

DATED \_\_\_\_\_ 20

- (1) 20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED
- (2) WINTECH LIMITED

**FAÇADE ENGINEER'S APPOINTMENT**  
in respect of a development at  
**20:20 Building, Skinner Lane, Leeds LS7 1BB**



**GOWLING WLG**

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**THIS AGREEMENT** is made

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**BETWEEN**

- (1) **20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED** (Company registration number 06770847) whose registered office is at Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB ("the Employer") and
- (2) **WINTECH LIMITED** (Company registration number 2430998) whose registered office is at Quartz House, Pendeford Business Park, Wobaston Road, Wolverhampton, WV9 5HA ("the Consultant")

**NOW THIS DEED WITNESSETH** as follows:

## 1. DEFINITIONS INTERPRETATION AND CIRCUMSTANCES

### 1.1 Definitions

In this agreement unless the context otherwise requires the following expressions shall have the following meanings:

"Additional Services"	services which the Employer requires the Consultant to perform at any time during the Project in accordance with clause 2.2 which are not comprised in the Standard Services
"Building Contract"	the building contract entered or to be entered into by the Employer with the Contractor for the carrying out and completion of the Works and includes any subsequent agreement varying or supplementing such contract
"CDM Regulations"	the Construction (Design and Management) Regulations 2015 (SI2015/51)
"Construction Act"	the Housing Grants Construction and Regeneration Act 1996
"Construction Period"	the period during which the Works are being carried out under the Building Contract as may be amended or updated from time to time
"Construction Programme"	the programme prepared by the Contractor and agreed by the Employer for the carrying out of the works under the Building Contract as updated or amended from time to time
"Contractor"	Ballymore Contract Services Limited or such other person as may be engaged by the Employer as contractor in relation to the Project for the carrying out and completion of the Works
"Employer"	includes (in addition to the person named as the first party to this agreement) any person to whom this agreement is validly assigned under clause 13
"Employer's Agent"	Cardoe Martin Limited or such other person as may be appointed from time to time by the Employer as employer's agent in relation to the Project

"Fee"	the fee payable to the Consultant for the provision of the Standard Services
"Fund"	a person (whether acting for himself and/or where leading for a syndicate of persons as agent and trustee for such persons) who is providing or shall provide interim or other finance for the carrying out of the Project itself and/or for the acquisition of the Site
"Group Company"	any subsidiary company or holding company of the Employer or another subsidiary or holding company of such company as subsidiary and holding company are defined in s1159 Companies Act 2006
"MHCLG"	The Ministry of Housing, Communities & Local Government, a UK government department whose principal office is at 2nd floor NW, Fry Building, 2 Marsham Street, London, SW1P 4DF, United Kingdom
"Moral Rights"	moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988
"Nominating Notice"	a written notice in the form set out at schedule 4
"Practical Completion"	practical completion of the whole of the Works as certified or otherwise evidenced pursuant to the terms of the Building Contract
"Principal Contractor"	shall have the same meaning as in the CDM Regulations
"Principal Designer"	Abco Management Ltd T/A Bell Safety Services or such other person as may be appointed from time to time by the Employer as principal designer in relation to the Project
"Professionals"	each of the following:
	(a) the Employer's Agent
	(b) the Principal Designer
	(c) the Quantity Surveyor
	(d) International Fire Consultants Limited (the Fire Engineer)
"Project"	and such other persons (if any) engaged or to be engaged by the Employer in addition to the Consultant to provide professional services in relation to the Project
"Project Cost Plan"	the design and construction of ACM cladding remediation works at the Site
	the document drawn up or to be drawn up by the Quantity Surveyor and agreed with the Employer setting out the cost of carrying out and completing the Project

	and each element of it as updated or amended from time to time
"Project Manager"	the Employer's Agent or such other person as may be appointed from time to time by the Employer as project manager in relation to the Project
"Project Material"	all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed by or on behalf of the Consultant in the course of or as a result of performing the Services and whether in existence or to be made or produced and including all amendments and additions thereto and all designs ideas concepts and inventions contained in them
"Project Programme"	the programme for the carrying out of the Project as a whole a copy of which shall be drawn up and supplied by the Project Manager as updated or amended by the Project Manager from time to time
"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act is a bank holiday
"Purchaser"	a person who has acquired or has agreed to acquire or may later acquire or agree to acquire a freehold interest in the whole or any part of the Site (and/or any premises constructed or to be constructed on the Site)
"Quantity Surveyor"	RPP Limited or such other person as may be appointed from time to time by the Employer as quantity surveyor in relation to the Project
"Required Consents"	planning permissions listed building consents building regulation approvals and all other permissions consents approvals licences certificates and permits whether of a public or private nature as may be necessary lawfully to commence carry out and complete the Project and the Works
"Scheme"	the Scheme for Construction Contracts SI 1998 No. 649 (as amended)
"Services"	the Standard Services any Additional Services and any other services provided by the Consultant in relation to the Project whatsoever
"Site"	20:20 Building, Skinner Lane, Leeds LS7 1BB where the Works are to be carried out
"Standard Services"	the services set out in schedule 2 or otherwise stated in this agreement to be carried out provided or performed by the Consultant (other than those stated to be provided as Additional Services)

"Statutory Requirements"	any Acts of Parliament and any instruments rules orders regulations notices directions bye-laws permissions and plans for the time being made under or deriving validity from them any European Directives or Regulations legally enforceable in England and Wales (including any which although they have not yet come into effect whether in whole or in part will or may do so as to affect the Project and/or the buildings and structures the subject of the Project once built) and any rules regulations building regulations orders bye-laws or codes of practice of any local or other competent authority
"Sub-Consultant"	a person engaged or to be engaged (if any) by the Consultant in accordance with this agreement to carry out any of the Services
"Sub-Contractor"	a contractor or supplier engaged by the Contractor to supply goods or materials or to carry out works of design or construction in relation to the Project
"Team Director"	the person named in schedule 1 whose role it is to co-ordinate the Consultant's activities and obligations under this agreement
"Tenant"	a person who has taken or has agreed to take or may later take or agree to take a lease of the whole or any part of the Site (and/or any premises constructed or to be constructed on the Site)
"Third Party"	any or all of the Purchaser and/or the Tenant upon whom the benefit of the Third Party Rights has been conferred
"Third Party Rights"	the rights and benefits set out in schedule 3
"Working Day"	Mondays to Fridays inclusive excluding all statutory and bank holidays
"Works"	the works to be carried out by the Contractor and the Sub-Contractors in relation to the Project

## 1.2 Interpretation

In this agreement unless the context otherwise requires:

- 1.2.1 words importing one gender include any other gender and words importing the singular number include the plural number and vice versa and any reference to a person includes a reference to a company firm authority board department or other body;
- 1.2.2 unless otherwise expressly stated all references to a clause or schedule or annexure mean a clause of or schedule or annexure to this agreement;
- 1.2.3 any reference to a statute (whether specifically named or not) or a section of a statute includes any amendment or modification or re-enactment of such statute for the time being in force and all instruments orders notices

regulations directions bye-laws permissions and plans for the time being made issued or given under or deriving validity from the same;

- 1.2.4 headings and titles to clauses are for reference purposes only and do not affect the construction or interpretation of this agreement;
- 1.2.5 at any time when any party to this agreement comprises two or more persons all references to such party include all or any of such persons and obligations expressed or implied to be made by or with any of them shall be deemed to be made by or with all or any two or more of such persons jointly and each of them severally.

### **1.3 Circumstances**

- 1.3.1 The Employer intends to develop the Site by the carrying out and completion of the Project.
- 1.3.2 The Employer wishes to appoint the Consultant to act as façade consultant in relation to the Project.
- 1.3.3 Notwithstanding the date of this agreement it shall have effect as if it had been executed upon the date that the Consultant first performed any Services in relation to the Project and accordingly the duties and obligations contained in this agreement shall be deemed to have applied to the carrying out of any of the Services prior to the date of this agreement.

### **2. APPOINTMENT OF THE CONSULTANT**

- 2.1 The Employer hereby appoints the Consultant as façade consultant to perform the Services in relation to the Project and the Consultant hereby accepts such appointment and agrees to perform the Services on the terms and conditions of this agreement.
- 2.2 The Employer may instruct Additional Services and/or vary the Services whether by omission or alteration and where the Employer does so instruct the Fee shall be adjusted in accordance with this agreement.

### **3. DUTY OF CARE**

- 3.1 The Consultant shall at all times in the performance of the Services under this agreement exercise the reasonable skill care and diligence to be expected of a properly qualified and competent façade consultant experienced in the provision of professional services for developments and projects of a similar size scope value character and complexity as the Project.
- 3.2 No consent approval comment or expression of satisfaction given by the Employer or by any other person with regard to any matter or thing relating to the provision of the Services and no failure to give any such consent approval comment or expression of satisfaction shall operate in any way to derogate from the Consultant's obligations under this agreement nor diminish any liability on its part under this agreement.
- 3.3 The liability of the Consultant under this agreement shall not be released diminished or in any other way affected by any independent enquiry test or survey into any relevant matter which may be made or carried out by or on behalf of the Employer or by the appointment by the Employer of any independent person firm or company to review and report to the Employer in respect of the Project (including without limitation the Services being performed by the Consultant) or by any act or omission which might give rise to an independent liability of such person firm or company to the

Employer PROVIDED THAT nothing in this clause shall modify or affect any rights which the Consultant might have to claim a contribution from any third party whether under statute or at common law.

#### **4. CO-OPERATION PROVISION OF INFORMATION AND COMPLIANCE WITH PROGRAMMES**

- 4.1 The Consultant shall perform the Services in liaison and co-operation with the Contractor all Sub-Contractors and the Professionals and shall so far as it is able supply such persons with any relevant information which they may reasonably require without charge and keep them fully and properly informed on all aspects of the progress and performance of the Services.
- 4.2 The Consultant shall at the Employer's request liaise and co-operate with any Fund and/or Purchaser and/or Tenant and/or MHCLG and/or any other person who has or may have at any time an interest in the Project and shall so far as he is able supply such persons with any relevant information which they may reasonably require and keep them fully and properly informed on all aspects of the progress and performance of the Services.
- 4.3 The Consultant shall have regard to and shall advise the Employer upon any obligations imposed upon the Employer and/or a Group Company contained in or arising from:
- 4.3.1 the Building Contract or in any agreements with any Fund and/or Purchaser and/or Tenant and/or MHCLG and/or in any other agreement entered into by the Employer and/or a Group Company in connection with the Project before or after the date of this agreement copies of which (or relevant extracts therefrom) have been or will be provided to the Consultant by the Employer PROVIDED THAT the Employer has provided copies to the Consultant in sufficient time for the Consultant to take account of such obligations in performing its duties under this agreement; and/or
  - 4.3.2 any Statutory Requirement or otherwise
- and shall assist the Employer in complying timeously and properly with any such obligations and shall not do or omit to be done anything which results in the Employer being in breach of any such obligations.
- 4.4 The Consultant shall in the performance of the Services have due regard to the Project Programme and the Construction Programme and the target dates contained in the Project Programme and the Construction Programme.
- 4.5 The Consultant shall liaise with the Professionals and all others involved in the design of the Project fully and effectively to the intent that the overall design of the Project is fully integrated.
- 4.6 The Consultant further acknowledges the role of the Project Manager as the consultant with authority and responsibility for the overall co-ordination and management of the Project and shall co-operate and liaise with him fully and effectively.
- 4.7 The Consultant shall have no authority to amend waive or release the obligations owed to the Employer by any of the Contractor Sub-Contractors Professionals or other persons involved in the Project.

