



**Professional Services Agreement  
in relation to minor building works**

**Contract Reference: NU xxxxxxxx**

**Contract Title: xxxxxxxxxxxxxxxx**

**Professional Services Agreement**

**for minor building works**

**CONTRACT DETAILS**

**DATE:** [ ]

<b>Contract No:</b>	[INSERT THE CONTRACT REFERENCE NUMBER ON THE FRONT PAGE].
<b>Contract Start Date:</b>	[INSERT THE DATE THAT THE SERVICES WILL START TO BE PROVIDED. ALTERNATIVELY, IF THERE IS NO START DATE DETERMINED AT THE DATE OF SIGNATURE INSERT "THE DATE ON WHICH THE SUPPLIER COMMENCED PROVISION OF THE SERVICES OR WHERE THE SERVICES HAVE NOT BEEN COMMENCED, THE DATE ON WHICH THE PARTIES AGREE IN WRITING THAT THE SERVICES SHALL COMMENCE "].
<b>University:</b>	means the University of Newcastle upon Tyne trading as Newcastle University.
<b>University's Representative:</b>	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
<b>Supplier:</b>	Name: [INSERT [COMPANY NAME] LIMITED (No. [NUMBER])] Address: [INSERT] Email: [EMAIL ADDRESS] Telephone: [NUMBER]
<b>Supplier's Representative:</b>	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER]

	Postal Address: [POSTAL ADDRESS]
<b>Services:</b>	[INSERT DESCRIPTION], as further detailed in Schedule 1.
<b>Key Deliverables:</b>	[INSERT DESCRIPTION], as further detailed in Schedule 1..
<b>Novation</b>	Novation of this Contract from the University to the Contractor [will/will not apply].
<b>Lead consultant</b>	The Supplier [is/is not] lead consultant.
<b>Professional Team</b>	[INSERT DETAILS OF UNIVERSITY'S OTHER CONSULTANTS].
<b>Key Personnel</b>	[INSERT DETAILS OF SUPPLIER'S KEY PERSONNEL THAT THE UNIVERSITY WOULD LIKE TO BE ENGAGED IN THE PROJECT].
<b>Project</b>	[INSERT DETAILS].
<b>Property</b>	[INSERT DETAILS].
<b>Third Party Agreements</b>	[INSERT DETAILS OF ANY THRID PARTY AGREEMENTS THAT THE SUPPLIER NEEDS TO COMPLY WITH OR PUT "NOT APPLICABLE"]
<b>Designer/Principal Designer</b>	The Supplier [is/is not] a designer under the CDM Regulations and the Building Regulations.  The Supplier [is/is not] the Principal Designer under the CDM Regulations.  The Supplier [is/is not] the Principal Designer under the Building Regulations.
<b>Supplier's Liability Cap:</b>	[AMOUNT]
<b>Sub-contracting:</b>	[NO SUB-CONTRACTING PERMITTED]  OR  [SUB-CONTRACTING TO [ ] IS PERMITTED ON TERMS TO BE FIRST APPROVED BY THE UNIVERSITY, SUCH CONSENT NOT TO BE UNREASONABLY WITHHELD OR DELAYED]
<b>Charges:</b>	[INSERT RELEVANT DETAILS HERE]

<p><b>Supplier's Insurance requirements:</b></p>	<ul style="list-style-type: none"> <li>professional indemnity insurance on customary and usual terms and conditions prevailing for the time being in the insurance market and on terms that do not require the Supplier to discharge any liability before being entitled to recover from the insurers and would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010, at an amount not less than £[AMOUNT] for each and every claim on and from the date of this Contract for the longest limitation period in which claims and/or proceedings may be commenced including under sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; and</li> <li>public liability insurance at an amount not less than £[AMOUNT] to cover the liabilities that may arise under or in connection with this Contract</li> </ul> <p>[LIST OTHER INSURANCE REQUIREMENTS HERE]</p>
<p><b>Liability Period</b></p>	<p>[6/12 years]</p> <p><i>[Note: If the Contract is signed under hand there is a 6-year limitation period or if executed as deed, there is a 12-year limitation period]</i></p>
<p><b>Notices and Points of Escalation:</b></p>	<p>For the University:</p> <p>First Point of Escalation: University's Representative at its address set out in these Contract Details</p> <p>Second Point of Escalation: [ ] at [ADDRESS],</p>

	<p>For the Supplier:</p> <p>First Point of Escalation: Supplier's Representative at its address set out in these Contract Details</p> <p>Second Point of Escalation: [ ] at [ADDRESS],</p>
<p><b>Adjudicator nominating body</b></p>	<p>[Delete all but one of the asterisked choices]</p> <ul style="list-style-type: none"> <li>* Royal Institute of British Architects</li> <li>* The Royal Institution of Chartered Surveyors</li> <li>* constructionadjudicators.com</li> <li>* Chartered Institute of Arbitrators</li> </ul>
<p><b>Special terms:</b></p>	<p>The parties have agreed the following special terms which will take precedence over the Agreement Conditions:</p> <p>[INSERT ANY SPECIAL TERMS or put "NOT APPLICABLE"]</p> <p><i>[DN: Special conditions could include amending the ownership of IPR in the Deliverables, restrictions on the University's right to assign.]</i></p> <p><i>[DN: if the Services relate to a Higher Risk Building as defined in Building Safety legislation, such as Park View student Village, special terms will be required to address the Building Safety legislation.]</i></p>
<p>Schedules:</p>	<p>Schedule 1: Services.</p> <p>Schedule 2: Charges.</p> <p>Schedule 3: Change Control Procedure.</p> <p>Schedule 4: Forms of Notices.</p> <p>Schedule 5: Novation</p> <p>Schedule 6: Collateral Warranties</p>

1. This Contract incorporates the following documents (which, to the extent that there is any inconsistency between any of them, will be resolved in the following descending order of priority):

- (a) The Contract Details (highest priority);
- (b) The Conditions;
- (c) The Schedules specified in the Contract Details; and
- (d) The University Policies (lowest priority).

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list will have priority over one contained in a document lower in the list.

This Contract has been entered into on the date stated at the beginning of it.

*[Note: If the Contract is signed under hand there is a 6-year limitation period or use the execution blocks below for as deed, for a 12-year limitation period]*

Signed by **[insert name of signatory]** .....  
for and on behalf of the **Supplier** Authorised signatory

Signed by **[insert name of signatory]** .....  
for and on behalf of the **University** Authorised signatory

**OR**

**Executed** as a deed but not delivered until the date  
stated at the beginning of the Contract by  
affixing the Common Seal of

**The University of Newcastle upon Tyne**  
(an exempt charity) in the presence of:

.....  
Authorised signatory

.....  
Authorised signatory

**Executed as a deed** but not delivered until the date  
stated at the beginning of the Contract by **[insert name  
of Supplier company]**

**DN: The Supplier should confirm if 2 Directors or  
a Director and Secretary need to sign, in which  
case this will need to be amended to add the extra  
signatories**

acting by

a director in the presence of

.....

(signature of director)

.....

Signature of witness

.....

Name of witness

.....

Address

.....

Occupation

## CONDITIONS OF CONTRACT

### 1. Interpretation

1.1 Unless the context requires otherwise, words and phrases used in this Contract shall have the following meanings stated in clause 1.2 below.

### 1.2 Definitions:

<b>Applicable Laws</b>	all applicable laws, statutes, regulations from time to time in force in England and Wales.
<b>Beneficiary</b>	any Funder, any Purchaser, any Tenant or any other person identified by the University.
<b>Building Contract</b>	a contract entered or to be entered into between the University and the Contractor for the Project.
<b>Building Regulations</b>	without limiting to clause 1.3.1, the Building Regulations 2010 incorporating the amendments introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023, and any standards and guidance issued in relation to them.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>CDM Regulations</b>	the Construction (Design and Management) Regulations 2015 (SI 2015/51).
<b>Change</b>	any amendment to the scope, nature or execution of the Services under this Contract or any amendment to any other term or schedule of this Contract.
<b>Change Control Note</b>	the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure in Schedule 3.
<b>Change Control Procedure</b>	the procedure for changing this Contract, as set out in Schedule 3
<b>Change in Control</b>	will occur in respect of a person (the relevant entity) where:



- (a) Control of the relevant entity is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person who did not at the Contract Start Date hold Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity; or
- (b) a person who has Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity at any time during the Term ceases to have Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity,

save that any such event will not constitute a Change in Control in respect of the relevant entity where its ultimate Parent Undertaking (if any) before the relevant event remains its ultimate Parent Undertaking after that event (Parent Undertaking has the meaning set out in section 1162 Companies Act 2006)

**Charges**

the charges payable by the University for the supply of the Services by the Supplier set out in the Contract Details and Schedule 2.

**Collateral Warranty**

a collateral warranty in the relevant form at Schedule 6.

**Conditions**

these terms and conditions set out in clause 1 (Interpretation) to clause 36 (Jurisdiction) (inclusive).

**Confidential Information**

the existence and terms of this Contract and all other information, however conveyed or presented, that relates to the business, affairs, operations, the University's students, customers, processes, budgets, charges, pricing policies (where applicable), product information

(where applicable), strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

**Consents**

all consents, licences, authorisations, approvals, permissions, certificates and permits (whether statutory, regulatory, contractual or otherwise) in any relevant jurisdiction.

**Construction Products**

UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (SI 2013/1387).

**Regulations**

**Contract**

the contract between the University and the Supplier for the supply of the Services in accordance with the Contract Details, these Conditions and any Schedules.

**Contractor**

the contractor employed under the Building Contract.

**Contract Details**

the contract details front sheet attached to these terms and conditions, signed by the Supplier and the University, which sets out the details of the Services the Supplier has agreed to supply to the University together with the Charges that the University has agreed to pay.

**Contract Start Date**

the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.

**Control**

has the meaning given in section 1124 of the Corporation Tax Act 2010.

**Default**

any default of either party in complying with its obligations under this Contract.

**Deleterious**

materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- posing a threat to the health and safety of any person;
- posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
- not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
- having been supplied or placed on the market in breach of the Construction Products Regulations.

**Deliverables**

all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other documents, products and materials documents provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Project and/or

the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts), and the Key Deliverables set out in the Contract Details.

**EIR**

the Environmental Information Regulations 2004.

**FOIA**

the Freedom of Information Act 2000 and any subordinate legislation (as defined under the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure Event**

any cause affecting, preventing or hindering the performance by a party of its obligations under this Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

**Funder**

a person providing finance in connection with:

(a) the Project or the completed Project; or

(b) the Property,

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

**Good Industry Practice**

all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Supplier's profession undertaking services in relation to works similar in scope, character, scale and complexity to the Project

Project. unless any of the Applicable Laws impose a higher standard in which case that higher standard will apply notwithstanding any provision of this Contract to the contrary.

**Intellectual Property Rights**

patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Key Personnel**

any key personnel of the Supplier named in the Contract Details.

**Material**

all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

<b>Permitted Uses</b>	the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.
<b>Professional Team</b>	the organisations or individuals listed in the Contract Details and any other organisations or individuals notified by the University to the Supplier.
<b>Programme</b>	the programme agreed by the Supplier and the Client, setting out key dates and time periods for: <ul style="list-style-type: none"> <li>(a) completing key activities;</li> <li>(b) issuing Deliverables and other documents; and</li> <li>(c) providing information relating to the Project,</li> </ul> as may be adjusted from time to time by agreement between the University and the Supplier.
<b>Project</b>	has the meaning in the Contract Details.
<b>Property</b>	has the meaning in the Contract Details.
<b>Purchaser</b>	a person to whom the University transfers or agrees to transfer its interest in the Property.
<b>Services</b>	the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to the Contract, as described in Schedule 1 and subject to any Change.
<b>Supplier IPRs</b>	all Intellectual Property Rights either subsisting in the Deliverables (excluding any University Materials incorporated in them) or otherwise necessary or desirable to enable a University to receive and use the Services.
<b>Supplier's Liability Cap</b>	the amount set out in the Contract Details.

<b>Supplier Personnel</b>	all employees, staff, other workers, agents and consultants of the Supplier who are engaged in the provision of the Affected Services.
<b>Supplier's Representative</b>	The individual acting as the Supplier's representative set out in the Contract Details.
<b>Tenant</b>	a person to whom the University grants, or agrees to grant, a leasehold interest in the Property.
<b>Third Party Agreement</b>	any agreement named as a Third Party Agreement in the Contract Details relating to the Property and/or the Project, a copy of which, or relevant extract, is supplied to the Supplier.
<b>UK Construction Products Regulation 2011</b>	the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018.
<b>University Materials</b>	all documents, information, items and materials in any form (whether owned by the University or a third party), which are provided by the University to the Supplier in connection with the Services, including the information provided pursuant to 5.1.2.
<b>University Policies</b>	the University's mandatory policies that are available at the website notified to the Supplier by the University or provided by the University to the Supplier from time to time during the Term.
<b>University's Representative</b>	The individual acting as the University's Representative set out in the Contract Details.
<b>VAT</b>	value added tax chargeable in the UK.

**1.3 Interpretation:**

1.3.1 A reference to legislation or a legislative provision:

1.3.1.1 is a reference to it as amended, extended or re-enacted from time to time;

and

1.3.1.2 will include all subordinate legislation made from time to time under that legislation or legislative provision.

1.3.2 Any words following the terms **including, include, in particular, for example** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.3.3 A reference to **writing** or **written** excludes fax but not email.

## 2. **Commencement and term**

2.1 The Contract will commence on the Contract Start Date set out in the Contract Details and will, unless terminated earlier in accordance with clause 16 (Termination), continue until completion of the Services.

## 3. **Novation**

3.1 Where the Contract Details provide for novation, within 5 Business Days of receiving a written request from the University, the Supplier shall:

3.1.1 enter into a deed of novation with the University and the Contractor in the form attached at Schedule 5; and

3.1.2 enter into a Collateral Warranty in the form marked "A" in Schedule 6 in favour of the University (or any assignee of the University)

## 4. **Supply of services**

4.1 The Supplier shall supply the Services to the University from the Contract Start Date in accordance with the Programme and this Contract.

