

Core Five Consulting Limited – Standard Terms of Engagement

1. Services

- 1.1 The Client appoints Core Five to perform and Core Five agree to perform the Services set out in the Fee Proposal.
- 1.2 Core Five shall perform the Services in accordance with the Programme, the terms of this Agreement and the Required Standard of Skill and Care.
- 1.3 This Agreement takes effect from the date when Core Five begin performing the Services regardless of the date of this Agreement.

2. Client's Undertakings

- 2.1 The Client shall advise Core Five of the person within the Client's organisation to whom Core Five will report and such person shall be deemed to have full authority to issue instructions and otherwise to act on behalf of the Client for all purposes in connection with this Agreement.
- 2.2 The Client shall promptly provide Core Five, free of charge, with such information or documentation as Core Five may reasonably require (including any updating of or revisions to such information or documentation) and shall take any relevant decisions in due time as shall be necessary for the proper performance of the Services by Core Five.
- 2.3 The Client hereby acknowledges and agrees that:
 - 2.3.1 Core Five are entitled to rely upon, shall rely upon and intend to rely upon the advice, approvals, certifications, information, designs, specifications, plans, design drawings and instructions provided to Core Five by the Client, the Consultants and the Building Contractor(s); and
 - 2.3.2 the Services shall not include and Core Five shall have no responsibility or liability for:
 - a. any design or design services, including the approval of any design documents;
 - b. the fitness for purpose or suitability of the Project for the Client's requirements;
 - c. the specification, choice of or fitness for purpose of any materials or methods used in the construction of the Project;
 - d. the workmanship or operational methods employed or advised to be employed;
 - e. any construction, including the supervision and undertaking of the same;
 - f. the inspection, acceptance and approvals given or made in relation to the construction of the Project;
 - g. the compliance by anyone other than Core Five with any health and safety requirements;
 - h. the completion of the Project by a specified date or time;
 - i. any liquidated damages; and
 - j. any instructions as may from time to time be given to Core Five by the Client, the Consultants or the Building Contractor (s).

3. Fees

- 3.1 The Client shall pay Core Five the Basic Fee calculated in accordance with the Fee Proposal to perform the Basic Services. In addition:
 - (i) If Core Five performs any Additional Services to the extent requested by the Client, the Client shall pay the Additional Fees.

(ii) Notwithstanding any other provision of this Agreement, Core Five shall be entitled to charge and the Client shall be required to pay Additional Fees for the performance by Core Five of Basic Services during and following any delays to any element, stage or section of the Programme including any prolongation, extension or suspension due to any cause except breach by Core Five of its material obligations under this Agreement and in respect of any additional time spent or costs incurred by Core Five on the resumption of the performance of the Services following any suspension thereof under clause 8.1.

- 3.2 Core Five shall submit a valid VAT invoice for each interim or final instalment of the Basic Fees on the dates set out in The Fee Proposal or on the dates otherwise agreed in respect of any Additional Fees.
- 3.3 For the purposes of the Housing Grants, Construction and Regeneration Act 1996 the due date for payment of each instalment of the Fee whether interim or final shall be the date of issue by Core Five of a valid VAT invoice.
- 3.4 The final date for payment of each instalment of the Fee shall be 30 days from the date of issue by Core Five of a valid VAT invoice.
- 3.5 Not later than five (5) days from the due date for payment from the Client as specified in clause 3.4, the Client shall give notice to Core Five specifying the amount (if any) of the payment made or proposed to be made, and the basis on which that amount was calculated.
- 3.6 For the purposes of Section 111 of the Housing Grants, Construction and Regeneration Act 1996, the prescribed period for the giving of an effective notice of intention to withhold payment shall be five (5) days. Such notice of intention to withhold payment shall specify the amount which the Client proposes to withhold and the ground for it and if there is more than one ground the amount attributable to each of them. Where no such notice is given the amount to be paid is that stated in the invoice.

