted from such sums as would be otherwise payable to the Consultant under this deed. Where the Consultant (whether in its own right or vicariously on behalf of any employees, agents or sub-contractors of the Consultant) is partly responsible, a suitable proportion of any compensation or the value of any other benefit may be deducted by the Client.
- 22.6 Where the Client does not hold any such sums from which the compensation paid or the value of any other benefit given may be deducted, such sums may be recovered from the Consultant as a civil debt, or from any sum held by the Client in relation to any other contract between the Client and Consultant.
- 22.7 For the purposes of this clause 22:
- 22.7.1 "compensation paid" means such sum as is recommended/required by the Local Government Ombudsman to be paid (as a result of the maladministration or other failure) or such other lesser sum as the Client actually pays following the Local Government Ombudsman's report; and "compensation" shall be construed accordingly and shall not require a decision, judgement or order to have been made by any Court, Tribunal or other appropriate body before such sum paid can be recovered from the Consultant in accordance with this clause 22; and
- 22.7.2 "the value of any other benefit" shall be such monetary value (if any) as in the Client's representative's opinion may approximate to or equal that other benefit given by the Client, providing such a benefit is capable of having a monetary value ascribed to it.
- 22.8 Where the Consultant disputes the value ascribed by the Client to the other benefit given, the task of assessing such value shall be given to an appropriate independent professional body. That body shall be selected by the Client having regard to the nature of the benefit given by the Client.

## 23 **Public Contracts Regulations**

### 23.1 The Consultant shall ensure that:

- 23.1.1 every sub-consultant agreement or sub-contract pertaining to the Services contains provisions requiring that payment due to the relevant sub-consultant or supplier of the Consultant is made no later than thirty (30) days after receipt of a valid and undisputed invoice, unless the relevant sub-consultant agreement or sub-contract requires the Consultant to make earlier payment.
- 23.1.2 every sub-consultant agreement or sub-contract includes a requirement for the sub-consultant or supplier to include a clause equivalent to the obligations in clause 23.1.1 and this clause 23.2.2 as between the relevant sub-consultant or supplier and its own sub-consultant or supplier so that the conditions of Regulation 113 of the PCR are satisfied.

## 24 **Contracts (Rights of Third Parties) Act 1999**

This Appointment does not intend to confer and does not confer on any third party any benefit or right to enforce any terms of this Appointment pursuant to the Contracts (Rights of Third Parties) Act 1999.

## 25 **Notices**

- 25.1 All notices given to a party under this Appointment shall be in writing and shall be duly and validly given if delivered by hand delivery or sent by prepaid registered or recorded delivery mail at its registered office (if a company) or its principal place of business (in any other case), and notices sent by prepaid registered or recorded delivery mail shall be deemed to have been served on the second working day after the date of posting unless they are proven to have been received later, in which case they shall be treated as given or served on receipt.

## 26 **Miscellaneous**

- 26.1 No inspection or approval or review on our part or on our behalf nor any omission to inspect or review or to disapprove nor any failure by us to enforce strict compliance with the terms and conditions of this Appointment shall negate or diminish any duty or liability on your part under or in connection with this Appointment.
- 26.2 This Appointment supersedes any previous agreement and/or arrangement between us in respect of the Project or the Services (whether oral or written) and represents the entire understanding between us in relation to the Project and/or the Services.
- 26.3 Notwithstanding the date of this Appointment it shall have effect as from actual commencement of the performance by you of the Services.
- 26.4 All additions amendments and variations to this Appointment shall be binding only if in writing and signed by the duly authorised representatives of both of us.
- 26.5 If any provision of this Appointment is declared to be invalid or unenforceable it shall not affect the validity or enforceability of the remaining provisions of this Appointment.

27      **Law and jurisdiction**

This Appointment and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

28      **Liability**

“Your maximum liability under or in connection with this Appointment, whether in contract, tort, negligence, for breach of statutory duty, or otherwise (other than in respect of death or personal injury) shall not exceed [x] million pounds (£[x],000,000).

