

7 Extraneous rights

- 7.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Contractor to the Beneficiary.
- 7.2 No approval or inspection of the Works or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Contractor arising under this Deed.

8 Rights, Defences and exclusions

- 8.1 Subject to clause 8.4, the duties owed by, and the liability of, the Contractor to the Beneficiary under or in connection with this Deed shall be no wider or greater than the duties and liabilities the Contractor would have had to the Beneficiary for such matter under the Construction Contract (and there shall be available to the Contractor any equivalent rights of defence that would have been available under the Construction Contract), if in lieu of this Deed, the Beneficiary had been named as the Contractor's joint employer with the Employer under the Construction Contract, excluding any set-off or counterclaim available against the Employer.
- 8.2 The Contractor shall not be entitled to rely under this Deed upon any set-off or counterclaim available against the Employer, that does not arise from or in connection with the Construction Contract.
- 8.3 [The exclusion of set-off or counterclaim effected by clause 8.1 shall not apply if the Beneficiary has served a Step-in Notice under clause 3 ([Substitution provisions]).]
- 8.4 The Contractor hereby acknowledges that the Contractor shall not be entitled to contend that:
- (a) the Beneficiary is precluded from recovering any loss arising from the Contractor's breach of its obligations under this Deed and/or following the issue of a Step-in Notice under clause 3 (Substitution provisions) any loss and/or liquidated damages for delay for which the Contractor is liable under the Construction Contract; or
 - (b) the Employer is precluded from recovering any loss and/or any liquidated damages for delay under the Construction Contract for which the Contractor is liable under the Construction Contract,

by reason (as the case may be) of the Beneficiary not being the original employer under the Construction Contract and/or or by reason that the Employer recovers such loss and/or liquidated damages under the Construction Contract for the benefit of the Beneficiary and not in its own right or that, but for this requirement, the Employer would have suffered no loss under the Construction Contract.

[Clause 8.3 applies only if the substitution provisions are included]

9 Liability

The Contractor shall have no liability under this Deed for any delay in relation to the carrying out and/or completion of the Works [unless or until the Beneficiary has given notice to the Contractor under clause 3.1 to 3.3¹].

¹ To be included in Mortgagee and the Council of the City of Manchester warranty.

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

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

11 **Expiry of warranty**

No proceedings shall be commenced against the Contractor under this Deed more than 12 years after the Practical Completion of the Works under the Construction Contract (or, if earlier, more than 12 years after the employment of the Contractor under the Construction Contract is terminated).

12 **Service of notice**

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being and marked for the attention of the Company Secretary. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

13 **Governing law and interpretation**

- 13.1 The law of this Deed is English law and the English courts shall (save for the purposes of enforcing a judgement of the English courts in another jurisdiction) have exclusive jurisdiction with regard to all matters arising under it.
- 13.2 Whilst ultimately a matter of statutory interpretation, the parties to this Deed do not intend for it to constitute a construction contract for the purposes of the Housing Grants, Construction & Regeneration Act 1996, or for either party to have any right to refer disputes (arising under or in connection with this Deed) to statutory adjudication.
- 13.3 The Project Data are part of this Deed and the definitions given in the Project Data and in the Recitals apply to this Deed.
- 13.4 In this Deed:
- (a) **Development** includes part of the Development;
 - (b) **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in s1159, Companies Act 2006, (as amended);
 - (c) **person** includes a firm and any entity having legal capacity;
 - (d) **Practical Completion of the Works under the Construction Contract** means the date practical completion of the Works is achieved under the Construction Contract as stated in the Practical Completion Statement issued under the Construction Contract or, where the Works are to be completed in Sections under the Construction Contract, the date practical completion of the last Section is achieved under the Construction Contract as stated in the last Section Completion Statement issued in respect of the Works under the Construction

Contract and for the purposes of this definition **Practical Completion Statement, Section** and **Section Completion Statement** shall have the meanings provided for in the Construction Contract;

- (e) any term importing gender shall include any gender;
- (f) any term importing the singular includes the plural and vice versa;
- (g) any reference to any clause or schedule is a reference to such clause or schedule of or to this Deed; and
- (h) any reference to any legislation means such legislation as amended, supplemented or re-enacted for the time being and from time to time.

13.5 Clause headings do not form part of nor affect the interpretation of this Deed.

Executed and delivered as a deed:

Executed as a deed and delivered by)
♦ acting by a director) Director
in the presence of:)
) Name

.....
Witness

.....
Name

Executed as a deed and delivered by)
[the Beneficiary] acting by a director in the) Director
presence of)
) Name

.....
Witness

.....
Name

Executed as a deed and delivered by)
♦ acting by a director in the presence of:) Director
)
) Name

.....
Witness

.....
Name

SCHEDULE B
Form of Consultant Warranty

Dated

20[•]

XXXXXXX
[BENEFICIARY]
[CONTRACTOR]

**CONSULTANT'S DEED OF
WARRANTY**
in favour of [developer]
[mortgagee] [purchaser]
[tenant] of a development at
St Michael's, Jackson's Row,
Manchester

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Appendix 1

Plan of Site

Appendix 2

Deed of warranty

3.1 The Consultant shall not:

The Appendix

[Alternative clause 4.1]

Appendix 3

Third Party Rights

Project Data	
Date of this Deed	◆
Contractor	
Consultant	XXXXXXXX (No. XXXXXXX) whose registered office is at XXXXXXXXXXXXXXXXXXXX
Contractor	◆ (No. ◆), registered office ◆.
Beneficiary	◆ (No. ◆), registered office ◆.
Consultant's profession	TBC
Development	St Michael's
Site	Jackson's Row, Manchester
Date of Appointment	◆
Date of Building Contract	◆
[Date of Novation]	◆
Beneficiary's interest	[Developer]
	[Mortgagee]
	[Purchaser of [◆ forming part of] the Development]
	[Tenant of [◆ forming part of] the Development]
Clause 2: (Professional indemnity insurance)	◆ ⁷
	(a) Limit of indemnity: not less than £◆,000,000.00 for any claim or claims arising out of each originating cause.
	(b) Excess: not exceeding £◆,000.00.

⁷ See provisions (if any) in the Appointment for additional classes of Beneficiary.

Parties

- (1) The Consultant
- (2) The Beneficiary
- (3) [The Contractor]

Whereas

- (A) The Contractor and the Consultant have entered into an appointment (**Appointment**) under which the Consultant has agreed to perform certain services (**Services**) and to perform certain other obligations in connection with the Development (which expression includes the Site and the works (**Works**) constructed or to be constructed on or adjacent to the Site or either of them as the case requires).
- (B) The Developer and the Contractor have entered into a building contract (**Building Contract**) under which the Contractor has agreed to design or complete the design of and to construct the Works.

It is agreed in consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Consultant acknowledges, as follows:

1 Duty of care

The Consultant warrants to the Beneficiary that it has performed and/or subject to the terms of the Appointment shall perform the Services and its other obligations under the Appointment, and that in doing so it has used and/or shall use all the professional skill and care and diligence reasonably to be expected of suitably qualified and experienced consultants undertaking duties similar to the Services in relation to projects similar to the Development.

2 Professional indemnity insurance

2.1 The Consultant warrants to the Beneficiary that there is in force a policy of professional indemnity insurance covering the liabilities of the Consultant for negligence under the Appointment and this Deed, conforming to the relevant requirements specified in the Project Data. The Consultant agrees to maintain such insurance at all times until 12 years after the practical completion of the Development under the Building Contract (or if sooner until 12 years after the termination of the employment of the Consultant under the Appointment), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable.

2.2 If for any period such insurance is not available on commercially reasonable terms, the Consultant shall forthwith inform the Beneficiary, and shall obtain in respect of such period such

reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.

- 2.3 Whenever reasonably required to do so by the Beneficiary, the Consultant shall provide to the Beneficiary documentary evidence that the insurance required under this Deed is being maintained.

3 [Substitution provisions]

- 3.1 The Consultant shall not:

- (a) terminate its employment;
- (b) treat its employment as having been terminated; or
- (c) suspend the performance of the Services,

under the Appointment (**Discontinue**) without giving the Beneficiary not less than 28 days' notice of the Consultant's intention to Discontinue, specifying the grounds for the discontinuance.

- 3.2 If the Beneficiary gives the Consultant notice requiring it to accept the instructions of the Beneficiary or its appointee under the Appointment, to the exclusion of the Contractor (**Step-in Notice**), the Consultant:

- (a) shall not Discontinue; and
- (b) shall comply with the Step-in Notice.

- 3.3 A Step-in Notice may be served, whether or not the Consultant has previously served notice under clause 3.1, but not after the notice period under clause 3.1 has expired.

- 3.4 As against the Contractor and the Beneficiary, the Consultant shall be entitled and obliged to rely upon and to comply with any Step-in Notice, and shall not make any enquiry into the entitlement of the Beneficiary as against the Contractor to serve the Step-in Notice.

- 3.5 As from the date of service of a Step-in Notice (**Step-in Date**), the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Contractor under the Appointment, provided that this shall not affect or derogate from any right of action the Contractor may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening before the Step-in Date.

- 3.6 Within 21 days after the Step-in Date, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under the Appointment.

- 3.7 Service of a Step-in Notice does not affect the right of the Consultant to Discontinue on account of any breach of duty of the Beneficiary or its appointee after the Step-in Date.

- 3.8 If the employment of the Consultant under the Appointment is terminated before service of any Step-in Notice, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Consultant an amount equal

to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under the Appointment.

- 3.9 The Beneficiary guarantees to the Consultant the performance of the obligations of any appointee of the Beneficiary nominated under clause 3.2 or 3.8.
- 3.10 If, before the service of any Step-in Notice under this Deed, any other person exercises any similar right to step into the Appointment to the exclusion of the Contractor, in accordance with any other agreement entered into pursuant to any term of the Appointment, this clause 3 shall cease to have effect.
- 3.11 The Contractor agrees to the provisions of this clause 3.]

[Note: Clause 3 shall be included in warranty in favour of favour of the Developer]

4 Deeds of warranty

- 4.1 [Version A – applicable where Beneficiary is the Developer]

The Consultant and the Contractor shall, as the Beneficiary may at any time or times require, each promptly execute and deliver a deed or deeds of warranty in terms of this Deed, mutatis mutandis, in favour of:

- (a) Mortgagees and/or Purchasers, but substituting for this clause 4.1, the text given in the appendix; and
- (b) Tenants, but excluding clause 3 ([Substitution provisions]) and this clause 4.