4. Licence

Subject to payment by the Client of all sums including any Fees properly due to Core Five under this Agreement, Core Five hereby grant and agree to grant to the Client with full title guarantee an irrevocable, royalty-free, non-exclusive non-assignable licence to use and reproduce all schedules, reports, calculations and other similar documents which have been or are to be prepared by Core Five or at its written request in connection with the Project ("**Proprietary Material**") for any purpose relating to the Project including without limitation the execution, completion, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project. Upon any termination of this Agreement, Core Five shall, upon receipt of payment of any Fee outstanding, deliver copies of all or any such Proprietary Material to the Client. Core Five shall not be liable for the use by the Client or any other party of any of the Proprietary Material for any purpose other than that for which it was prepared or provided by Core Five and the Client hereby indemnifies Core Five from and against any loss, damage, cost or expense sustained or incurred by Core Five as result of any such unauthorised use of any of the Proprietary Material.

5. Confidentiality

Core Five shall not without the prior written consent of the Client, which consent shall not be unreasonably delayed or withheld, disclose to any third party any confidential information relating to the Project save for where such disclosure is:

- 5.1. required by law;
- 5.2. necessary for Core Five to carry out its duties in relation to this Agreement;
- 5.3. necessary for Core Five to make full frank and proper disclosure to its insurers or intended insurers;
- 5.4. necessary for Core Five to obtain legal, taxation or accounting advice;
- 5.5. agreed in writing between the parties.

6. Assignment / Sub-Letting / Third Party Rights

6.1 Neither the Client nor Core Five shall assign the whole or any part of this Agreement without the consent of the other in writing, which consent shall not be unreasonably delayed or withheld. In the event that the Client intends to assign the benefit of this Agreement, Core Five shall not be obliged to give its written consent unless any such assignment takes place prior to practical completion and is for the sole purpose of completing the Project and until all fees of Core Five incurred and due pursuant to this Agreement prior to the date of the assignment have been paid, and the assignee has entered into contractual obligations direct with Core Five to be liable for all fees of Core Five that become due pursuant to this Agreement after the date of the assignment.

6.2 Core Five shall not sub-let any part of the services without the consent of the Client in writing, which consent shall not be unreasonably delayed or withheld.

6.3 Notwithstanding any other provision of this Agreement, nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

6.4 At the written request of the Client, Core Five shall execute a collateral warranty in favour of any Funder, First Purchaser or First Tenants of the whole of the Project in the form set out in the Appendix B. Core Five shall not be required by the terms of this clause 6.4 to execute any warranty in favour of any Tenant(s) of a residential leasehold unit at the Project.

7. Liability / Insurance / Indemnity

7.1 Nothing in this Agreement limits or excludes the liability of either Party for:

- 7.1.1 death or personal injury caused by negligence
- 7.1.2 fraud or fraudulent misrepresentation; and
- 7.1.3 any other liability which cannot be excluded or limited by law.

7.2 Notwithstanding anything to the contrary contained in this Agreement Core Five's liability to the Client under this Agreement shall be limited to the proportion of the Client's losses which it would be just and equitable to require Core Five to pay having regard to the extent of Core Five's responsibility for the same, on the following assumptions namely that:

- 7.2.1 all other Consultants shall be deemed to have provided contractual undertakings to the Client as regards the performance of their services on no less onerous terms than those contained in this Agreement;
- 7.2.2 the Building Contractor(s) shall be deemed to have provided a warranty to the Client in respect of the Works that it has carried out under the Building Contract(s) and that there