- 4.8 The Consultant confirms that it is fully aware of the provisions of the CDM Regulations and that it possesses the requisite degree of competence, knowledge, skill, qualification, experience, organisational capability and level of resources to meet (and will meet) the requirements of the CDM Regulations.
- 4.9 The Consultant shall comply with its obligations under the CDM Regulations and in conjunction with the Professionals, shall co-operate with and liaise with the person(s) or body(ies) who has/have or shall be appointed by the Employer as Principal Designer and Principal Contractor in respect of the Project and in particular shall provide the Principal Designer with such information as the Principal Designer shall require in the drawing up and completion of health and safety files as required by the CDM Regulations.

## **5. STATUTORY REQUIREMENTS REQUIRED CONSENTS AND OTHER REQUIREMENTS**

- 5.1 The Consultant shall subject to the standard of skill care and diligence required by clause 3.1 ensure that any design of the Project (including any design or performance criteria) carried out or drawn up by the Consultant in the performance of the Services and any Project Material produced by the Consultant (or for which the Consultant is responsible) and that any Project Material comply with and are in accordance with:
- 5.1.1 all Statutory Requirements;
  - 5.1.2 all Required Consents;
  - 5.1.3 all relevant codes of practice and British or European standards;
  - 5.1.4 the requirements and regulations of all relevant statutory or other undertakers or utilities.

- 5.2 The Consultant shall comply with all Statutory Requirements and all Required Consents in the performance of the Services.
- 5.3 To the extent that the obtaining of any Required Consents is not the responsibility of the Consultant the Consultant shall nevertheless as part of the Standard Services assist the Employer the Professionals the Contractor and/or the Sub-Contractors or such other persons involved in the Project in obtaining such Required Consents.

## **6. PROHIBITED MATERIALS**

- 6.1 The Consultant has exercised and will continue to exercise the standard of skill care and diligence required by clause 3.1 to see that it has not and shall not specify authorise cause or allow to be used within or in relation to the Project any materials which at the time of specification :
- 6.1.1 where it is known or there are reasonable grounds for suspecting that such materials might in themselves or as a result of the manner of their use pose a hazard to health and in particular to the health of the persons involved in the installation construction or maintenance of the Project or to the eventual occupants of the Project;
  - 6.1.2 not in conformity with any relevant British or European Standards or Codes of Practice;
  - 6.1.3 which at the time the Project is being carried out are generally accepted as (or reasonably suspected of):

- 6.1.3.1 being deleterious in themselves; or
  - 6.1.3.2 becoming deleterious in a particular situation or in combination with other materials; or
  - 6.1.3.3 becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of a comparable type; or
  - 6.1.3.4 being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.
- 6.2 For the purposes of clause 6.1.3 a material or combination of materials shall be regarded as being deleterious if its use would or might have the effect of reducing the normal life expectancy of:
- 6.2.1 the material itself; or
  - 6.2.2 any material to which it is affixed; or
  - 6.2.3 the structure in which it is incorporated or to which it is affixed; or
  - 6.2.4 the Project or any part of the Project
- to a period less than that specified or which would normally be expected.
- 6.3 The Consultant subject to the standard of skill care and diligence required by clause 3.1 warrants that it shall comply with and have regard to the publication entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices" (current edition) in assessing whether or not an intended material is deleterious in the terms set out in clause 6.2.
- 6.4 The Consultant shall immediately notify the Employer if it becomes aware of any proposed or actual use in the Works of any materials not compliant with clauses 6.1 and 6.2.
- 6.5 For the avoidance of doubt, this clause 6 shall not impose any additional duty on the Consultant to inspect the Project over and above any such duty contained elsewhere in this Appointment.

## **7. PERSONNEL**

### **7.1 Team Director and Key Personnel**

- 7.1.1 The Consultant shall appoint the person named in schedule 1 to be Team Director who shall manage the overall performance of the Services by the Consultant and who shall at all times have full authority in all matters to act for the Consultant.
- 7.1.2 The Consultant shall use the key personnel listed in schedule 1 in connection with the performance of the Services.

### **7.2 Substitution of Team Director and Key Personnel**

The Consultant shall not substitute any of the persons referred to in clause 7.1 without first consulting with the Employer and obtaining his consent save in the case where such substitution is necessitated by death illness retirement resignation or dismissal of any such person whereupon such consent of the Employer shall not be unreasonably withheld.

### **7.3 Removal of Team Director and Key Personnel**

The Employer shall have the right after consultation with the Consultant to request the removal of any person engaged in the performance of the Services if the Employer considers his performance or conduct to be unsatisfactory in which case the Consultant shall promptly remove such person and replace him with such person as shall be agreed to by the Employer (such agreement not to be unreasonably withheld). Removal of such person shall not be deemed to be an admission of liability on the part of the Consultant.

### **7.4 Staff generally**

The Consultant warrants that all staff of the Consultant and its Sub-Consultants engaged on the Project shall be suitably qualified in their respective professions and shall be experienced in projects of a similar size scope value character and complexity as the Project and that such persons shall not be engaged on a freelance basis for major and ongoing roles.

## **8. SUB-CONSULTANTS SUB-CONTRACTORS AND DELEGATION OF DUTIES**

- 8.1 The Consultant shall not sub-let or delegate any of the Services except as specifically permitted under this clause 8.
- 8.2 The Consultant shall not appoint Sub-Consultants to perform any of the Services without first consulting with the Employer and obtaining the Employer's prior written consent.
- 8.3 If Sub-Consultants are appointed the Consultant shall be fully responsible for:
  - 8.3.1 co-ordinating and integrating the work of the Sub-Consultants into the Project; and
  - 8.3.2 such of the Services and any other duties as shall be performed by Sub-Consultants as if they had been performed by the Consultant itself.
- 8.4 The Consultant shall not sublet or delegate any of the Services to the Contractor or any Sub-Contractors without first consulting with the Employer and obtaining the Employer's prior written agreement to such sub-letting or delegation.
- 8.5 If the Consultant considers that any design or other professional service should be carried out by a specialist consultant to be engaged directly by the Employer the Consultant shall so advise the Employer.
- 8.6 If the Employer agrees to any sub-letting or delegation to the Contractor or any Sub-Contractor under clause 8.4 or the appointment of specialist consultants under clause 8.4 the Consultant shall:
  - 8.6.1 advise the Employer on the competence and experience of the Contractor Sub-Contractor or specialist consultant; and
  - 8.6.2 to the extent that the services carried out by the Contractor Sub-Contractor or specialist consultant relate to or impact upon the Services being provided by the Consultant (or vice versa) co-ordinate and integrate the services carried out by the specialist consultant Contractor or Sub-Contractor with the Services; and
  - 8.6.3 check comment and advise the Employer upon the integrity and adequacy of any design produced by the Contractor Sub-Contractor or specialist

consultant and upon the competence proper execution and performance of such Contractor Sub-Contractor or specialist consultant.

## **9. EMPLOYER'S OBLIGATIONS**

In circumstances where such information cannot be obtained by the Consultant by liaising with the Professionals the Contractor and any Sub-Contractors or Sub-Consultants the Employer shall use all reasonable endeavours to supply to the Consultant (if requested by the Consultant) any relevant information either in the possession or the control of the Employer in any way relating to the Project which is required by the Consultant so as to enable the Consultant to properly perform the Services.

## **10. THE FEE AND PAYMENT FOR ADDITIONAL SERVICES**

### **10.1 The Fee**

- 10.1.1 The Employer shall pay the Consultant the Fee stated in schedule 1 which is a fixed fee and full remuneration for the full and proper performance by the Consultant of the Standard Services (credit being given for any part of the Fee already paid to the Consultant prior to the date of this agreement).
- 10.1.2 Subject to clause 10.2.1 the Fee (including any adjustment of the Fee as referred to in clause 10.2.1) shall be deemed to be inclusive payment for the provision of the Standard Services and all other obligations or other matters contained or referred to in this agreement and shall (unless otherwise stated in schedule 1) also be inclusive of all costs disbursements expenses and overheads of whatsoever nature incurred by the Consultant in connection with this agreement.

### **10.2 Adjustment to the Fee, additional fees and Additional Services**

- 10.2.1 If at any time the nature and scope of the Project materially changes at the instigation of the Employer with the result that the level of work required of the Consultant in providing the Standard Services is substantially increased or decreased or if the Employer requires the Consultant to carry out any Additional Services then the Employer and the Consultant shall agree a fair and reasonable adjustment to the Fee (or an additional fee or remuneration) to reflect such increase or decrease or any such Additional Services (which shall exclude any loss of profit in the event of omission of any of the Services).
- 10.2.2 If the Consultant considers that there should be an adjustment to the Fee in accordance with clause 10.2.1 the Consultant shall notify the Employer in writing before carrying out any services for which it expects adjustment to the Fee to be made or an additional fee or other remuneration to be paid otherwise no adjustment or additional fee or other remuneration shall be made or payable by the Employer unless the Employer shall at its absolute discretion otherwise agree.
- 10.2.3 Any adjustment to the Fee and/or any additional fees or remuneration in accordance with clause 10.2.1 shall be agreed in writing between the Employer and the Consultant.
- 10.2.4 The Employer shall be entitled to require the Consultant to accept compensation in full for the performance of any Additional Services either at the hourly rates set out in schedule 1 or alternatively (but at the Employer's absolute discretion) at a fixed additional fee to be agreed between the Employer and the Consultant (which the Consultant shall be obliged to quote and substantiate prior to the performance of any Additional Services).

- 10.2.5 No adjustment to the Fee and no additional fee shall be made or paid in respect of any Additional Services required as a result of a breach of this agreement by the Consultant.
- 10.2.6 Any costs disbursements expenses and overheads associated with the provision of any Additional Services shall be deemed to be included in any agreed fixed additional fee or within the hourly rates set out in schedule 1 unless and to the extent otherwise agreed between the Employer and the Consultant.

### **10.3 Payment schedule and submission of accounts**

- 10.3.1 The Consultant shall submit accounts in respect of the Fee at the instalment dates and in the instalment amounts stipulated in schedule 1. In the event of any adjustment to the Fee being agreed pursuant to clause 10.2.1 then the Employer and the Consultant shall agree any necessary adjustments to the instalment dates and the instalment amounts.
- 10.3.2 If no instalment dates or amounts are stipulated in schedule 1 or if any additional fees are agreed for the provision of any Additional Services then the Consultant shall submit accounts in respect of the Fee or (as the case may be) any additional fees on such dates and in such amounts as shall be agreed between the Employer and the Consultant which dates shall not be more frequently than monthly and which amounts shall properly reflect the extent of services already performed by the Consultant at the date of submission of such accounts and 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.
- 10.3.3 In the event that the Consultant has not performed the level or extent of services anticipated by any instalment date (whether stipulated in schedule 1 or otherwise agreed) whether due to any delay in the Project or any default of the Consultant or otherwise then the fee anticipated for payment on that instalment date shall be adjusted accordingly as shall the remaining fees and instalment dates and any such adjustment shall be recorded in writing between the Employer and the Consultant.
- 10.3.4 The Consultant shall when submitting any accounts to the Employer under this agreement submit them in such form and with such supporting evidence or documentation as may be required by the Employer.