[OR]

[Version B – applicable where Beneficiary is a Mortgagee or a Purchaser]

The Consultant shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of Purchasers and/or Tenants, in the terms of this Deed, mutatis mutandis, but excluding the terms of clause 3 ([Substitution provisions]) and of this clause 4.

[Note: Clause 4.1 Version B shall be included in warranties in favour of Mortgagees and/or Purchasers if the Contractor shall so require.]

- 4.2 If the Consultant and/or the Contractor fails to execute and deliver any deed pursuant to clause 4.1 within 7 days of the Beneficiary's request, the Beneficiary may execute such deed on behalf of the party in default and the Consultant and the Contractor each hereby appoints the Beneficiary as its attorney for the purpose of executing any such deed. The Consultant and the Contractor each agrees to ratify and confirm any act done by the Beneficiary pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4 of the Powers of Attorney Act 1971.]

[Note: Clause 4 is not applicable to warranties in favour of Tenants.]

5 Assignment

- 5.1 The entire rights and benefit of the Beneficiary under this Deed may be:

- (a) charged to any Mortgagee;
- (b) assigned as security to any Mortgagee (and may be re-assigned on redemption);
- (c) assigned by absolute assignment to any Group Company of the Beneficiary; and
- (d) assigned by absolute assignment on two other occasions only.

5.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Deed to another trustee of the same trust.

5.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees, but not so as to permit more than two assignments under clause 5.1(c).

6 Copyright

6.1 [The Consultant grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Consultant under the Appointment and any designs contained in them (Documents) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Consultant.] **[Applies if the consultant is providing design services]**

[OR]

[The Consultant grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce all documents produced by the Consultant pursuant to the Appointment (Documents) for any purpose connected with the Development and to grant sub-licences in terms of this licence, but copyright in the Documents shall remain vested in the Consultant.] **[Applies if the consultant is not providing design services]**

6.2 The Consultant will not be liable for any use of the Documents for any purposes other than those for which they are or were produced.

6.3 The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Consultant with full and proper copies of the Documents.]

6.4 The Consultant warrants to the Beneficiary that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

6.5 [The Consultant agrees to waive any right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 80 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.] **[Applies only if the consultant is providing design services]**

7 Extraneous rights

7.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Consultant to the Beneficiary.

7.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Deed.

8 Defences and exclusions

8.1 In any claim under this Deed for breach of clause 1 (Duty of care) there shall be available to the Consultant any defence that:

- (a) arises from or in connection with the Appointment; and
- (b) would have been available if the claim had been brought by the Contractor under the Appointment,

excluding any set-off or counterclaim available against the Contractor.

8.2 The Consultant shall not be entitled to rely under this Deed upon any set-off or counterclaim available against the Contractor, that does not arise from or in connection with the Appointment.

8.3 [The exclusion of set-off or counterclaim effected by clause 8.1 shall not apply if the Beneficiary has served a Step-in Notice under clause 3 ([Substitution provisions).] **[Clause 8.3 applies only if the substitution provisions are included]**

9 Contracts (Rights of Third Parties) Act 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

10 Expiry of warranty

No proceedings shall be commenced against the Consultant under this Deed⁹ more than 12 years after the practical completion of the Development under the Building Contract (or, if earlier, more than 12 years after the employment of the Consultant under the Appointment is terminated).

11 Service of notice

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

12 Governing law and interpretation

12.1 The law of this Deed is English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.

12.2 The Project Data are part of this Deed and the definitions given in the Project Data and in the Recitals apply to this Deed.

12.3 In this Deed:

- (a) **Developer** means the employer under the Building Contract;
- (b) **Development** includes part of the Development;

⁹ Other than proceedings for the purposes of para. 23(2) of the Scheme for Construction Contracts (*final determination of a dispute decided by an adjudicator*), if applicable.

- (c) **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in s1159, Companies Act 2006, (as amended);
 - (d) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it;
 - (e) **person** includes a firm and any entity having legal capacity;
 - (f) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;
 - (g) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).
 - (h) any term importing gender shall include any gender;
 - (i) any term importing the singular includes the plural and vice versa; and
 - (j) any reference to any clause or Schedule or Appendix is a reference to such clause or Schedule or Appendix of or to this Deed.
- 12.4 For the purposes of clause 1 (Duty of care), references to the Appointment include any previous appointment of the Consultant by the Contractor (whether or not in writing) to provide services of the kind mentioned in the Appointment in connection with the Development.
- 12.5 Clause headings do not affect the interpretation of this Deed.

Executed and delivered as a deed:

Executed as a deed and delivered by
XXXXXXXXXXXXXXXXXX acting by a director in the
presence of

)
) Director
)
) Name

.....
Witness

.....
Name

[Executed as a deed and delivered by
[the Beneficiary] acting by a director in the
presence of

)
) Director
)
) Name

.....
Witness

.....
Name]

[Executed as a deed and delivered by
[the Contractor] acting by a director in the
presence of

)
) Director
)
) Name

.....
Witness

.....
Name]

The Appendix

[Alternative clause 4.1]

- 4.1 The Consultant shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of Purchasers and/or Tenants, in terms of this Deed, mutatis mutandis, but excluding the terms of clause 3 ([Substitution provisions) and of this clause 4 (Deeds of warranty).

[Note: Appendix to be included in the warranty in favour of the Developer only]

SCHEDULE C
Form of Consultant Appointment

Dated **20[.]**

BOWMER & KIRKLAND LIMITED

XXXXXXXXXXXXXXXXXX

**APPOINTMENT OF [TBC]
relating to a development at
St Michael's, Jackson's Row,
Manchester**

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Appendix 2

Deed of warranty

Appendix 3

Third Party Rights

This Appointment is made

20[.]

Between

- (1) **Bowmer and Kirkland Limited** (No. 00701982) whose registered office is at High Edge Court Church Street, Heage, Belper, Derbyshire, DE56 2BW (**Contractor**); and
- (2) **XXXXXXXXXXXXXX** (No. XXXXXX) whose registered office is at XXXXXXXXXXXXXXXXXXXX (**Consultant**).

Whereas

- (A) The Contractor intends to carry out the Development at the Site.
- (B) The Consultant is in practice as [TBC].
- (C) The Contractor wishes to appoint the Consultant in connection with the Development.
- (D) The Contractor and the Developer propose to enter into a Building Contract or several of them for the construction of the Works.

It is agreed

1 Definitions and interpretation

1.1 In this Appointment:

Bank Holiday means a Christmas Day, Good Friday or day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales

Building Contract means a construction contract for the carrying out of the Works or any part of the Works

Building Regulations means the Building Act 1984 and all relevant subordinate legislation made under that Act

CDM Regulations means the Construction (Design and Management) Regulations 2015

Construction Act 1996 means Part II, Housing Grants, Construction and Regeneration Act 1996

Consultant's Team Leader means the person named as such in the Project Data or any other person appointed to that position in accordance with clause 13 (Consultant's Team)

Contractor's Representative means the person named as such in the Project Data or any other person appointed to that position in accordance with clause 12 (Contractor's Representative)

Developer means the employer under the Building Contract

Development means the development briefly described in the Project Data, or, as the case requires, means Site and/or the Works

Documents is defined in clause 21.1 (Documents)

Group Company means in relation to any company, another body corporate which is a Subsidiary of, or a Holding Company of, or another Subsidiary of a Holding Company of that company; **Holding Company** and **Subsidiary** have the meanings ascribed thereto by section 1159 Companies Act 2006 save that the condition in section 1159(1)(a) shall be deemed to be satisfied if that other holds more than one quarter in nominal value of the company's equity share capital

Insolvent and related terms derive their meaning from section 113, construction Act 1996

Lease means the lease entered into or to be entered into between the Developer and the Council of the City of Manchester in relation to the Development

Mortgagee means a person providing finance in relation to the Development and/or having or acquiring a mortgage or charge over the Development or part of the Development

Parties means the Contractor and the Consultant

Plan means the plan in Appendix 1 (Plan of Site)

Planning Act means the Town and Country Planning Act 1990

Prohibited Materials means any materials:

- (a) which by their nature or application contravene any British Standard or EU equivalent
- (b) which contravene the recommendations of the British Council for Offices' publication *Good Practice in the Selection of Construction Materials* (2011) or
- (c) which are generally considered to be deleterious within the building design professions in the UK

Project Data means the project data in Schedule 2

Purchaser means a person having or acquiring a freehold interest in (or in part of) the Development or a purchaser for a capital consideration of a leasehold interest in (or in part of) the Development but in respect of the element of residential development this shall not include an individual residential purchaser but shall include a purchaser of Residential Units which exceed a cumulative value of £2 million

Services means the services to be performed by the Consultant as set out in Schedule 1 together with any additional services to be performed

Skill and Care means the professional skill and care and diligence reasonably to be expected of duly qualified and experienced consultants undertaking services and other duties similar to those to be performed under this Appointment in relation to projects similar in scale and character to the Development

Site means the land the approximate extent of which is shown on the Plan

Tenant means a person having or acquiring a leasehold interest in (or in part of) the Development (other than a Purchaser)

Third Party means:

- (a) any Mortgagee;
- (b) any Purchaser;

- (c) any Tenant;
- (d) any Group Company of the Contractor;
- (e) the Council of the City of Manchester, and
- (f) any other party with an interest in the Development, as notified by the Contractor to the Consultant.

Third Party Agreements means the Building Contract, any contracts entered into by the Developer and/or a Group Company and/or the Contractor with any consultant and/or contractor and any funding agreements, development agreements, sale contracts, agreements for lease, statutory agreements, licences and/or any other agreements that the Developer and/or a Group Company and/or the Contractor may enter into with any third party in respect of the Development and the term Third Party Agreement shall mean any such contract, agreement or licence²

Working Day means any day other than a Bank Holiday

Work Stage means a work stage in Schedule 1 (Services)

Works means the construction works and any remediation works, demolition, enabling works and off-Site and ancillary works required for the carrying out of the Development

1.2 In this Appointment:

- (a) where the context admits, the singular includes the plural and vice versa and any gender includes any other gender;
- (b) any reference to any person includes a firm and any entity having legal capacity;
- (c) any reference to any enactment includes any subordinate legislation made under that enactment and any statutory consolidation, re-enactment, amendment or replacement of such enactment; and
- (d) save where a contrary intention appears, any reference to any clause or Schedule or Appendix is a reference to such clause or Schedule or Appendix of or to this Appointment.

1.3 In Schedule 1 (Services), expressions in the first person (we, our, etc.) relate to the Contractor; expressions in the second person (you, your, etc.) relate to the Consultant.