4.2 In supplying the Services, the Supplier shall:

4.2.1 comprehensively perform, manage and provide the Services using Good Industry Practice;

4.2.2 comply with all lawful and reasonable directions of the University relating to its supply of the Services and performance of the Services;

4.2.3 appoint or, at the written request of the University, replace without delay a manager, who will have authority to contractually bind the Supplier on all matters relating to the Services;



- 4.2.4 ensure that personnel are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
- 4.2.5 obtain, and maintain all Consents it may require and which are necessary to enable it to comply with its obligations in the Contract;
- 4.2.6 ensure that the Services and the Deliverables will conform in all respects with the requirements set out in this Contract and ensure that they fulfil the purpose indicated by or to be reasonably inferred from such requirements;
- 4.2.7 provide all equipment, tools, vehicles and other items required to provide the Services;
- 4.2.8 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services will be free from defects in workmanship, installation and design;
- 4.2.9 comply with:
  - 4.2.9.1 all Applicable Laws; and
  - 4.2.9.2 the University Policies.
- 4.2.10 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the University's premises from time to time and are notified to the Supplier;
- 4.2.11 hold all University Materials in safe custody at its own risk, maintain the University Materials in good condition until returned to the University, and not dispose of or use the University Materials other than in accordance with the University's written instructions or authorisation;
- 4.2.12 not do or omit to do anything which may cause the University to lose any Consent on which it relies for the purposes of conducting its business and to comply with all Consents in relation to the Property and the Project; and
- 4.2.13 notify the University in writing immediately upon the occurrence of a Change in Control of the Supplier; and
- 4.2.14 not specify for use anything in the Project, which is Deleterious at the time of specification.

- 4.2.15 not, without the University's prior written consent, make any material change to the designs or specifications for the Project after they have been settled or approved;
  - 4.2.16 where the Supplier prepares drawings, provide the University with as many copies of the "as built" drawings of the Project as the University reasonably requires;
  - 4.2.17 where the Supplier acts as lead consultant, the Supplier shall co-ordinate the services of the Professional Team, give instructions to the Professional Team as necessary to co-ordinate the services of the Professional Team; and schedule the activities of the Professional Team to comply with the Programme; and
  - 4.2.18 where the Supplier is not acting as lead consultant, the Supplier shall co-operate with the other members of the Professional Team and comply with the reasonable instructions of any lead consultant identified by the University for the co-ordination of the Professional Team;
  - 4.2.19 act fairly and impartially when exercising any power to issue certificates and award extensions of time under the Building Contract;
  - 4.2.20 not to cause or contribute to any breach by the University of any Third Party Agreement provided that, where the University notifies the Supplier of a Third Party Agreement after the date of this Contract, the Supplier is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the date of this Contract; and
  - 4.2.21 ensure that the Key Personnel devote sufficient time and attention fulfilling their respective roles and are not removed without the University's prior written consent (such consent not to be unreasonably withheld or delayed), except in the event of death, permanent incapacity, an illness making the relevant individual unavailable for work or the relevant individual leaving the Supplier's employment.
- 4.3 The University may at any time instruct the Supplier to remove any Key Personnel or other person engaged in performing the Services if, in the University's reasonable opinion, that Key Personnel or person's performance or conduct is unsatisfactory. The Supplier shall remove any such Key Personnel and person promptly and any personnel appointed by the Supplier to replace them shall be subject to the written approval of the University (such approval not to be unreasonably withheld or delayed).

- 4.4 The Supplier's duties or liabilities under this Agreement shall not be negated or diminished by:
- 4.4.1 any approval or inspection of:
    - 4.4.1.1 the Property; or
    - 4.4.1.2 the Project; or
    - 4.4.1.3 any designs or specifications for the Property or the Project; or
  - 4.4.2 any testing of any work, goods, materials, plant or equipment; or
  - 4.4.3 any omission to approve, inspect or test,  
by or on behalf of the University.

## 5. **University's obligations**

- 5.1 The University will:
- 5.1.1 provide such access to the University's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the University in writing in advance, for the purposes of providing the Services; and
  - 5.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.
- 5.2 A failure by the University to comply with the terms of the Contract can only relieve the Supplier from complying with its obligations under the Contract with effect from the date on which the Supplier notifies the University in writing and in reasonable detail of the University's failure and its effect or anticipated effect on the Services.

## 6. **Change control**

- 6.1 Any requirement for a Change shall be subject to the Change Control Procedure as set out in Schedule 3.

## 7. **The Building Regulations and the CDM Regulations**

- 7.1 Where the Contract Details state that the University appoints the Supplier as a designer and/or Principal Designer for the purposes of the CDM Regulations and/or the Building Regulations, the Supplier undertakes that it will carry out and comply with its duties as a designer and/or Principal Designer under the CDM Regulations and the Building Regulations, as relevant.

7.2 The Supplier warrants to the University that the Supplier is competent to carry and comply with the Supplier's duties under clause 7.1 and the Supplier shall provide to the University satisfactory written evidence of such competence as and when requested by the University.

7.3 The Supplier shall inform the University in writing of any changes in the Supplier's competency to carry and comply with the Supplier's duties under clause 7.1.

7.4 The Supplier shall provide all such co-operation as is required by the University in relation to the compliance by the Supplier with the CDM Regulations, the Building Safety Act 2022 and the Building Regulations.

## 8. **Collateral Warranty**

8.1 Within 10 Business Days of receiving a written request from the University, the Supplier shall enter into a Collateral Warranty in the form marked "B" in Schedule 6 in favour of any Beneficiary identified by the University in its written request.

8.2 The Supplier shall procure that any sub-consultant that it appoints enters into a Collateral Warranty in favour of the University in the form marked "C" in Schedule 6 and in favour of any Beneficiary in the form marked "D" in Schedule 6 within 10 Business Days of appointment.

## 9. **Title to Deliverables and University Materials**

9.1 Subject to clause 11:

9.1.1 title to any Deliverables that are goods or in any physical media on which Deliverables are stored and title to any goods or materials transferred to the University as part of the Services will pass to the University on the earlier of their delivery to the University or payment of the Charges for them. The Supplier transfers the Deliverables and all such goods and materials to the University free from all liens, charges and encumbrances.

9.1.2 all University Materials are the exclusive property of the University.

## 10. **Consultant's authority**

10.1 Notwithstanding any other provision of this Contract, other than in an emergency or with the prior written consent of the University, the Supplier has no authority to:

10.1.1 make (or instruct the Contractor or] any member of the Professional Team to make) any material alteration to the Project or its Services;

10.1.2 vary, terminate or waive compliance with the terms of:

10.1.2.1 the Building Contract;

- 10.1.2.2 the appointment of any member of the Professional Team; or
- 10.1.2.3 any Third Party Agreement;
- 10.1.3 enter into any contract, commitment or undertaking on behalf of the University; or
- 10.1.4 without prejudice to clause 4.2.19, issue any instruction or notice under the Building Contract, the appointment of any member of the Professional Team or any Third Party Agreement that:
  - 10.1.4.1 delays the Project; or
  - 10.1.4.2 increases the cost of the Project.

**11. Intellectual property**

- 11.1 Where the Services and Deliverables have been created by the Supplier specifically for the University in the provision of the Services (if this is not the case and the Services and Deliverables provided are generic then clauses 11.2, 11.2.2 and 11.2.3 shall apply):
- 11.1.1 any Intellectual Property Rights which come into existence as a result of the performance of the Services by the Supplier, including the Deliverables, will be the property of the University;
  - 11.1.2 the University and its licensors will retain ownership of all Intellectual Property Rights in the University Materials;
  - 11.1.3 the Supplier assigns to the University free from all charges and other encumbrances all right, title and interest in and to all Intellectual Property Rights subsisting in or relating to the Deliverables, together with all rights of action arising or accrued in relation to those Intellectual Property Rights, including the right to take proceedings and to seek and recover damages, the right to obtain delivery-up of all infringing copies and all other remedies for past infringement; and
  - 11.1.4 at the request and expense of the University, the Supplier shall and will procure that their personnel will:
    - 11.1.4.1 do all things necessary or desirable to enable the University or its nominee to confirm absolute title to and ownership of and to obtain the benefit of the invention, development, discovery, improvement, process, design or copyright work (as the case may be) and to secure patent or other appropriate forms of protection for it throughout the world; and

- 11.1.4.2 provide to the University all such assistance as the University may require in relation to the resolution of any questions concerning patent, copyright or other intellectual property proprietary rights assigned by virtue of this clause 11, and decisions as to the procuring of a patent or other appropriate protection and exploitation will be in the sole discretion of the University.
- 11.2 Where the Services are generic, off the shelf services and the Deliverables provided by the Supplier have not been created specifically for the University:
- 11.2.1 the Supplier and its licensors will retain ownership of all Supplier IPRs. The University and its licensors (if applicable) will retain ownership of all Intellectual Property Rights in the University Materials;
- 11.2.2 the Supplier grants the University, or will procure the direct grant to the University of, a fully paid-up, worldwide, non-exclusive, perpetual, irrevocable, royalty-free, licence to copy, use and modify the Supplier IPRs in the Material together with the right to grant sub-licences to copy, use and modify the Supplier IPRs, for the purpose of receiving and using the Services and the Deliverables and the Permitted Uses;
- 11.2.3 the University grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the University Materials for the term of the Contract for the purpose of providing the Services to the University in accordance with the Contract; and
- 11.2.4 the Supplier shall grant or use its best endeavours to obtain the grant of an irrevocable royalty free, perpetual, transferable non-exclusive licence to the University to use such pre-existing Intellectual Property Rights as will be necessary for the use of the Deliverables and the Permitted Uses.
- 11.3 The Supplier hereby waives and will procure that any relevant third party will waive (to the extent that such rights may be waived) all moral rights which now or in the future may subsist anywhere in the world in the Deliverables.
- 11.4 The Supplier warrants that neither the Deliverables nor the provision or receipt of the Services by the University and its permitted sub-licensees will infringe any third party Intellectual Property Rights.

- 11.5 If any third party claims that the possession and/or use by a Protected Party or the supply of all or any part of the Deliverables and/or receipt of the Services, materials or other items to a Protected Party by or on behalf of the Supplier (**Indemnified Items**) infringes the Intellectual Property Rights of that third party or of another person (**IPR Claim**), the Supplier shall Indemnify each Protected Party in full against all liabilities, costs, expenses, damages and losses suffered or incurred by that Protected Party arising out of or in connection with that IPR Claim. The **Protected Parties** or **Protected Party** means the University and all of its agents, officers, employees, sub-licensees or any one of them.
- 11.6 If there is an IPR Claim:
- 11.6.1 the University will as soon as reasonably practicable notify the Supplier of the IPR Claim, provided that the giving of such notice will not be a condition precedent to the liability of the Supplier under clause 11.5;
- 11.6.2 the Supplier shall at its own cost and expense control the defence of the IPR Claim and any related proceedings or settlement negotiations, except that the University will be entitled to take any action which it deems necessary if the Supplier fails to take action, or (in the University's reasonable opinion) delays taking action, in defending or settling any such IPR Claim and such failure or delay may, in the reasonable opinion of the University, prejudice the interests of any Protected Party; and
- 11.6.3 at the cost and expense of the Supplier, the University will take all reasonable steps to co-operate with the Supplier in the defence or settlement of such IPR Claim.
- 11.7 If the University is (or reasonably believes it is likely to be) subject to any IPR Claim the University may by written notice require the Supplier to promptly (and at the Supplier's cost and expense) either:
- 11.7.1 obtain for the Protected Parties the right to continue possessing, using and receiving the Indemnified Items in the manner permitted under the Contract free from any liability for such infringement or likely infringement; or
- 11.7.2 modify, substitute or replace the relevant Indemnified Item so as to avoid the infringement or alleged infringement, without prejudice to any representations, warranties and indemnities in the Contract and without adversely affecting or limiting in

any respect the performance, scope or functionality of the infringing items or any other Indemnified Item or any part of them.

11.8 The University may, at any time (whether before or after completion of the Services, or after termination of the Supplier's engagement under this Contract) request a copy or copies of (some or all of) the Material from the Supplier and the Supplier shall provide the copy (or copies) to the University within 5 Business Days of request

## 12. **Charges and payment**

12.1 In consideration for the provision of the Services, the University will pay the Supplier the Charges in accordance with this clause 12 and Schedule 2 and, where applicable, the Charges in relation to a Change implemented under Schedule 3

12.2 All amounts payable by the University exclude amounts in respect of value added tax (**VAT**) which the University will additionally be liable to pay to the Supplier at the prevailing rate (if applicable).

12.3 The Supplier shall submit invoices for the Charges, which shall be valid VAT invoices where VAT is payable, to the University at the intervals specified in Schedule 2, or, where applicable, in relation to a Change at the intervals in Schedule 3. Each invoice will include all supporting information reasonably required by the University. The invoice and supporting documents (if any) shall specify the sum that the Supplier considers will become due on the payment due date in respect of the instalment of the Charges, and the basis on which that sum is calculated.

12.4 Where Schedule 2 provides that the Supplier is entitled to recovery of expenses and disbursements, the University shall reimburse the Supplier for such expenses or disbursements at the rates specified in Schedule 2. Any other expenses and disbursements that the Supplier incurs are deemed to be included in the Charges. Any expenses or disbursements payable by the University to the Supplier shall be included in the next invoice after they are incurred and paid by the University in accordance with this clause 12.

12.5 The Charges, together with any permitted expenses and disbursements and where applicable, a Charges for a Change under Schedule 3 shall be the Supplier's entire remuneration under this Contract.

12.6 Payment of invoices shall be due on the date the University receives each invoice.



- 12.7 No later than five days after payment becomes due, the University shall notify the Supplier of the sum that the University considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated.
- 12.8 The final date for payment shall be 30 days after the date on which payment becomes due.
- 12.9 Payments shall be made to a bank account nominated in writing by the Supplier.
- 12.10 If the invoice is an electronic invoice it must comply with the standard on electronic invoicing. For these purposes “electronic invoice” means an invoice which has been issued transmitted and received in a structured electronic format that allows for its automatic and electronic processing. An electronic invoice complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice) and uses a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution.
- 12.11 Subject to clause 12.13 and unless the University has served a notice under clause 12.12, it shall pay the Supplier the sum referred to in the University’s notice under clause 12.7 (or, if the University has not served notice under clause 12.7, the sum referred to in the invoice referred to in clause 12.3) (in this clause 12, the notified sum) on or before the final date for payment of each invoice.
- 12.12 Not less than two days before the final date for payment (in this clause 12, the prescribed period), the University may give the Supplier notice that it intends to pay less than the notified sum (in this clause 12, a pay less notice). Any pay less notice shall specify:
- 12.12.1 the sum that the payer considers to be due on the date the notice is served; and
- 12.12.2 the basis on which that sum is calculated.
- Where a pay less notice is given in accordance with this clause 12.12, the obligation to pay the notified sum in clause 12.11 applies only in respect of the sum specified in that pay less notice.
- 12.13 Notwithstanding clause 12.11 and clause 12.12 and without prejudice to clause 17, if the Supplier becomes insolvent as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996 after the prescribed period, the University shall not be required to pay the Supplier the notified sum on or before the final date for payment.