### **10.4 Construction Act**

- 10.4.1 For the purposes of the Construction Act the "due date" for any instalment of the Fee or any additional fee shall be the later of:
  - 10.4.1.1 the instalment date stipulated in schedule 1 or otherwise agreed between the Employer and the Consultant and
  - 10.4.1.2 the date seven days after receipt by the Employer of the account for such instalment submitted by the Consultant in accordance with clause 10.3
- 10.4.2 No later than five days after the due date for any instalment of the Fee or any additional fee the Employer shall give a notice to the Consultant of the amount that the Employer considers to be or to have been due at the payment due date in respect of the payment and the basis on which that amount is calculated (a **payment notice**).
- 10.4.3 For the purposes of the Construction Act the "final date for payment" by the Employer of any instalment of the Fee or any additional fee shall be the date 28 days from the payment due date of the instalment in question.

10.4.4 Unless the Employer has served a notice under clause 10.4.5, the Employer shall pay the Consultant the sum referred to in the Employer's notice under clause 10.4.2 (or if the Employer has not served notice under Clause 10.4.2, the sum referred to in the accounts referred to in clause 10.3 (in this clause 10, the **notified sum**) on or before the final date for payment of each account.

10.4.5 If the Employer intends to pay less than the notified sum then the Employer shall give to the Consultant notice (a **pay less notice**) of:

10.4.5.1 the sum that the Employer considers to be due on the date the notice is served; and

10.4.5.2 the basis on which that sum is calculated

Such notice may be comprised in or accompany the notice to be given under clause 10.4.2 but in any event shall be given no later than three days before the final date for payment of the instalment in question (the **prescribed period**).

10.4.6 The Employer may not withhold payment of any instalment after its final date for payment unless it has served a pay less notice pursuant to clause 10.4.5 but where the Employer has served a pay less notice it must pay the sum specified in the pay less notice on or before the final date for payment.

10.4.7 Where the Employer has given a pay less notice complying with clause 10.4.5 and either the Employer or the Consultant refers a dispute concerning such notice and/or the withholding or deduction of any payment under that notice to adjudication under clause 23 and the adjudicator decides that the whole or any part of the amount withheld or deducted should be paid then payment of such amount shall be made not later than:

10.4.7.1 seven days from the date of the adjudicator's decision; or

10.4.7.2 the date which apart from the notice given under clause 10.4.5 would have been the final date for payment for such amount

whichever is the later

## **10.5 Right to suspend performance**

10.5.1 Where a payment is provided for by this agreement and the Employer does not pay the notified sum (to the extent not already paid) on or before the final date for payment:-

10.5.1.1 the Consultant may (but without prejudice to any other right or remedy) suspend performance of any or all of its obligations under this agreement by giving not less than seven days' prior notice to the Employer of its intention to do so and stating the ground or grounds on which it intends to suspend performance. The right to suspend shall cease when the Employer makes payment in full of the sum referred to in clause 10.4.4 and any period during which performance is validly suspended pursuant to or in consequence of the exercise of this clause 10.5.1 shall be disregarded in assessing the time taken by the Consultant to complete any services to be performed by the Consultant which are affected by such suspension.

10.5.1.2 the Employer shall pay to the Consultant in addition to any amount not properly paid by the Employer:-

- 10.5.1.2.1 a reasonable amount in respect of costs and expenses reasonably incurred by the Consultant as a result of any exercise of its right referred to in clause 10.5.1; and
- 10.5.1.2.2 (taking into account any sum paid under clause 10.5.1.2.1) any adjustment to the Fee due under clause 10

and such payment shall be the Consultant's sole compensation for suspension of its Services and obligations under this agreement. For the purposes of this clause, the 'notified sum' in relation to any payment provided for by this agreement means; in a case where a **payment notice** as defined in clause 10.4.2 has been given pursuant to and in accordance with a requirement of this agreement the amount specified in that notice.

## **10.6 Interest on late payments**

- 10.6.1 Where a payment is provided for by this agreement and the Employer does not pay the notified sum (to the extent not already paid) on or before the final date for payment the Employer shall pay to the Consultant in addition to any amount not properly paid by the Employer simple interest thereon for the period until such payment is made at the rate of two per cent over the base rate of the Bank of England which is current at the date that the payment by the Employer became overdue.
- 10.6.2 Any payment of simple interest under this clause 10.6.1 shall not in any circumstances be construed as a waiver by the Consultant of his right to proper payment of the principal amount due from the Employer to the Consultant in accordance with the provisions of this agreement.
- 10.6.3 The Consultant and the Employer agree that the provision of this clause 10.6.1 constitutes a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

## **10.7 Value Added Tax**

The Employer shall pay to the Consultant (subject to receipt of a valid value added tax invoice) value added tax properly chargeable on the Consultant on the supply to the Employer of any goods or services under this agreement.

## **11. INSURANCE**

- 11.1 The Consultant warrants that, without prejudice to its liability under this agreement, it shall effect and will maintain at all relevant times during the Project and for the period of twelve years from the date of Practical Completion or 12 years from completion of the Services in the event that Practical Completion is not achieved (notwithstanding that the Consultant's engagement may be terminated under this agreement) with reputable insurers carrying on business in the United Kingdom professional indemnity insurance cover for the amount referred to in schedule 1 PROVIDED ALWAYS such insurance continues to be available in the United Kingdom market to professional consultants of a similar size to and providing similar services as the Consultant upon reasonable terms and conditions and at commercially reasonable premium rates.
- 11.2 The Consultant shall throughout the period referred to in clause 11.1 provide to the Employer (when reasonably requested by him to do so) evidence that the insurance required by clause 11.1 is being maintained in accordance with that clause.
- 11.3 The Consultant shall immediately inform the Employer as soon as it becomes aware that the insurance referred to in clause 11.1 is not maintained in accordance with this schedule or for any reason becomes void or unenforceable and shall agree with the

Employer the best means of protecting the Consultant and the Employer's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

## **12. COPYRIGHT AND CONFIDENTIALITY**

- 12.1 The copyright in the Project Material shall remain vested in the copyright owner.
- 12.2 The Consultant waives any Moral Rights that it may have as author in respect of the Project Material and/or the Project and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Project Material and/or the Project.
- 12.3 The Consultant grants or shall procure the grant from third parties engaged by the Consultant (where copyright is vested in such parties) to the Employer of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Project Material for any purpose whatsoever connected with the Project and/or the Site and/or any premises constructed or to be constructed on the Site including without limitation the execution completion maintenance letting occupation management sale advertisement extension (save that such use shall not include a licence to reproduce the designs contained in the Project Material for the extension of the Project) alteration reinstatement and repair thereof PROVIDED THAT the Consultant shall not be liable for the consequences of any use of the Project Material for any purpose other than that for which the same was prepared.
- 12.4 The Consultant agrees that:
  - 12.4.1 the Employer may assign the licence referred to in clause 12.3 or grant a sub-licence or sub-licences from such licence to any person with an interest (whether existing or to be acquired) in all or part of the Site (including any premises constructed or to be constructed on the Site) or the Project (including without limitation persons with a freehold or leasehold interest and any mortgagees);
  - 12.4.2 it will provide the Employer or any person acquiring an interest in all or part of the Site (including any premises constructed or to be constructed on the Site) or the Project with such information and copies of the Project Material as may be requested by the Employer.
- 12.5 Notwithstanding clause 12.1 the Consultant shall not (and shall procure that third parties engaged by the Consultant shall not) without the Employer's consent use the Project Material to design any other project or development which is of similar design appearance or concept to the Project and the Consultant and third parties engaged by the Consultant shall not likewise use the Project Material for any purpose whatsoever connected with the Site other than in the performance of the Services for the Employer under this agreement.
- 12.6 The Consultant shall not (and shall procure that none of its Sub-consultants and any of its or their employees or agents shall not) during the Project or at any time thereafter (except as may be required by law or in order to properly perform the Services) disclose to any third party (except the Consultant's professional advisers and insurers) any information relating to the Project or the business of the Employer of a confidential or commercially sensitive nature including the contents of this agreement without the prior written authority of the Employer.
- 12.7 The Consultant shall not contribute to or seek any publicity or advertising in any way relating to the Project whether through the divulgence of any photographic or written

information relating to the Project or otherwise without the prior written approval of the Employer.

- 12.8 The provisions of this clause 12 including without limitation the licence granted to the Employer pursuant to clause 12.3 shall continue in full force and effect notwithstanding any suspension or termination of the Consultant's services or engagement in relation to the Project.

### **13. ASSIGNMENT AND NOVATION**

- 13.1 The Consultant shall not assign its interest in this agreement or any part of this agreement nor any right arising under this agreement to any person without the prior written consent of the Employer.
- 13.2 The Employer may assign all its rights and interests in or under this agreement to any party on two occasions only without the consent of the Consultant being required. :
- 13.3 Notice of any assignment pursuant to clause 13.2 shall be served upon the Consultant within 10 Working Days of such assignment.
- 13.4 If the Employer selects a design and build form of building contract for the completion of any design and/or carrying out the Works the Consultant shall within 10 Working Days of a request so to do from or on behalf of the Employer execute and deliver to the Employer a deed of novation in the form set out in Schedule 6 with the intent that the engagement of the Consultant under this agreement be novated to the Contractor

### **14. WARRANTIES AND THIRD PARTY RIGHTS**

- 14.1 The Consultant shall within 10 Working Days of a request to do so from or on behalf of the Employer execute and deliver to the Employer a deed of collateral warranty in favour of:

- 14.1.1 any Purchaser; and/or
- 14.1.2 any Tenant; and/or
- 14.1.3 any Fund; and/or
- 14.1.4 MHCLG

the form of such collateral warranties shall be as set out in schedule 5 with such amendments as the Employer may reasonably require and the Consultant approves (such approval not to be unreasonably withheld or delayed).

- 14.2 If the Consultant fails to execute and deliver any deed of collateral warranty in accordance with clause 14.1 then without prejudice to the Employer's other rights and remedies in relation to such breach the Employer shall not be obliged to make any further payment to the Consultant under this agreement until such deed of collateral warranty is duly executed and delivered to the Employer.
- 14.3 The Employer (or the Employer's solicitors on behalf of the Employer) may (except where a warranty has been executed and delivered to the Employer in favour of such Tenant and/or Purchaser in accordance with clause 14.1) from time to time serve a Nominating Notice on the Consultant conferring the benefit of the Third Party Rights in favour of the Purchaser and/or Tenant.
- 14.4 The Employer and the Consultant agree that as of the date of the Nominating Notice the Purchaser and/or the Tenant named in the relevant Nominating Notice shall be

entitled to enforce the Third Party Rights pursuant to the Contracts (Rights of Third Parties) Act 1999.

- 14.5 The Consultant shall provide collateral warranties pursuant to clause 14.1 or Third Party Rights pursuant to clause 14.3 at no cost to the Employer for up to a maximum of three beneficiaries. Any further collateral warranties or Third Party Rights will be provided for a fee of no more than £600 per beneficiary.

## **15. TERMINATION OF CONSULTANT'S ENGAGEMENT BY THE EMPLOYER**

- 15.1 The Employer may at any time terminate the Consultant's engagement under this agreement without cause and by giving the Consultant 7 days' written notice to that effect.

- 15.2 Where the Consultant either:

- 15.2.1 is in material or substantial breach of this agreement or has committed a material or substantial negligent act or omission or other default; and/or
- 15.2.2 persistently commits a breach of this agreement or negligent act or omission or other default or refuses to remedy a breach having been requested by the Employer to remedy the same

then the Employer may at any time terminate the Consultant's engagement under this agreement with cause and with immediate effect by giving to the Consultant written notice to that effect.

- 15.3 The Employer may at any time by written notice to the Consultant bring to an end the Consultant's performance and involvement in any part or parts of the Services at which point the Fee shall be adjusted in accordance with clause 10.2.1.