1.4 Clause headings do not form part of or affect the interpretation of this Appointment.

2 Services

2.1 The Consultant shall perform in relation to the Development the Services in Schedule 1 (Services).

2.2 The Consultant shall perform in relation to the Development such additional services within the discipline and competence of the Consultant as the Contractor reasonably instructs in writing.

² Third Party Agreements to be listed, and to include all relevant Mortgagee standards and requirements, including in respect of compliance with anti-corruption, modern slavery and environmental standards.

Subject to clause 25 (Remuneration) the Consultant shall be entitled to additional remuneration for services provided pursuant to this clause 2.2.

- 2.3 The Contractor may give instructions to the Consultant to omit any of the Services.
- 2.4 The Consultant shall have regard to any obligations on the part of the Developer and/or any Group Company and/or the Contractor contained in the Third Party Agreements provided that relevant extracts setting out such obligations have been provided to the Consultant before the date of this Appointment. The Consultant warrants that:
- (a) it has performed and will continue to perform the Services and its other duties and obligations under this Appointment in such a manner and at such times that no act, omission or default of the Consultant in relation thereto shall constitute, cause or contribute to any breach by the Developer and/or any Group Company and/or the Contractor of any of its obligations in the Third Party Agreements;
 - (b) it shall comply with procedures laid down in the Third Party Agreements for the drawdown of funding and for (or approval of) designs, changes in design, specification or materials and for the inspection of the Development prior to practical completion or completion of making good of defects under the Building Contract and for similar matters;
 - (c) it shall comply with any procedures laid down in the Third Party Agreements for the approval by any third party of any designs, specifications and other design documents prepared in respect of the Development and for (or approval of) changes in design, specification or materials;
 - (d) exercising the Skill and Care the Development will be procured in line with the Developer's and/or any Group Company's and/or the Contractor's obligations under the Third Party Agreements;
 - (e) exercising the Skill and Care, the design of all elements of the Development for which it is responsible will comply with the Developer's and/or the Contractor's obligations in respect of such design under the Third Party Agreements;
 - (f) it will provide such copy plans, drawings, specifications, reports, programmes and other documents prepared by or on behalf of the Consultant and such information and assistance as may be required by the Developer and/or the Contractor to fulfil the obligations under such Third Party Agreements within such time periods as may be provided for in the Third Party Agreements;
 - (g) it shall attend such meetings as may be required with such third parties as may be provided for in such Third Party Agreements; and
 - (h) it shall not and shall procure that its employees and sub-consultants shall not, save as required by law or as the Contractor may approve in writing, disclose the terms of such Third Party Agreements to any third party.
- 2.5 Where extracts of any Third Party Agreement(s) are provided to the Consultant after the date of this Appointment, the Consultant shall in respect of such Third Party Agreement(s) comply with the obligations and warranties imposed upon the Consultant pursuant to clause 2.4, save that the Consultant shall not be required to comply with such obligations and warranties where the Consultant has within 7 days from receipt of such extracts notified the Contractor in writing of the reasons why and the extent to which it is unable to comply with the provisions of clause 2.5 in respect of such Third Party Agreement(s) disclosed after the date of this Appointment and

the Contractor has not instructed additional services under clause 2.2 to address the concerns raised by the Consultant in such notice.

3 Site

3.1 The Site is edged red on the Plan.

3.2 The Consultant shall perform any of the Services described in Schedule 1 (Services) required in connection with any ancillary works on land adjacent to the Site (such as highways, drainage or sewerage works) and in the performance of its Services the Consultant shall have regard to the requirement for such works.

4 Previous agreements

Any Services performed by the Consultant for the Contractor before the date of this Appointment in connection with the Development shall be treated as having been performed under the terms of this Appointment, which supersedes any previous agreement between the parties with regard to the Development³.

5 General information

The Contractor shall provide to the Consultant upon request all relevant information available to the Contractor relating to the title to the Site, rights of adjoining owners and other pertinent matters so far as necessary for the performance of the Consultant's duties under this Appointment, and the Consultant shall make all reasonable enquiries with regard to such matters.

6 Contractor's instructions

6.1 Subject to clause 12 (Contractor's Representative) the Consultant shall comply with all reasonable instructions of the Contractor given in writing under or in connection with this Appointment.

6.2 The Consultant shall obtain the written authority of the Contractor before commencing any Work Stage.

7 Duty of care

7.1 The Consultant warrants and undertakes that in the performance of its duties under this Appointment the Consultant has used and shall use Skill and Care.

7.2 The Consultant shall use Skill and Care to see that the design of all parts of the Works for which the Consultant has a responsibility under this Appointment complies with the Building Regulations and other statutory and regulatory requirements applicable to the Works.

7.3 The Consultant shall comply with its statutory duties under the CDM Regulations.

7.4 No inspection or approval or review by the Contractor or by any person acting on behalf of the Contractor nor any omission to inspect or review or to disapprove shall negate or diminish any duty or liability of the Consultant under or in connection with this Appointment.

8 Prohibited Materials

The Consultant shall use Skill and Care not to specify for use, and not to approve the use in the Development of any Prohibited Materials.

³ Amend if necessary, e.g. if there has been any relevant previous appointment for other services.

9 Budget and programme requirements

- 9.1 The Consultant shall have due regard in the performance of its Services to the Contractor's budget requirements for the Development. If the Consultant becomes aware of any circumstances which may cause those budget requirements to be exceeded, the Consultant shall inform the Contractor without delay.
- 9.2 Programme dates and completion dates for the Development have been established or may be established and made known to the Consultant and varied dates may be made known to the Consultant from time to time. Subject to the Consultant promptly making known to the Contractor any reasonable objections to such dates, the Consultant shall so provide all drawings, details, specifications, information and Services for which the Consultant is responsible under this Appointment as not to cause such dates to be exceeded.
- 9.3 The Consultant shall collaborate with the Contractor and the Contractor's other consultants to establish a co-ordinated programme for the production of the design of the Development and if necessary to revise such programme from time to time.
- 9.4 If at any time the Consultant is delayed or becomes aware of any circumstance which might prevent it from meeting programme requirements the Consultant shall forthwith inform the Contractor and propose any measures which may be practicable to recover the delay or to avoid or reduce the potential delay.
- 9.5 The Consultant shall comply with all reasonable instructions of the Contractor given for the purpose of achieving budget or programme requirements or minimising or recovering any cost overrun or delay.

10 Design changes

- 10.1 The Consultant shall not make or approve any alteration to any approved or settled design without the consent of the Contractor.
- 10.2 The Consultant shall keep the Developer's quantity surveyor informed on a day to day basis of all instructions, variations and design changes made or authorised by the Consultant.

11 Reporting requirements

- 11.1 The Consultant shall provide a monthly written report to the Contractor in the form set out in Schedule 1 (the Services) , reporting as to all matters within the Consultant's responsibility under this Appointment.³
- 11.2 The Consultant shall send to the Contractor on a day-to-day basis, copies of all correspondence and documents issued by the Consultant, and of all minutes of meetings produced by the Consultant relating to the Development.

12 Contractor's Representative

- 12.1 Subject to clause 12.2, all instructions to the Consultant shall be given by the Contractor's Representative.
- 12.2 The Contractor's Representative may from time to time appoint any other person to act as his deputy in connection with this Appointment. The Contractor's Representative shall notify the Consultant in writing of the appointment of any deputy and the scope of his authority and such

³ Compliance monitoring strategy to be confirmed.

deputy may give instructions to the Consultant within the scope of his authority so notified.

- 12.3 No person other than the Contractor's Representative or any deputy appointed under clause 12.2 shall have any authority to bind the Contractor under or in connection with this Appointment.

13 Consultant's Team

- 13.1 The Consultant's Team Leader shall be the person so described in the Project Data.

- 13.2 If the Consultant's Team Leader is unable to carry out his responsibilities, the Consultant shall consult the Contractor and appoint another member of the Consultant's staff approved by the Contractor to be the Consultant's Team Leader.

- 13.3 The responsibilities of the Consultant's Team Leader are:

- (a) to assume personal direction and control of the Consultant's Services;
- (b) to abstain from any other professional responsibilities which would or might impede or impair the performance of the Consultant's duties under this Appointment;
- (c) to prepare for and attend meetings and presentations for the purpose of marketing the Development to potential tenants, funders, investors and purchasers of or in the Development;
- (d) whenever necessary to prepare for and attend meetings with the relevant Town and Country Planning authorities, and other relevant authorities; and
- (e) to maintain direct and regular contact with the Contractor and the Contractor's other consultants on all matters pertaining to the Consultant's Services.

- 13.4 The Consultant shall appoint a deputy to be responsible for overall management, supervision and co-ordination of the Consultant's Services. The person to be appointed as deputy and any person appointed to replace him shall be agreed with the Contractor in advance, and shall not be replaced without the Contractor's consent in writing.

- 13.5 [During the construction period the Consultant shall provide resident site staff of a sufficient number and of sufficient qualifications and experience adequately to monitor the quality of construction and conformity to the requirements of the Building Contract.]⁴

- 13.6 The Contractor shall be informed in writing of the names, status and responsibilities of the Consultant's staff employed on the Development and the Consultant shall not change such personnel without the Contractor's prior written consent (such consent not to be unreasonably withheld).

14 Other consultants

- 14.1 The Contractor has appointed or proposes to appoint the other consultants listed in the Project Data. The Contractor may replace any such consultant with another consultant of the Contractor's choice and may appoint further consultants.

- 14.2 The Consultant shall afford the Contractor's other consultants its full co-operation at all levels, to facilitate the performance of the duties assigned to them, by all appropriate means, including but not limited to the provision of information and regular co-ordination meetings.

⁴ Delete if not applicable.

- 14.3 The Consultant shall fully consider and respond to all comments and suggestions of the Contractor's other consultants with regard to any matters of design or specification, or bearing upon the progress or administration or design or construction of the Development, and shall give due account to such comments and suggestions in the performance of the Consultant's Services.
- 14.4 If any differences arises between the Consultant and any other consultant of the Contractor, the Consultant shall endeavour to achieve an amicable resolution of those differences. If such resolution is not achieved or is not likely to be achieved, then before such difference becomes detrimental to the Development, the Consultant shall refer the matter to the Contractor for instructions.
- 14.5 If the Consultant produces any designs by computer-assisted means, then (without detracting from clause 22.1 (Supply of Documents)) the Consultant may be required at its own cost to supply (as often as necessary) copies of such designs to the Contractor's other consultants in the form of computer discs or other electronically reproducible form.