- 12.14 If the University fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 16.2 (Termination), the University will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 12.15 Subject to clause 12.12, the University may at any time, without notice to the Supplier, set off any liability of the Supplier to the University against any liability of the University to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the University may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the University of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.
- 12.16 The parties agree and acknowledge that the Charges may not be increased for any reason without the prior written consent of the University and unless agreed otherwise.

### 13. **Limitation of liability**

- 13.1 References to liability in this clause 13 include every kind of liability arising under or in connection with this Contract including but not limited to liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise.
- 13.2 Neither party may benefit from the limitations and exclusions set out in this clause 13 in respect of any liability arising from its deliberate default.
- 13.3 Nothing in the Contract will limit the Supplier's liability under clause 11.5 (IPR Indemnity) or in respect of any loss, injury or damage whatsoever to any property (real or personal) in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Services and is due to any negligence, breach of contract, breach of statutory duty, omission or default of the Supplier or any of its officers, employees, agents and sub-contractors.
- . Any liability which falls within this clause 13.3 will not be taken into account in assessing whether the Supplier's financial caps in clause 13.5 have been reached.
- 13.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- 13.4.1 death or personal injury caused by negligence;
  - 13.4.2 fraud or fraudulent misrepresentation; and
  - 13.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) and any other liability which cannot be limited or excluded by Applicable Law.
- 13.5 Subject to clause 13.2 (No limitations for deliberate default), clause 13.3 (Liability under identified clauses) and clause 13.4 (Liabilities which cannot legally be limited) the Supplier's total liability to the University for all loss or damage howsoever arising under or in connection with this Contract will not exceed the Supplier's Liability Cap for any one event or series of connected events.
- 13.6 Subject to clause 13.2 (No limitations for deliberate default) and clause 13.4 (Liabilities which cannot legally be limited) the University's total aggregate liability to the Supplier for all loss or damage howsoever arising under or in connection with the Contract shall not exceed the Charges actually paid to the Supplier at the time at which the liability arose.
- 13.7 The caps on the Supplier's liabilities shall not be reduced by:
- 13.7.1 payment of an uncapped liability;
  - 13.7.2 amounts awarded or agreed to be paid under clause 11.5 (IPR Indemnity) or any other terms of this Contract; and
  - 13.7.3 amounts awarded by a court or adjudicator or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 13.8 Subject to clause 13.2 (No limitations for deliberate default), clause 13.3 (Liability under identified clauses) and clause 13.4 (Liabilities which cannot legally be limited), neither party shall in any circumstances have any liability for any special, indirect or consequential loss arising under or in connection with this Contract.
14. **Insurance**
- 14.1 During the term of this Contract, the Supplier shall maintain in force, with a reputable insurance company:
- 14.1.1 professional indemnity insurance for such period and amount and on such basis as set out in the Contract Details; and
  - 14.1.2 such other insurances and the amounts set out in the Contract Details.

14.2 The Supplier shall produce to the University on request both the insurance certificate giving details of required insurances that is in place and the receipt for the current year's premium in respect of each insurance.

15. **Suspension**

15.1 The University may, on 14 days' written notice to the Supplier, require the Supplier to suspend or delay the performance of all or any part of the Services or the supply of any Deliverables for up to 14 days (**Suspension Notice**). The Supplier must comply with the requirements of the Suspension Notice.

15.2 The University may issue a Suspension Notice at any time and any number of times during the term of this Contract.

15.3 Subject to clause 15.1, the University may at any time extend or cancel a Suspension Notice by giving the Supplier notice of that extension or cancellation.

15.4 The Supplier shall resume the full performance of the Services and provision of Deliverables as soon as reasonably practicable, and in any event within 7 days, after receiving the University's notice to cancel a Suspension Notice or the expiry of a Suspension Notice and the parties acknowledge and agree that the Term of the Contract will be extended accordingly to allow for the completion of the Services and or provision of the Deliverables affected by the Suspension Notice.

15.5 If:

15.5.1 subject to clause 12.13, the University fails to pay in full the notified sum to the Supplier under this Contract by the final date for payment under clause 12; and

15.5.2 the University has not given a pay less notice complying with clause 10, the Supplier may suspend the performance of any or all of the Services and other obligations under this Contract by giving not less than 7 days' notice to the University of its intention to do so and stating the ground or grounds on which it intends to suspend performance.

15.6 In the event of a suspension in accordance with this clause, the University shall pay the Supplier such proportion of the Charges (taking into account any adjustment to the Charges under Schedule 3) as represents the proportion of the Services that have been completed at the date of suspension after deducting any sums already paid and subject to clause 12.15. Such

payment shall be the Supplier's sole compensation for suspension of the Services and obligations under this Contract.

**16. Termination**

16.1 Without affecting any other right or remedy available to it, the University may terminate the engagement of the Supplier under this Contract (in whole or in part) with immediate effect by giving written notice to the Supplier if:

16.1.1 any circumstance(s) arise which impact on the Project and the Project is unable to continue as planned including, but not limited to, where the University's funding decreases or ceases for the project to which the Services relate, in which case the University will provide as much evidence of the circumstance(s) as the Supplier reasonably requires;

16.1.2 there is a Change of Control of the Supplier;

16.1.3 the Supplier's financial position deteriorates to such an extent that in the University's reasonable opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;

16.1.4 the Supplier commits a breach of clause 4.2.9, clause 14, clause 20, clause 24; or

16.1.5 the University reasonably believes that a termination ground in any Applicable Law relating to the procurement of supplies, services and works applies.

16.2 Without affecting any other right or remedy available to it, either party may terminate the Supplier's engagement under the Contract with immediate effect by giving written notice to the other party if:

16.2.1 the other party commits a material breach of any term of this Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

16.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

- 16.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 16.2.4 the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- 16.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 16.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- 16.2.7 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 16.2.8 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 16.2.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 16.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2.1 to clause 16.2.9 (inclusive); or
- 16.2.11 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

16.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Supplier's engagement under the Contract or expiry of the Contract will remain in full force and effect.

16.4 Termination of the Supplier's engagement under the Contract or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

#### 17. **Obligations on termination**

On termination of the Supplier's engagement under this Contract for whatever reason:

17.1 the Supplier shall immediately deliver to the University all Deliverables whether or not they are complete, and return all University Materials unless any law, regulation, or government or regulatory body requires the Supplier to retain any of them. If the Supplier fails to do so, then the University may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;

17.2 the Supplier shall, if so requested by the University, provide all assistance reasonably required by the University to facilitate the smooth transition of the Services to the University or any replacement supplier appointed by it; and

17.3 subject to clauses 17.4, 17.5 and 17.6, the University shall pay the Supplier

17.3.1 any amount properly due for payment under this Contract at the date of termination;  
and

17.3.2 a fair and reasonable proportion of the next instalment of the Charges, together with any expenses and disbursements which the Supplier is entitled to recover under this Contract, commensurate with the Services properly performed at the date of termination.

17.4 where the Supplier terminates the Supplier's engagement under clause 16.2, the University shall also pay any expenses and disbursements necessarily incurred by the Supplier as a direct result of termination.

17.5 except as set out in clauses 17.3 and 17.4, the University shall not be liable to the Supplier for:

17.5.1 any costs, expenses, disbursements or losses;

- 17.5.2 any loss of profits, loss of fees, loss of chance or other similar losses; or
- 17.5.3 any indirect losses or consequential losses
- 17.6 If the Consultant's engagement under this Contract is terminated by the University in accordance with clause 16.1 or clause 16.2 the Supplier shall pay the University the reasonable cost of procuring a replacement professional consultant to carry out any unperformed Services, to the extent that such cost exceeds the Charges (or, where the Charges are yet to be determined, the University's reasonable estimate of the Charges). Any such cost shall be deducted from the amount payable to the Supplier under clause 17.3 and if any shortfall remains following such deduction the University may claim it as a debt due from the Supplier.
- 17.7 Payments under clauses 17.3 and 17.4 (if any) shall be:
- 17.7.1 the Supplier's sole entitlement to compensation for termination of its engagement under this Contract; and
- 17.7.2 claimed by the Supplier as if it was a payment under clause 12.
- 17.8 Termination of the Supplier's engagement under this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.
18. **Liability Period**
- 18.1 Subject to clause 18.2, neither party shall commence any legal action against the other under this Contract after the period of years set out in the Contract Details from the date of Practical Completion as defined in the Building Contract.
- 18.2 The University may commence an action or proceedings against the Supplier:
- 18.2.1 in accordance with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; and/or
- 18.2.2 for a breach of this agreement that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or that gives rise to a failure to comply with that legislation in relation to the Project or any part thereof, provided that any such action or proceedings are subject to the limitation periods that would apply if they were commenced under that legislation and/or the Civil



Liability (Contribution) Act 1978 and is not subject to any shorter limitation period applicable to a claim for breach of contract under the Limitation Act 1980 nor any shorter limitation period specified under clause 18.1.

**19. Force majeure**

- 19.1 Subject to the remaining provisions of this clause 19, neither party to this Contract shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such delay or non-performance is due to a Force Majeure Event.
- 19.2 In the event that either party is delayed or prevented from or hindered in performing its obligations under this Contract by a Force Majeure Event, such party shall:
- 19.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause of the delay or prevention and its estimated duration;
- 19.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and
- 19.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 19.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 19.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 19.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Supplier is the affected party, it shall take or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Good Industry Practice.
- 19.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on

the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

19.7 Neither party will be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving 30 days' written notice to the other party.

**20. Equal Opportunities and the Equality Act 2010**

20.1.1 The University is committed to a comprehensive policy of equal opportunities and to meeting its responsibilities under the Equality Act 2010 (the 'EA') and the Code of Practice on Racial Equality in Employment 2005.

20.1.2 The Supplier shall in performing the Contract comply with the provisions of section 149 of the EA as if the Supplier were a body within the meaning of Schedule 19 of the EA.

20.1.3 The Supplier shall comply with the provisions of section 41 of the EA in all dealings with sub-contractors.

20.1.4 The Supplier shall comply with all of its legal obligations regarding the prevention of discrimination, victimisation or harassment because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation, and the promotion of equality.

20.1.5 The Supplier shall, when required, answer queries raised by the University on matters referred to in this clause 20 and breach of statutory obligations will entitle the University to immediately terminate this Contract.

20.1.6 The Supplier shall establish, maintain and enforce its own policies and procedures, to ensure compliance with the requirements of the EA.

**21. Assignment and other dealings**

21.1 Save as set out in the Contract Details, the Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract.

21.2 The University may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Contract, provided that it gives prior written notice of such dealing to the Supplier.

21.3 The Supplier shall not contend that any person to whom the benefit of this Contract is assigned under clause 21.2 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.

## 22. **Variation**

22.1 Subject to clause 6 (Change control), no variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 23. **Audit**

23.1 The Supplier shall allow the University (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to verify that the Charges and any other sums charged to the University under this Contract are accurate.

23.2 Subject to the Supplier's confidentiality obligations, the Supplier shall provide the University (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.

23.3 The University shall provide at least 5 Business Days' notice of its intention to conduct an audit and any audit shall be conducted during Business Hours.

23.4 The University and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.

## 24. **Corrupt Gifts**

24.1 The Supplier shall, and shall procure that their employees, officer, agents, sub-contractors, or anyone else acting on their behalf shall:

24.1.1 not commit any act or omission which causes or could cause it or the University to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;

24.1.2 not, offer or give, or agree to give either directly or indirectly, to any employee or representative of the University, any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing,

any act in relation to the obtaining or execution of this or any other contract with the University, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such other contract;

24.1.3 keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with the Contract and the steps it takes to comply with this clause 24.1, and permit the University to inspect those records as reasonably required;

24.1.4 promptly notify the University of:

24.1.4.1 any request or demand for any financial or other advantage received by it;  
and

24.1.4.2 any financial or other advantage it gives or intends to give whether directly or indirectly in connection with the Contract; and

24.1.5 promptly notify the University of any breach of this clause 24.1.

24.1.6 The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

24.1.7 The University may terminate the Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of this clause 24.1.

## 25. **Confidentiality and Freedom of Information**

25.1 Each party will, subject to clauses 25.2 and 25.3:

25.1.1 keep all Confidential Information secret, safe and secure;

25.1.2 not use or disclose the Confidential Information except for the purposes of performing their obligations under this Contract.

25.2 The provisions of clause 25.1 shall not apply to Confidential Information to the extent that it is or was:

25.2.1 already in the possession of a party free of any duty of confidentiality on the date of its disclosure;

25.2.2 in the public domain other than as a result of a breach of clause 25.1; or

25.2.3 required to be disclosed by regulatory or legal requirement.

25.3 Notwithstanding the provisions of clauses 25.1 and 25.2 the Supplier acknowledges and agrees that the University is committed to meeting its responsibilities under the FOIA and EIR and to

external auditors where the University may need to disclose information about the subject matter of this Contract and the Charges and the Supplier shall assist and cooperate with the University (at no expense to the University) to enable the University to comply these responsibilities.

**26. Waiver**

26.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy.

26.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law will prevent or restrict the further exercise of that or any other right or remedy.

**27. Rights and remedies**

The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

**28. Severance**

28.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.

28.2 If any provision or part-provision of this Contract is deemed deleted under clause 28.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**29. Entire agreement**

29.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

29.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

29.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

**30. No partnership or agency**

30.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

30.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**31. Third party rights**

31.1 This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

**32. Notices**

32.1 Any notice or other communication given to a party under or in connection with the Contract will be in writing and will be:

32.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

32.1.2 or sent by email to the email address specified in the Contract Details.

32.2 Any notice or communication will be deemed to have been received:

32.2.1 if delivered by hand, at the time the notice is left at the proper address;

32.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

32.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 32.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

32.3 This clause 32 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**33. Counterparts**

33.1 This Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

33.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

34. **Multi-tiered dispute resolution procedure**

34.1 Subject to clause 34.6, if a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then each party will follow and procure that its representatives set out in the Contract Details follow, the procedure set out in this clause 34.