This Appointment has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**[Client]** of [    ]

(the **Client**)

EXECUTED AS A DEED BY

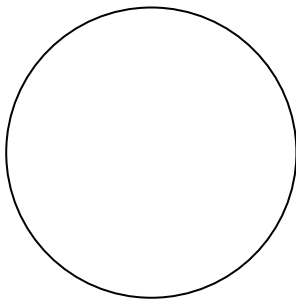
**the Client**

by affixing its common seal

in the presence of:

.....

Authorised Signatory



**[Consultant]** (Company no: [    ]) whose registered office is at [    ] (the **Consultant**)

EXECUTED AS A DEED BY

**the Consultant** acting by

*[two directors] or [a director and  
a secretary]*

.....

Director

.....

Director / Secretary

## **Schedule 1**

[For additional information]



## **Schedule 2**

### **Project Brief and Fee Payment Schedule**

### **Schedule 3**

#### **The Services**

The Services to be provided under this Appointment (in accordance with the Specification) may include:

- a. [Insert services]
- b. [Insert services]
- c. [Insert services]

## Schedule 4

### Housing Grants Construction and Regeneration Act 1996 (as amended)

#### 1 General provisions

References in this Schedule 4 to a paragraph are references to such paragraph in this schedule.

#### 2 Payment

2.1 You shall submit to us written applications for payment in accordance with Schedule 2 and (if applicable) pursuant to clauses 18.3 and 19.4.2 or paragraph 3.2 of this Schedule 4. Such applications shall set out what you consider is due to you on the Due Date (defined below) and the basis on which that sum is calculated. Such applications shall be in such form and with such supporting documentation as we may reasonably require.

2.2 The due date of payment of any monies payable to you pursuant to this Appointment shall be the date of receipt by us of your written application for payment submitted in accordance with paragraph 2.1 (the **Due Date**).

2.3 Within five (5) days of the Due Date we shall give notice of the sum we consider to have been due on the Due Date and the basis on which that sum is calculated (the **Payment Notice**).

2.4 If we do not issue a Payment Notice in accordance with paragraph 2.3 then your application for payment under paragraph 2.1 shall be treated as the Payment Notice.

2.5 The final date for payment of any sum payable pursuant to this Appointment shall be 28 days after the Due Date (the **Final Date for Payment**).

2.6 If we want to pay less than the amount stated in the Payment Notice we shall issue a notice specifying the sum we consider to be due on the date the notice is served and the basis on which that sum is calculated (the **Pay Less Notice**). The Pay Less Notice shall be served no later than [seven (7)] days before the Final Date for Payment.

2.7 Subject to paragraph 2.8, we shall pay you the amount stated in the Payment Notice or, if issued, the Pay Less Notice (defined below) by the Final Date for Payment (defined below).

2.8 In the event that you become insolvent (as set out in section 113(2), 113(3), 113(4) or 113(5) Housing Grants Construction and Regeneration Act 1996 (as amended)) we do not have to pay any sum that has become due to you insofar as we have issued or shall issue a Pay Less Notice in accordance with paragraph 2.6 or if you become insolvent after the date on which the Pay Less Notice in relation to that sum could have been issued in accordance with paragraph 2.6.

2.9 Notwithstanding any other provision of this Appointment we may in any subsequent payment to you delete, correct and/or modify any sum or sums previously paid by us.

- 2.10 Any sum due to us from you which we do not deduct and/or withhold from sums due or to become due to you shall be due for payment on receipt of an application from us by you (the **Client Due Date**). In such application we shall specify the sum we consider to be due on the Client Due Date and the basis on which that sum is calculated. Within 5 days of the Client Due Date you shall issue a notice confirming the sum that you consider to have been due on the Client Due Date and the basis on which that sum is calculated. If you fail to serve such notice our application shall be treated as the payment notice. The final date for payment for any such sum applied for by us shall be 28 days from the Client Due Date.

### 3 **Right of suspension**

- 3.1 Without prejudice to any other remedy or right you may have and **provided that** you have given us at least seven (7) days notice of your intention to do so stating the ground or grounds on which you intend to suspend performance you may suspend performance of any or all of your obligations under this Appointment if we do not pay any sum properly due and owing under this Appointment by the relevant Final Date for Payment. Your right to suspend performance shall cease when we make payment in full of the relevant amount.
- 3.2 If you do suspend any or all of your obligations pursuant to paragraph 3.1 you shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by you as a result of such suspension.