## **16. TERMINATION OF CONSULTANT'S ENGAGEMENT BY THE CONSULTANT**

If as a result of a material breach of this agreement by the Employer the Consultant wishes to determine its engagement under this agreement the Consultant shall promptly notify the Employer in writing of such breach and if within a period of 28 days from the date of receipt of such notice the Employer has failed to remedy such breach or offer a reasonable compromise then the Consultant shall be entitled by further written notice on the Employer to terminate its engagement under this agreement.

## **17. SUSPENSION OF CONSULTANT'S ENGAGEMENT BY THE EMPLOYER**

- 17.1 The Employer may at any time and from time to time by written notice to the Consultant suspend the performance by the Consultant of the Services (or any part or parts of the Services) without cause and with by giving to the Consultant 7 days' written notice to that effect.

- 17.2 The Consultant shall remain available to resume the Services (or such part or parts of the Services) so suspended supplying all Project Material relating to all or any of the services carried out before the date of suspension in its possession or control as may be required by the Employer without cost to the Consultant.

- 17.3 The Consultant shall comply with all reasonable instructions of the Employer during any period of suspension and if required by the Employer subject to the standard of skill care and diligence required by clause 3.1 to carry out any services in addition to those which have or should have been carried out in accordance with the Project Programme before the date of suspension such services shall constitute Additional Services for the purposes of this agreement.

- 17.4 The Employer may at any time instruct the Consultant to resume the Services so suspended which the Consultant shall promptly do and an adjustment to the instalment dates for payment of the Fee shall be made to properly reflect the period of suspension.
- 17.5 If the Employer shall have suspended the whole of the Services for a period in excess of twelve months the Consultant may serve written notice on the Employer requesting an instruction to resume the Services and if the Employer fails to order resumption of such Services within 28 days of receipt of such notice the Consultant may at any time thereafter (but not once the Employer has instructed the Consultant to resume the Services) terminate its engagement under this agreement by serving further written notice on the Employer to that effect.

## **18. CONSEQUENCES OF TERMINATION OR SUSPENSION OF CONSULTANT'S ENGAGEMENT**

- 18.1 Upon termination of the Consultant's engagement under clauses 14.5 or 16 or upon suspension of the whole of the Services under clause 17:
- 18.1.1 the Consultant shall deliver to the Employer all Project Material in its possession or control (PROVIDED THAT the Consultant shall be entitled to retain a copy of the Project Material) and cease its involvement in the Project in an orderly and co-operative manner with all reasonable speed and economy; and
  - 18.1.2 the Employer shall (subject to any right of set-off or counterclaim) pay to the Consultant that part of the Fee and any other additional fees arising under this agreement which properly and reasonably reflect the Services performed by the Consultant up to such termination and which remain unpaid; and
  - 18.1.3 the Employer shall not be liable to the Consultant for any loss of profit or loss of contracts or (subject only to clauses 18.1.2 and 18.2) for any other costs losses and/or expenses arising out of or in connection with such termination or suspension.
- 18.2 In addition to any sum payable by the Employer pursuant to clause 18.1.2 the Employer shall where the Consultant's engagement has been terminated without cause under clause 15.1 or pursuant to clause 17.5 pay to the Consultant such direct costs and expenses which have been incurred by the Consultant and are directly attributable to such termination save to the extent that they could have been avoided or mitigated against and/or arise due to the negligence default or omission on the part of the Consultant.
- 18.3 Any termination of the Consultant's engagement under this agreement shall in no way affect the rights of any party to this agreement against any other party and the provisions of this agreement shall continue to bind the parties insofar as and for as long as may be necessary to give effect to their respective rights and obligations under this agreement.

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

- 19.1 Subject to clause 14 and schedule 3 nothing in this agreement confers or is intended to confer any right to enforce any of its terms on any party who is not a party to it (save for permitted assignees) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 19.2 The Employer and the Consultant shall be entitled to agree any amendment waiver settlement or compromise in respect of this agreement or to terminate the

Consultant's employment under this agreement without the consent of the Purchaser and/or Tenant on whom the benefit of Third Party Rights have been conferred pursuant to clause 14 PROVIDED THAT the Employer and the Consultant shall not be entitled to vary any provision of schedule 3 to this agreement after the right to enforce such Third Party Rights has vested in any Purchaser and/or Tenant pursuant to clause 14 without the consent of each such Purchaser and/or Tenant (such consent not to be unreasonably withheld or delayed).

## **20. PERIODS OF RECKONING OF TIME**

Where under this agreement an act is required to be done within a specified period of time after or from a specified date that period shall begin immediately after that date. Where that period would include a day which is a Public Holiday that day shall be excluded.

## **21. NOTICES**

21.1 Any notice to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent to the persons and the addresses specified in clauses 21.3 and 21.4 as the case may be by either:

- 21.1.1 personal delivery; or
- 21.1.2 pre-paid registered or recorded delivery mail; or
- 21.1.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.

21.2 Notices and communications shall be deemed to have been served or received as follows:

- 21.2.1 in the case of personal delivery on the date of delivery;
- 21.2.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
- 21.2.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

21.3 Notices and communications to the Employer shall be addressed to the address above or to such other address as may be notified by the Employer.

21.4 Notices and communications to the Consultant shall be addressed to the address above or to such other address as may be notified by the Consultant.

## **22. VARIATIONS TO THIS AGREEMENT**

22.1 This agreement constitutes the entire contract between the Employer and the Consultant and there are no other arrangements between the parties relating to the subject matter of this agreement.

22.2 Subject to clause 22.3 any variations to this agreement shall be set out in a formal written agreement and signed by the Employer and the Consultant agreeing such variations.

22.3 The requirements of clause 22.2 shall not apply to the instruction of Additional Services or the variation of the Services by the Employer which may be instructed by the Employer by way of written correspondence served in accordance with clause 21.

## **23. ADJUDICATION**

23.1 Subject to either party's right to adjudicate at any time, the Employer and the Consultant shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation.

23.2 If any dispute or difference arising out of or concerning or touching upon this Contract shall arise between the Employer and the Consultant and such dispute or difference cannot be resolved by negotiation or mediation, or if either the Employer or the Consultant requires the dispute to be referred to adjudication then either the Employer or the Consultant may refer the dispute or difference to adjudication under the Construction Act and such adjudication shall be conducted in accordance with the Scheme.

## **24. COURTS AND LAW**

24.1 Subject to clause 23 the Employer and the Consultant agree that any difference or dispute of whatever nature arising out of or concerning or touching upon this agreement shall be referred to the English courts and specifically (unless otherwise agreed) to the Technology and Construction Court.

24.2 This agreement shall be governed by English law.

## **25. BRIBERY ACT 2010 (AS VARIED AMENDED OR RE-ENACTED)**

25.1 The Consultant shall:

25.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("the Relevant Requirements");

25.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

25.1.3 comply with the Employer's ethics, anti-bribery and anti-corruption policies (copies of which are available on request) as the Employer may update from time to time ("the Relevant Policies");

25.1.4 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 25.1.2, and will enforce them where appropriate;

25.1.5 promptly report to the Employer any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this agreement;

25.1.6 immediately notify us (in writing) if a foreign public official becomes its officer or employee or acquires a direct or indirect interest in the Consultant (and the Consultant warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);

- 25.1.7 on request, certify to the Employer in writing signed by one of the Consultant's officers, its compliance with this clause 25 and that of all persons associated with the Consultant under clause 25.2. The Consultant shall provide such supporting evidence of compliance as the Employer may reasonably request.
- 25.2 The Consultant shall ensure that any person associated with the Consultant who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consultant in this clause 25 ("the Relevant Terms"). The Consultant shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Employer for any breach by such persons of any of the Relevant Terms.
- 25.3 For the purpose of this clause 25, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 26 a person associated with the Consultant includes but is not limited to any of the Consultant's sub-consultants.

## **26. LIMITATION OF LIABILITY**

- 26.1 Notwithstanding anything to the contrary contained in this agreement, the liability of the Consultant under or in connection with this agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed the sum of two millions pounds (£2,000,000) in the aggregate.

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

Executed as a deed by  
**20:20 HOUSE (RESIDENTIAL  
MANAGEMENT) LIMITED**  
acting by a Director  
in the presence of a Witness

DocuSigned by:  
  
466ED44708344D7.....  
Director

Nick Massingham  
Print name.....

DocuSigned by:  
  
60GA06C768D1496.....  
Witness

Philip Pogson  
Witness name.....  
Phil Pogson  
.....

.....  
Witness address

Executed as a deed by  
**WINTECH LIMITED**  
acting by two a Directors

DocuSigned by:  
  
D6C355664AF4426...  
Director

David watabiki  
Print name.....

DocuSigned by:  
  
5E6DFD68170D47A...  
Director

Paul Savidge  
Print name.....

**SCHEDULE 1**  
**Main Details**

- 7.1.1 The Team Director is David Watabiki
- 7.1.2 The Consultant's key personnel are:
- (i) Paul Savage
  - (ii) Harvir Bansal
- 10.1.1 The Fee is ONE HUNDRED AND SIXTEEN THOUSAND SIX HUNDRED AND FIFTY POUNDS (£116,650)
- 10.1.2 Reimbursable expenses disbursements costs overheads etc : none
- 10.2.4 Hourly rates for Additional Services are:  
£185.33
- The above mentioned rates are fixed for the duration of the Project and are subject to annual review by the Consultant. The Employer and the Consultant shall agree changes to the above mentioned rates throughout the duration of the Project to take into account any annual reviews as and when required.
- 10.3.2 Instalment dates and instalments amounts in respect of the Fee are:

<b>Payment Stage</b>	<b>Amount (£)</b>
Initial Document Review and Site Survey	2,980.00
Reporting	ACM Cost: 2,780.00 Timber Cost: 2,780.00
Desktop and Meeting Time	4,170
Remedial Specification	ACM Cost: 3,475.00 Timber Cost: 3,475.00
Tender Review	1,390
Site visits (30 no)	68,550 (2,285 per visit)
Design Audit	18,070.00
Additional 1no. site visit	1,590
Additional 1no. site visit	1,550
4-days review of Penthouse 2 details	5,840

- 11.1 The level of professional indemnity insurance cover required is two million pounds (£2,000,000) in the aggregate for each period of insurance.

## **SCHEDULE 2 The Standard Services**

### **1.0 Initial Document Review and Site Survey**

The Consultant will carry out an initial review of the available O&M information for both the ACM and Timber areas to try to understand the intended construction prior to attending site. The Consultant will subsequently attend site for 1No. day to witness the opening up of a selection of the ACM and Timber areas. The Consultant understands that the Employer will be providing both the contractors and access equipment required to carry out the review and therefore the Consultant has not made any allowance for this in their costs.

### **2.0 Reporting**

Upon completion of the above review the Consultant will provide a separate report for the ACM and Timber. The Consultant's report will comment on their findings from the initial O&M review and the site investigation to comment on whether the construction of the facades were naturally compliant at the time of construction, as well as current guidance. The Consultant will provide some high level remedial solutions for consideration by the Employer.

### **3.0 Desktop and Meeting Time**

Following on from the issue of the report, there may be a requirement to attend meetings or carry out desktop time/correspondence with the Employer and the team to discuss and agree remedial solutions prior to production of the remedial specification. At this point it is difficult to determine how much time may be required and therefore we have confirmed our day rate so that costs can be charged based on time taken.

### **4.0 Remedial Specification**

The Consultant will produce a remedial specification document which details the required replacement components, along with performance requirements and any standards or regulations that need to be met. The document will include required technical submittals that the contractor will need to provide alongside the detailed design, as well as any allowance for testing upon completion.