15 Professional indemnity insurance

- 15.1 The Consultant warrants that there is in force a policy of professional indemnity insurance covering its liabilities in respect of any negligence of the Consultant under or in connection with this Appointment, conforming to the relevant details specified in the Project Data. The Consultant agrees to maintain such insurance at all times until 12 years after the date of practical completion of the whole of the Works under the Building Contract, (or if earlier until 12 years after the completion or termination of the Consultant's Services under this Appointment), provided such insurance is available on commercially reasonable terms, having regard (inter alia) to premiums required and policy terms obtainable.
- 15.2 If for any period such insurance is not available on commercially reasonable terms, the Consultant shall forthwith inform the Contractor in writing and shall obtain in respect of such period such reduced professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Consultant or to obtain.
- 15.3 When reasonably required to do so by the Contractor from time to time the Consultant shall provide to the Contractor documentary evidence that the required insurance is being maintained.

15A Public liability indemnity

The Consultant shall be liable for, and shall indemnify the Contractor and hold the Contractor harmless from, any and all claims, losses, expenses, costs or proceedings in respect of any injury or damage to any property, real or personal, or in respect of any personal injury to or the death of any person whomsoever insofar as such injury or damage arises out of or in the course of or by reason of the Services to the extent that the same is due to any breach of this Appointment or any negligent act, omission or default by the Consultant, the Consultant's employees, agents or sub-consultants.

16 Third Party Rights and Collateral warranties

- 16.1 The rights set out in Appendix 3 (Third Party Rights) shall vest in any Third Party on the date on which the Contractor issues a written notice to the Consultant identifying the Third Party and the nature of its interest in the Development.
- 16.2 The rights set out in Appendix 3 (Third Part Rights) shall vest in the following persons on the date of this Appointment:

- (a) The Council of the City of Manchester.

- 16.3 The Consultant shall, as the Contractor may at any time or times require as an alternative to the vesting of rights pursuant to Clause 16.1, promptly execute and deliver a deed of warranty in favour of any Third Party, in the form set out in Appendix 2 (Deed of warranty) or such other no more onerous terms as the Contractor shall reasonably require.

17 Remedies

- 17.1 If the Consultant fails to comply with clause 15 (Professional indemnity insurance) or 16 (Third Party Rights and Collateral warranties) or if the Consultant becomes Insolvent, the Contractor shall be entitled to recover from the Consultant any premiums reasonably incurred to effect insurance (such as inherent defects insurance or other suitable cover) in order to obtain suitable alternative protection.

Clause 17.1 does not exclude any other remedy the Contractor may have for breach of clause 15 or clause 16.

18 Assignment

- 18.1 The entire rights and benefit of the Contractor under this Appointment may be:
- (a) charged to any Mortgagee;
 - (b) assigned as security to any Mortgagee (and may be re-assigned on redemption);
 - (c) assigned by absolute assignment to any Group Company; and
 - (d) assigned by absolute assignment on two other occasions only.
- 18.2 The Consultant shall not assign or charge the benefit of this Appointment.

19 Sub-letting

The Consultant shall not sub-let or delegate the whole or any part of its duties under this Appointment save on the Contractor's written instruction or with its written consent.

20 Documents

- 20.1 The Consultant hereby grants and agrees to grant to the Contractor an irrevocable, non-exclusive, royalty-free licence to use and reproduce any of the designs, drawings, details, plans and other documents produced for the purposes of this Appointment (**Documents**) for any purpose whatsoever connected with the Development, including its construction, advertisement, letting, sale, maintenance, repair, reinstatement, reconstruction, and extension. The Contractor shall be entitled to grant sub-licences in the terms of this licence.
- 20.2 The Consultant waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 80 of that Act as against the Contractor or any licensee or assignee of the Contractor or any Beneficiary.
- 20.3 In the event that an act unauthorised by the Contractor infringes a moral right of the Consultant in relation to the Documents the Consultant hereby undertakes, if the Contractor so requests, to institute proceedings for infringement of those moral rights and the Contractor shall bear the cost of such proceedings.
- 20.4 The Consultant warrants that (unless authorised by the Contractor) it has not granted and shall not grant any rights to any third party to use or otherwise exploit the Documents so as to

derogate from the licence granted in clause 21.1 and that it has not and shall not permit or tolerate any use or exploitation of the Documents by any third person.

- 20.5 The Consultant warrants to the Contractor that the use of the Documents for the purposes of the Development will not infringe the rights of any third party, and the Consultant hereby indemnifies and shall keep the Contractor indemnified at all times against any claims, actions, demands, damages, costs and expenses (including legal expenses) made against or suffered by the Contractor as a result of any claim or action for infringement of any intellectual property rights of any third party caused by or arising out of the carrying out of the Services or by the exercise of the licence granted in this clause.

21 Supply of Documents

- 21.1 The Consultant shall supply copies of the Documents to the Contractor and to the Contractor's other consultants and to the Developer as necessary to enable them to discharge their respective functions in relation to the Development.

- 22 After the termination or conclusion of the Consultant's employment under this Appointment, the Consultant shall supply the Contractor with copies and/or computer discs of such of the Documents as the Contractor may from time to time request, and the Contractor shall pay the Consultant's reasonable costs for producing such copies or discs.

23 Inspection of records

The Contractor shall be entitled from time to time (after as well as before the completion of the Consultant's services or termination of this Appointment) on reasonable notice by itself or its appointee to inspect any of the Consultant's papers or any other form of record brought into being or received by the Consultant in the performance of the Services (but excluding papers or other records relating to the internal management or administration or accounts of the Consultant) and to be provided with copies of any such records. The Contractor shall pay the Consultant's reasonable costs of producing such copies.

24 Termination and suspension

- 24.1 The Contractor shall be entitled at any time, in its absolute discretion by notice in writing to terminate the employment of the Consultant under this Appointment.
- 24.2 If the Contractor terminates the Consultant's employment on account of the Consultant's Insolvency or breach by the Consultant of any term of this Appointment, the Contractor shall be entitled to recover from the Consultant the costs and losses reasonably or necessarily incurred by the Contractor by reason of the termination.
- 24.3 The Contractor may by notice in writing suspend the performance of any of the Consultant's Services.
- 24.4 If the Contractor suspends the whole or substantially the whole of the Consultant's Services for a continuous period exceeding 6 months, the Consultant may request in writing that its services be resumed. Unless written instructions to resume are given by the Contractor within 28 days after the Consultant's request, the employment of the Consultant shall determine upon the expiry of the said period of 28 days.
- 24.5 Subject to any Third Party's rights under a collateral warranty or Appendix 3, if the Contractor is materially in breach of its obligations under this Appointment in any respect that would reasonably justify the Consultant in terminating its employment the Consultant may serve 28 days' written notice of its intention to terminate, stating the grounds for termination, and if in such 28 day period the Contractor fails to rectify its breach, the Consultant may at the expiry of that period serve further written notice terminating its employment under this Appointment

with immediate effect.

- 24.6 Termination of the employment of the Consultant shall not affect the operation of any provisions of this Appointment that are capable of operation after such termination.

25 Remuneration

- 25.1 The Consultant's remuneration under this Appointment:

- (a) shall be as provided in this clause 25 and in the Project Data; and
- (b) shall be payable in accordance with Schedule 3 (Construction Act 1996).

- 25.2 If the Consultant's employment is terminated or suspended (other than for its having breached any term of this Appointment) the Consultant will be entitled (in addition to any fee instalments that are then due in full) to a fair and reasonable proportion of any fee instalments in the process of being earned at the date of termination, but not to compensation for loss of profit.

- 25.3 If at the Contractor's request the Consultant undertakes any additional services, or if by reason of any design changes requested by the Contractor or other circumstances beyond the Consultant's control, it is required to undertake significant extra work, then provided it notifies the Contractor in writing before undertaking such additional services or extra work that it will or might require it, the Consultant will be entitled to an additional fee. Such additional fee will be calculated at the applicable hourly rates specified in the Project Data, or if no hourly rates are specified in the Project Data, will be of a fair and reasonable amount.⁶

- 25.4 If the Contractor gives the Consultant instructions to omit any material Services, there will be a corresponding reduction in the Consultant's remuneration.

- 25.5 The fee specified in the Project Data is exclusive of VAT and inclusive of all office, staff, travel, reproduction and incidental costs and inclusive of disbursements. However, the Contractor will reimburse the Consultant any third party charges it incurs at the Contractor's request, such as survey fees or statutory fees or the cost of any models or any specialist presentational artwork, provided such charges (other than charges fixed by any public authority) are agreed by the Contractor before they are incurred.

- 25.6 If the Contractor wrongfully withholds any amount due to the Consultant after the relevant final date for payment, such amount shall bear simple interest at the rate of 5% over Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.

26 Time recording

- 26.1 The Consultant shall maintain records of all time spent by its professional and technical staff in performing each service performed by such staff under this Appointment.

- 26.2 The Consultant shall from time to time upon request (and after as well as before the termination or conclusion of the Consultant's employment hereunder) make such records available to the Contractor or his appointee for inspection and provide such copies as the Contractor may request.

27 VAT

The Contractor shall pay value added tax on the Consultant's remuneration at the rate and in the manner from time to time prescribed by law.

28 Confidentiality

Save as is necessary in the performance of the Consultant's Services, or as the Contractor allows in writing, the Consultant shall treat as confidential all information relating to this Appointment and the Development, and shall take all reasonable steps to see that its staff are bound by and adhere to the same duty of confidentiality.

29 Bribery Act 2010

- 29.1 The Consultant warrants that no offence under the Bribery Act 2010 (**Act**) has been or will be committed by the Consultant or any person associated with the Consultant, in connection with the procurement or implementation of this Appointment.
- 29.2 For the purposes of and without derogation from clause 29.1, an offence is committed under any provision of the Act before such provision is in force, if such offence would have been committed, had such provision then been in force.
- 29.3 For the purposes of clause 29.1, the definition of associated person in section 8 of the Act applies.
- 29.4 If at any time the Consultant has knowledge of, or has reasonable grounds to suspect the occurrence of, a breach of the warranty in clause 29.1, the Consultant shall promptly notify the Contractor in writing of such matters within its knowledge, or of such grounds for suspicion, and shall co-operate with the Contractor in the investigation of such breach or suspected breach of warranty.

30 Construction Act 1996

Schedule 3 (Construction Act 1996) shall have effect.

31 Expiry

No proceedings shall be commenced under or in connection with this Appointment (except for the final determination of a dispute which has been decided by an adjudicator) more than 12 years after the practical completion of the Development under the Building Contract (or, if earlier, more than 12 years after the completion or termination of the Consultant's Services).