### 4 **Adjudication**

Either you or we may refer any difference or dispute arising under this Appointment at any time to adjudication. Any such adjudication shall be governed by the Scheme set out in part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended).

**Schedule 5**  
**Collateral Warranty**

**Dated**

**20[ ]**

**[Client ]**

and

**[Consultant]**

and

**[Beneficiary ]**

### **Collateral warranty**

in relation to the provision of **Engineering Inspection Services (EIS)** services to support [insert details of project]

## Collateral warranty

dated [ ]

### Parties

- (1) [ ] (registration number [ ]) [of] [whose registered office is at] [ ] (the **Client**)

**OR**

[ ] of [ ] and [ ] of [ ] (the **Partners**) carrying on business together in partnership as [ ] [of] [whose principal place of business is at] [ ] (the **Client**)

- (2) **[Consultant]** (**Company** no: [ ]) whose registered office is at [ ] (the **Consultant**)

- (3) [the **Beneficiary**]

**OR**

**[Additional Client]**

### Introduction

- (A) By a letter of appointment dated [ ] (the **Appointment**) the Client has appointed the Consultant to provide [*insert services*] consultancy services in connection with the Project as detailed further in Schedule 3 of the Appointment (the **Services**) upon the terms and conditions contained in the Appointment.
- (B) The Beneficiary has an interest in these services as [an additional client, subsequent owner, leaseholder or another define as required]
- (C) The Consultant has agreed to enter into this warranty in favour of the Beneficiary.

### Agreed terms

#### 1 Interpretation and definitions

In this warranty:

- 1.1 clause headings are for convenience only and do not affect its interpretation;
- 1.2 words importing the singular meaning include where the context so allows the plural meaning and vice versa;
- 1.3 where the context so admits references in this warranty to a schedule or clause are to a schedule or clause of this warranty;
- 1.4 a reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

## 2 **Consideration**

In consideration of the payment of one pound (£1.00) by the Beneficiary to the Consultant (receipt of which the Consultant hereby acknowledges) the Consultant covenants with the Beneficiary as set out in this warranty.

## 3 **Duty of care**

The Consultant warrants and undertakes to the Beneficiary that:

- 3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Appointment; and
- 3.2 in the performance of the Services and any Additional Services instructed pursuant to paragraph 1.1 of the Appointment it has exercised and shall exercise all the reasonable skill care and diligence to be expected of a properly qualified and competent [*consultant*] [*architect*] experienced in the provision of services for projects of a similar size, scope, value, character and complexity to the Project; and
- 3.3 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Consultant's professional responsibilities in relation to the Project **provided that:**
  - 3.3.1 the Consultant will have no greater liability to the Beneficiary or liability for a longer duration under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named as client instead of the Client in the Appointment; and
  - 3.3.2 the Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment (including but not limited to the financial limits on the Consultant's liability under the Appointment) and to raise the equivalent rights in defence of liability (excluding any rights of set-off and/or counterclaim that the Consultant may have under the Appointment) as it would have against the Client under the Appointment; and
  - 3.3.3 the Beneficiary shall be deemed to have relied upon the Consultant's professional skill and judgement in respect of all matters which lie within the scope of the Consultant's professional responsibilities in relation to the Project.

## 4 **Prohibited materials**

- 4.1 The Consultant warrants that it has exercised and shall continue to exercise the standard of skill, care and diligence required by clause 3.2 to ensure that it has not and shall not [*specify*] authorise cause or allow to be used in the Project any products or materials which:
  - 4.1.1 do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or