### **5.0 Tender Review**

Once the Façade Contractors provide their tender returns, the Consultant will carry out a review of the bids that they have made to see if they have generally provided a bid that meets the requirements of the specification.

#### **Design Audit Scope:**

Once the specialist Façade Contractor begins their design work, the Consultant will carry out a detailed technical review to help see that it meets the requirements of the project specification and the Employer's requirements, as well as all applicable standards and regulations. As part of this process the supporting calculations will be reviewed by the Consultant's in-house specialist Structural and Thermal Engineers. The Consultant's costs are based on the review of up to 30No. details (up to twice for each detail), along with supporting structural and thermal calculations and associated data sheets.

#### **Site Monitoring Visits**

The Consultant will provide an attendance on site at agreed intervals to help see that the works are installed in compliance with the design details, specification and with the appropriate level of expertise, craftsmanship and quality. The Consultant will make a photographic record of the

findings, observations and progress made on site. During the Consultant's attendance they will make themselves available for any meetings that may be required with the sub-contractors and Professional Team if requested. The Consultant's cost also allows for the ongoing correspondence and desktop works required between their visits.

The final scope will be dependent on the quality of the chosen Sub-Contractor and the duration of the façade works; however, the Consultant would recommend an attendance once weekly during the course of the façade works on site.

**SCHEDULE 3**  
**Third Party Rights**

**1. DEFINITIONS**

1.1 Unless stated otherwise below defined terms in this schedule shall have the meanings given to them in the Appointment:

"Appointment"	the terms of appointment entered into between the Consultant and the Employer
"Group Company"	any subsidiary company or holding company of the Third Party or any other subsidiary or holding company of such company as subsidiary and holding company are defined in s1159 Companies Act 2006 (as amended)
"Mortgagee"	a person having or acquiring a mortgage or charge over the Project or any part of the Project

1.2 Unless stated otherwise references to a paragraph or clause are to a paragraph or clause in this schedule

**2. DUTY OF CARE**

The Consultant warrants and undertakes to the Third Party that:

2.1 it has performed and will continue to perform its duties under the Appointment;

2.2 it has exercised and will continue to exercise the reasonable skill care and diligence to be expected of a properly qualified and competent façade consultant experienced in the provision of professional services for developments and projects of a similar size scope value character and complexity as the Project.

**3. RESTRAINTS ON THE CONSULTANT**

The Consultant may not exercise any rights of set-off or counterclaim which may be permissible against his liability under the Appointment against any claim or entitlement of the Third Party under this schedule.

**4. PROFESSIONAL INDEMNITY INSURANCE**

4.1 The Consultant warrants that, without prejudice to its liability under this schedule, it shall effect and will maintain at all relevant times during the Project and for the period of twelve years from the date of Practical Completion or 12 years from completion of the Services in the event that Practical Completion is not achieved with reputable insurers carrying on business in the United Kingdom professional indemnity insurance cover of the amount referred to in the Appointment PROVIDED ALWAYS such insurance continues to be available in the United Kingdom market to professional consultants of a similar size to and providing similar services as the Consultant upon reasonable terms and conditions and at commercially reasonable premium rates.

4.2 The Consultant shall throughout the period referred to in paragraph 4.1 provide to the Third Party (when reasonably requested by him to do so) evidence that the insurance required by paragraph 4.1 is being maintained in accordance with that paragraph.

4.3 The Consultant shall immediately inform the Third Party as soon as it becomes aware that the insurance referred to in paragraph 4.1 is not maintained in accordance with this schedule or for any reason becomes void or unenforceable and shall agree with the Third Party the best means of protecting the Consultant and the Third Party's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

## **5. COPYRIGHT**

5.1 Copyright in the Project Material shall remain vested in the copyright owner.

5.2 The Consultant waives any Moral Rights that it may have as author in respect of the Project Material and/or the Project and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Project Material and/or the Project.

5.3 The Consultant grants or shall procure the grant from third parties engaged by the Consultant (where copyright is vested in such parties) to the Third Party of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Project Material for any purpose whatsoever connected with the Site and/or the Project and/or any premises constructed or to be constructed on the Site including without limitation the execution completion maintenance letting occupation management sale advertisement extension (save that such use shall not include a licence to reproduce the designs contained in the Project Material for the extension of the Project) alteration reinstatement and repair of the Site and/or the Project and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Consultant shall not be liable for the consequences of any use of the Project Material for any purpose other than that for which the same was prepared.

5.4 The Consultant agrees that:

- 5.4.1 the Third Party may assign the licence referred to in paragraph 5.3 or grant a sub-licence or sub-licences from such licence to any person with an interest in the Site and/or the Project and/or any premises constructed or to be constructed on the Site;
- 5.4.2 subject to payment of its reasonable copying costs it will provide the Third Party with such information and copies of the Project Material as may be reasonably requested by the Third Party.

## **6. ASSIGNMENT**

6.1 The Third Party may (without the consent of the Consultant) assign its rights under this schedule to:

- 6.1.1 any Mortgagee and by way of re-assignment on redemption; and/or
- 6.1.2 any Group Company; and/or
- 6.1.3 any other party on two occasions only.

6.2 In this schedule references to the Third Party shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 6.1.3.

6.3 The Consultant undertakes with the Third Party not to contend that any person to whom the benefit of this schedule may be assigned will be precluded from recovering

under this schedule any loss resulting from any breach of this schedule either by reason that the person is an assignee and not the original party on whom the benefit of this schedule was conferred or by reason that the Third Party to whom the benefit of this schedule was originally conferred or any intermediate owner of the Third Party's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

## **7. LIMITATION AND MISCELLANEOUS**

- 7.1 The liability of the Consultant under this schedule shall be limited to claims arising within twelve years after the date of Practical Completion or 12 years from completion of the Services in the event that Practical Completion is not achieved.
- 7.2 The rights of the Third Party conferred by this schedule are additional to any other that it may enjoy by grant assignment or at law.
- 7.3 Any consent approval or expression of satisfaction given by the Third Party with regard to any matter or thing relating to the Appointment shall not in any way derogate from the Consultant's obligations under this deed nor diminish any liability on its part under this schedule provided always that nothing in this clause shall modify or affect any rights which the Consultant might have but for the existence of this clause to claim a contribution from any third party whether under statute or at common law.
- 7.4 The Consultant acknowledges that:
  - 7.4.1 the Third Party shall be deemed to have relied upon the Consultant's reasonable skill care and diligence in respect of those matters relating to the Project which lie within the scope of its responsibilities under the Appointment or under this schedule;
  - 7.4.2 no negligent or other act omission or delay by or on behalf of the Third Party and their respective successors in title and assigns in inspecting approving or informing itself about anything relating to the Project shall abate or reduce the Consultant's liability under this schedule to the Third Party and its respective successors in title and assigns provided always that nothing in this clause shall modify or affect any rights which the Consultant might have but for the existence of this clause to claim a contribution from any third party whether under statute or at common law.
- 7.5 Subject to paragraph 3:
  - 7.5.1 the Consultant shall have no greater obligations to the Third Party by virtue of this schedule than it would have had if the Third Party had been named in the Appointment jointly with the Employer; and
  - 7.5.2 the Consultant shall be entitled in any action or proceedings by the Third Party to rely on any limitation or exclusion in the Appointment and to raise equivalent rights of defence of liability as it would have against the Employer under the Appointment.

## **8. NOTICES**

- 8.1 Any notice to be served under this schedule shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered office for the time being or in any other case to any address for the time being of the person to be served.
- 8.2 Notice may be served by:

- 8.2.1 personal delivery; or
  - 8.2.2 pre-paid registered or recorded delivery mail; or
  - 8.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.
- 8.3 Notices and communications shall be deemed to have been served or received as follows:
- 8.3.1 in the case of personal delivery on the date of delivery;
  - 8.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
  - 8.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

## **9. LAW**

This schedule shall be governed by English law and the Consultant and the Third Party hereby submit to the non exclusive jurisdiction of the English courts.

**SCHEDULE 4**  
**Form of Nominating Notice**

**TO:** [ ] (Company registration number [ ]) whose registered office is at [ ]

**FROM:** **GOWLING WLG (UK) LLP** of 4 More London Riverside London SE1 2AU for and on behalf of [ ] (Company registration number [ ]) whose registered office is at [ ] ("the Employer")

Date: [ ]

Dear Sirs

[ ] ("the Project")

You have entered into an appointment with the Employer dated [ ] in respect of the Project ("the Appointment").

Schedule 3 of the Appointment sets out the benefits and rights which may be enforced by a third party on the issue of this notice. On behalf of the Employer we hereby nominate [ ] (Company registration number [ ]) as a third party ("the Third Party") entitled to enforce the benefits and rights set out in Schedule 3 of the Appointment in accordance with the terms of the Appointment as from the date of this notice.

[The Third Party has taken or agreed to take a lease of the premises known as [ ] forming part of the Project] [The Third Party has agreed to purchase the whole of the property of which the Project forms part]

Yours faithfully,

.....  
For and on behalf of [ ]

**SCHEDULE 5**  
**Deed of Collateral Warranty in favour of Funder/Purchaser/Tenant/Employer**

DATED \_\_\_\_\_ 20[ ]

(1) [REDACTED]

(2) [REDACTED]

(3) [REDACTED]

**CONSULTANT'S WARRANTY**  
in favour of [Purchaser] [Fund] [Tenant] [Employer]  
in respect of a development at

[REDACTED]



**GOWLING WLG**

**THIS DEED** is made

20[ ]

**BETWEEN**

(1) [ ] (Company registration number [ ]) whose registered office is at [ ] ("the Consultant")

**OR**

[ ] [ ] [ ] [ ] and [ ] who together [and with others] are carrying on business in partnership as [ ] at [ ] ("the Consultant")

(2) [ ] (Company registration number [ ]) whose registered office is at [ ] ("the Company")

(3) [ ] (Company registration number [ ]) whose registered office is at [ ] [("the Employer")] [("the Contractor")]

**DRAFTING NOTE :** Employer/Contractor only to be a party to warranty where step in rights are granted.

In consideration of the sum of one pound (£1.00) paid by the Company to the Consultant (receipt of which is hereby acknowledged) **THIS DEED WITNESSETH** as follows:

**1. DEFINITIONS INTERPRETATION AND CIRCUMSTANCES**

**1.1 Definitions**

In this deed unless the context otherwise requires the following expressions shall have the following meanings:

"Appointment" the terms of appointment entered into between the Consultant and the [Employer] [Company] dated [ ] 20[ ]

"Employer" [ ] (Company registration number [ ]) whose registered office is at [ ]

**DRAFTING NOTE :** only insert definition of "Employer" in warranty if step in rights are not being granted

"Group Company" any subsidiary company or holding company of the Company or another subsidiary or holding company of such company as subsidiary and holding company are defined in s1159 Companies Act 2006

"Moral Rights" moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988

"Mortgagee" a person having or acquiring a mortgage or charge over the Project or any part of the Project

"Practical Completion"	shall have the same meaning as in the Appointment
"Project"	[ ] at the Site
"Project Material"	all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and any other works prepared conceived or developed by or on behalf of the Consultant in the course of or as a result of performing the Services and whether in existence or to be made and additions thereto and all designs ideas concepts and inventions contained in them
"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act is a bank holiday
"Services"	the services which the Consultant has been retained to carry out under the Appointment
"Site"	[ ]
"Working Day"	any day except Saturday Sunday and bank or other public holidays in England

## 1.2 Interpretation

In this deed unless the context otherwise requires:

- 1.2.1 words importing one gender include any other gender and words importing the singular number include the plural number and vice versa and any reference to a person includes a reference to a company firm or other body;
- 1.2.2 unless otherwise expressly stated all references to a clause mean a clause of this deed;
- 1.2.3 any reference to a statute (whether specifically named or not) or a section of a statute includes any amendment or modification or re-enactment of such statute for the time being in force and all instruments orders notices regulations directions bye-laws permissions and plans for the time being made issued or given under or deriving validity from the same;
- 1.2.4 headings and titles to clauses are for reference purposes only and do not affect the construction or interpretation of this deed;
- 1.2.5 at any time when any party to this deed comprises two or more persons all references to such party include all or any of such persons and obligations expressed or implied to be made by or with any of them shall be deemed to be made by or with all or any two or more of such persons jointly and each of them severally.