34.2 Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents (in the form attached in Schedule 4). Once the Dispute Notice has been served in relation to the Dispute, the Dispute will be referred to each party's First Point of Escalation set out in the Contract Details. Those representatives will meet at the earliest convenient time and in any event within 7 days of the date of service of the Dispute Notice and will attempt in good faith to resolve the Dispute.

34.3 If the Dispute has not been resolved within 7 days of the date of service of the relevant Dispute Notice each party will refer the Dispute to their Second Point of Escalation set out in the Contract Details. Those representatives will meet at the earliest convenient time and in any event within 14 days of the date of service of the Dispute Notice and will attempt in good faith to resolve the Dispute.

34.4 Subject to clause 34.5, the procedure set out in clauses 34.1 to 34.3 will be followed prior to the commencement of any proceedings by either party in relation to the Dispute. However, if the Dispute is not resolved within 30 days of the date of service of the relevant Dispute Notice either party may commence proceedings in accordance with clause 36 or, if both parties agree in writing to do so, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Either party may withdraw from mediation at any time.

34.5 Nothing in this clause 34 will prevent or delay either party from:

34.5.1 seeking orders for specific performance, interim or final injunctive relief;

34.5.2 exercising any rights it has to terminate the Contract; or

34.5.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

34.6 Notwithstanding any other provision of this Contract either party may refer a dispute arising under this Contract to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this clause.

34.7 The adjudicator shall be appointed by the nominating body stated in the Contract Details.

35. **Governing law**

35.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, will be governed by, and construed in accordance with, the law of England and Wales.

36. **Jurisdiction**

36.1 Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.



## Schedule 1

### Services

Details of Services: [INSERT DETAILS OF THE SERVICES]

University Materials: [SPECIFY]

Timetable for the Services: [TIMETABLE FOR PERFORMANCE OF SERVICES]

Deliverables: [DELIVERABLES FOR SERVICES]

Key Deliverables: [INSERT]

## Schedule 2

### Charges

#### 1. Charges for the Services

[DETAILS OF THE CHARGES].

[INCLUDE TIME CHARGES. IF APPLICABLE FOR THE SERVICES OR IF THEY ARE TO APPLY TO A CHANGE]

#### 2. Timing of Invoicing

[DETAILS OF WHEN INVOICES ARE TO BE RAISED FOR THE SERVICES].

#### 3. Expenses and disbursements

EITHER [Expenses and disbursements are included in the Charges for the Services and any Change to them.]

OR [Expenses and disbursements are additional to the Charges for the Services and any Change to them and shall be charged at the rates below:

[ INSERT RATES].]

#### 4. Time Charges [DELETE IF NOT APPLICABLE]

Where the Charges include rates based on time, the Supplier shall maintain records of all time spent by its personnel in performing the Services. Upon the University's written request, the Supplier shall allow the University to inspect the records and provide such copies as the University requests, subject to payment of the Supplier's reasonable charges for providing the copies]. The University's right to inspect and demand copies shall continue after the Supplier's engagement under this Contract has concluded or terminated.

### **Schedule 3**

#### **Change Control Procedure**

##### **1. Principles**

- 1.1 Where the either University or the Supplier sees a need for a Change, the University may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 3.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the University and the Supplier shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the University and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 3, shall be undertaken entirely at the expense and liability of the Supplier.
- 1.5 The Supplier acknowledges and agrees that any increase to the Charges resulting from a Change will not be effective unless the University has agreed to such change in the Charges.

##### **2. Change Procedure**

- 2.1 Discussion between the University and the Supplier concerning a Change shall result in any one of the following:
  - 2.1.1 no further action being taken; or
  - 2.1.2 a request to change this Contract by the University; or
  - 2.1.3 a recommendation to change this Contract by the Supplier.
- 2.2 Where a written request for a Change is received from the University, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the University within [two weeks] of the date of the request.
- 2.3 A recommendation for a Change by the Supplier shall be submitted directly to the University in the form of two copies of a Change Control Note signed by the Supplier at the time of such

recommendation. The University shall give its response to the Change Control Note within two weeks of the date of the recommendation.

2.4 Each Change Control Note shall be in the form contained under paragraph 3 of this Schedule.

2.5 For each Change Control Note submitted by the Supplier the University shall, within the period of the validity of the Change Control Note:

2.5.1 allocate a sequential number to the Change Control Note; and

2.5.2 evaluate the Change Control Note and, as appropriate:

2.5.2.1 request further information for the Supplier (in which case the Supplier shall respond to such request for further information within 5 Business Days of the date of the request); or

2.5.2.2 arrange for two copies of the Change Control Note to be signed by or on behalf of the University and return one of the copies to the Supplier; or

2.5.2.3 notify the Supplier of the rejection of the Change Control Note.

2.5.3 A Change Control Note signed by the University and by the Supplier shall constitute a Change.

2.6 If the parties are unable to agree a Change Control Note either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 34 (Multi-tiered dispute resolution procedure).

### 3. **Form of Change Control Note**

3.1 The form of Change Control Note shall be in the form below

### Form of Change Control Note

Title of the Change:	
The originator and date of the request or recommendation for the Change:	
Reason for the Change:	
Full details of the Change, including any specifications:	
Price, if any, of the Change:	
Timetable for implementation, together with any proposals for acceptance of the Change:	
Schedule of payments, if appropriate:	
<p>Details of the likely impact, if any, of the Change on other aspects of this Contract including:</p> <ul style="list-style-type: none"> <li>• Timetable for the provision of the Change;</li> <li>• Personnel to be provided;</li> <li>• The Charges;</li> <li>• Documentation to be provided;</li> <li>• Training to be provided;</li> <li>• Working arrangements; and</li> <li>• Other contractual issues.</li> </ul>	
Date of expiry of validity of the Change Control Note:	
<b>Signed by [insert name of signatory]</b> for and on behalf of the <b>Supplier</b>	..... Authorised signatory
<b>Signed by [insert name of signatory]</b> for and on behalf of the <b>University</b>	..... Authorised signatory

**Schedule 4**  
**Forms of Notices**

<b>Suspension Notice (for use in accordance with clause 15.1 of the Contract)</b>	
<b>Date:</b>	
<b>Services and/or Deliverables affected by the Suspension Notice:</b>	
<b>Date when suspension of the Services and/or Deliverables occurs:</b>	
<b>Duration of the suspension:</b>	
<b>Signed by [insert name of signatory] for and on behalf of the University</b>	..... <b>Authorised signatory</b>

<b>Dispute Notice (for use in accordance with clause 34 of the Contract)</b>	
<b>Date:</b>	
<b>Full details of the Dispute (including, its nature and full particulars):</b>	
<b>Supporting Documents:</b>	
<b>Signed by [insert name of signatory] for and on behalf of the University</b>	..... <b>Authorised signatory</b>

**Schedule 5**

**Novation**

Dated

202[ ]

The University of Newcastle upon Tyne

and

[Contractor]

and

[Consultant]

Novation of professional appointment: The University of Newcastle  
upon Tyne to Contractor  
relating to a project at [ ]



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Dated

202[ ]

## Parties

- (1) **The University of Newcastle upon Tyne (trading as Newcastle University** of King's Gate. Newcastle upon Tyne, United Kingdom, NE1 7RU (**Employer**);
- (2) [FULL COMPANY OR LLP NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**); and
- (3) [FULL COMPANY OR LLP NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Consultant**).

## Background

- (A) The Consultant is in practice as [CONSULTANT'S ROLE].
- (B) By an agreement in writing dated [DATE] (**Appointment**), the Employer appointed the Consultant to provide [CONSULTANT'S SERVICES] services in connection with the [DESCRIPTION OF PROJECT] (**Project**).
- (C) The Employer and the Contractor have entered into a building contract, under which the Contractor has been appointed to carry out and complete the design and construction of the Project.
- (D) The parties have agreed to novate the Appointment from the Employer and the Consultant to the Contractor and the Consultant on the terms of this Deed.

## It is agreed

### 1. Interpretation

The following rules of interpretation apply in this Deed.

- 1.1 Clause, schedule and paragraph headings shall not affect the interpretation of this Deed.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the schedules.

- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 This Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective personal representatives, successors and permitted assigns and references to any party shall include that party's personal representatives, successors or permitted assigns.
- 1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to **writing** or **written** excludes fax but not email.
- 1.12 A reference to **this Deed** or to any other agreement or document is a reference to this Deed or such other agreement or document, in each case as varied from time to time.
- 1.13 References to clauses and schedules are to the clauses and schedules of this Deed; references to paragraphs are to paragraphs of the relevant schedule.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## 2. **Novation of Appointment**

This Deed novates the Appointment from the Employer and the Consultant to the Contractor and the Consultant.

## 3. **Release of Consultant**

The Consultant shall no longer owe any duty or obligation to the Employer in respect of the Appointment.

## 4. **Release of Employer**

The Employer shall no longer owe any duty or obligation to the Consultant in respect of the Appointment.

**5. Binding of Consultant to Contractor**

5.1 The Consultant binds itself to the Contractor under the Appointment as if the Contractor was, and always had been, named in the Appointment in place of the Employer.

5.2 The Consultant undertakes and warrants to the Contractor that it has carried out, and will carry out, its duties and obligations under the Appointment. In performing its services under the Appointment, the Consultant has exercised, and will continue to exercise, all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking such services on works similar in scope and character to the Project unless any of the Statutory Requirements impose a higher standard in which case that higher standard will apply notwithstanding any provision of the Appointment to the contrary.

5.3 The Contractor shall not be prevented from recovering any losses incurred by the Contractor that result from any breach of this clause 5 because:

5.3.1 the acts or omissions causing that breach occurred before this Deed took effect; or

5.3.2 the Employer will not incur, has not incurred or would not have incurred those losses.

**6. Binding of Contractor to Consultant**

The Contractor binds itself to the Consultant under the Appointment as if the Contractor were, and always had been, named in the Appointment in place of the Employer.

**7. Vesting of remedies in Contractor**

All rights of action and remedies vested in the Employer against the Consultant in respect of the Appointment shall vest in the Contractor from the date of this Deed.

**8. Vesting of remedies against Contractor**

All rights of action and remedies vested in the Consultant against the Employer in respect of the Appointment shall lie against the Contractor from the date of this Deed.

**9. Fees and disbursements**

The Consultant acknowledges that all fees, disbursements and expenses due to the Consultant under the Appointment to [the date of this Deed OR [DATE]] have been paid in full.

**10. [Amendment of Appointment]**

The parties agree that the terms of the Appointment are varied as set out in Schedule 1.]

**11. Affirmation of Appointment**

Subject to the terms of this Deed, the Appointment shall remain in full force and effect.

12. **Collateral warranties and third party rights**

Nothing in this Deed shall affect any collateral warranty given, or to be given, by the Consultant to the Employer (or to any third party) in respect of the Project. Nothing in this Deed shall affect any third party rights in favour of the Employer (or in favour of any third party) under the Appointment.

13. **Third party rights**

13.1 This deed does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed

13.2 A third party given a collateral warranty by the Consultant may enforce the benefit of clause 12. A third party benefiting from third party rights under the Appointment may enforce the benefit of clause 12.

14. **Governing law**

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

15. **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

**Executed** as a deed and is delivered and takes effect on the date stated at the beginning of it.

## Schedule 1

### **[Variations to the terms of the Appointment]**

[Insert details of variations, if any or if none, delete this schedule]

**Executed** as a deed but not delivered until the date

stated on the front of this document by

affixing the Common Seal of

**The University of Newcastle upon Tyne**

(an exempt charity) in the presence of:

.....

Authorised signatory

.....

Authorised signatory

**Executed** as a deed but not delivered until the date  
on the front of this document by

[Contractor]

acting by

a director in the presence of

.....  
(signature of director)

I confirm that the witness named below was physically present when I signed this deed

*Signature of witness*

.....

*Name of witness*

.....

*Address of witness*

.....

*Occupation of witness*

.....

I confirm that I was physically present when the above signatory signed this deed

**Executed** as a deed but not delivered until the date on the front of this document by

[Consultant]

acting by

.....

*(signature of director)*

a director in the presence of

I confirm that the witness named below was physically present when I signed this deed

*Signature of witness*

.....

*Name of witness*

.....

*Address of witness*

.....

*Occupation of witness*

.....

I confirm that I was physically present when the above signatory signed this deed



**Schedule 6**  
**Collateral Warranties**

Dated "A" 202[ ]

[Consultant]

and

The University of Newcastle upon Tyne

and

[Client]

Consultant's collateral warranty to the University of Newcastle upon Tyne upon novation to Contractor relating to a project at [ ]

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Dated

202[ ]

## Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Consultant**);
- (2) **The University of Newcastle upon Tyne (trading as Newcastle University)** of King's Gate, Newcastle upon Tyne, United Kingdom, NE1 7RU (**Beneficiary**); and
- (3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Client**).

## Background

- (A) The Beneficiary engaged the Consultant to perform the Services in relation to the Project.
- (B) The Consultant's appointment was novated to the Client pursuant to a deed of novation dated [insert date].
- (C) The Beneficiary has an interest in the Project.
- (D) The Client requires the Consultant to enter into a collateral warranty in favour of the Beneficiary.
- (E) The Consultant has agreed to enter into this Agreement with the Client and the Beneficiary, for the benefit of the Beneficiary.
- (F) The Beneficiary has paid £1 to the Consultant and the Client as consideration under this Agreement.

## It is agreed

### 1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

#### 1.1 Definitions:

<b>Building Contract</b>	a contract [dated] between the Beneficiary and the Client for the Project.
<b>Building Regulations</b>	without limiting to clause 1.9, the Building Regulations 2010 incorporating the amendments introduced by the Building Regulations etc. (Amendment) (England)

Regulations 2023, and any standards and guidance issued in relation to them.

**Building Safety Laws**

- (a) the Building Safety Act 2022;
- (b) the Defective Premises Act 1972;
- (c) the Building Act 1984;
- (d) the Building Regulations;
- (e) any statutory instrument, regulation, rule, order, code of practice or guideline made under the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984 and the Building Regulations having the force of law which affects the Project;
- (f) any guidance issued by a government department, the Building Safety Regulator and/or the Health and Safety Executive in connection with the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984, the Building Regulations and/or any statutory instrument, regulation, rule, order, code of practice or guideline relating to the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984 and/or the Building Regulations; and
- (g) any building safety laws and regulations now or from time to time in force which affects the Project or performance of any obligations under this Agreement.