32 Contracts (Rights of Third Parties) Act 1999

Save in respect of Clause 16, the terms of this Appointment are not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

33 Service of notice

- 33.1 Any notice to be given under this Appointment:

(a) if given for the purposes of Schedule 3 (Construction Act 1996), must be:

(i) delivered by hand; or

(ii) sent by e-mail and on the same day, sent by pre-paid first class post,

to the relevant addressee, addressed in accordance with the applicable details in the Project Data, or such other details as the relevant party (or specified person as defined in Schedule 3) notifies to the other in writing from time to time; or

(b) if given for any other purpose, may be given by any effective means.

- 33.2 Any notice delivered or sent in accordance with clause 33.1 takes effect as being given and

served:

- (a) if delivered by hand:
 - (i) by 4.00 p.m. on a Working Day, on the day of delivery; but otherwise
 - (ii) on the first Working Day after it is delivered;
- (b) if sent by post, on the first Working Day after it is sent.

34 Governing law

This Appointment is subject in all respects to English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under or in connection with it.

In witness whereof the Contractor and the Consultant have executed this Appointment as a Deed.

Executed as a deed and delivered by)
BOWMER & KIRKLAND LIMITED acting by a) Director
director in the presence of)
) Name

.....
Witness

.....
Name

[Executed as a deed and delivered by)
[the Consultant] acting by a director in the) Director
presence of)
) Name

.....
Witness

.....
Name]

Schedule 1
Services

Schedule 2**Project Data**

Clause 1: Brief description of the Development	◆
Clause 12: Contractor's Representative	◆
Clause 13: Consultant's Team Leader	◆
Clause 14: Contractor's other consultants	[◆]
Clause 15: Professional indemnity insurance	(a) Limit of indemnity: not less than £◆,000,000.00 for any claim or claims arising out of each originating cause. (b) Excess: not exceeding £◆,000.00.

Clause 25: Remuneration	(a) [A lump sum, inclusive of expenses and disbursements and exclusive of VAT and statutory fees, of £♦.] (b) The fee may be invoiced in the following instalments: ♦ (c) The hourly rates applicable to any additional remuneration are as follows: ♦
Clause (33) : Service of notice	(a) Notices to the Contractor are to be addressed to ♦ at ♦; e-mail address ♦; (b) Notices to the Consultant are to be addressed to ♦ at ♦; e-mail address ♦.
[Partners of the Consultant]	♦

Schedule 3

Construction Act 1996

Part 1 - Payment

1 General

1.1 In this Schedule:

instalment means any instalment, stage payment or other periodic payment to be made under this Deed

notified sum means, in respect of an instalment, the sum notified in:

- (a) the payment notice given in accordance with paragraph 5, but if no such notice is given,
- (b) the payment application given in accordance with paragraph 4

payer and **payee** mean respectively the person from whom and the person to whom an instalment is due.

1.2 Where an act is required under this Schedule to be done within a specified period after or from a specified date, the period begins immediately after that date.

1.3 Where a period specified in this Schedule would include a Bank Holiday, that day is excluded.

2 Specified person

The payer may give notice to the payee from time to time nominating a person (**specified person**) to give and receive any other notice to be given by or to the payer under this Part of this Schedule, supplying with such notice postal and an e-mail addresses for service upon the specified person, or revoking any such nomination, and in that case any such notices under this Part of this Schedule must be served accordingly.

3 Due and final dates for payment

3.1 Payments are to be made in instalments, each calculated to the end of the period (relevant period**) in which the instalment becomes eligible for payment, as such instalments and relevant periods are specified in, or may be ascertained in accordance with, the Project Data.**

3.2 The **payment due date of each payment is the 10th day after the date of service of the relevant payment application under paragraph 4.**

3.3 The **final date for payment of each instalment is the 20th day after the payment due date of that payment.**

4 Payment applications

4.1 In relation to each instalment, the payee must give the payer (or the specified person, if any) a notice (payment application**) of:**

- (a) the sum that the payee considers will become due on the payment due date; and
- (b) the basis on which that sum is calculated.

- 4.2 A payment application in respect of an instalment may not be given until after the end of the relevant period.

5 Payment notices

In relation to each instalment, the payer (or specified person, if any) must give a notice (**payment notice**) to the payee not later than five days after the payment due date, specifying:

- (a) the sum that, in the opinion of the payer (or specified person), is (or was) due at the payment due date; and
 - (b) the basis on which that sum is calculated,
- it being immaterial that such sum may be zero.

6 Payments

Subject to paragraphs 7.4 and 8, the payer must pay the payee the notified sum (to the extent not already paid) no later than the final date for payment of that sum.

7 Payment reduction notice

- 7.1 The payer (or specified person, if any) may give the payee notice of the payer's intention to pay less than the notified sum (**payment reduction notice**) and such notice must specify:
- (a) the sum (**adjusted sum**) the payer considers to be due on the date the payment reduction notice is served; and
 - (b) the basis on which that sum is calculated.
- 7.2 A payment reduction notice may not be given:
- (a) before the notice by reference to which the notified sum is determined; nor
 - (b) any later than five days before the final date for payment.
- 7.3 It is immaterial that the sum referred to in paragraph 7.1 may be zero.
- 7.4 If the payer (or a specified person) serves a payment reduction notice in accordance with this paragraph 7, the amount the payer must pay under paragraph 6 is the adjusted sum.

8 Insolvency

- 8.1 Paragraph 8.2 applies if:
- (a) the payee is or becomes insolvent; and
 - (b) the payee's employment is therefore terminated.
- 8.2 Where this paragraph 8.2 applies:
- (a) the payer need not pay any sum that he would otherwise have to pay in accordance with this Schedule, provided:

- (i) he (or the specified person, if any) gives a payment reduction notice in respect of that sum in accordance with paragraph 7, invoking this paragraph 8; or
 - (ii) the insolvency post-dates the latest date for service of a payment reduction notice in respect of that sum; and
- (b) in such case, no further payment need be made by the payer until he has been able to ascertain the costs and losses he will incur by reason of the termination.

Part 2 - Adjudication

9 Adjudication

- 9.1 Either party may give notice at any time of his intention to refer any dispute under this Appointment to adjudication under and in accordance with the Scheme for Construction Contracts in place for the time being under the Construction Act 1996, subject as follows:
- (a) the adjudicator nominating body is the Royal Institution of Chartered Surveyors;
 - (b) an adjudicator may determine more than one dispute between the parties at the same time and (if required to do so by the respondent party to a claim or counterclaim) shall determine any matter in the nature of set-off, abatement or counterclaim at the same time as he determines any dispute referred to him;
 - (c) at the same time as he gives a decision, an adjudicator must give written reasons;
 - (d) no legal proceedings to finally determine a dispute that is referred to adjudication may be commenced after the date (**relevant date**) which is 90 days after the date of issue of the adjudicator's decision;
 - (e) if neither party commences such legal proceedings before the expiry of the applicable time limit under paragraph 9.1(d), the adjudicator's decision shall be final and conclusive between the parties;
 - (f) for the purposes of the adjudication and any such legal proceedings commenced after the date of referral of the dispute to adjudication, the referral to adjudication stops the running of time under the Limitation Act 1980 in respect of the dispute; and
 - (g) the burden of proof in legal proceedings is unaltered by an adjudicator's decision.
- 9.2 The time limit in paragraph 9.1(d) above does not apply to any appeal from the judgment of a court of law and does not run from the date of issue of an adjudicator's decision that is declared by the court or agreed by the parties to have been invalid; upon such declaration or agreement, the running of time under the Limitation Act 1980 resumes.

Appendix 1

Plan of Site

Appendix 2

Deed of warranty

Dated

20[•]

XXXXXXX
[BENEFICIARY]
[CONTRACTOR]

**CONSULTANT'S DEED OF
WARRANTY**
in favour of [developer]
[mortgagee] [purchaser]
[tenant] of a development at
St Michael's, Jackson's Row,
Manchester

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Appendix 1

Plan of Site

Appendix 2

Deed of warranty

3.1 The Consultant shall not:

The Appendix

[Alternative clause 4.1]

Appendix 3

Third Party Rights

Project Data	
Date of this Deed	◆
Contractor	
Consultant	XXXXXXXX (No. XXXXXX) whose registered office is at XXXXXXXXXXXXXXXXXXXX
Contractor	◆ (No. ◆), registered office ◆.
Beneficiary	◆ (No. ◆), registered office ◆.
Consultant's profession	TBC
Development	St Michael's
Site	Jackson's Row, Manchester
Date of Appointment	◆
Date of Building Contract	◆
[Date of Novation]	◆
Beneficiary's interest	[Developer]
	[Mortgagee]
	[Purchaser of [◆ forming part of] the Development]
	[Tenant of [◆ forming part of] the Development]
	◆ ⁷
Clause 2: (Professional indemnity insurance)	(c) Limit of indemnity: not less than £◆,000,000.00 for any claim or claims arising out of each originating cause.
	(d) Excess: not exceeding £◆,000.00.

⁷ See provisions (if any) in the Appointment for additional classes of Beneficiary.

Parties

- (4) The Consultant
- (5) The Beneficiary
- (6) [The Contractor]

Whereas

- (A) The Contractor and the Consultant have entered into an appointment (**Appointment**) under which the Consultant has agreed to perform certain services (**Services**) and to perform certain other obligations in connection with the Development (which expression includes the Site and the works (**Works**) constructed or to be constructed on or adjacent to the Site or either of them as the case requires).
- (B) The Developer and the Contractor have entered into a building contract (**Building Contract**) under which the Contractor has agreed to design or complete the design of and to construct the Works.

It is agreed in consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Consultant acknowledges, as follows:

1 Duty of care

The Consultant warrants to the Beneficiary that it has performed and/or subject to the terms of the Appointment shall perform the Services and its other obligations under the Appointment, and that in doing so it has used and/or shall use all the professional skill and care and diligence reasonably to be expected of suitably qualified and experienced consultants undertaking duties similar to the Services in relation to projects similar to the Development.

2 Professional indemnity insurance

2.1 The Consultant warrants to the Beneficiary that there is in force a policy of professional indemnity insurance covering the liabilities of the Consultant for negligence under the Appointment and this Deed, conforming to the relevant requirements specified in the Project Data. The Consultant agrees to maintain such insurance at all times until 12 years after the practical completion of the Development under the Building Contract (or if sooner until 12 years after the termination of the employment of the Consultant under the Appointment), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable.

2.2 If for any period such insurance is not available on commercially reasonable terms, the Consultant shall forthwith inform the Beneficiary, and shall obtain in respect of such period such

reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.

- 2.3 Whenever reasonably required to do so by the Beneficiary, the Consultant shall provide to the Beneficiary documentary evidence that the insurance required under this Deed is being maintained.