## 1.3 Circumstances

- 1.3.1 By the Appointment the [Employer] [Company] employed the Consultant to act as [ ] in relation to the Project.
- 1.3.2 [The Appointment of the Consultant has been novated to the Contractor.]

- 1.3.3 [The Company has agreed to [purchase [the whole] [part] of the Project from the Employer] [provide funding for the Employer to complete the Project] [take a lease of the premises known as [ ] forming part of the Project].]
- 1.3.4 It is a term of the Appointment that the Consultant enter into this deed for the benefit of the Company and its permitted assigns.

## **2. DUTY OF CARE**

The Consultant warrants and undertakes to the Company that:

- 2.1 it has performed and will continue to perform its duties under the Appointment;
- 2.2 it has exercised and will continue to exercise the reasonable skill care and diligence to be expected of a properly qualified and competent façade consultant experienced in the provision of professional services for developments and projects of a similar size scope value character and complexity as the Project.

## **3. DELETERIOUS MATERIALS**

- 3.1 The Consultant has exercised and will continue to exercise the standard of skill care and diligence required by clause 2.2 to see that it has not and shall not specify authorise cause or allow to be used within or in relation to the Project any materials which at the time of specification:
  - 3.1.1 where it is known or there are reasonable grounds for suspecting that such materials might in themselves or as a result of the manner of their use pose a hazard to health and in particular to the health of the persons involved in the installation construction or maintenance of the Project or to the eventual occupants of the Project;
  - 3.1.2 not in conformity with any relevant British or European Standards or Codes of Practice;
  - 3.1.3 which at the time the Project is being carried out are generally accepted or reasonably suspected of within the building industry of:
    - 3.1.3.1 being deleterious in themselves; or
    - 3.1.3.2 becoming deleterious in a particular situation or in combination with other materials; or
    - 3.1.3.3 becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of a comparable type; or
    - 3.1.3.4 being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.
- 3.2 For the purposes of clause 3.1 a material or combination of materials shall be regarded as being deleterious if its use would or might have the effect of reducing the normal life expectancy of:
  - 3.2.1 the material itself; or
  - 3.2.2 the material to which it is affixed; or
  - 3.2.3 the structure in which it is incorporated or to which it is affixed; or

- 3.2.4 the Project or any part of the Project to a period less than that which has been specified or would normally be expected.
- 3.3 The Consultant subject to the standard of skill care and diligence required by clause 2.1 warrants that it shall comply with and have regard to the publication entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices" (current edition) in assessing whether or not an intended material is deleterious in the terms set out in clause 3.1.
- 3.4 The Consultant will as soon as reasonably practicable notify the Company if it becomes aware of any proposed or actual use in the Project of any materials not compliant with clause 3.1.
- 3.5 For the avoidance of doubt, this clause 3 shall not impose any additional duty on the Consultant to inspect the Project over and above any such duty contained elsewhere in the Appointment.

#### **4. RESTRAINTS ON CONSULTANT**

The Consultant may not exercise any rights of set-off or counterclaim which may be permissible against his liability under the Appointment against any claim or entitlement of the Company under this deed.

#### **5. INSTRUCTIONS**

The Company has no authority to issue any direction or instruction to the Consultant in relation to performance of the Consultant's duties under the Appointment [unless and until the Company has given notice under clause 7.2].

**DRAFTING NOTE:** wording in brackets only to be included in warranty where step in rights being granted

#### **6. LIABILITY FOR PAYMENT**

The Company has no liability to the Consultant in respect of fees and expenses under the Appointment [unless and until the Company has given notice under clause 7.2].

**DRAFTING NOTE:** wording in brackets only to be included in warranty where step in rights being granted

#### **7. STEP-IN RIGHTS**

- 7.1 The Consultant agrees that it will not without first giving the Company previous notice in writing exercise any right it may have to terminate the Appointment or to treat the same as having been repudiated by the [Employer] [Contractor] or to discontinue the performance of any duties to be performed by the Consultant pursuant to the Appointment and 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 or pay less has been given such notice shall be not less than 7 days otherwise such notice shall be not less than 15 Working Days.
- 7.2 The right of the Consultant to terminate the Appointment with the [Employer] [Contractor] or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice and subject to clause 7.4 the Company shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Company or its appointee to the exclusion of the [Employer] [Contractor] in respect of the carrying out and completion of the Project upon the terms

and conditions of the Appointment PROVIDED THAT the rights of the [Fund] under clause 7 of the warranty given or to be given by the Consultant to the [Fund] shall have priority over the rights of the Company under this clause whether such rights are exercised by the [Fund] before or after the exercise by the Company of its rights under this clause.

**DRAFTING NOTE :** delete clause 7.3 if the agreement between the Employer and the Company does not give the Company the right to issue a notice to the Consultant and step into the Appointment in the case of breach of the agreement between the Employer and the Company by the Employer.

- 7.3 The Consultant agrees that it will if required by notice in writing given by the Company and subject to clause 7.4 accept the instructions of the Company or its appointee to the exclusion of the [Employer] [Contractor] in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment. The [Employer] [Contractor] acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Company under this clause as conclusive evidence for the purposes of this deed that the right to serve such notice has accrued to the Company pursuant to the terms of the agreement between the [Employer] [Contractor] and the Company.
- 7.4 Any notice given by the Company under this clause 7 shall state that the Company or its appointee accepts liability for payment of fees payable to the Consultant under the Appointment (including those due and owing under the Appointment at the date of any notice served by the Company) and for performance of the [Employer's] [Contractor's] obligations under the Appointment and in the case of the Company appointing a nominee the Company guarantees all payments due to the Consultant from its appointee.
- 7.5 Compliance by the Consultant with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the [Employer] [Contractor] giving rise to the right of termination nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.2.

**DRAFTING NOTE:** clause 7 is only to be included where step in rights are to be granted and if step in rights granted to more than one company then need to resolve priority of step in rights – see clause 7.2

## 8. PROFESSIONAL INDEMNITY INSURANCE

- 8.1 The Consultant warrants that without prejudice to its liability under this deed, it shall effect and will maintain at all relevant times during the Project and for the period of twelve years from the date of Practical Completion or completion of the Services if Practical Completion is not achieved with reputable insurers carrying on business in the United Kingdom professional indemnity insurance cover of at least two million pounds (£2,000,000) in the aggregate for each period of insurance PROVIDED ALWAYS such insurance continues to be available in the United Kingdom market to professional consultants of a similar size to and providing similar services as the Consultant upon reasonable terms and conditions and at commercially reasonable premium rates.
- 8.2 The Consultant shall throughout the period referred to in clause 8.1 provide to the Company, when reasonably requested by him to do so, evidence that the insurance required by clause 8.1 is being maintained in accordance with clause 8.1.
- 8.3 The Consultant shall immediately inform the Company as soon as it becomes aware that the insurance referred to in clause 8.1 is not maintained in accordance with this

deed or for any reason becomes void or unenforceable and shall agree with the Company the best means of protecting the Consultant and the Company's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

## **9. COPYRIGHT**

- 9.1 Copyright in the Project Material shall remain vested in the copyright owner.
- 9.2 The Consultant waives any Moral Rights that it may have as author in respect of the Project Material and/or the Project and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Project Material and/or the Project.
- 9.3 The Consultant grants or shall procure the grant from third parties engaged by the Consultant (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Project Material for any purpose whatsoever connected with the Project and/or the Site and/or any premises constructed or to be constructed on the Site including without limitation the execution completion maintenance letting occupation management sale advertisement extension (save that such use shall not include a licence to reproduce the designs contained in the Project Material for the extension of the Project) alteration reinstatement and repair of the Site and/or the Project and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Consultant shall not be liable for the consequences of any use of the Project Material for any purpose other than that for which the same was prepared.
- 9.4 The Consultant agrees that:
  - 9.4.1 the Company may assign the licence referred to in clause 9.3 or grant a sub-licence or sub-licences from such licence to any person with an interest in the Site and/or the Project and/or any premises constructed or to be constructed on the Site;
  - 9.4.2 subject to payment of its reasonable copying costs it will provide the Company with such information and copies of the Project Material as may be reasonably requested by the Company.

## **10. ASSIGNMENT**

- 10.1 The Company may (without the consent of the Consultant) assign its rights under this deed to:
  - 10.1.1 any Mortgagee and by way of re-assignment on redemption;
  - 10.1.2 any Group Company;
  - 10.1.3 any other party on two occasions only.
- 10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.3.
- 10.3 The Consultant undertakes with the Company not to contend that any person to whom this deed may be assigned will be precluded from recovering under this deed any loss resulting from any breach of this deed either by reason that the person is an assignee and not the original party to this deed or by reason that the Company named in this

deed or any intermediate owner of the Company's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

## **11. [EMPLOYER] [CONTRACTOR] ACKNOWLEDGEMENT**

The [Employer] [Contractor] has joined in this deed to confirm its compliance with the arrangements made and contemplated by this deed and confirms that by acting in accordance with clause 7 the Consultant shall not incur any liability to the [Employer] [Contractor].

**DRAFTING NOTE:** clause 11 is only to be included in warranty where step in rights are granted

## **12. PERIODS OF RECKONING TIME**

Where under this deed an act is required to be done within a specified period of days after or from a specified date that period shall begin immediately after that date. Where the period could include a day which is a Public Holiday that day shall be excluded.

**DRAFTING NOTE:** clause 12 is only to be included in warranty where step in rights are granted

## **13. LIMITATION AND MISCELLANEOUS**

- 13.1 The liability of the Consultant under this deed shall be limited to claims arising within twelve years after the date of Practical Completion or completion of the Services if Practical Completion is not achieved.
- 13.2 The rights of the Company conferred by this deed are additional to any other that it may enjoy by grant assignment or at law.
- 13.3 Any consent approval comment or expression of satisfaction given by the Company with regard to any matter or thing relating to the Appointment shall not in any way derogate from the Consultant's obligations under this deed nor diminish any liability on its part under this deed provided always that nothing in this clause shall modify or affect any rights which the Consultant might have but for the existence of this clause to claim a contribution from any third party whether under statute or at common law.
- 13.4 The Consultant acknowledges that:
  - 13.4.1 the Company shall be deemed to have relied upon the Consultant's reasonable skill care and diligence in respect of those matters relating to the Project which lie within the scope of its responsibilities under the Appointment or under this deed;
  - 13.4.2 no negligent or other act omission by or on behalf of the Company and their respective successors in title and assigns in inspecting approving or informing itself about anything relating to the Project shall abate or reduce the Consultant's liability under this deed to the Company and its respective successors in title and assigns provided always that nothing in this clause shall modify or affect any rights which the Consultant might have but for the existence of this clause to claim a contribution from any third party whether under statute or at common law.
- 13.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend any terms of this deed to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been entitled to enforce such terms.