**Business Day**

a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**CDM Regulations**

the Construction (Design and Management) Regulations 2015 (SI 2015/51).

**Construction Products**

UK Construction Products Regulations 2011 and the Construction Products Regulations 2013 (SI 2013/1387).

**Regulations****Deleterious**

materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- posing a threat to the health and safety of any person;
- posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
- not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agrément; or

having been supplied or placed on the market in breach of the Construction Products Regulations.

**Funder**

a person providing finance in connection with:

- (c) the Project or the completed Project; or
- (d) the Property,

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

**Good Industry Practice**

all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services on

works similar in scope and character to the Project unless any of the Statutory Requirements impose a higher standard in which case that higher standard will apply notwithstanding any provision of this Agreement to the contrary.

**Group**

in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**Material**

all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

**Permitted Uses**

the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.

**Professional Appointment**

an agreement in writing dated [DATE] between the Beneficiary and the Consultant and novated to the Client under a deed of novation dated [DATE] between the Beneficiary, the Consultant and the Client.

**Programme**

the programme, as defined in the Professional Appointment.

<b>Project</b>	[DESCRIPTION OF PROJECT] at the Property.
<b>Property</b>	[DESCRIPTION OF PROPERTY].
<b>Services</b>	the services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.
<b>Statutory Requirements</b>	any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law including the Building Safety Laws that affects the Project or performance of any obligations under this Agreement and any regulation or bye law of any local authority or statutory undertaker which has any jurisdiction with regard to the Project.
<b>Third Party Agreement</b>	any Third Party Agreement referred to in the Professional Appointment.
<b>UK Construction Products Regulations 2011</b>	the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party includes that party's personal representatives, successors and permitted assigns.



- 1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to legislation or a legislative provision includes all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to **writing** or **written** excludes fax but not email.
- 1.12 A reference to a document is a reference to that document as varied or novated from time to time.
- 1.13 References to clauses are to the clauses of this Agreement.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## 2. **Comply with Professional Appointment**

- 2.1 The Consultant warrants and undertakes that, exercising Good Industry Practice, it has complied, and shall continue to comply, with its obligations under the Professional Appointment, including its obligations to:
- 2.1.1 perform the services in compliance with the terms of the Professional Appointment;
- 2.1.2 carry out and fulfil, in all respects, the duties of a designer **[and principal designer]** under the CDM Regulations and the duties of a designer **[and principal designer]** under Part 2A of the Building Regulations, including any obligations relating to those duties set out in the Professional Appointment; and
- 2.1.3 act fairly and impartially when exercising any power to issue certificates and award extensions of time under the Building Contract
- 2.1.4 not specify for use anything in the Project, which is Deleterious at the time of specification or use;
- 2.1.5 comply with (and ensure the completed Project complies with) any Statutory Requirements;

- 2.1.6 perform the Services and prepare all Material for those elements of the Project for which the Consultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;
  - 2.1.7 ensure that the Project complies with all planning agreements, permissions and conditions; and
  - 2.1.8 not cause or contribute to any breach by the Client of any Third Party Agreement provided that, where the Client notifies the Consultant of a Third Party Agreement after the date of this Agreement, the Consultant is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the date of this Agreement.
- 2.2 The Consultant warrants that:
- 2.2.1 neither it nor any of its officers, employees, agents or sub-consultants has done, or permitted to be done, or will do or permit to be done, anything which:
    - 2.2.1.1 is in breach, or is likely to have been in breach of any Building Safety Laws;  
or
    - 2.2.1.2 will result, or is likely to result, in the Client being in breach of any Building Safety Laws; and
  - 2.2.2 it shall comply, and shall procure compliance by each of officers, employees, agents and sub-consultants with the Building Safety Laws.
- 2.3 In complying with clause 2.1 and clause 2.2, the Consultant shall owe no greater obligations to the Beneficiary under this Agreement than it owes to the Client under the Professional Appointment. In proceedings for breach of clause 2.1 and clause 2.2, the Consultant may:
- 2.3.1 rely on any limit of liability or other term of the Professional Appointment; and
  - 2.3.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).
- 2.4 The Consultant's duties or liabilities under this Agreement shall not be negated, diminished or otherwise affected by:
- 2.4.1 any approval or inspection of:

- 2.4.1.1 the Property; or
  - 2.4.1.2 the Project; or
  - 2.4.1.3 any designs or specifications for the Property or the Project; or
- 2.4.2 any testing of any work, goods, materials, plant or equipment; or
- 2.4.3 any omission to approve, inspect or test,  
by or on behalf of the Beneficiary or the Client.
- 2.5 Nothing in this Agreement shall in any way limit or affect any other rights or remedies (whether under contract, at law, in equity or otherwise) which the Beneficiary would have against the Consultant in the absence of this Agreement.
- 3. **Step-in rights: Consultant may not terminate**
- 3.1 Subject to clause 3.6, the Consultant shall not exercise, or seek to exercise, any right to terminate its employment under the Professional Appointment for any reason (including any breach on the part of the Client) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Consultant shall specify the grounds for the Consultant's proposed termination.
- 3.2 If the Professional Appointment allows the Consultant a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Professional Appointment shall be extended to take account of the notice period required under clause 3.1.
- 3.3 The Consultant's right to terminate its employment under the Professional Appointment shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Consultant, copied to the Client:
  - 3.3.1 requiring the Consultant not to terminate its employment under the Professional Appointment;
  - 3.3.2 acknowledging that the Beneficiary (or its nominee) will assume all the Client's obligations under the Professional Appointment; and
  - 3.3.3 undertaking that the Beneficiary or its nominee will pay to the Consultant:
    - 3.3.3.1 any sums that may subsequently become due and payable to the Consultant under the Professional Appointment; and
    - 3.3.3.2 within 20 Business Days any sums then due and payable to the Consultant under the Professional Appointment that are unpaid.

3.4 If the Beneficiary (or its nominee) serves notice on the Consultant under clause 3.3, then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if the Consultant's rights to terminate had not arisen and as if it had been entered into between the Consultant and the Beneficiary (to the exclusion of the Client) and the Beneficiary shall be regarded as "Original Client" for the purposes of clause 21.2 of the Professional Appointment.

3.5 In complying with this clause 3, the Consultant:

3.5.1 does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client; and

3.5.2 may exercise its right to terminate its employment under the Professional Appointment after the expiry of the notice period referred to in clause 3.1, unless the Consultant's right to terminate has ceased under clause 3.3.

3.6 If:

3.6.1 the Consultant enters into an agreement with another third party or grants rights to a third party concerning the Project at the request of the Client; and

3.6.2 that agreement or those third party rights include similar step-in rights to those in clause 3 or clause 4,

then the Beneficiary's step-in rights shall take priority.

#### 4. **Step-in rights: Beneficiary may step-in**

4.1 Subject to clause 3.6 and without affecting clause 3.1, if the Beneficiary serves a notice on the Consultant, copied to the Client, that:

4.1.1 confirms that the Beneficiary wishes to step-in to the Professional Appointment; and

4.1.2 complies with the requirements for a Beneficiary's notice under clause 3.3,

then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (or its nominee), to the exclusion of the Client.

4.2 The Consultant shall assume that, between the Client and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Consultant shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4 the Consultant does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client.

**5. Step-in rights: Consultant's position and Client's consent**

5.1 The Consultant shall not incur any liability to the Client by acting in accordance with clause 3 or clause 4.

5.2 The Client has entered into this Agreement to confirm its consent to the agreement.

**6. Step-in rights: Beneficiary's guarantee**

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Consultant, as guarantor, for the payment of any sums due and payable from time to time to the Consultant from the Beneficiary's nominee.

**7. No instructions to Consultant by Beneficiary**

Unless the Beneficiary has stepped-in under clause 3 or clause 4, the Beneficiary may not give instructions to the Consultant under this Agreement.

**8. Copyright**

8.1 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.

8.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

8.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.

8.4 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

8.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

**9. Professional indemnity insurance**

9.1 On and from the date of this Agreement the Consultant shall maintain professional indemnity insurance for an amount of at least £[SUM] each and every claim for such period as shall be

necessary to cover the full duration of the Consultant's liabilities under clause 10 of this Agreement, provided that such insurance is available at commercially reasonable rates. The Consultant shall maintain that professional indemnity insurance: for a period beginning on the date of this Agreement and

9.1.1 with reputable insurers lawfully carrying on insurance business in the UK;

9.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and

9.1.3 on terms that:

9.1.3.1 do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and

9.1.3.2 would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

9.2 Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

9.3 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates [and terms] or at all or if there is any material reduction in the scope or level of cover offered by such insurance, so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project and the Property, without that insurance.

9.4 The Consultant shall fully co-operate with any measures reasonably required by the Beneficiary, including:

9.4.1 completing any proposals for insurance and associated documents; or

9.4.2 maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Consultant for the net cost of that insurance above commercially reasonable rates.

9.5 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Consultant's insurers or brokers confirming:

- 9.5.1 the Consultant's then current professional indemnity insurance; and
- 9.5.2 that the premiums for that insurance have been paid in full at the date of that letter.

10. **Liability period**

No party shall commence any legal action against the other under this Agreement after the period of liability set out in clause 18 of the Professional Appointment.

11. **Assignment**

11.1 The Beneficiary may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that it gives prior written notice of such dealing to the Consultant.

11.2 The Consultant shall not contend that any person to whom the benefit of this Agreement is assigned under clause 11.1 may not recover any sum under this Agreement because that person is an assignee and not a named party to this Agreement.

12. **Notices**

12.1 A notice given to a party under or in connection with this Agreement will be in writing and will be:

12.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

12.1.2 or sent by email to the email address specified in the Contract Details.

12.2 Any notice or communication will be deemed to have been received:

12.2.1 if delivered by hand, at the time the notice is left at the proper address;

12.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

12.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**13. Third party rights**

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**14. Governing law**

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

**15. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

*[Note: If the Professional Appointment is signed under hand there is a 6-year limitation period or use the execution blocks below]*

**Signed by [insert name of signatory]**

for and on behalf of the Consultant

.....

Authorised signatory

**Signed by [insert name of signatory]**

for and on behalf of the University of Newcastle upon Tyne

.....

Authorised signatory

**[Signed by [insert name of signatory]**

for and on behalf of the Client

.....

Authorised signatory]

*[Note: If the Professional Appointment is executed as a deed there is a 12-year limitation period so use the execution blocks below]*

**Executed** as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Executed** as a deed but not delivered until the date on the front of this document by

**[Consultant]**

acting by

.....



a director in the presence of

*(signature of director)*

I confirm that the witness named below was physically present when I signed this deed

*Signature of witness*

.....

*Name of witness*

.....

*Address of witness*

.....

*Occupation of witness*

.....

I confirm that I was physically present when the above signatory signed this deed

**Executed** as a deed but not delivered until the date  
on the front of this document by  
affixing the Common Seal of

**The University of Newcastle upon Tyne**

**(an exempt charity)** in the presence of:

.....

Authorised signatory

.....

Authorised signatory

**Executed** as a deed but not delivered until the date  
on the front of this document by

**[Client]**

acting by

.....

*(signature of director)*

a director in the presence of

I confirm that the witness named below was physically present when I signed this deed

*Signature of witness*

.....

*Name of witness*

.....

*Address of witness*

.....

*Occupation of witness*

.....

I confirm that I was physically present when the above signatory signed this deed

Dated "B" 202[ ]

[Consultant]

and

[Beneficiary]

[and]

[The University of Newcastle upon Tyne]

Collateral warranty from Consultant appointed by the University of  
Newcastle upon Tyne to a Beneficiary  
relating to a project at [ ]

***[Note: step in rights are only to be given to a Funder/owner of the building and only where Services are still being performed. The University will not be a party to this unless there are step in rights]***

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Dated

202[ ]

## Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Consultant);
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Beneficiary) [./; and]
- (3) [The University of Newcastle upon Tyne (trading as Newcastle University) of King's Gate, Newcastle upon Tyne, United Kingdom, NE1 7RU (Client).]

## Background

- (A) The Client has engaged the Consultant to perform the Services in relation to the Project.
- (B) The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the Project.
- (C) The Client requires the Consultant to enter into a collateral warranty in favour of the Beneficiary.
- (D) The Consultant has agreed to enter into this Agreement [with the Client and] the Beneficiary, for the benefit of the Beneficiary.
- (E) The Beneficiary has paid £1 to the Consultant [and the Client] as consideration under this Agreement.

## It is agreed

### 1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

#### 1.1 Definitions:

- |                             |  |
|-----------------------------|--|
| <b>Building Contract</b>    | a contract [dated [DATE] OR to be entered into] between the Client and [INSERT NAME] for the Project.  |
| <b>Building Regulations</b> | without limiting to clause 1.9, the Building Regulations 2010 incorporating the amendments introduced by the Building Regulations etc. (Amendment) (England) |

Regulations 2023, and any standards and guidance issued in relation to them.

**Building Safety Laws**

- (a) the Building Safety Act 2022;
- (b) the Defective Premises Act 1972;
- (c) the Building Act 1984;
- (d) the Building Regulations;
- (e) any statutory instrument, regulation, rule, order, code of practice or guideline made under the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984 and the Building Regulations having the force of law which affects the Project;
- (f) any guidance issued by a government department, the Building Safety Regulator and/or the Health and Safety Executive in connection with the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984, the Building Regulations and/or any statutory instrument, regulation, rule, order, code of practice or guideline relating to the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984 and/or the Building Regulations; and
- (g) any building safety laws and regulations now or from time to time in force which affects the Project or performance of any obligations under this Agreement.

**Business Day**

a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**CDM Regulations**

the Construction (Design and Management) Regulations 2015 (SI 2015/51).

**[Client]**

**The University of Newcastle upon Tyne (trading as Newcastle University)]**

**Construction Products Regulations Deleterious**

UK Construction Products Regulations 2011 and the Construction Products Regulations 2013 (SI 2013/1387). materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- posing a threat to the health and safety of any person;
- posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
- not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or

having been supplied or placed on the market in breach of the Construction Products Regulations.