- 4.1.2 are generally known to members of the Consultant's profession to be deleterious in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
- 4.1.3 do not comply with the guidance set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council of Offices.
- 4.2 The Consultant shall as soon as reasonably practicable notify the Beneficiary if it becomes aware of any proposed or actual specification and/or use in the Project of any materials which do not comply with clause 4.1.
- 5 **Step-in**
- 5.1 The Consultant covenants with the Beneficiary that if any event of default shall occur under the Agreement at any time the Consultant shall , if so required by notice in writing given by the Beneficiary mutatis mutandis in accordance with clauses 5.4.1 to 5.4.3 inclusive, accept the instructions of the Beneficiary or its appointee to the exclusion of the Client upon the terms and conditions of the Appointment and the Client acknowledges that the Consultant shall be entitled to rely on the notice given to the Consultant by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.
- 5.2 The Consultant hereby covenants that it shall not exercise nor seek to exercise any right to terminate or treat as terminated the Appointment and/or its employment or discontinue or suspend the performance of any of its obligations under the Appointment without first giving to the Beneficiary prior written notice specifying the Consultant's ground for terminating or treating as terminated the Appointment and/or its employment and/or discontinuing or suspending its performance under the Appointment. If the grounds are that fees which are due have not been paid by the final payment date and no effective notice to withhold payment has been given the Consultant shall give seven days' notice otherwise the Consultant shall give 15 Working Days notice.
- 5.3 Compliance by the Consultant with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Client 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 discontinuance or suspension shall have ceased pursuant to the provision of clause 5.4.
- 5.4 Within the relevant notice period referred to in clause 5.2 the Beneficiary or its appointee may give written notice to the Consultant:
- 5.4.1 acknowledging that it assumes all the obligations of the Client;
- 5.4.2 requiring the Consultant to continue with the performance of its duties and obligations under the Appointment;
- 5.4.3 undertaking unconditionally to the Consultant to pay to the Consultant within 15 Working Days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Consultant under the Appointment but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Consultant from the appointee[;][.]

[provided that the rights of [ ] under clause 5 of the warranty given or to be given by the Consultant to [ ] shall have priority over the rights of the Beneficiary under this clause whether such rights are exercised by [ ] before or after the exercise by the Beneficiary of its rights under this clause.]

5.5 In the event of the Beneficiary or their appointee giving notice to the Consultant in accordance with clause 5.4 the Appointment shall continue in full force and effect and in all respects as if the Appointment had been made between the Consultant and the Beneficiary or its appointee (as applicable) to the exclusion of the Client (but without prejudice to any rights of recovery as between the Consultant and the Client) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.

5.6 The Client confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.

## 6 Copyright

The Consultant hereby:

6.1 grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce all documents and information prepared by the Consultant or on the Consultant's behalf in connection with the Project (whether in hard form or on computer aided disks or otherwise) (the **Documents**) for any purpose whatsoever connected with the Project including (without limitation) the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project **provided that** the Consultant shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which they were prepared or provided by the Consultant or on the Consultant's behalf. Such licence shall carry the right to grant sub-licences, shall be transferable and shall survive any termination and/or suspension of the Consultant's engagement/employment;

6.2 warrants that the Documents do not and will not infringe any intellectual property rights of any third parties;

6.3 agrees to provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Consultant's reasonable copying charges in connection with complying with such request.

## 7 Insurance

7.1 The Consultant shall effect and maintain professional indemnity insurance with a limit of indemnity of not less than ten million pounds (£10 million) [for each and every claim] [for each occurrence or series of occurrences arising out of each and every event] **provided that** such limit of indemnity may be [in the aggregate for each year of insurance] [ ] pounds (£ [ ]) in respect of claims for pollution and contamination] from the date of commencement of the Services and for a period expiring no earlier than 12 years from the date of completion of the Project **provided that** the insurance remains available to organisations of equivalent size and type to the Consultant's practice/organisation at commercially reasonable rates and on commercially reasonable terms.

7.2 The Consultant shall maintain the insurance referred to in clause 7.1 with reputable insurance companies based in the UK and shall send the Beneficiary, within five working days of a request to do so, evidence confirming the insurance details.

7.3 The Consultant shall inform the Beneficiary if the insurance required by clause 7.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Consultant and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

## 8 **Assignment**

8.1 The benefit of all or any rights under or arising out of this warranty may be assigned or transferred at any time without the consent of the Consultant [and the Client] on two occasions and the Consultant agrees that they will not contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

8.2 The Consultant shall not assign or transfer all or any rights under or arising out of this warranty they may have without the consent of the Beneficiary.