- are no limitations on liability as between the Contractor(s) and the Client under the Building Contract(s); and
- 7.2.3 that all those referred to in paragraphs 7.1.1 and 7.1.2 above shall be deemed to have paid to the Client such proportion of the Client's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Client's losses.
- 7.3 Subject to clause 7.1, Core Five shall have no liability for loss of production, loss of use, loss of opportunity, loss of contracts, loss of profits, loss of business, loss of revenue, losses related to delays, loss of goodwill, losses arising from pollution, contamination, date recognition or asbestos, nor for any indirect or consequential losses arising under or in connection with the performance or non-performance of this Agreement.
- 7.4 Subject to clause 7.1, Core Five's maximum liability to the Client under or in connection with this Agreement whether in contract or in tort or in negligence or breach of statutory duty or otherwise shall not exceed the amount set out in the Fee Proposal, or £2,000,000 in the aggregate if no such amount is set out in the Fee Proposal.
- 7.5 No action or proceedings whatsoever for any breach of this Agreement or arising out of or in connection with this Agreement whether in contract, negligence or tort or howsoever shall be commenced against Core Five after the expiry of six years from the date of this Agreement.
- 7.6 Without prejudice to its liabilities under this Agreement, Core Five shall take out with effect from the date of this Agreement and maintain until the expiry of six years from Practical Completion of the Project or termination of this Agreement whichever is the earlier a policy of professional indemnity insurance with a limit of indemnity of not less than the amount set out in the Fee Proposal or £2,000,000 if no such amount is set out in the Fee Proposal, for any one occurrence or series of occurrences arising out of any one event to cover any negligence, omission or error in the performance of the Services to the extent that such insurance is available in the market at commercially reasonable rates and terms. Such insurance shall be taken out and maintained with a well-established insurance office or underwriter of repute carrying out business in the United Kingdom and shall not be subject to abnormal exclusions or excess. Within 14 days of the Client's written request Core Five shall provide documentary evidence in the form of a broker's letter or verification certificate that such insurance is being maintained.
- 8. Suspension / Termination**
- 8.1 The Client may at any time, by giving twenty-eight (28) days' notice, require Core Five to suspend performance of the Services, but if the Services have not been resumed within a period of six (6) months from the date of such notice then either party may by written notice terminate this Agreement.
- 8.2 If either Party:
- 8.2.1 commits a material and persistent breach of its obligations under this Agreement which it fails to remedy within 28 days after receiving written notice from the other Party specifying the breach and requiring its remedy; or
- 8.2.2 are Insolvent,
- the other Party shall be entitled forthwith to terminate this Agreement by service of a written notice to the defaulting Party to that effect.
- 8.3 Upon any termination or suspension of this Agreement:
- 8.3.1 the Client shall pay all Fees outstanding for Services carried out in accordance with this Agreement up to the date of termination or suspension;

8.3.2 Core Five shall take such steps as are reasonable to bring to an end the Services under this Agreement and subject to the Client's compliance with clause 8.3.1 deliver to the Client copies of all documents in its possession relating to the Project.

8.4 Any termination or suspension of this Agreement shall be without prejudice to the accrued rights and remedies of either party in respect of any negligence, omission, or default of the other prior to such termination or suspension.

9. Complaints

In accordance with the requirements of the Royal Institution of Chartered Surveyors, Core Five maintains a complaints handling procedure. In the event that the Client has a complaint in respect of the performance by Core Five of the Services under this Agreement, without prejudice to any other remedy available under this Agreement, the Client shall be entitled to have access to the complaints handling procedure, a written copy of which is available on request from a Founding Partner of Core Five.

10. Dispute Resolution

10.1 Either party may at any time give notice to the other of its intention to refer any dispute or difference arising under this Agreement to adjudication in accordance with this clause 10.

10.2 The person who is to act as Adjudicator shall be nominated by the Royal Institution of Chartered Surveyors.

10.3 In the event that the Adjudicator is deceased, unable or unwilling to act, another Adjudicator shall be appointed on the application of either party by the President or a Vice-President for the time being of the Royal Institution of Chartered Surveyors.

10.4 The Adjudicator's decision shall be binding upon the parties unless and until the matter is finally determined by legal proceedings or by agreement.

10.5 If either party is dissatisfied with the decision of the Adjudicator, then:

10.5.1 the dispute may be determined by agreement between the parties; or,

10.5.2 the dispute may be referred at the instance of either of the parties to be determined by an arbitrator in accordance with clause 10.6 hereof.

10.6 Any dispute arising under this Agreement shall be referred at the instance of either of the parties to be determined by an arbitrator. The person who is to act as arbitrator shall be agreed between the parties within 28 days of the one giving notice of his wish to refer the dispute to an arbitrator or, failing agreement at the end of that period, shall be a person appointed by the President or a Vice-President of the Royal Institution of Chartered Surveyors at the instance of either party. The arbitration shall be conducted in accordance with the Construction Industry Model Arbitration Rules current at the time of entering into this Agreement and any timetable no more onerous than those contained in the Scheme for Construction Contracts referred to in the Housing Grants Construction and Regeneration Act 1996

11. Agreement

11.1 The headings and margin notes in this Agreement shall not be taken into consideration in the interpretation of this Agreement.