3 [Substitution provisions]

- 3.1 The Consultant shall not:

- (a) terminate its employment;
- (b) treat its employment as having been terminated; or
- (c) suspend the performance of the Services,

under the Appointment (**Discontinue**) without giving the Beneficiary not less than 28 days' notice of the Consultant's intention to Discontinue, specifying the grounds for the discontinuance.

- 3.2 If the Beneficiary gives the Consultant notice requiring it to accept the instructions of the Beneficiary or its appointee under the Appointment, to the exclusion of the Contractor (**Step-in Notice**), the Consultant:

- (c) shall not Discontinue; and
- (d) shall comply with the Step-in Notice.

- 3.3 A Step-in Notice may be served, whether or not the Consultant has previously served notice under clause 3.1, but not after the notice period under clause 3.1 has expired.

- 3.4 As against the Contractor and the Beneficiary, the Consultant shall be entitled and obliged to rely upon and to comply with any Step-in Notice, and shall not make any enquiry into the entitlement of the Beneficiary as against the Contractor to serve the Step-in Notice.

- 3.5 As from the date of service of a Step-in Notice (**Step-in Date**), the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Contractor under the Appointment, provided that this shall not affect or derogate from any right of action the Contractor may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening before the Step-in Date.

- 3.6 Within 21 days after the Step-in Date, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under the Appointment.

- 3.7 Service of a Step-in Notice does not affect the right of the Consultant to Discontinue on account of any breach of duty of the Beneficiary or its appointee after the Step-in Date.

- 3.8 If the employment of the Consultant under the Appointment is terminated before service of any Step-in Notice, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Consultant an amount equal

to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under the Appointment.

- 3.9 The Beneficiary guarantees to the Consultant the performance of the obligations of any appointee of the Beneficiary nominated under clause 3.2 or 3.8.
- 3.10 If, before the service of any Step-in Notice under this Deed, any other person exercises any similar right to step into the Appointment to the exclusion of the Contractor, in accordance with any other agreement entered into pursuant to any term of the Appointment, this clause 3 shall cease to have effect.
- 3.11 The Contractor agrees to the provisions of this clause 3.]

[Note: Clause 3 shall be included in warranty in favour of favour of the Developer]

4 Deeds of warranty

- 4.1 [Version A – applicable where Beneficiary is the Developer]

The Consultant and the Contractor shall, as the Beneficiary may at any time or times require, each promptly execute and deliver a deed or deeds of warranty in terms of this Deed, mutatis mutandis, in favour of:

- (a) Mortgagees and/or Purchasers, but substituting for this clause 4.1, the text given in the appendix; and
- (b) Tenants, but excluding clause 3 ([Substitution provisions]) and this clause 4.

[OR]

[Version B – applicable where Beneficiary is a Mortgagee or a Purchaser]

The Consultant shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of Purchasers and/or Tenants, in the terms of this Deed, mutatis mutandis, but excluding the terms of clause 3 ([Substitution provisions]) and of this clause 4.

[Note: Clause 4.1 Version B shall be included in warranties in favour of Mortgagees and/or Purchasers if the Contractor shall so require.]

- 4.2 If the Consultant and/or the Contractor fails to execute and deliver any deed pursuant to clause 4.1 within 7 days of the Beneficiary's request, the Beneficiary may execute such deed on behalf of the party in default and the Consultant and the Contractor each hereby appoints the Beneficiary as its attorney for the purpose of executing any such deed. The Consultant and the Contractor each agrees to ratify and confirm any act done by the Beneficiary pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4 of the Powers of Attorney Act 1971.]

[Note: Clause 4 is not applicable to warranties in favour of Tenants.]

5 Assignment

- 5.1 The entire rights and benefit of the Beneficiary under this Deed may be:

- (a) charged to any Mortgagee;
- (b) assigned as security to any Mortgagee (and may be re-assigned on redemption);
- (c) assigned by absolute assignment to any Group Company of the Beneficiary; and
- (d) assigned by absolute assignment on two other occasions only.

5.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Deed to another trustee of the same trust.

5.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees, but not so as to permit more than two assignments under clause 5.1(c).

6 Copyright

6.1 [The Consultant grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Consultant under the Appointment and any designs contained in them (Documents) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Consultant.] **[Applies if the consultant is providing design services]**

[OR]

[The Consultant grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce all documents produced by the Consultant pursuant to the Appointment (Documents) for any purpose connected with the Development and to grant sub-licences in terms of this licence, but copyright in the Documents shall remain vested in the Consultant.] **[Applies if the consultant is not providing design services]**

6.2 The Consultant will not be liable for any use of the Documents for any purposes other than those for which they are or were produced.

6.3 The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Consultant with full and proper copies of the Documents.]

6.4 The Consultant warrants to the Beneficiary that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

6.5 [The Consultant agrees to waive any right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 80 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.] **[Applies only if the consultant is providing design services]**

7 Extraneous rights

7.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Consultant to the Beneficiary.

7.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Deed.

8 Defences and exclusions

8.1 In any claim under this Deed for breach of clause 1 (Duty of care) there shall be available to the Consultant any defence that:

- (a) arises from or in connection with the Appointment; and
- (b) would have been available if the claim had been brought by the Contractor under the Appointment,

excluding any set-off or counterclaim available against the Contractor.

8.2 The Consultant shall not be entitled to rely under this Deed upon any set-off or counterclaim available against the Contractor, that does not arise from or in connection with the Appointment.

8.3 [The exclusion of set-off or counterclaim effected by clause 8.1 shall not apply if the Beneficiary has served a Step-in Notice under clause 3 ([Substitution provisions).] **[Clause 8.3 applies only if the substitution provisions are included]**

9 Contracts (Rights of Third Parties) Act 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

10 Expiry of warranty

No proceedings shall be commenced against the Consultant under this Deed⁹ more than 12 years after the practical completion of the Development under the Building Contract (or, if earlier, more than 12 years after the employment of the Consultant under the Appointment is terminated).

11 Service of notice

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

12 Governing law and interpretation

12.1 The law of this Deed is English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.

12.2 The Project Data are part of this Deed and the definitions given in the Project Data and in the Recitals apply to this Deed.

12.3 In this Deed:

- (a) **Developer** means the employer under the Building Contract;
- (b) **Development** includes part of the Development;

⁹ Other than proceedings for the purposes of para. 23(2) of the Scheme for Construction Contracts (*final determination of a dispute decided by an adjudicator*), if applicable.

- (c) **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in s1159, Companies Act 2006, (as amended);
 - (d) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it;
 - (e) **person** includes a firm and any entity having legal capacity;
 - (f) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;
 - (g) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).
 - (h) any term importing gender shall include any gender;
 - (i) any term importing the singular includes the plural and vice versa; and
 - (j) any reference to any clause or Schedule or Appendix is a reference to such clause or Schedule or Appendix of or to this Deed.
- 12.4 For the purposes of clause 1 (Duty of care), references to the Appointment include any previous appointment of the Consultant by the Contractor (whether or not in writing) to provide services of the kind mentioned in the Appointment in connection with the Development.
- 12.5 Clause headings do not affect the interpretation of this Deed.

Executed and delivered as a deed:

Executed as a deed and delivered by
XXXXXXXXXXXXXXXXXX acting by a director in the
presence of

)
) Director
)
) Name

.....
Witness

.....
Name

[Executed as a deed and delivered by
[the Beneficiary] acting by a director in the
presence of

)
) Director
)
) Name

.....
Witness

.....
Name]

[Executed as a deed and delivered by
[the Contractor] acting by a director in the
presence of

)
) Director
)
) Name

.....
Witness

.....
Name]

The Appendix

[Alternative clause 4.1]

- 4.1 The Consultant shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of Purchasers and/or Tenants, in terms of this Deed, mutatis mutandis, but excluding the terms of clause 3 ([Substitution provisions) and of this clause 4 (Deeds of warranty).

[Note: Appendix to be included in the warranty in favour of the Developer only]

Appendix

3 Third Party

Rights

Interpretation

Unless the context otherwise requires, in this Memorandum:

- (A) **"Beneficiary"** means the person in favour of whom third party rights are vested in accordance with the Appointment (including its successors in title and permitted assignees);
- (B) **"Appointment"** means the Appointment (which expression shall include any variation to the terms of the Appointment and any new or replacement contract created by the novation of the Appointment);
- (C) **"Memorandum"** means this Appendix 3 of the Appointment; and
- (D) terms or phrases which are defined in the Appointment shall have the same meaning in this Memorandum.

1 Duty of care

The Consultant warrants to the Beneficiary that it has performed and/or subject to the terms of the Appointment shall perform the Services and its other obligations under the Appointment, and that in doing so it has used and/or shall use all the professional skill and care and diligence reasonably to be expected of suitably qualified and experienced consultants undertaking duties similar to the Services in relation to projects similar to the Development.

2 Professional indemnity insurance

- 2.1 The Consultant warrants to the Beneficiary that there is in force a policy of professional indemnity insurance covering the liabilities of the Consultant for negligence under the Appointment and this Memorandum, conforming to the relevant requirements specified in the Project Data. The Consultant agrees to maintain such insurance at all times until 12 years after the practical completion of the Development under the Building Contract (or if sooner until 12 years after the termination of the employment of the Consultant under the Appointment), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable.
- 2.2 If for any period such insurance is not available on commercially reasonable terms, the Consultant shall forthwith inform the Beneficiary, and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.
- 2.3 Whenever reasonably required to do so by the Beneficiary, the Consultant shall provide to the Beneficiary documentary evidence that the insurance required under this Memorandum is being maintained.

3 Substitution provisions

The provisions set out in this clause shall only apply in the case of a Beneficiary that is the Developer.

3.1 The Consultant shall not:

- (a) terminate its employment;
- (b) treat its employment as having been terminated; or
- (c) suspend the performance of the Services,

under the Appointment (**Discontinue**) without giving the Beneficiary not less than 28 days' notice of the Consultant's intention to Discontinue, specifying the grounds for the discontinuance.

3.2 If the Beneficiary gives the Consultant notice requiring it to accept the instructions of the Beneficiary or its appointee under the Appointment, to the exclusion of the Contractor (**Step-in Notice**), the Consultant:

- (a) shall not Discontinue; and
- (b) shall comply with the Step-in Notice.

3.3 A Step-in Notice may be served, whether or not the Consultant has previously served notice under clause 3.1, but not after the notice period under clause 3.1 has expired.

3.4 As against the Contractor and the Beneficiary, the Consultant shall be entitled and obliged to rely upon and to comply with any Step-in Notice, and shall not make any enquiry into the entitlement of the Beneficiary as against the Contractor to serve the Step-in Notice.