13.6 Subject to clause 4:

- 13.6.1 the Consultant shall have no greater liability to the Company by virtue of this deed than it would have had if the Company had been named in the Appointment jointly with the Employer; and
- 13.6.2 the Consultant shall be entitled in any action or proceedings by the Company to rely on any limitation or exclusion in the Appointment and to raise equivalent rights of defence of liability as it would have against the Employer under the Appointment.

**14. NOTICES**

- 14.1 Any notice to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered office for the time being or in any other case to any address for the time being of the person to be served.
- 14.2 Notice may be served by:
  - 14.2.1 personal delivery; or
  - 14.2.2 pre-paid registered or recorded delivery mail; or
  - 14.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.
- 14.3 Notices and communications shall be deemed to have been served or received as follows:
  - 14.3.1 in the case of personal delivery on the date of delivery;
  - 14.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
  - 14.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

**15. LAW**

This deed shall be governed by English law and the Consultant and the Company hereby submit to the jurisdiction of the English courts.

**EXECUTED** and delivered as a deed on the date at the head of this deed.

**Deed of Collateral Warranty in favour of MHCLG**

Date.....**2021** insert date

**Collateral Warranty  
from Consultant to MHCLG  
relating to ACM cladding remedial works at 20:20 Block B  
Flats, Skinner Lane, Leeds LS7 1BE**

Wintech Limited <sup>(1)</sup>  
The Ministry of Housing, Communities & Local Government <sup>(2)</sup> and  
20:20 House (Residential Management) Limited <sup>(3)</sup>

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**DATE..... 2021**

## **PARTIES**

- (1) **WINTECH LIMITED** (No. 02430998) whose registered office is Quartz House, Pendeford Business Park, Wolverhampton, West Midlands, United Kingdom, WV9 5HA (**Consultant**).
- (2) **THE MINISTRY OF HOUSING, COMMUNITIES & LOCAL GOVERNMENT**, a UK government department whose principal office is at 2nd floor NW, Fry Building, 2 Marsham Street, London, SW1P 4DF, United Kingdom (**MHCLG**).
- (3) **20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED** (No.06770847) whose registered office is Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB (**Employer**).

## **BACKGROUND**

- (A) By the Appointment, the Employer has engaged the Consultant to act in the capacity of facade engineer in relation to the design, specification, construction and completion of Remedial Works at the Site on the terms and subject to the conditions set out in the Appointment.
- (B) The MHCLG has established the private sector ACM cladding remediation fund (**ACM Fund**) . The ACM Fund provides funding for the replacement of unsafe ACM cladding systems on private residential buildings. The Employer is an applicant of the ACM Fund.
- (C) Pursuant to a funding agreement dated 23 February 2021 between the MHCLG, the Delivery Partner and the Employer, the MHCLG has agreed to fund the Remedial Works at the Site (**Funding Agreement**).
- (D) The Consultant has agreed to enter into this Deed for the benefit of the MHCLG and its successors in title and assigns.

## **AGREED TERMS**

In consideration of the payment of £1 by the MHCLG to the Consultant (receipt of which is hereby acknowledged) and which the parties hereby agree to be full and valuable consideration it is hereby agreed that:

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed the words below have the meanings next to them unless the context requires otherwise:

**ACM** Aluminium Composite Material.

**ACM Cladding** ACM cladding which shall include the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding includes the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashings, fixings, gaskets and sealants.

**ACM Fund** has the definition ascribed to in Recital (B).

**Appointment** the deed of appointment between the Employer and the Consultant dated 3 July 2020 for the carrying out of facade engineer services, duties and obligations in relation to the Remedial Works including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.

<b>Business Day</b>	a day which is not a Saturday or Sunday or a bank or national holiday in England.
<b>Contract</b>	the contract between the Employer and the Contractor dated 2 December 2020 for the design, carrying out and completion of Remedial Works including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.
<b>Contractor</b>	Ballymore Services Limited (No. NI622883) whose registered office is 20 Armagh Road, Portadown, Craigavon, Northern Ireland, BT62 3DP
<b>Construction Regulations</b>	<b>Products</b> the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).
<b>Delivery Partner</b>	Homes England.
<b>EU Exit</b>	the UK ceasing to be a member state of the European Union and ceasing to be subject to any transitional arrangements which substantively treat the UK as a member state of the European Union.
<b>Funding Agreement</b>	has the definition ascribed to it in recital (C).
<b>Material</b>	all designs, drawings, calculations, charts, diagrams, sketches, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, data, databases, schedules, programmes, bills of quantities, budgets, surveys, levels, setting out dimensions and/or other documents or materials produced or prepared by or on behalf of the Consultant in relation to and/or connection with the Remedial Works and/or Site (whether in existence or to be made) and all updates, amendments, additions and revisions to them and any works, designs or inventions contained incorporated or referred to in them for any purpose relating to the Remedial Works and/or Site.
<b>Practical Completion</b>	the date of practical completion of the Remedial Works in accordance with the definition of "practical completion" (or equivalent) in the Contract and if there is no such definition (or equivalent) it means the date on which Homes England is satisfied that the Remedial Works have been completed in accordance with the Funding Agreement and the Contract.
<b>Remedial Works</b>	the Unsafe ACM Cladding remedial works by the Employer at the Site.
<b>Site</b>	building known as 20:20 Block B Flats upon which the Remedial Works are to be performed.
<b>Unsafe Cladding</b>	any ACM Cladding that has been identified as containing combustible materials (e.g. a polyethylene core in an aluminium composite panel) and which failed the series of BS8414 tests commissioned by the government over summer 2017. Full details are set out in the consolidated advice note published by

the Building Safety Programme on 5 September 2017, available here:

<https://www.gov.uk/government/publications/building-safety-programme-update-and-consolidated-advice-for-building-owners-following-large-scale-testing>

1.2 In this Deed unless the context requires otherwise:

- 1.2.1 references to a Clause or Schedule are to a clause of, or schedule to this Deed, references to this Deed include its schedules, and references in a Schedule to a paragraph are to a paragraph of that Schedule;
- 1.2.2 references to this Deed or any other document are to this Deed or that document as amended from time to time;
- 1.2.3 words denoting the singular include the plural and vice versa;
- 1.2.4 references to a person include any corporate or unincorporated body;
- 1.2.5 the table of contents and headings in this Deed do not affect its interpretation;
- 1.2.6 writing or written does not include e-mail or any other form of electronic communication;
- 1.2.7 the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.8 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives;
- 1.2.9 unless otherwise specified, a reference to a statutory provision is a reference to that provision as amended, consolidated, extended or re-enacted from time to time (whether before or after the date of this Deed) and to any subordinate legislation made under it except to the extent that it would increase the liability of any party under this Deed;
- 1.2.10 if the Consultant is a partnership each partner shall be jointly and severally liable under this Deed. Where the context so requires and where the Consultant is a partnership, the term **Consultant** shall be deemed to include any additional partner(s) who may be admitted into the partnership of the Consultant during the currency of this Deed. This Deed shall not automatically terminate upon the death, retirement or resignation of one or more members of such partnership; and
- 1.2.11 unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended or re-enacted on or after EU Exit.

## 2. EXERCISE OF SKILL AND CARE

- 2.1 The Consultant warrants and undertakes to the MHCLG that it has observed and performed and shall continue to observe and perform each and all of its services, duties and obligations contained in or implied by the Appointment. Save as expressly provided for in this Deed the duty of the Consultant is to be treated as being no greater than it would have been if the MHCLG had been a party to the Appointment instead of this Deed and the Consultant shall be entitled in any action or proceedings by the MHCLG to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Employer under the Appointment but neither this provision nor any other provision in this Deed shall entitle the Consultant to raise any defence based on set-off or counterclaim and/or prevent the MHCLG from recovering loss and/or damage from the Consultant as a result of the Consultant's breach of any provisions of this Deed on the basis that the Employer has not suffered any loss and/or damage

and/or the same loss and/or damage and the Consultant hereby irrevocably agrees and undertakes not to raise any such arguments by way of defence and/or set-off and/or counterclaim to any claim made by the MHCLG.

- 2.2 Without prejudice to the generality of Clause 2.1 the Consultant warrants and undertakes to the MHCLG that it has exercised and shall continue to exercise in the performance of the services, duties and obligations contained in or implied by the Appointment the reasonable skill, care and diligence to be expected of a properly qualified and competent facade engineer experienced in performing similar services, duties and obligations in relation to works of a similar nature, value, scope, character, complexity and timescale to the Remedial Works, and in particular:
  - 2.2.1 Not used.
  - 2.2.2 in the selection of goods and materials by or on behalf of the Consultant in respect of the Remedial Works.
- 2.3 The Consultant acknowledges that the MHCLG has relied and shall rely on the warranties under this Clause 2 and the other terms of this Deed and may and/or shall suffer loss and/or damage in the event of a breach of these warranties and/or the other terms of this Deed.
- 2.4 The obligations of the Consultant under this Deed shall not be released or diminished by the appointment of any person by the MHCLG to carry out any independent enquiry into any matter.

### **3. OBLIGATIONS PRIOR TO TERMINATION OF THE APPOINTMENT**

- 3.1 The Consultant warrants and undertakes to the MHCLG that it shall not exercise or seek to exercise any right of termination of the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations thereunder for any reason whatsoever (including any services, duties and/or obligations in relation to the Remedial Works by reason of breach on the part of the Employer) without giving to the MHCLG not less than 28 days' notice of its intention to do so and specifying the grounds for the proposed termination and/or discontinuance.
- 3.2 Any period stipulated in the Appointment for the exercise by the Consultant of a right of termination of the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations in relation to the Remedial Works shall be extended as may be necessary to take account of the period of notice required under Clause 3.1.
- 3.3 Compliance by the Consultant with the provisions of Clause 3.1 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of termination of the Appointment and/or to discontinue the performance of any of the Consultant's services, duties and/or obligations in relation to the Remedial Works, nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice unless the right of termination and/or right to discontinue shall have ceased under the provisions of Clause 4.

### **4. OBLIGATIONS OF THE CONSULTANT TO THE MHCLG**

- 4.1 The right of the Consultant to terminate the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations shall cease within the period of 28 days referred to in Clause 3.1 if the MHCLG shall give written notice to the Consultant:
  - 4.1.1 requiring the Consultant to continue performing its services, duties and obligations under the Appointment in relation to the Remedial Works;
  - 4.1.2 acknowledging that the MHCLG is assuming all the services, duties and obligations of the Employer under the Appointment;
  - 4.1.3 undertaking unconditionally to the Consultant to discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment;

and shall pay to the Consultant any sums which have become due and payable to it under the Appointment but which were then unpaid.

- 4.2 Upon compliance by the MHCLG with the requirements of Clause 4.1 the Appointment shall continue in full force and effect as if the right of termination and/or discontinuance on the part of the Consultant had not arisen and in all respects as if the Appointment had been made between the Consultant and the MHCLG to the exclusion of the Employer.
- 4.3 Notwithstanding that as between the Employer and the Consultant the Consultant's rights of termination of the Appointment and/or discontinuance may not have arisen, the provisions of Clause 4.2 shall nevertheless apply if the MHCLG gives notice to the Consultant and the Employer to that effect and the MHCLG complies with the requirements on its part under Clause 4.1.
- 4.4 The Consultant shall not be concerned or required to enquire whether, and shall be bound to assume that, as between the Employer and the MHCLG the circumstances have occurred permitting the MHCLG to give notice under Clause 4.1.
- 4.5 The Consultant acting in accordance with the provisions of this Clause 4 shall not by so doing incur any liability to the Employer.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 All rights including copyright in all the Materials, if any, shall remain vested in the Consultant but, subject to the Consultant having been paid all sums due and payable under the Appointment, the MHCLG and its appointee shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Materials and to reproduce the designs and content of them for any purpose relating to the Remedial Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Remedial Works. Such licence shall enable the MHCLG and its appointee to copy and use the Consultant's Materials for an extension of the Remedial Works but shall not include any right or licence to reproduce the designs contained in them for any extension of the Remedial Works. The Consultant shall not be liable for any such use by the MHCLG or its appointee of any of the Materials for any purpose other than that for which they were prepared.