- 11.2 This Agreement embodies the complete and entire Agreement between the Client and Core Five and supersedes all previous agreements or correspondence between the Client and Core Five in connection with the Project. All services carried out by Core Five in connection with this Project prior to the date of this Agreement shall be deemed to have been carried out subject to the terms of this Agreement. The Client confirms that, in agreeing to enter into this Agreement, it has not relied on any representation except as set out herein and the Client agrees that it shall have no remedy in respect of any misrepresentation which has not become a term of this Agreement, excluding any fraudulent misrepresentation.
- 11.3 All notices, instructions, approvals, and consents to be given under this Agreement shall be in writing and delivered personally or sent by pre-paid first class recorded delivery post to the party at the address shown in this Agreement or to such an address as the other party may have specified from time to time by notice to each other. Such notice shall be deemed to have been received on the day of delivery if delivered personally and otherwise two (2) working days after the date when posted.
- 11.4 Where under this Agreement an act is required to be completed within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is Christmas Day, Good Friday, or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday that day shall be excluded.
- 11.5 Core Five has given commitments as to compliance of the Services with relevant specifications in clause 1.2. In view of these commitments, the terms implied by section 13 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded.
- 11.6 The definitions for terms used in this Agreement are set out in Appendix A.

12. Governing Law and Jurisdiction

Wherever the Client is resident or domiciled and wherever the Project is situated, 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 shall be governed by and construed in accordance with the law of England and Wales. 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 the Agreement or its subject matter or formation.

Appendix A

Definitions

'Additional Fees'	The fees payable by the Client for any Additional Services as calculated in accordance with the Fee Proposal including any changes made in accordance therewith or otherwise in accordance with Core Five's then current rates.
'Additional Services'	Any services in addition to the Basic Services agreed between the Parties in writing to be provided by Core Five and any services required under a third party agreement notified by the Client to Core Five after the date of this Agreement.
'Agreement'	The Fee Proposal accepted in accordance with its terms and these Conditions.
'Appointment'	The appointment of Core Five to provide the Services to the Client subject to the Agreement.
'Basic Fee'	The fee for the Basic Services.
'Basic Services'	The services as set out in the Fee Proposal.
'Building Contract'	The contract to be entered into between the Client and the Building Contractor in respect of the Works.
'Building Contractor'	The party engaged by the Client under the Building Contract.
'Completion Date'	The date for completion of the Project as set out in the Agreement.
'Conditions'	These terms and conditions and any schedules or appendices hereto.
'Core Five'	Core Five Consulting Limited, a limited liability company with company number (08089972) registered office at Granville House, 2 Tettenhall Road, Wolverhampton, West Midlands, England, WV1 4SB
'Consultants'	The parties other than Core Five engaged by the Client or who otherwise may be working on behalf of the Client to provide services which may include, but which shall not be limited to, architecture, engineering (structural, civils and services), planning matters, legal matters and the like, in relation to the Project.
'Consultancy Agreements'	The Agreements entered into between the Client and the Consultants.
'Fee'	The Basic Fee and the Additional Fee, which is the amount calculated in accordance with Appendix B including any changes made in accordance therewith.
'Fee Proposal'	The letter from Core Five to the Client setting out the proposed key terms of Core Five's Appointment with the Client, subject to these Conditions
'First Purchaser'	A person to whom the Client first transfers or agrees to transfer its interest in the Project or any substantial part thereof.
'First Tenants'	Persons to whom the Client first grants or agrees to grant a leasehold interest in a substantial part of the Project but excluding such an interest in a residential unit.
'Funder'	A person providing substantial finance in connection with the Project whether on its own account, as agent for a syndicate of other parties, or otherwise.