## 9 **Notices**

9.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered office for the time being.

9.2 Notices may be served by personal delivery, pre-paid registered or recorded delivery mail.

9.3 Notices and communications shall be deemed to have been served or received in the case of personal delivery on the date of delivery; and in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted.

## 10 **Continuing effect**

Notwithstanding the completion of the Project or any part of the Project this warranty shall continue to have effect.

## 11 **Miscellaneous**

11.1 No inspection or approval or review by or on behalf of the Beneficiary or any omission to inspect or review or to disapprove shall negate or diminish any duty or liability of the Consultant under or in connection with this warranty.

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

12      **Contracts (Rights of Third Parties) Act 1999**

Nothing in this warranty confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

13      **Law**

This warranty and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the jurisdiction of the English courts.

This warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Schedule 6**  
**Deed of Novation**

Dated

20[ ]

**[Client]**

and

**[Consultant]**

and

**[New Client]**

## **Deed of Novation**

in relation to the provision of **Engineering Inspection Services (EIS)**  
services to support [insert details of project]

# Deed of Novation

dated

20[ ]

## Parties

- (1) [ ] of [ ] (the **Client**)
- (2) **[Consultant] (Company** no: [ ]) whose registered office is at [ ] (the **Consultant**)
- (3) [ ] (registration number [ ]) [of] [whose registered office is at] [ ] (the **New Client**)

**OR**

[ ] [ ] [ ] and [ ] (registration number [ ]) carrying on business together in partnership as [ ] [of] [whose principal place of business is at] [ ] (the **New Client**)

## Introduction

- (A) The Client has appointed the Consultant to provide [ ] services (the **Services**) by an agreement dated [ ] (the **Appointment**) in respect of a development at [ ] (the **Project**).
- (A) The Client and Consultant have agreed that from the date of this Agreement the New Client shall assume the obligations of the Client and that the Consultant shall perform its obligations under the Appointment in favour of the New Client and that the Client and the Consultant shall subject to the terms of this Agreement, each release the other from any obligations owed by the other to them under the Appointment.

## Agreed terms

### 1 Novation

- 1.1 The Client hereby releases and discharges the Consultant from any and all obligations and liabilities owed to the Client under the Appointment.
- 1.2 The Consultant undertakes to perform the Appointment and to be bound by its terms in every way as if the New Client were, and had been from the inception, a party to the Appointment in lieu of the Client.
- 1.3 The Consultant hereby releases and discharges the Client from any and all obligations and liabilities owed to the Consultant under the Appointment and accepts the liability of the New Client under the Appointment in lieu of the liability of the Client.
- 1.4 Without prejudice to clause 1.2, the Consultant warrants to the New Client that it shall be liable for any loss or damage suffered or incurred by the New Client arising out of any negligent act, default or breach by the Consultant in the performance of its obligations under the Appointment (whether or not notified or complained of) prior to the date of this agreement. Subject to any limitation of liability in the Appointment, the Consultant shall be liable for such loss or damage notwithstanding that such loss or damage would not have

been suffered or incurred by the Client (or suffered or incurred to the same extent by the Client).

- 1.5 The Consultant acknowledges that all fees and expenses properly due to the Consultant under the Appointment up to the date of this Agreement have been paid by the Client.

OR

The Consultant acknowledges that as at the date of this agreement the Consultant has been paid the sum of [ ] pounds (£ [ ]) exclusive of Value Added Tax by the Client.

- 1.6 The New Client undertakes to perform the Appointment and to be bound by its terms in every way as if the New Client were, and had been from the inception, a party to the appointment in lieu of the Client.

## 2 **Proper law and jurisdiction**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English Courts.

## 3 **Contracts (Rights of Third Parties) Act 1999**

Subject to the provisions of the Appointment nothing in this Agreement confers or purports to confer any rights on any person pursuant to the Contract (Rights of Third Parties) Act 1999.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.