**Funder**

a person providing finance in connection with:

- (e) the Project or the completed Project; or
- (f) the Property,

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

**Good Industry Practice**

all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services on works similar in scope and character to the Project unless any of the Statutory Requirements impose a higher standard in which case that higher standard will apply notwithstanding any provision of this Agreement to the contrary.

**Group**

in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**Material**

all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

**Permitted Uses**

the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.

**Professional Appointment**

an agreement in writing dated [DATE] between the Client and the Consultant.



<b>Programme</b>	the programme, as defined in the Professional Appointment.
<b>Project</b>	[DESCRIPTION OF PROJECT] at the Property.
<b>Property</b>	[DESCRIPTION OF PROPERTY].
<b>Services</b>	the services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.
<b>Statutory Requirements</b>	any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law including the Building Safety Laws that affects the Project or performance of any obligations under this Agreement and any regulation or bye law of any local authority or statutory undertaker which has any jurisdiction with regard to the Project.
<b>Third Party Agreement</b>	any agreement referred to in the Professional Appointment.
<b>UK Construction Products Regulations 2011</b>	the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and

references to any party includes that party's personal representatives, successors and permitted assigns.

- 1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to legislation or a legislative provision includes all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to **writing** or **written** excludes fax but not email.
- 1.12 A reference to a document is a reference to that document as varied from time to time.
- 1.13 References to clauses are to the clauses of this Agreement.
- 1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## 2. **Comply with Professional Appointment**

- 2.1 The Consultant warrants and undertakes that, exercising Good Industry Practice, it has complied, and shall continue to comply, with its obligations under the Professional Appointment, including its obligations to:
  - 2.1.1 perform the services in compliance with the terms of the Professional Appointment;
  - 2.1.2 carry out and fulfil, in all respects, the duties of a designer **[and principal designer]** under the CDM Regulations and the duties of a designer **[and principal designer]** under Part 2A of the Building Regulations, including any obligations relating to those duties set out in the Professional Appointment; and
  - 2.1.3 act fairly and impartially when exercising any power to issue certificates and award extensions of time under any building contract relating to the Project.
  - 2.1.4 not specify for use anything in the Project, which is Deleterious at the time of specification or use;
  - 2.1.5 comply with (and ensure the completed Project complies with) any Statutory Requirements;

- 2.1.6 perform the Services and prepare all Material for those elements of the Project for which the Consultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;
  - 2.1.7 ensure that the Project complies with all planning agreements, permissions and conditions; and
  - 2.1.8 not cause or contribute to any breach by the Client of any Third Party Agreement provided that, where the Client notifies the Consultant of a Third Party Agreement after the date of this Agreement, the Consultant is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the date of this Agreement.
- 2.2 The Consultant warrants that:
- 2.2.1 neither it nor any of its officers, employees, agents or sub-consultants has done, or permitted to be done, or will do or permit to be done, anything which:
    - 2.2.1.1 is in breach, or is likely to have been in breach of any Building Safety Laws;
    - or
    - 2.2.1.2 will result, or is likely to result, in the Client being in breach of any Building Safety Laws; and
  - 2.2.2 it shall comply, and shall procure compliance by each of officers, employees, agents and sub-consultants with the Building Safety Laws.
- 2.3 In complying with clause 2.1 and clause 2.2, the Consultant shall owe no greater obligations to the Beneficiary under this Agreement than it owes to the Client under the Professional Appointment. In proceedings for breach of clause 2.1 and clause 2.2, the Consultant may:
- 2.3.1 rely on any limit of liability or other term of the Professional Appointment; and
  - 2.3.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).
- 2.4 The Consultant's duties or liabilities under this Agreement shall not be negated, diminished or otherwise affected by:
- 2.4.1 any approval or inspection of:

- 2.4.1.1 the Property; or
  - 2.4.1.2 the Project; or
  - 2.4.1.3 any designs or specifications for the Property or the Project; or
  - 2.4.2 any testing of any work, goods, materials, plant or equipment; or
  - 2.4.3 any omission to approve, inspect or test,  
by or on behalf of the Beneficiary or the Client.
- 2.5 Nothing in this Agreement shall in any way limit or affect any other rights or remedies (whether under contract, at law, in equity or otherwise) which the Beneficiary would have against the Consultant in the absence of this Agreement.

**3. [Step-in rights: Consultant may not terminate *[Note: step in rights are only to be given to a Funder/owner and only where Services are still being performed]***

3.1 [Subject to clause 3.6,] the Consultant shall not exercise, or seek to exercise, any right to terminate its employment under the Professional Appointment for any reason (including any breach on the part of the Client) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Consultant shall specify the grounds for the Consultant's proposed termination.

3.2 If the Professional Appointment allows the Consultant a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Professional Appointment shall be extended to take account of the notice period required under clause 3.1.]

3.3 The Consultant's right to terminate its employment under the Professional Appointment shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Consultant, copied to the Client:

3.3.1 requiring the Consultant not to terminate its employment under the Professional Appointment;

3.3.2 acknowledging that the Beneficiary (or its nominee) will assume all the Client's obligations under the Professional Appointment; and

3.3.3 undertaking that the Beneficiary or its nominee will pay to the Consultant:

3.3.3.1 any sums that may subsequently become due and payable to the Consultant under the Professional Appointment; and

3.3.3.2 within [five] Business Days any sums then due and payable to the Consultant under the Professional Appointment that are unpaid.

3.4 If the Beneficiary (or its nominee) serves notice on the Consultant under clause 3.3, then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if the Consultant's rights to terminate had not arisen and as if it had been entered into between the Consultant and the Beneficiary (to the exclusion of the Client) and the Beneficiary shall be regarded as "Original Client" for the purposes of clause 21.2 of the Professional Appointment.

3.5 In complying with this clause 3, the Consultant:

3.5.1 does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client; and

3.5.2 may exercise its right to terminate its employment under the Professional Appointment after the expiry of the notice period referred to in clause 3.1, unless the Consultant's right to terminate has ceased under clause 3.3.]

3.6 [If:

3.6.1 the Consultant enters into an agreement with another third party or grants rights to a third party concerning the Project at the request of the Client; and

3.6.2 that agreement or those third party rights include similar step-in rights to those in clause 3 or clause 4,

then, on that third party's (or that third party's nominee's) exercise of those step-in rights:

3.6.3 the Consultant shall no longer be bound by clause 3.1 and clause 3.3; and

3.6.4 the Beneficiary may no longer exercise its rights under clause 3 or clause 4.] ***[Note: order of priority to be agreed where step in rights are given to more than one person and amend this clause accordingly.]***

4. ***[Step-in rights: Beneficiary may step-in [Note: step in rights are only to be given to a Funder/owner and only where Services are still being performed]***

4.1 [Subject to clause 3.6 and] without affecting clause 3.1, if the Beneficiary serves a notice on the Consultant, copied to the Client, that:

4.1.1 confirms that the Beneficiary wishes to step-in to the Professional Appointment; and

4.1.2 complies with the requirements for a Beneficiary's notice under clause 3.3,

then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (or its nominee), to the exclusion of the Client.

4.2 Subject to clause 3.6, the Consultant shall assume that, between the Client and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Consultant shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4 the Consultant does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client.]

5. **[Step-in rights: Consultant's position and Client's consent *[Note: step in rights are only to be given to a Funder/owner and only where Services are still being performed]***

5.1 The Consultant shall not incur any liability to the Client by acting in accordance with clause 3 or clause 4.

5.2 The Client has entered into this Agreement to confirm its consent to the agreement.]

6. **[Step-in rights: Beneficiary's guarantee *[Note: step in rights are only to be given to a Funder/owner and only where Services are still being performed]***

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Consultant, as guarantor, for the payment of any sums due and payable from time to time to the Consultant from the Beneficiary's nominee.]

7. **No instructions to Consultant by Beneficiary**

[Unless the Beneficiary has stepped-in under clause 3 or clause 4,] the Beneficiary may not give instructions to the Consultant under this Agreement.

8. **Copyright**

8.1 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.

8.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

8.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.

8.4 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

8.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

## 9. **Professional indemnity insurance**

9.1 On and from the date of this Agreement the Consultant shall maintain professional indemnity insurance for an amount of at least £[SUM] each and every claim for such period as shall be necessary to cover the full duration of the Consultant's liabilities under clause 10 of this Agreement, provided that such insurance is available at commercially reasonable rates. The Consultant shall maintain that professional indemnity insurance: for a period beginning on the date of this Agreement and

9.1.1 with reputable insurers lawfully carrying on insurance business in the UK;

9.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and

9.1.3 on terms that:

9.1.3.1 do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and

9.1.3.2 would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

9.2 Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

9.3 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates [and terms] or at all or if there is any material reduction in the scope or level of cover offered by such insurance, so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project and the Property, without that insurance.

9.4 The Consultant shall fully co-operate with any measures reasonably required by the Beneficiary, including:

9.4.1 completing any proposals for insurance and associated documents; or

9.4.2 maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Consultant for the net cost of that insurance above commercially reasonable rates.

9.5 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Consultant's insurers or brokers confirming:

9.5.1 the Consultant's then current professional indemnity insurance; and

9.5.2 that the premiums for that insurance have been paid in full at the date of that letter.

#### 10. **Liability period**

No party shall commence any legal action against the other under this Agreement after the period of liability set out in clause 18 of the Professional Appointment.

#### 11. **Assignment**

11.1 The Beneficiary may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that it gives prior written notice of such dealing to the Consultant.

11.2 The Consultant shall not contend that any person to whom the benefit of this Agreement is assigned under clause 11.1 may not recover any sum under this Agreement because that person is an assignee and not a named party to this Agreement .

#### 12. **Notices**

12.1 A notice given to a party under or in connection with this Agreement will be in writing and will be:

12.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

12.1.2 or sent by email to the email address specified in the Contract Details.

12.2 Any notice or communication will be deemed to have been received:

12.2.1 if delivered by hand, at the time the notice is left at the proper address;



12.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

12.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**13. Third party rights**

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**14. Governing law**

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

**15. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

*[Note: If the Professional Appointment is signed under hand there is a 6-year limitation period or use the execution blocks below]*

**Signed by [insert name of signatory]**

for and on behalf of the Consultant

.....

Authorised signatory

**Signed by [insert name of signatory]**

for and on behalf of the Beneficiary

.....

Authorised signatory

**[Signed by [insert name of signatory]**

for and on behalf of the University of Newcastle upon Tyne

.....

**Authorised signatory]**

**[Note: If the Professional Appointment is executed as a deed there is a 12-year limitation period so use the execution blocks below]**

**Executed** as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Executed** as a deed but not delivered until the date on the front of this document by

**[Consultant]**

acting by

.....

*(signature of director)*

a director in the presence of

I confirm that the witness named below was physically present when I signed this deed

*Signature of witness*

.....

*Name of witness*

.....

*Address of witness*

.....

*Occupation of witness*

.....

I confirm that I was physically present when the above signatory signed this deed

**Executed** as a deed but not delivered until the date on the front of this document by

**[Beneficiary]**

acting by

.....

*(signature of director)*

a director in the presence of

I confirm that the witness named below was physically present when I signed this deed

*Signature of witness*

.....

*Name of witness*

.....

*Address of witness*

.....

*Occupation of witness*

.....

I confirm that I was physically present when the above signatory signed this deed

**Executed** as a deed but not delivered until the date

on the front of this document by

affixing the Common Seal of

**The University of Newcastle upon Tyne**

(**an exempt charity**) in the presence of:

.....

Authorised signatory

.....

Authorised signatory

Dated "C" 202[ ]

[Sub-Consultant]

and

The University of Newcastle upon Tyne

and

[Client]

Sub-Consultant's collateral warranty to the University of Newcastle  
upon Tyne  
relating to a project at [ ]

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Dated

202[ ]

## Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Sub-Consultant**);
- (2) **The University of Newcastle upon Tyne (trading as Newcastle University)** of King's Gate, Newcastle upon Tyne, United Kingdom, NE1 7RU (**Beneficiary**); and
- (3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Client**).

## Background

- (A) The **Client** has engaged the Sub-Consultant to perform the Services in relation to the Project.
- (B) The Beneficiary has an interest in the Project.
- (C) The Client requires the Sub-Consultant to enter into a collateral warranty in favour of the Beneficiary.
- (D) The Sub-Consultant has agreed to enter into this Agreement with the Client and the Beneficiary, for the benefit of the Beneficiary.
- (E) The Beneficiary has paid £1 to the Sub-Consultant and the Client as consideration under this Agreement.

## It is agreed

### 1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

#### 1.1 Definitions:

<b>Building Contract</b>	a contract [dated [DATE] OR to be entered into] between the Beneficiary and [INSERT NAME] for the Project.
<b>Building Regulations</b>	without limiting to clause 1.9, the Building Regulations 2010 incorporating the amendments introduced by the Building Regulations etc. (Amendment) (England)

Regulations 2023, and any standards and guidance issued in relation to them.

**Building Safety Laws**

- (a) the Building Safety Act 2022;
- (b) the Defective Premises Act 1972;
- (c) the Building Act 1984;
- (d) the Building Regulations;
- (e) any statutory instrument, regulation, rule, order, code of practice or guideline made under the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984 and the Building Regulations having the force of law which affects the Project;
- (f) any guidance issued by a government department, the Building Safety Regulator and/or the Health and Safety Executive in connection with the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984, the Building Regulations and/or any statutory instrument, regulation, rule, order, code of practice or guideline relating to the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984 and/or the Building Regulations; and
- (g) any building safety laws and regulations now or from time to time in force which affects the Project or performance of any obligations under this Agreement.

**Business Day**

a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**CDM Regulations**

the Construction (Design and Management) Regulations 2015 (SI 2015/51).

**Construction Products**

UK Construction Products Regulations 2011 and the Construction Products Regulations 2013 (SI 2013/1387).

**Regulations****Deleterious**

materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- posing a threat to the health and safety of any person;
- posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
- not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or

having been supplied or placed on the market in breach of the Construction Products Regulations.

**Funder**

a person providing finance in connection with:

- (g) the Project or the completed Project; or
- (h) the Property,

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

**Good Industry Practice**

all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Sub-Consultant's profession undertaking the Services on



works similar in scope and character to the Project unless any of the Statutory Requirements impose a higher standard in which case that higher standard will apply notwithstanding any provision of this Agreement to the contrary.

**Group**

in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**Material**

all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

**Permitted Uses**

the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.

**Professional Appointment**

an agreement in writing dated [DATE] between the Client and the Sub-Consultant.