‘Insolvent / Insolvency’	<p>For the purposes of clause 7, insolvency on the part of either the Client or Core Five (either, for that clause only, "the defaulting party") shall include:</p> <ol style="list-style-type: none"> a. any distress or execution levied upon the defaulting party’s property or assets; b. the defaulting party making any composition or arrangement with his creditors; c. the defaulting party committing an act of bankruptcy which shall include any petition or order in bankruptcy being made against the defaulting party or if, being a company, the defaulting party makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 or if the defaulting party has an application made under the Insolvency Act 1986 in respect of his company to the Court for the appointment of an administrator or has any petition or resolution to wind up his business (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) passed or presented; or the defaulting party having a provisional liquidator, receiver, administrative receiver or manager appointed to his undertaking, property or assets or any part of them
‘Practical Completion’	As provided in the JCT Standard Forms of Contract or the equivalent under other forms of contract.
‘Programme’	The programme for the Basic Services setting out the dates by which the Basic Services are to be carried out based on the Completion Date and otherwise on the key dates or sections for the Works as set out in Appendix A.
‘Project’	as set out in the Fee Proposal.
‘Required Standard of Skill and Care’	all the reasonable skill, care and diligence to be expected of a qualified and experienced cost consultant undertaking the Services on works similar in scope and character to the Project.
‘Services’	The Basic Services as described in Appendix A and the Additional Services.
‘Working Day’	Means Monday to Friday inclusive but excluding Christmas Day, Good Friday and a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales.
‘Works’	The work that the Building Contractor(s) performs under the Building Contract(s).

Appendix B

Collateral Warranty

This deed is dated [DATE]

PARTIES

- (1) CORE FIVE CONSULTING LIMITED registered in England and Wales with registration number 08089972 whose principal office is at Granville House, 2 Tettenhall Road, Wolverhampton, West Midlands, WV1 4SB (the **Consultant**)
- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Beneficiary**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Client**)

BACKGROUND

- (A) The Client has engaged the Consultant to perform the Services in relation to the Project.
- (B) The Beneficiary, as [Funder] or [First Purchaser] or [First Tenant].
- (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.

AGREED TERMS

1. Interpretation

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

1.1 Definitions:

Appointment: an agreement in writing dated *(Date)* between the Consultant and the Client.

Building Contractor: as defined in the Appointment

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

First Purchaser: the first purchaser of the whole or any part of the Project or the completed Project or the whole or any part of the Property or related site.

First Tenant: a first tenant of the whole or any part of the Project

Funder: a person that has provided, or is to provide, finance in connection with the whole or any part of the Project or the completed Project or the whole or any part of the Site, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

Material: all or any reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided by the Consultant in connection with the Project and all updates, amendments, additions and revisions to them.

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.

Practical Completion: as defined in the Appointment.

Programme: the programme, as defined in the Appointment.

Project: the project, as defined in the Appointment.

Property: the property, in relation to which the Services are provided.

Required Standard of Skill and Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced professional undertaking the Services on works similar in scope and character to the Project.

Services: the services referred to in the Appointment, performed or to be performed by or on behalf of the Consultant under the Appointment.

Third Party Agreement: any agreement between the Client and a third party relating to the Project and of which a copy, or relevant extract, is attached to the Appointment or has been provided to the Consultant in writing after the date of the Appointment.

Works: as defined in the Appointment.

- 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 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 agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 Unless expressly provided otherwise in this agreement, reference to legislation or a legislative provision includes a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless expressly provided otherwise in this agreement, 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 includes 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 construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Compliance with Appointment

- 2.1 The Consultant warrants to the Beneficiary that it has complied, and shall continue to comply, with its obligations under the Appointment, including its obligations to exercise and to continue to exercise the Required Standard of Skill and Care when performing the Services.
- 2.2 In complying with Clause 2.1, the Consultant shall owe no greater obligations to the Beneficiary under this agreement than it owes to the Client under the Appointment.
- 2.3 In proceedings for breach of Clause 2.1, the Consultant may:
- (a) rely on any limit of liability or other term of the Appointment; and
 - (b) 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 Appointment (for this purpose not taking into account any set off or counterclaim against the actual client under the Appointment).
- 2.4 The Beneficiary hereby acknowledges and agrees with the Consultant that, in performing the Services, the Consultant shall have no liability or responsibility for the design of the Project or the fitness for purpose thereof, the specification or choice or fitness for purpose of any materials used in the construction thereof (save in respect of advice requested on the cost of materials), the workmanship and/or operational methods employed therein, the supervision of construction in relation thereto, the inspection acceptance and approvals given or made in relation to the construction thereof, health and safety provisions on the site or such instructions or information as may from time to time in or about the Project be given to the Consultant by the Client and/or any other consultant(s) retained by the Client in connection with the Project.