3.5 As from the date of service of a Step-in Notice (**Step-in Date**), the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Contractor under the Appointment, provided that this shall not affect or derogate from any right of action the Contractor may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening before the Step-in Date.

3.6 Within 21 days after the Step-in Date, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under the Appointment.

3.7 Service of a Step-in Notice does not affect the right of the Consultant to Discontinue on account of any breach of duty of the Beneficiary or its appointee after the Step-in Date.

4 Assignment

4.1 The entire rights and benefit of the Beneficiary under this Memorandum may be:

- (a) charged to any Mortgagee;
- (b) assigned as security to any Mortgagee (and may be re-assigned on redemption);
- (c) assigned by absolute assignment to any Group Company of the Beneficiary; and

(d) assigned by absolute assignment on two other occasions only.

4.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Memorandum to another trustee of the same trust.

5 Copyright

5.1 The Consultant grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Consultant under the Appointment and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Consultant.

5.2 The Consultant will not be liable for any use of the Documents for any purposes other than those for which they are or were produced.

5.3 The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Consultant with full and proper copies of the Documents.

5.4 The Consultant warrants to the Beneficiary that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

5.5 The Consultant agrees to waive any right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 80 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.

6 Extraneous rights

6.1 This Memorandum shall not negate or diminish any duty or liability otherwise owed by the Consultant to the Beneficiary.

6.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Memorandum.

7 Defences and exclusions

In any claim under this Memorandum for breach of clause 1 (Duty of care) there shall be available to the Consultant any defence that:

(a) arises from or in connection with the Appointment; and

(b) would have been available if the claim had been brought by the Contractor under the Appointment,

excluding any set-off or counterclaim available against the Contractor.

8 Expiry of warranty

No proceedings shall be commenced against the Consultant under this Memorandum more

than 12 years after the practical completion of the Development under the Building Contract (or, if earlier), more than 12 years after the employment of the Consultant under the Appointment is terminated.

9 Service of notice

Any notice to be served under this Memorandum must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

10 Governing law and interpretation

- 10.1 The law of this Memorandum is English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.
- 10.2 For the purposes of clause 1 (Duty of care), references to the Appointment include any previous appointment of the Consultant by the Contractor (whether or not in writing) to provide services of the kind mentioned in the Appointment in connection with the Development.
- 10.3 Clause headings do not affect the interpretation of this Memorandum.

SCHEDULE D
Form of Sub-Contractor Warranty

Dated 20[•]

[SUB-CONTRACTOR]
[BENEFICIARY]
[CONTRACTOR]

SUB-CONTRACTOR'S DEED
OF WARRANTY
in favour [employer] [funder]
[purchaser] [tenant] [LLP
party] [management
company] of a development
at ♦

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Project Data

Date of this Deed	◆
Employer	◆ (No. ◆), registered office ◆.
Contractor	◆ (No. ◆), registered office ◆.
Sub-Contractor	◆ (No. ◆), registered office ◆.
Beneficiary	◆ (No. ◆), registered office ◆.
Development and Site	◆ at ◆
Date of Main Contract	◆
Date of Sub-Contract	◆
Sub-Contract Works	◆
Beneficiary's interest	[Employer] [Funder] [Funder of Purchaser] [Purchaser of [◆ forming part of] the Development] [Tenant of [◆ forming part of] the Development] [LLP Party] [Management company] ◆⁴

Clause 5: Insurance [Professional indemnity insurance] [Public and product liability insurance]:

- (a) Limit of indemnity: not less than £◆,000,000.00 for any claim or claims arising out of each originating cause, provided that such limit of indemnity may be in the aggregate for each year of insurance in respect of claims for pollution, contamination and date recognition.
- (b) To be maintained until 12 years after the practical completion of the whole of the Works.

Prohibited Materials Any materials:

- (a) are generally considered within the building design professions or the UK construction industry at the time

⁴ See provisions in the Construction Contract for additional classes of Beneficiary.

of incorporation, use or specification (as the case may be) to be:

- (i) deleterious or pose a hazard to health and safety;
 - (ii) likely to adversely affect performance or durability of the Works in the particular circumstances in which they are used;
- (b) contravene any British Standard or EU equivalent and Codes of Practice where applicable or applicable Agrément Certificates;
- (c) are identified or referred to at the time of use in the guide entitled *"Good Practice in the Selection of Construction Materials 2011"* published by the British Council for Offices or such other version of such publication current at the time of use (**Good Practice Guide**) unless such materials or substances are used in accordance with the points of caution and good practice notes set out in the Good Practice Guide;
- (d) have been publicised in the Building Research Establishment Digest at the time of use as being deleterious to health and safety or the integrity of buildings and/or other structures and/or plant or machinery;
- (e) the use of which is prohibited in the Employer's Requirements or which are named in the Employer's Requirements as prohibited materials or as deleterious materials; or
- (f) are not in accordance with good building practice.

Parties

The Sub-Contractor

The Beneficiary

[The Contractor]

Whereas

The Employer and the Contractor have entered into a construction contract (**Main Contract**), under which the Contractor has agreed to carry out and complete the works (**Works**) required for the purposes of the Development (which expression includes the Works and/or the Site and/or any premises constructed or to be constructed on the Site or any one or more of them as the case requires).

The Contractor and the Sub-Contractor have entered into a sub-contract (**Sub-Contract**), under which the Sub-Contractor has agreed to design or complete the design of and to supply and erect or install the Sub-Contract Works as part of the Works.

It is agreed in consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Sub-Contractor acknowledges:

Primary obligations

Performance of the Sub-Contract

1 The Sub-Contractor warrants that it:

- (a) has carried out or will carry out and complete the Sub-Contract Works in accordance with and subject to the terms of the Sub-Contract; and
- (b) has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Sub-Contract.

2 Design warranty

2.1 The Sub-Contractor warrants that all reasonable skill and care have been and will be exercised in the following, to the extent of the Sub-Contractor's responsibility for the same:

- (a) the design of the Sub-Contract Works;
- (b) the selection of goods, materials, equipment or plant for the Sub-Contract Works; and
- (c) the satisfaction of any performance requirement or specification of or for the Sub-Contract Works,

and for this purpose, the Sub-Contractor is responsible for any design or the selection of any goods, materials, equipment or plant, whether such design or selection is produced or made by the Sub-Contractor or by another person on the Sub-Contractor's behalf.

3 Prohibited materials

3.1 The Sub-Contractor warrants that it has not specified and shall not specify for use and has not used and shall not use in the Development any Prohibited Materials.

4 Copyright

- 4.1 The Sub-Contractor grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, details, calculations, specifications and/or all other documents, data and models (including but not limited to BIM data and models) produced by the Sub-Contractor under the Sub-Contract and any designs contained in them (**Documents**) for any purpose connected with the Development and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Sub-Contractor.
- 4.2 The Sub-Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced.
- 4.3 The Sub-Contractor warrants that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.
- 4.4 The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Sub-Contractor with full and proper copies of the Documents.

5 Insurance

- 5.1 The Sub-Contractor warrants that there is in force a policy of insurance covering the liabilities of the Sub-Contractor under the Sub-Contract and under this Deed in respect of the risks usually covered by such insurance, conforming to the relevant requirements specified in the Project Data.
- 5.2 The Sub-Contractor agrees to maintain such insurance continuously in place for the relevant period specified in the Project Data, provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms available.
- 5.3 Whenever required to do so, the Sub-Contractor shall provide to the Beneficiary documentary evidence that such insurance is being maintained.

6 [Replacement Contractor

In the event of the employment of the Contractor under the Building Contract at any time being terminated by the Employer, for whatsoever reason and howsoever arising, and a reputable replacement contractor (the "**Replacement Contractor**") being employed by the Employer for the carrying out and completion of the Development as and when requested by the Employer the Contractor and the Sub-Contractor shall forthwith execute with the Replacement Contractor a novation agreement in the form required by the Employer acting reasonably by which agreement the Replacement Contractor shall replace the Contractor as though the Replacement Contractor was and always had been the Contractor under the Sub-Contract. The Contractor shall assign to the Employer its rights and benefits under any bond procured by the Sub-Contractor in favour of the Contractor under the Sub-Contract upon service by the Employer of a notice under this clause 4 or completion of novation agreement under this clause.

The Sub-Contractor shall procure that the surety who has issued any bond in favour of the Contractor under the Sub-Contract shall execute such document and perform such acts as may be required fully and effectively to assure the Replacement Contractor that any assignment of such bond has been duly effected and that the bond applies to the new contract created by the novation of the Sub-Contract.]

[Note: Clause 4 shall be included in warranties in favour of the Employer only.]

7 [Deeds of warranty]

- 7.1 The Sub-Contractor shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds in the terms of this Deed, mutatis mutandis, but excluding clause 6 and this clause 7, in favour of each or any Funder and/or Purchaser and/or Tenant and/or LLP Party and/or Management Company.
- 7.2 Any New Sub-Contract under clause 6 shall incorporate the terms of this clause 7.

[Note: Clause 7 shall be included in warranties in favour of the Employer only.]

8 Assignment

- 8.1 The entire rights and benefit of the Beneficiary under this Deed may be:
- (a) charged to any Funder;
 - (b) assigned as security to any Funder (and may be re-assigned on redemption);
 - (c) assigned by absolute assignment to any Group Company of the Beneficiary; and
 - (d) assigned by absolute assignment on two other occasions only.
- 8.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Deed to another trustee of the same trust.
- 8.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees, but not so as to permit more than two assignments under clause 8.1(d).

9 Defences and exclusions

- 9.1 In any claim for breach of clause 0 (Primary obligations) there shall be available to the Sub-Contractor any defence that:
- (a) arises from or in connection with the Sub-Contract; and
 - (b) would have been available if the claim had been brought by the Contractor under the Sub-Contract,

excluding any set-off or counterclaim available against the Contractor.

- 9.2 The Sub-Contractor shall not be entitled to rely under this Deed upon any set-off or counterclaim available against the Contractor, that does not arise from or in connection with the Sub-Contract.

10 Liability for delay

The Sub-Contractor shall not have any liability under this Deed for any delay in carrying out the Sub-Contract Works.

11 Extraneous rights

- 11.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor to the Beneficiary.

- 11.2 No approval or inspection of the Development or of any designs or specifications nor the testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Sub-Contractor arising under this Deed.

12 Contracts (Rights of Third Parties) Act 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

13 Expiry of warranty

No proceedings shall be commenced against the Sub-Contractor under this Deed⁵ more than 12 years after the practical completion of the Works under the Main Contract (or, if earlier, more than 12 years after the employment of the Sub-Contractor under the Sub-Contract is terminated).