**Programme**

the programme, as defined in the Professional Appointment.

**Project**

[DESCRIPTION OF PROJECT] at the Property.

**Property**

[DESCRIPTION OF PROPERTY].

<b>Services</b>	the services referred to in the Professional Appointment, performed by or on behalf of the Sub-Consultant under the Professional Appointment.
<b>Statutory Requirements</b>	any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law including the Building Safety Laws that affects the Project or performance of any obligations under this Agreement and any regulation or bye law of any local authority or statutory undertaker which has any jurisdiction with regard to the Project.
<b>Third Party Agreement</b>	any Third Party Agreement referred to in the appointment of the Client.
<b>UK Construction Products Regulations 2011</b>	the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party includes that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.9 A reference to legislation or a legislative provision includes all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to **writing** or **written** excludes fax but not email.
- 1.12 A reference to a document is a reference to that document as varied or novated from time to time.
- 1.13 References to clauses are to the clauses of this Agreement.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## 2. **Comply with Professional Appointment**

- 2.1 The Sub-Consultant warrants and undertakes that, exercising Good Industry Practice, it has complied, and shall continue to comply, with its obligations under the Professional Appointment, including its obligations to:
- 2.1.1 perform the services in compliance with the terms of the Professional Appointment;
- 2.1.2 carry out and fulfil, in all respects, the duties of a designer **[and principal designer]** under the CDM Regulations and the duties of a designer **[and principal designer]** under Part 2A of the Building Regulations, including any obligations relating to those duties set out in the Professional Appointment; and
- 2.1.3 act fairly and impartially when exercising any power to issue certificates and award extensions of time under any building contract relating to the Project.
- 2.1.4 not specify for use anything in the Project, which is Deleterious at the time of specification or use;
- 2.1.5 comply with (and ensure the completed Project complies with) any Statutory Requirements;
- 2.1.6 perform the Services and prepare all Material for those elements of the Project for which the Sub-Consultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;

- 2.1.7 ensure that the Project complies with all planning agreements, permissions and conditions; and
  - 2.1.8 not cause or contribute to any breach by the Client of any Third Party Agreement provided that, where the Client notifies the Sub-Consultant of a Third Party Agreement after the date of this Agreement, the Sub-Consultant is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the date of this Agreement.
- 2.2 The Sub-Consultant warrants that:
- 2.2.1 neither it nor any of its officers, employees, agents or sub-Sub-Consultants has done, or permitted to be done, or will do or permit to be done, anything which:
    - 2.2.1.1 is in breach, or is likely to have been in breach of any Building Safety Laws; or
    - 2.2.1.2 will result, or is likely to result, in the Client being in breach of any Building Safety Laws; and
  - 2.2.2 it shall comply, and shall procure compliance by each of officers, employees, agents and sub-Sub-Consultants with the Building Safety Laws.
- 2.3 In complying with clause 2.1 and clause 2.2, the Sub-Consultant shall owe no greater obligations to the Beneficiary under this Agreement than it owes to the Client under the Professional Appointment. In proceedings for breach of clause 2.1 and clause 2.2, the Sub-Consultant may:
- 2.3.1 rely on any limit of liability or other term of the Professional Appointment; and
  - 2.3.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).
- 2.4 The Sub-Consultant's duties or liabilities under this Agreement shall not be negated, diminished or otherwise affected by:
- 2.4.1 any approval or inspection of:
    - 2.4.1.1 the Property; or
    - 2.4.1.2 the Project; or

- 2.4.1.3 any designs or specifications for the Property or the Project; or
  - 2.4.2 any testing of any work, goods, materials, plant or equipment; or
  - 2.4.3 any omission to approve, inspect or test,  
by or on behalf of the Beneficiary or the Client.
- 2.5 Nothing in this Agreement shall in any way limit or affect any other rights or remedies (whether under contract, at law, in equity or otherwise) which the Beneficiary would have against the Sub-Consultant in the absence of this Agreement.
- 3. **Step-in rights: Sub-Consultant may not terminate**
- 3.1 Subject to clause 3.6, the Sub-Consultant shall not exercise, or seek to exercise, any right to terminate its employment under the Professional Appointment for any reason (including any breach on the part of the Client) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Sub-Consultant shall specify the grounds for the Sub-Consultant's proposed termination.
- 3.2 If the Professional Appointment allows the Sub-Consultant a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Professional Appointment shall be extended to take account of the notice period required under clause 3.1.
- 3.3 The Sub-Consultant's right to terminate its employment under the Professional Appointment shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Sub-Consultant, copied to the Client:
  - 3.3.1 requiring the Sub-Consultant not to terminate its employment under the Professional Appointment;
  - 3.3.2 acknowledging that the Beneficiary (or its nominee) will assume all the Client's obligations under the Professional Appointment; and
  - 3.3.3 undertaking that the Beneficiary or its nominee will pay to the Sub-Consultant:
    - 3.3.3.1 any sums that may subsequently become due and payable to the Sub-Consultant under the Professional Appointment; and
    - 3.3.3.2 within [five] Business Days any sums then due and payable to the Sub-Consultant under the Professional Appointment that are unpaid.
- 3.4 If the Beneficiary (or its nominee) serves notice on the Sub-Consultant under clause 3.3, then, from the date of service of the notice, the Professional Appointment shall continue in full force

and effect, as if the Sub-Consultant's rights to terminate had not arisen and as if it had been entered into between the Sub-Consultant and the Beneficiary (to the exclusion of the Client) and the Beneficiary shall be regarded as "Original Client" for the purposes of clause 21.2 of the Professional Appointment.

3.5 In complying with this clause 3, the Sub-Consultant:

3.5.1 does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client; and

3.5.2 may exercise its right to terminate its employment under the Professional Appointment after the expiry of the notice period referred to in clause 3.1, unless the Sub-Consultant's right to terminate has ceased under clause 3.3.

3.6 If:

3.6.1 the Sub-Consultant enters into an agreement with another third party or grants rights to a third party concerning the Project at the request of the Client; and

3.6.2 that agreement or those third party rights include similar step-in rights to those in clause 3 or clause 4,

then the Beneficiary's step-in rights shall take priority.

4. **Step-in rights: Beneficiary may step-in**

4.1 Subject to clause 3.6 and without affecting clause 3.1, if the Beneficiary serves a notice on the Sub-Consultant, copied to the Client, that:

4.1.1 confirms that the Beneficiary wishes to step-in to the Professional Appointment; and

4.1.2 complies with the requirements for a Beneficiary's notice under clause 3.3,

then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Sub-Consultant and the Beneficiary (or its nominee), to the exclusion of the Client.

4.2 The Sub-Consultant shall assume that, between the Client and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Sub-Consultant shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4 the Sub-Consultant does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client.

**5. Step-in rights: Sub-Consultant's position and Client's consent**

5.1 The Sub-Consultant shall not incur any liability to the Client by acting in accordance with clause 3 or clause 4.

5.2 The Client has entered into this Agreement to confirm its consent to the agreement.

**6. Step-in rights: Beneficiary's guarantee**

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Sub-Consultant, as guarantor, for the payment of any sums due and payable from time to time to the Sub-Consultant from the Beneficiary's nominee.

**7. No instructions to Sub-Consultant by Beneficiary**

Unless the Beneficiary has stepped-in under clause 3 or clause 4, the Beneficiary may not give instructions to the Sub-Consultant under this Agreement.

**8. Copyright**

8.1 The Sub-Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Sub-Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.

8.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

8.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Sub-Consultant.

8.4 The Sub-Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

8.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Sub-Consultant. On the Beneficiary's payment of the Sub-Consultant's reasonable charges for providing the copy (or copies), the Sub-Consultant shall provide the copy (or copies) to the Beneficiary.

**9. Professional indemnity insurance**

9.1 On and from the date of this Agreement the Sub-Consultant shall maintain professional indemnity insurance for an amount of at least **£[SUM]** each and every claim for such period as shall be necessary to cover the full duration of the Sub-Consultant's liabilities under clause 10

of this Agreement, provided that such insurance is available at commercially reasonable rates. The Sub-Consultant shall maintain that professional indemnity insurance: for a period beginning on the date of this Agreement and

9.1.1 with reputable insurers lawfully carrying on insurance business in the UK;

9.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and

9.1.3 on terms that:

9.1.3.1 do not require the Sub-Consultant to discharge any liability before being entitled to recover from the insurers; and

9.1.3.2 would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

9.2 Any increased or additional premium required by insurers because of the Sub-Consultant's claims record or other acts, omissions, matters or things particular to the Sub-Consultant shall be deemed to be within commercially reasonable rates.

9.3 The Sub-Consultant shall immediately inform the Beneficiary if the Sub-Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates [and terms] or at all or if there is any material reduction in the scope or level of cover offered by such insurance, so that the Sub-Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Sub-Consultant regarding the Project and the Property, without that insurance.

9.4 The Sub-Consultant shall fully co-operate with any measures reasonably required by the Beneficiary, including:

9.4.1 completing any proposals for insurance and associated documents; or

9.4.2 maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Sub-Consultant for the net cost of that insurance above commercially reasonable rates.

9.5 Whenever the Beneficiary reasonably requests, the Sub-Consultant shall send the Beneficiary evidence that the Sub-Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Sub-Consultant's insurers or brokers confirming:



- 9.5.1 the Sub-Consultant's then current professional indemnity insurance; and
- 9.5.2 that the premiums for that insurance have been paid in full at the date of that letter.

**10. Liability period**

- 10.1 Subject to clause 10.2, no party shall commence any legal action against the other under this Agreement after the period of **[6/12]** years from the date of Practical Completion of the whole of the Project under the Building Contract.
- 10.2 The Beneficiary may commence an action or proceedings against the Sub-Consultant:
  - 10.2.1 in accordance with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; and/or
  - 10.2.2 for a breach of this Agreement that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or that gives rise to a failure to comply with that legislation in relation to the Project or any part thereof, provided that any such action or proceedings are subject to the limitation periods that would apply if they were commenced under that legislation and/or the Civil Liability (Contribution) Act 1978 and is not subject to any shorter limitation period applicable to a claim for breach of contract under the Limitation Act 1980 nor any shorter limitation period specified under clause 10.1.

**11. Assignment**

- 11.1 The Beneficiary may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that it gives prior written notice of such dealing to the Sub-Consultant.
- 11.2 The Sub-Consultant shall not contend that any person to whom the benefit of this Agreement is assigned under clause 11.1 may not recover any sum under this Agreement because that person is an assignee and not a named party to this Agreement.

**12. Notices**

- 12.1 A notice given to a party under or in connection with this Agreement will be in writing and will be:

12.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

12.1.2 or sent by email to the email address specified in the Contract Details.

12.2 Any notice or communication will be deemed to have been received:

12.2.1 if delivered by hand, at the time the notice is left at the proper address;

12.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

12.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### 13. **Third party rights**

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

### 14. **Governing law**

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

### 15. **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

**[Note: If the Professional Appointment is signed under hand there is a 6-year limitation period or use the execution blocks below]**

**Signed by [insert name of signatory]**

for and on behalf of the Sub-Consultant

.....

Authorised signatory

**Signed by [insert name of signatory]**

for and on behalf of the Beneficiary

.....

Authorised signatory

**[Signed by [insert name of signatory]**

for and on behalf of the University of Newcastle upon Tyne

.....

Authorised signatory]

**[Note: If the Professional Appointment is executed as a deed there is a 12-year limitation period so use the execution blocks below]**

**Executed** as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Executed** as a deed but not delivered until the date on the front of this document by

**[Sub-Consultant]**

acting by

.....  
(signature of director)

a director in the presence of

I confirm that the witness named below was physically present when I signed this deed

*Signature of witness*

.....

*Name of witness*

.....

*Address of witness*

.....

*Occupation of witness*

.....

I confirm that I was physically present when the above signatory signed this deed

**Executed** as a deed but not delivered until the date on the front of this document by

[Beneficiary]

acting by

.....  
(signature of director)

a director in the presence of

I confirm that the witness named below was physically present when I signed this deed

Signature of witness

.....

Name of witness

.....

Address of witness

.....

Occupation of witness

.....

I confirm that I was physically present when the above signatory signed this deed

**Executed** as a deed but not delivered until the date

on the front of this document by

affixing the Common Seal of

**The University of Newcastle upon Tyne**

(an exempt charity) in the presence of:

.....

Authorised signatory

.....

Authorised signatory

Dated "D" 202[ ]

[Sub-Consultant]

and

[Beneficiary]

[and]

[Client]

Sub-Consultant's collateral warranty to a Beneficiary  
relating to a project at [ ]

***[Note: step in rights are only to be given to a Funder/owner and only where Services are still being performed. The Client will not be a party to this unless there are step in rights]***

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Dated

202[ ]

## Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Sub-Consultant**);
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Beneficiary**) [./; and]
- (3) [[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Client**).]

## Background

- (A) The **Client** has engaged the Sub-Consultant to perform the Services in relation to the Project.
- (B) The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the Project.
- (C) The Client requires the Sub-Consultant to enter into a collateral warranty in favour of the Beneficiary.
- (D) The Sub-Consultant has agreed to enter into this Agreement [with the Client and] the Beneficiary, for the benefit of the Beneficiary.
- (E) The Beneficiary has paid £1 to the Sub-Consultant [and the Client] as consideration under this Agreement.

## It is agreed

### 1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

#### 1.1 Definitions:

**Building Contract** a contract [dated [DATE] OR to be entered into] between the University of Newcastle upon Tyne and [INSERT NAME] for the Project.

**Building Regulations** without limiting to clause 1.9, the Building Regulations 2010 incorporating the amendments introduced by the

Building Regulations etc. (Amendment) (England) Regulations 2023, and any standards and guidance issued in relation to them.

### **Building Safety Laws**

- (a) the Building Safety Act 2022;
- (b) the Defective Premises Act 1972;
- (c) the Building Act 1984;
- (d) the Building Regulations;
- (e) any statutory instrument, regulation, rule, order, code of practice or guideline made under the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984 and the Building Regulations having the force of law which affects the Project;
- (f) any guidance issued by a government department, the Building Safety Regulator and/or the Health and Safety Executive in connection with the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984, the Building Regulations and/or any statutory instrument, regulation, rule, order, code of practice or guideline relating to the Building Safety Act 2022, the Defective Premises Act 1972, the Building Act 1984 and/or the Building Regulations; and
- (g) any building safety laws and regulations now or from time to time in force which affects the Project or performance of any obligations under this Agreement.