3. Step-in Rights

- 3.1 Subject to Clause 3.5, the Consultant shall not exercise, or seek to exercise, any right to terminate its employment under the Appointment for any reason (including any breach on the part of the Client) without giving the Beneficiary at least three 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 The Consultant's right to terminate its employment under the Appointment shall cease if, within the period referred to in Clause 3.1, the Beneficiary gives notice to the Consultant, copied to the Client:
- (a) requiring the Consultant not to terminate its employment under the Appointment; and
 - (b) acknowledging that the Beneficiary (or its nominee) will assume all the Client's obligations under the Appointment; and
 - (c) undertaking that the Beneficiary or its nominee will pay to the Consultant:
 - (i) within three Business Days any sums then due and payable to the Consultant under the Appointment that are unpaid; and
 - (ii) any sums that may subsequently become due and payable to the Consultant under the Appointment.

3.3 If the Beneficiary (or its nominee) serves notice on the Consultant under 3.2, then, from the date of service of the notice, the 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).

3.4 In complying with this Clause 3, the Consultant:

- (a) does not waive any breach of, or default under, the Appointment by the Client; and
- (b) may exercise its right to terminate its employment under the Appointment after the expiry of the notice period referred to in Clause 3.1, unless the Consultant's right to terminate has ceased under

3.2

3.5 If 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 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:

- (a) the Consultant shall no longer be bound by Clause 3.1 and 3.2; and
- (b) the Beneficiary may no longer exercise its rights under Clause 3.

3.6 Subject to Clause 3.5 and without affecting Clause 3.1, if the Beneficiary serves a notice on the Consultant, copied to the Client, that:

- (a) confirms that the Beneficiary wishes to step-in to the Appointment; and
- (b) complies with the requirements for a Beneficiary's notice under Clause 3.2,

then, from the date of service of the notice, the 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.

3.7 The Consultant shall assume that, between the Client and the Beneficiary, the Beneficiary may give a notice under Clause 3.6. The Consultant shall not enquire whether the Beneficiary may give that notice.

3.8 In complying with Clauses 3.6 and 3.7 the Consultant does not waive any breach of the appointment or default under the Appointment by the Client.

3.9 The Consultant shall not incur any liability to the Client by acting in accordance with Clause 3.

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

3.11 If a Beneficiary's notice under Clause 3 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.

4. No instructions to Consultant by Beneficiary

Unless the Beneficiary has stepped-in under Clause 3, the Beneficiary may not give instructions to the Consultant under this agreement.

5. Copyright

5.1 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, 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.

5.2 This licence carries the right to grant a maximum of 2 sub-licences without the consent of the Consultant.

- 5.3 This licence may be assigned by the Beneficiary on two occasions only without the consent of the Consultant.
- 5.4 The Consultant shall not be liable for use of the Material by the Beneficiary or any of its sub-licensees or assignees for any purpose other than that for which it was prepared and/or provided and the Beneficiary hereby indemnifies the Consultant from and against any loss, damage, cost or expense incurred or sustained by the Consultant as a result of any such improper use of the Material by the Beneficiary or any of its sub-licensees or assignees.
- 5.5 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.

6. Professional indemnity insurance

- 6.1 The Consultant shall maintain professional indemnity insurance for an amount of at least **£X,000,000** for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this Agreement and ending six years after the date of the earlier of Practical Completion or the termination of the Appointment, provided that such insurance is available to the Consultant at commercially reasonable rates and terms.
- 6.2 The Consultant shall maintain such professional indemnity insurance with reputable insurers lawfully carrying on insurance business in the UK on customary and usual terms and conditions prevailing for the time being in the insurance market.
- 6.3 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, 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.
- 6.4 Whenever the Beneficiary reasonably requests (but on no more than one occasion in each insurance year) the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force.