## **6. INSURANCE**

- 6.1 The Consultant warrants to the MHCLG that it maintains, has at all relevant times maintained, and shall continue to maintain throughout the duration of the Remedial Works and for a period of 12 years following Practical Completion (irrespective of any termination of the Appointment or the Consultant's employment under the Appointment for any reason) professional indemnity insurance with reputable insurers lawfully carrying on such insurance business in the United Kingdom at commercially reasonable rates and terms with a limit of indemnity and basis of cover of not less than that set out in the Appointment in the annual aggregate to cover claims made under this Deed against the Consultant in relation to the Remedial Works.
- 6.2 As and when reasonably required by the MHCLG the Consultant shall provide satisfactory documentary evidence of the terms of insurance referred to in Clause 6.1 and that the insurance referred to in Clause 6.1 is being properly maintained, and shall confirm that payment has been made in respect of the last preceding premium due under such insurance.
- 6.3 The Consultant warrants that it has at all relevant times observed and shall continue to observe all of the conditions of the insurance policy referred to in Clause 6.1 and all of the insurance provisions contained or referred to in the Appointment.
- 6.4 The Consultant shall as soon as reasonably practicable inform the MHCLG if the insurance referred to in Clause 6.1 ceases to be available at commercially reasonable rates and terms and shall obtain such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain. For the purposes of this Clause 6, commercially reasonable rates shall mean such level of premium rates at which other consultants of a similar size and financial standing as the Consultant at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, errors, omissions,

negligence, breaches, defaults, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

## **7. HEALTH AND SAFETY**

The Consultant warrants that it has complied and shall comply with all of its obligations in relation to the Remedial Works as set out in the Construction (Design and Management) Regulations 2015.

## **8. EXCLUDED MATERIALS**

- 8.1 The Consultant warrants that it has not and shall not use and/or permit the use of and/or specify for use in or in connection with the Remedial Works any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the Consultant's trade and/or the construction industry:
- 8.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
  - 8.1.2 to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the Remedial Works or any part thereof and/or to other structures, finishes, plant and/or machinery;
  - 8.1.3 not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or
  - 8.1.4 to be supplied or placed on the market in breach of the Construction Products Regulations.

## **9. COMMUNICATIONS**

- 9.1 Except as otherwise provided for in this Deed, all notices or other communications under or in respect of this Deed to either party shall be deemed to be duly given or made when delivered to that party at the address appearing below (or at such other address as that party may hereafter specify for this purpose to the other):

in the case of the **Consultant**:

Names: Paul Savidge

Address: Wintech Limited, Quartz House, Pendeford Business Park,  
Wolverhampton, WV9 5HA

in the case of the **MHCLG**:

The Director of Building Safety

Ministry of Housing, Communities and Local Government

2 Marsham Street, London, SW1P 4DF

in the case of the **Employer**:

Names: Nick Massingham

Address: Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB

- 9.2 A notice or other communication which is not received on a Business Day or which is received after business hours in the place of receipt shall be deemed to be given or made on the next following Business Day in that place.

## **10. CONCURRENT LIABILITIES**

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

## **11. ASSIGNMENT**

- 11.1 The MHCLG may without the consent of the Consultant from time to time assign transfer and/or charge the benefit of all or any of the Consultant's obligations under this Deed and/or any benefit arising under or out of this Deed on three occasions only. In this Deed references to the MHCLG include where the context admits its permitted assignees.
- 11.2 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named party under this Deed.
- 11.3 The Consultant shall not be entitled to assign, transfer and/or charge the benefit of any (if any) of the MHCLG's obligations under this Deed and/or any benefit (if any) arising to the Consultant out of this Deed.

## **12. LIMITATION PERIOD**

The liability of the Consultant under this Deed shall cease 12 years following Practical Completion save in relation to any claims made by the MHCLG against the Consultant and/or notified by the MHCLG to the Consultant in writing prior thereto.

## **13. EMPLOYER**

The Employer agrees that it shall not take any steps which would prevent or hinder the MHCLG from exercising its rights under this Deed and confirms that the rights of the MHCLG in Clauses 3 and 4 override any obligations of the Consultant to the Employer under the Appointment.

## **14. GOVERNING LAW AND JURISDICTION**

- 14.1 This Deed 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 law of England and Wales.
- 14.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales which shall have jurisdiction to hear and decide any suit, action or proceedings and/or to settle any dispute or claim which may arise out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

## **15. RIGHTS OF THIRD PARTIES**

Unless the right of enforcement is expressly provided for it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999. This Clause 15 shall not affect or prevent any assignees who take the benefit of this Deed pursuant to Clause 11 or successors in title to the MHCLG from enforcing the provisions of this Deed.

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

Signed as a deed by .....  
..... Director's printed name for and Director's signature  
on behalf of **WINTECH LIMITED** in the presence of:

*witness' signature*  
.....

Name.....

Address.....  
.....

Occupation.....

The **CORPORATE SEAL** of **THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT** herewith affixed is authenticated by:

Signed as a deed by .....  
for and on behalf of **20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED** Director's signature  
in the presence of:

..... witness'  
signature

Name.....

Address.....  
.....

Occupation.....

**SCHEDULE 6  
Deed of Novation**

DATED \_\_\_\_\_ 20[ ]

- (1) [ ]
- (2) [ ]
- (3) [ ]

**DEED OF NOVATION**  
in respect of a development at  
[ ]



**THIS DEED** is made

20[ ]

**BETWEEN**

- (1) [ ] (Company registration number [ ]) whose registered office is at [ ] ("the Client")
- (2) [ ] (Company registration number [ ]) whose registered office is at [ ] ("the Contractor")
- (3) [ ] (Company registration number [ ]) whose registered office is at [ ] ("the Consultant")

**OR**

[ ] [ ] [ ] [ ] and  
 [ ] [ ] who together [and with others] are carrying on business in partnership as [ ] at [ ] ("the Consultant")

**NOW THIS DEED WITNESSETH** as follows:

**1. DEFINITIONS AND CIRCUMSTANCES**

**1.1 Definitions**

In this deed unless the context otherwise requires the following expressions shall have the following meanings:

"Appointment"	the appointment entered into between the Consultant and the Client dated [ ]
"Project"	[ ] at the Site
"Site"	[ ]
"1999 Act"	the Contracts (Rights of Third Parties) Act 1999

**1.2 Circumstances**

- 1.2.1 By the Appointment the Client appointed the Consultant to act as Façade Consultant in relation to the Project
- 1.2.2 It has been agreed between the Client and the Contractor that the Contractor shall (subject to obtaining the consent of the Consultant) assume the obligations of the Client under the Appointment
- 1.2.3 The Consultant consents to the substitution of the Contractor for the Client under the Appointment
- 1.2.4 This deed is supplemental to the Appointment

**2. RELEASE BY CLIENT**

The Client releases and discharges the Consultant from further performance of the Consultant's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed

**3. RELEASE BY CONSULTANT**

The Consultant releases and discharges the Client from further performance of the Client's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed

**4. ACCEPTANCE OF LIABILITY BY CONTRACTOR**

The Contractor accepts the liabilities of the Client under the Appointment and agrees to perform all the duties and to discharge all the obligations of the Client under it and to be bound by all its terms and conditions in every way as if he were named in the Appointment as a party ab initio in place of the Client. Without limiting the generality of the foregoing the Contractor acknowledges and agrees that he will receive and accept responsibility for negotiating and settling all claims and demands whatsoever against the Client arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed

**5. ACCEPTANCE OF LIABILITY BY CONSULTANT**

- 5.1 The Consultant agrees to perform all his duties and to discharge all his obligations under the Appointment and to be bound by all its terms and conditions in favour of the Contractor in every way as if the Contractor were named in the Appointment as a party ab initio in place of the Client
- 5.2 Without limiting the generality of the foregoing:
  - 5.2.1 the Consultant acknowledges and agrees that the Contractor shall have the right to enforce the Appointment and pursue all claims and demands (future or existing) by the Client whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed
  - 5.2.2 it is agreed and acknowledged that any dispute between the Consultant and Contractor which arises from or in connection with a breach or alleged breach of the Appointment which occurred or is alleged to have occurred prior to the date of this deed shall be dealt with in all respects and for all purposes as though at the date of the said breach or alleged breach the party defined as "the Client" in the Appointment had been the Contractor
- 5.3 The Consultant acknowledges that the Contractor is entitled to rely and may rely upon the performance by the Consultant of all of its obligations and the services required to be carried out by the Consultant under the Appointment and that the Contractor may suffer loss consequent upon the failure by the Consultant to perform such obligations and/or services to the standard of care required under the Appointment and whether or not the obligations and/or services were originally performed for the Contractor or the Client before or after the date of this deed
- 5.4 The Consultant agrees that in defence of any claim brought by the Contractor in respect of breach by the Consultant of its duties and/or obligations under the Appointment prior to the date hereof it shall not assert that the Contractor is precluded from recovering any loss resulting from such breach of the Appointment on the

grounds that the Client for whom such duties and/or obligations were originally performed has suffered no loss or a loss different from the Contractor by reason of any breach by the Consultant

## 6. ACKNOWLEDGEMENT OF PAYMENT

The Consultant acknowledges that up to the point of novation he has been paid all sums properly due from the Client

## 7. CONSULTANCY AGREEMENT IN FORCE

The terms and conditions of this deed represent the entire agreement between the parties relating to the novation of the Appointment and except as specifically amended by this deed all the terms and conditions of the Appointment remain in full force and effect

## 8. NO DISCHARGE OF CONSULTANT'S LIABILITY

Nothing in this deed shall operate to discharge the Consultant from any liability in respect of duties performed prior to the execution hereof

## 9. THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

- 9.1 The Consultant shall contemporaneously with the execution of this deed execute a collateral warranty in favour of the Client in the form set out the Appointment
- 9.2 Nothing in this deed shall affect or derogate from any collateral warranty given or to be given by the Consultant to the Client
- 9.3 Subject to clause 14.1 of the Appointment the Consultant shall at the request of the Client enter into a collateral warranty with any Tenant and/or Purchaser and/or Funder and/or MHCLG (as those terms are defined in the Appointment) in the form set out in the Appointment within fourteen days of such request
- 9.4 Subject to clause 14.3 of the Appointment the Client shall be entitled to issue Nominating Notices conferring Third Party Rights pursuant to the Appointment (as those terms are defined in the Appointment).

## 10. 1999 ACT

- 10.1 Unless the right of enforcement is expressly provided for in this deed a person who is not a party to this deed may not by virtue of the 1999 Act enforce any of its terms
- 10.2 Except to the extent that there is express provision in this deed to the contrary the parties may by agreement rescind or vary this deed without the consent of any such person

**IN WITNESS** whereof the parties hereto have executed this deed as a deed and delivered the same the day and year first before written