<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>CDM Regulations</b>	the Construction (Design and Management) Regulations 2015 (SI 2015/51).
<b>Construction Products Regulations</b>	UK Construction Products Regulations 2011 and the Construction Products Regulations 2013 (SI 2013/1387).
<b>Deleterious</b>	<p>materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:</p> <ul style="list-style-type: none"> <li>• posing a threat to the health and safety of any person;</li> <li>• posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;</li> <li>• reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;</li> <li>• not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or</li> </ul> <p>having been supplied or placed on the market in breach of the Construction Products Regulations.</p>
<b>Funder</b>	<p>a person providing finance in connection with:</p> <ul style="list-style-type: none"> <li>(i) the Project or the completed Project; or</li> <li>(j) the Property,</li> </ul> <p>whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.</p>

**Good Industry Practice**

all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Sub-Consultant's profession undertaking the Services on works similar in scope and character to the Project unless any of the Statutory Requirements impose a higher standard in which case that higher standard will apply notwithstanding any provision of this Agreement to the contrary.

**Group**

in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**Material**

all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

**Permitted Uses**

the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.

**Professional Appointment**

an agreement in writing dated [DATE] between the Client and the Sub-Consultant.

<b>Programme</b>	the programme, as defined in the Professional Appointment.
<b>Project</b>	[DESCRIPTION OF PROJECT] at the Property.
<b>Property</b>	[DESCRIPTION OF PROPERTY].
<b>Services</b>	the services referred to in the Professional Appointment, performed by or on behalf of the Sub-Consultant under the Professional Appointment.
<b>Statutory Requirements</b>	any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law including the Building Safety Laws that affects the Project or performance of any obligations under this Agreement and any regulation or bye law of any local authority or statutory undertaker which has any jurisdiction with regard to the Project.
<b>Third Party Agreement</b>	any Third Party Agreement referred to in the appointment of the Client.
<b>UK Construction Products Regulations 2011</b>	the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and

references to any party includes that party's personal representatives, successors and permitted assigns.

- 1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to legislation or a legislative provision includes all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to **writing** or **written** excludes fax but not email.
- 1.12 A reference to a document is a reference to that document as varied or novated from time to time.
- 1.13 References to clauses are to the clauses of this Agreement.
- 1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## 2. **Comply with Professional Appointment**

- 2.1 The Sub-Consultant warrants and undertakes that, exercising Good Industry Practice, it has complied, and shall continue to comply, with its obligations under the Professional Appointment, including its obligations to:
  - 2.1.1 perform the services in compliance with the terms of the Professional Appointment;
  - 2.1.2 carry out and fulfil, in all respects, the duties of a designer [and principal designer] under the CDM Regulations and the duties of a designer [and principal designer] under Part 2A of the Building Regulations, including any obligations relating to those duties set out in the Professional Appointment; and
  - 2.1.3 act fairly and impartially when exercising any power to issue certificates and award extensions of time under any building contract relating to the Project.
  - 2.1.4 not specify for use anything in the Project, which is Deleterious at the time of specification or use;
  - 2.1.5 comply with (and ensure the completed Project complies with) any Statutory Requirements;

- 2.1.6 perform the Services and prepare all Material for those elements of the Project for which the Sub-Consultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;
  - 2.1.7 ensure that the Project complies with all planning agreements, permissions and conditions; and
  - 2.1.8 not cause or contribute to any breach by the Client of any Third Party Agreement provided that, where the Client notifies the Sub-Consultant of a Third Party Agreement after the date of this Agreement, the Sub-Consultant is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the date of this Agreement.
- 2.2 The Sub-Consultant warrants that:
- 2.2.1 neither it nor any of its officers, employees, agents or sub-Sub-Consultants has done, or permitted to be done, or will do or permit to be done, anything which:
    - 2.2.1.1 is in breach, or is likely to have been in breach of any Building Safety Laws;
    - or
    - 2.2.1.2 will result, or is likely to result, in the Client being in breach of any Building Safety Laws; and
  - 2.2.2 it shall comply, and shall procure compliance by each of officers, employees, agents and sub-Sub-Consultants with the Building Safety Laws.
- 2.3 In complying with clause 2.1 and clause 2.2, the Sub-Consultant shall owe no greater obligations to the Beneficiary under this Agreement than it owes to the Client under the Professional Appointment. In proceedings for breach of clause 2.1 and clause 2.2, the Sub-Consultant may:
- 2.3.1 rely on any limit of liability or other term of the Professional Appointment; and
  - 2.3.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).

- 2.4 The Sub-Consultant's duties or liabilities under this Agreement shall not be negated, diminished or otherwise affected by:
- 2.4.1 any approval or inspection of:
    - 2.4.1.1 the Property; or
    - 2.4.1.2 the Project; or
    - 2.4.1.3 any designs or specifications for the Property or the Project; or
  - 2.4.2 any testing of any work, goods, materials, plant or equipment; or
  - 2.4.3 any omission to approve, inspect or test,  
by or on behalf of the Beneficiary or the Client.
- 2.5 Nothing in this Agreement shall in any way limit or affect any other rights or remedies (whether under contract, at law, in equity or otherwise) which the Beneficiary would have against the Sub-Consultant in the absence of this Agreement.

**3. [Step-in rights: Sub-Consultant may not terminate *[Note: step in rights are only to be given to a Funder/owner and only where Services are still being performed]***

3.1 [Subject to clause 3.6,] the Sub-Consultant shall not exercise, or seek to exercise, any right to terminate its employment under the Professional Appointment for any reason (including any breach on the part of the Client) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Sub-Consultant shall specify the grounds for the Sub-Consultant's proposed termination.

3.2 If the Professional Appointment allows the Sub-Consultant a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Professional Appointment shall be extended to take account of the notice period required under clause 3.1.]

3.3 The Sub-Consultant's right to terminate its employment under the Professional Appointment shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Sub-Consultant, copied to the Client:

3.3.1 requiring the Sub-Consultant not to terminate its employment under the Professional Appointment;

3.3.2 acknowledging that the Beneficiary (or its nominee) will assume all the Client's obligations under the Professional Appointment; and

3.3.3 undertaking that the Beneficiary or its nominee will pay to the Sub-Consultant:

3.3.3.1 any sums that may subsequently become due and payable to the Sub-Consultant under the Professional Appointment; and

3.3.3.2 within [five] Business Days any sums then due and payable to the Sub-Consultant under the Professional Appointment that are unpaid.

3.4 If the Beneficiary (or its nominee) serves notice on the Sub-Consultant under clause 3.3, then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if the Sub-Consultant's rights to terminate had not arisen and as if it had been entered into between the Sub-Consultant and the Beneficiary (to the exclusion of the Client) and the Beneficiary shall be regarded as "Original Client" for the purposes of clause 21.2 of the Professional Appointment.

3.5 In complying with this clause 3, the Sub-Consultant:

3.5.1 does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client; and

3.5.2 may exercise its right to terminate its employment under the Professional Appointment after the expiry of the notice period referred to in clause 3.1, unless the Sub-Consultant's right to terminate has ceased under clause 3.3.]

3.6 [If:

3.6.1 the Sub-Consultant enters into an agreement with another third party or grants rights to a third party concerning the Project at the request of the Client; and

3.6.2 that agreement or those third party rights include similar step-in rights to those in clause 3 or clause 4,

then, on that third party's (or that third party's nominee's) exercise of those step-in rights:

3.6.3 the Sub-Consultant shall no longer be bound by clause 3.1 and clause 3.3; and

3.6.4 the Beneficiary may no longer exercise its rights under clause 3 or clause 4.]

**[Note: order of priority to be agreed where step in rights are given to more than one person. If the University has collateral warranties from Sub-Consultants, its step rights will prevail. Amend this clause accordingly]**

**4. [Step-in rights: Beneficiary may step-in *[Note: step in rights are only to be given to a Funder/owner and only where Services are still being performed]***

4.1 [Subject to clause 3.6 and] without affecting clause 3.1, if the Beneficiary serves a notice on the Sub-Consultant, copied to the Client, that:

4.1.1 confirms that the Beneficiary wishes to step-in to the Professional Appointment; and

4.1.2 complies with the requirements for a Beneficiary's notice under clause 3.3,

then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Sub-Consultant and the Beneficiary (or its nominee), to the exclusion of the Client.

4.2 Subject to any notice served by [the Client/the University of Newcastle upon Tyne] which shall have priority, the Sub-Consultant shall assume that, between the Client and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Sub-Consultant shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4 the Sub-Consultant does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client.]

**5. [Step-in rights: Sub-Consultant's position and Client's consent *[Note: step in rights are only to be given to a Funder/owner and only where Services are still being performed]***

5.1 The Sub-Consultant shall not incur any liability to the Client by acting in accordance with clause 3 or clause 4.

5.2 The Client has entered into this Agreement to confirm its consent to the agreement.]

**6. [Step-in rights: Beneficiary's guarantee *[Note: step in rights are only to be given to a Funder/owner and only where Services are still being performed]***

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Sub-Consultant, as guarantor, for the payment of any sums due and payable from time to time to the Sub-Consultant from the Beneficiary's nominee.]

**7. No instructions to Sub-Consultant by Beneficiary**

[Unless the Beneficiary has stepped-in under clause 3 or clause 4,] the Beneficiary may not give instructions to the Sub-Consultant under this Agreement.



## 8. **Copyright**

- 8.1 The Sub-Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Sub-Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.
- 8.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.
- 8.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Sub-Consultant.
- 8.4 The Sub-Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 8.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Sub-Consultant. On the Beneficiary's payment of the Sub-Consultant's reasonable charges for providing the copy (or copies), the Sub-Consultant shall provide the copy (or copies) to the Beneficiary.

## 9. **Professional indemnity insurance**

- 9.1 On and from the date of this Agreement the Sub-Consultant shall maintain professional indemnity insurance for an amount of at least **£[SUM]** each and every claim for such period as shall be necessary to cover the full duration of the Sub-Consultant's liabilities under clause 10 of this Agreement, provided that such insurance is available at commercially reasonable rates. The Sub-Consultant shall maintain that professional indemnity insurance: for a period beginning on the date of this Agreement and
- 9.1.1 with reputable insurers lawfully carrying on insurance business in the UK;
- 9.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- 9.1.3 on terms that:
- 9.1.3.1 do not require the Sub-Consultant to discharge any liability before being entitled to recover from the insurers; and
- 9.1.3.2 would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

- 9.2 Any increased or additional premium required by insurers because of the Sub-Consultant's claims record or other acts, omissions, matters or things particular to the Sub-Consultant shall be deemed to be within commercially reasonable rates.
- 9.3 The Sub-Consultant shall immediately inform the Beneficiary if the Sub-Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates [and terms] or at all or if there is any material reduction in the scope or level of cover offered by such insurance, so that the Sub-Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Sub-Consultant regarding the Project and the Property, without that insurance.
- 9.4 The Sub-Consultant shall fully co-operate with any measures reasonably required by the Beneficiary, including:
- 9.4.1 completing any proposals for insurance and associated documents; or
- 9.4.2 maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Sub-Consultant for the net cost of that insurance above commercially reasonable rates.
- 9.5 Whenever the Beneficiary reasonably requests, the Sub-Consultant shall send the Beneficiary evidence that the Sub-Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Sub-Consultant's insurers or brokers confirming:
- 9.5.1 the Sub-Consultant's then current professional indemnity insurance; and
- 9.5.2 that the premiums for that insurance have been paid in full at the date of that letter.
10. **Liability period**
- 10.1 Subject to clause 10.2, no party shall commence any legal action against the other under this Agreement after the period of [6/12] years from the date of Practical Completion of the whole of the Project under the Building Contract.
- 10.2 The Beneficiary may commence an action or proceedings against the Sub-Consultant:
- 10.2.1 in accordance with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; and/or

10.2.2 for a breach of this Agreement that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or that gives rise to a failure to comply with that legislation in relation to the Project or any part thereof, provided that any such action or proceedings are subject to the limitation periods that would apply if they were commenced under that legislation and/or the Civil Liability (Contribution) Act 1978 and is not subject to any shorter limitation period applicable to a claim for breach of contract under the Limitation Act 1980 nor any shorter limitation period specified under clause 10.1.

**11. Assignment**

11.1 The Beneficiary may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that it gives prior written notice of such dealing to the Sub-Consultant.

11.2 The Sub-Consultant shall not contend that any person to whom the benefit of this Agreement is assigned under clause 11.1 may not recover any sum under this Agreement because that person is an assignee and not a named party to this Agreement.

**12. Notices**

12.1 A notice given to a party under or in connection with this Agreement will be in writing and will be:

12.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

12.1.2 or sent by email to the email address specified in the Contract Details.

12.2 Any notice or communication will be deemed to have been received:

12.2.1 if delivered by hand, at the time the notice is left at the proper address;

12.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

12.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**13. Third party rights**

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**14. Governing law**

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

**15. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

*[Note: If the Professional Appointment is signed under hand there is a 6-year limitation period or use the execution blocks below]*

**Signed by [insert name of signatory]**

for and on behalf of the Sub-Consultant

.....

Authorised signatory

**Signed by [insert name of signatory]**

for and on behalf of the Beneficiary

.....

Authorised signatory

**[Signed by [insert name of signatory]**

for and on behalf of the University of Newcastle upon Tyne

.....

**Authorised signatory]**

*[Note: If the Professional Appointment is executed as a deed there is a 12-year limitation period so use the execution blocks below]*

**Executed** as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Executed** as a deed but not delivered until the date on the front of this document by

[Sub-Consultant]

acting by .....  
(signature of director)

a director in the presence of  
I confirm that the witness named below was physically present when I signed this deed

Signature of witness .....

Name of witness .....

Address of witness .....

Occupation of witness .....

I confirm that I was physically present when the above signatory signed this deed

**Executed** as a deed but not delivered until the date on the front of this document by

[Beneficiary]

acting by .....  
(signature of director)

a director in the presence of  
I confirm that the witness named below was physically present when I signed this deed

Signature of witness .....

Name of witness .....

Address of witness .....

Occupation of witness .....

I confirm that I was physically present when the above signatory signed this deed

**Executed** as a deed but not delivered until the date  
on the front of this document by  
affixing the Common Seal of  
**The University of Newcastle upon Tyne**  
(**an exempt charity**) in the presence of:

.....

Authorised signatory

.....

Authorised signatory