14 Service of notice

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

15 Governing law and interpretation

- 15.1 The law of this Deed is English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.
- 15.2 The Project Data are part of this Deed and the definitions given in the Project Data and in the Recitals apply to this Deed.
- 15.3 In this Deed:
- (a) **Development** includes part of the Development;
 - (b) **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in s1159 Companies Act 2006, (as amended);
 - (c) **Funder** means a party, including where the finance is syndicated such party acting as funder, agent and/or security trustee, who agrees to provide finance in connection with the Development and any person providing finance to a Purchaser;
 - (d) **[LLP Party]** means [♦];

⁵ Other than proceedings for the purposes of para. 23(2) of the Scheme for Construction Contracts (*final determination of a dispute decided by an adjudicator*), if applicable.

- (e) **[Management Company]** means [♦];
- (f) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;
- (g) **person** includes a firm and any entity having legal capacity;
- (h) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser);
- (i) any term importing gender shall include any gender;
- (j) any term importing the singular includes the plural and vice versa; and
- (k) any reference to any clause or Schedule or Appendix is a reference to such clause or Schedule or Appendix of or to this Deed.

15.4 Clause headings are of no effect.

Executed and delivered as a deed:

Executed as a deed and delivered by)
[the Sub-Contractor] acting by a director in the) Director
presence of)
) Name

.....
Witness

.....
Name

[Executed as a deed and delivered by)
[the Beneficiary] acting by a director in the) Director
presence of)
) Name

.....
Witness

.....
Name]

[Executed as a deed and delivered by
[the Contractor] acting by a director in the
presence of

)
) Director
)
)
) Name

.....
Witness

.....
Name]

SCHEDULE E

Third Party Agreements

1. The Agreement for Lease entered into between (1) The Council of the city of Manchester (2) BCRI St Michaels Development Limited (3) Jacksons Row Developments Limited (4) Gary Alexander Neville (5) Ryan Joseph Giggs and (6) Brendan Flood relating to the site at Bootle Street, Manchester dated 17 February 2015 as amended by a deed of variation entered into between (1) The Council of the city of Manchester (2) BCRI St Michaels Development Limited (3) Jacksons Row Developments Limited and (4) Gary Alexander Neville dated 21st May 2021.
2. The Interface Agreement entered into between (1) Jacksons Row Developments Limited and (2) St Michaels UK Propco Limited dated 3 August 2021.

SCHEDULE F

Bond in respect of payment for off-site materials and/or goods

..... 20[•]

[BANK]

and

[EMPLOYER]

and

[CONTRACTOR]

and

[SUB-CONTRACTOR]

FORM OF OFF-SITE MATERIALS BOND

- in connection with -

THE DEVELOPMENT AT [•]

Herbert Smith Freehills LLP

The parties to this Bond are:

- .1 **[BANK]** (Company No. []) whose registered office is at [] (the "**Surety**");
- .2 **[EMPLOYER]** (Company No: []) whose registered office is at [] (the "**Employer**", which term shall include its permitted successors in title and assigns);
- .3 **[CONTRACTOR]** (Company No. []) whose registered office is at [] (the "**Contractor**"); and
- .4 **[SUB-CONTRACTOR]** (Company No. []) whose registered office is at [] (the "**Sub-Contractor**").

WHEREAS:

- (A) The Employer and the Contractor have entered into the Contract.
- (B) The Contractor and the Sub-Contractor have entered into the Sub-Contract, under which the Sub-Contractor is to provide the Listed Items.
- (C) The Contractor is to procure that the Sub-Contractor provides this Bond in favour of the Employer, as a pre-condition of the Employer making payment under the Contract in respect of the Listed Items prior to their delivery to or adjacent to the Works.
- (D) Under the Sub-Contract, the Sub-Contractor has agreed to provide this Bond.
- (E) The Surety has delivered this Bond to the Employer, under which amounts shall be paid to the Employer on demand in accordance with the Bond's terms.
- (F) The Contractor is a Party to this Bond solely for the purpose of giving the confirmation in clause 5.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Bond:

"Business Day" means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England;

"Contract" means the contract dated [●] between (1) the Employer, (2) the Contractor and (3) the Guarantor for the carrying out and completion of the Works, which expression shall include any variation to the terms of the Contract and any new or replacement contract created by the novation of the Contract as well as the Contract after the exercise of any step-in rights in relation to it;

"Employer" includes its permitted assignees under the Contract and any person who is the "Employer" under the Contract following any novation of it or the exercise of any step-in rights in relation to it;

"Guarantor" means [●] (Co. Regn. No. [●]) whose registered office is at [●];

"Listed Items" has the meaning given to it in clause 2.1;

"Longstop Date" means [●];

"Notice of Demand" means a notice of demand in the form set out in the Schedule to this Bond;

"Parties" means two or more of the Bank, the Employer, the Contractor and the Sub-Contractor and **"Party"** means any of them, as the context requires;

"Sub-Contract" means the sub-contract dated [●] between (1) the Contractor and (2) the Sub-Contractor for the carrying out and completion of sub-contracted works in relation to the Works, which expression shall include any variation to the terms of the Sub-Contract and any new or replacement contract created by the novation of the Sub-Contract as well as the Sub-Contract after the exercise of any step-in rights in relation to it; and

"Works" [●].

- 1.2 The clause headings in this Bond are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.

- 1.3 Words in this Bond denoting the singular include the plural meaning and vice versa.
- 1.4 The words and phrases "other", "include", "includes", "including" and "in particular" shall (if used) not limit the generality of the words preceding or succeeding them.

2 CONTRACTUAL PROVISIONS AND DEMANDS

- 2.1 Subject to the relevant provisions of the Contract as summarised below but with which the Bank shall not at all be concerned:

- 2.1.1 the Employer has agreed with the Contractor that the amount stated as due in Interim Certificates (as defined in the Contract) shall include the value of the following materials or goods or items prefabricated for inclusion in the Works (the **"Listed Items"**), before their delivery to or adjacent to the Works:

[insert brief description/details of the Listed Items];

- 2.1.2 unless and until the Listed Items are insured under the Works Insurance Policy to be maintained under the Contract, the Contractor has agreed to insure or to procure that the Listed Items are insured against loss or damage for their full value in respect of risks identified in the Contract under a policy of insurance protecting the interest of the Employer and the Contractor; and

- 2.1.3 this Bond shall exclusively relate to the amount paid to the Contractor in respect of the Listed Items which have not been delivered to or adjacent to the Works.

- 2.2 The Bank in complying with its obligations under or in connection with this Bond shall not at all be concerned with the provisions of the Sub-Contract.

- 2.3 The Employer shall in making any demand provide to the Bank a Notice of Demand which shall be accepted as conclusive evidence for all purposes under this Bond. The Bank's obligations to make payments under this Bond shall arise upon receipt of a Notice of Demand, without any further proof or condition and without any right of set-off or counterclaim, and the Bank shall not be required or permitted to make any other investigation or enquiry in respect thereof.

- 2.4 The Bank hereby unconditionally and irrevocably undertakes that within five Business Days after receiving a Notice of Demand the Bank shall pay to the Employer the sum so demanded failing which interest shall accrue on the unpaid balance at a rate of 2% per annum above the official bank rate of the Bank of England current at the date that the relevant payment becomes overdue.

- 2.5 Payments under this Bond shall be made notwithstanding any dispute between the Employer, the Contractor and/or the Sub-Contractor and whether or not any of these Parties are or might be under any liability one to the other. Payment by the Bank under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Bank from liability to the extent of such payment.

- 2.6 The Employer may make one or more demands under this Bond.

3 BANKS'S LIABILITY

- 3.1 The Bank's maximum aggregate liability under this Bond shall be £[●].

- 3.2 The obligations of the Bank under this Bond shall cease upon whichever is the earlier of:

- 3.2.1 the date on which all the Listed Items have been delivered to or adjacent to the Works as certified in writing to the Bank by the Employer; or

- 3.2.2 the Longstop Date,

and any claims hereunder must be received by the Bank in writing on or before such earlier date.

- 3.3 Clause 3.2.2 is without prejudice to the Bank's liability to pay any claim notified on or before the Longstop Date.

4 BOND REPLACEMENT

4.1 If:

4.1.1 the obligation of the Bank under this Bond has not ceased pursuant to clause 3.2.1 by the date which is not later than 40 Business Days before the Longstop Date, the Sub-Contractor shall, not less than 20 Business days before the Longstop Date; or

4.1.2 at any time:

4.1.2.1 the Bank's credit rating for long-term debt falls below any of the following ratings from the relevant ratings agency:

4.1.2.1.1 BBB+ from Standard & Poor's; or

4.1.2.1.2 Baa1 from Moody's

and its obligation under this Bond has not previously ceased pursuant to clause 3.2; or

4.1.2.2 this Bond is unenforceable for any reason (other than cessation under clause 3.2 or return of this Bond to the Sub-Contractor pursuant to clause 4.4),

the Sub-Contractor shall, within 20 Business days after such fall in credit rating or cessation,

deliver to the Employer (at no cost to it) a duly executed bond in place of this Bond in accordance with clause 4.2, save where prior to such delivery the Employer has notified the Sub-Contractor that all the Listed Items have been delivered to or adjacent to the Works.

4.2 The replacement bond shall be:

4.2.1 on the same terms as this Bond including this clause 4, provided that (in the case of a replacement bond to be provided under clause 4.1.1) it shall contain a "Longstop Date" which is no earlier than the date 18 months after the Longstop Date in this Bond;

4.2.2 for an amount equal to the amount stated in clause 3.1, but less the amount of any payment received and retained by the Employer under this Bond; and

4.2.3 provided by a bank which has the minimum ratings referred to in clause 4.1.2.1, has a place of business and is authorised to operate in the United Kingdom and which has previously been approved by the Employer in writing.

4.3 The Contractor undertakes to the Employer and the Sub-Contractor duly and promptly to execute the replacement bond and forward it to the Sub-Contractor for delivery to the Employer.

4.4 The Employer shall return this Bond to the Sub-Contractor within ten Business Days from receiving a replacement bond in accordance with clauses 4.1 and 4.2.

4.5 If the Sub-Contractor does not provide a replacement bond in accordance with clause 4.1 and 4.2, the Employer shall be entitled to demand payment under this Bond of amounts not in total exceeding the amount (less the amount of any demands previously paid to the Employer by the Bank) stated in clause 3.1. Nothing in the statement of entitlement in this clause 4.5 shall infer any restriction of the on-demand nature of this Bond.