7. Liability

- 7.1 The Consultant's maximum aggregate liability to the Beneficiary under or in connection with this Agreement, whether in contract or in tort or in negligence or breach of statutory duty or otherwise (other than in respect of death or personal injury caused by the Consultant's negligence) shall not exceed in the aggregate the limit of the Consultant's liability to the Client as set out in the Appointment and subject to any exclusions liability set out therein, provided that this clause 7.1 shall not exclude or limit the Consultant's liability for:
- 7.1.1 death or personal injury caused by the Consultant's negligence; or
- 7.1.2 fraud or fraudulent misrepresentation.
- 7.2 The Consultant shall have no liability for loss of production, loss of profits, loss of business, loss of revenue, loss of goodwill or for losses related to delays nor for any indirect losses or consequential damages arising under or in connection with the performance or non-performance of this Agreement.
- 7.3 The Beneficiary may not commence any legal action against the Consultant under this Agreement after six years from the date of the earlier of the practical completion of the Project or the termination of the Appointment.

7.4 Notwithstanding anything to the contrary contained in this Agreement the Consultant's liability under this Agreement shall be limited to the proportion of the Beneficiary's losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same, on the following assumptions namely that:

- 7.2.1 all other consultants in relation to the Project shall be deemed to have provided contractual undertakings to the Beneficiary as regards the performance of their services on no less onerous terms than those contained in this Appointment;
- 7.2.2 the Building Contractor(s) (as defined in the Appointment) shall be deemed to have provided a warranty to the Beneficiary in respect of the Works that it has carried out under the Building Contract(s) and that there are no limitations on liability as between the Contractor(s) and the Client under the Building Contract(s); and
- 7.2.3 that all those referred to in paragraphs 7.1.1 and 7.1.2 above shall be deemed to have paid to the Beneficiary such proportion of the Beneficiary's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Beneficiary's losses.

8. Assignment

- 8.1 Where the Beneficiary is a Funder, the Beneficiary may assign the benefit of this agreement on two occasions only without the consent of the Consultant to any person with an interest in the Project. Where the Beneficiary is a First Tenant or First Purchaser, the Beneficiary may not assign the benefit of this agreement.
- 8.2 The Beneficiary shall notify the Consultant in writing of any assignment.
- 8.3 The Consultant shall not contend that any person to whom the benefit of this Agreement is assigned under Clause 8.1 may not recover any sum under this Agreement because that person is an assignee and not a named party to this Agreement.

9. Notices

- 9.1 A notice given to a party under or in connection with this agreement shall be in writing and sent to the party at the address given in this agreement or as otherwise notified in writing to the party giving notice under or in connection with this agreement for that purpose.
- 9.2 This Clause 9.2 sets out the delivery methods for sending a notice to a party under this agreement and, for each delivery method, the date and time when the notice is deemed to have been received (provided that all other requirements of this clause have been satisfied and subject to the provision in Clause 9.3):
 - (a) if delivered by hand, at the time the notice is left at the address;
 - (b) if sent by pre-paid first class post or other next working day delivery service providing proof of delivery, at 9.00am on the second Business Day after posting.
- 9.3 If deemed receipt under Clause 9.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this Clause 9.3, 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.
- 9.4 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.
- 9.5 A notice given under this agreement is not valid if sent by email.

11. 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.

12. 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.

13. 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.

Attestation

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

Executed under hand on behalf of Core Five Consulting Limited

by a Director:

.....
[Signature / Print Name]

by a Director:

.....
[Signature / Print Name]

In the presence of:

.....
[Witness Signature / Print Name]

.....
[Witness Address / Occupation]

Executed under hand on behalf of **[NAME OF BENEFICIARY]**

by a Director:

.....
[Signature / Print Name]

by a Director / Secretary:

.....
[Signature / Print Name]

In the presence of:

.....
[Witness Signature / Print Name]

.....
[Witness Address / Occupation]

Executed under hand on behalf of **[NAME OF CLIENT]**

by a Director:

.....
[Signature / Print Name]

In the presence of:

.....
[Witness Signature / Print Name]

.....
[Witness Address / Occupation]