**DATED**

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# FORM OF AGREEMENT FOR AN NEC3 PROFESSIONAL SERVICES CONTRACT

for multi-disciplinary consultancy services in connection with

## THE CENTRE FOR STUDENT LIFE

between

**CARDIFF UNIVERSITY**

and

**[ ]**


Bradley Court
Park Place
Cardiff
CF10 3DP

www.blakemorgan.co.uk


**(Ref: 2015 04 10 RCG Appointment for Student Life)**

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**THIS DEED** is dated

**PARTIES**

(1) **CARDIFF UNIVERSITY** of 30-36 Newport Road, Cardiff CF24 0DE (***Employer,*** which expression includes its permitted successors in title and assigns).

(2) **[ ]** incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ](***Consultant***).

**BACKGROUND**

(A) The *Employer* wishes to appoint the *Consultant* to Provide the Services in respect of a site at Park Place, Cardiff.

(B) The *Consultant* has agreed to Provide the Services in accordance with the *conditions of contract* specified in clause 4 of this Agreement.

**AGREED TERMS**

**1. INTERPRETATION**

Unless the context otherwise requires:

(a) any term used with initial capital letters has the meaning given to it in the *conditions of contract*; and

(b) any italicised term has the meaning given to it in the Contract Data.

**2. *CONSULTANT'S* RESPONSIBILITIES**

The *Consultant* will Provide the Services in accordance with the *conditions of contract* and other contract documents specified in clause 4 below.

**3. *EMPLOYER'S* RESPONSIBILITIES**

The *Employer* will pay the *Consultant* for the *services* and carry out his other duties in relation to the contract in accordance with the *conditions of contract* and other contract documents specified in clause 4 below.

**4. CONTRACT FOR THE *SERVICES***

The contract for the *services* comprises:

(a) the *conditions of contract* in the form of the NEC3 Professional Services Contract, April 2013 edition, incorporating the following options:

(i) Option A;

(ii) Dispute resolution Option W2;

(iii) Options X2, X7, X9, X11, Y(UK)2 and Z; and

(b) the *additional conditions of contract* annexed to this Agreement at Annex 2,

together with the Scope, the *activity schedule*, the completed Contract Data, Annexes 5 and 6 and this Agreement.

## 5. CONTRACT DATA

A copy of the completed Contract Data is annexed to this Agreement at Annex 1.

## 6. ADDITIONAL CONDITIONS OF CONTRACT

A copy of the *additional conditions of contract* is annexed to this Agreement at Annex 2.

## 7. PRIORITY OF DOCUMENTS

If there is any ambiguity or inconsistency in or between the documents comprising this contract, the priority of the documents is in accordance with the following sequence:

(a) this Agreement;

(b) the completed Contract Data,

(c) the *additional conditions of contract*;

(d) the other *conditions of contract*; and

(e) any other document forming part of the contract.

## 8. PRIOR AGREEMENTS

This Agreement supersedes any previous agreement between the Parties in relation to the *services*.

## 9. VARIATION

The terms of this Agreement may only be varied by an express written agreement to that effect executed as a Deed by the *Employer* and the *Consultant*. No waiver, estoppel, acceptance, or other ground on which the *Employer* may be said to have lost its right to insist on its strict rights under this Agreement, shall have such effect unless expressly so executed as a variation to this Agreement as stated above.

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

**EXECUTED AS A DEED** by **CARDIFF UNIVERSITY**
By affixing hereto its common seal in the presence of

Signed …….

Name …….

Job title…….

| | |
|---|---|
| Executed as a deed by **[ ]** acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR/SECRETARY], [a director OR its secretary] | .....<br>[SIGNATURE OF FIRST DIRECTOR]<br>Director<br>.....<br>[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]<br>[Director OR Secretary] |

**OR**

| | |
|---|---|
| Executed as a deed by **[ ]** acting by [NAME OF DIRECTOR] a director, in the presence of:<br>.....<br>[SIGNATURE OF WITNESS]<br>[NAME, ADDRESS [AND OCCUPATION] OF WITNESS] | .....<br>[SIGNATURE OF DIRECTOR]<br>Director |

## Annex 1 Completed Contract Data

### Part one – Data provided by the *Employer*

**General**

The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X2, X7, X9, X11, Y(UK)2 and Z of the NEC3 Professional Services Contract (April 2013), as supplemented and amended by the *additional conditions of contract*.

The *Employer* is

**Cardiff University**
**Estates Department**
**30-36 Newport Road**
**Cardiff**
**CF24 0DE**

The *Adjudicator* is **to be nominated by the *Adjudicator nominating body*.**

The *services* are The appointment of an architect led design team to design The Centre for Student Life new building and link to the existing Student Union building together with the design for a new pedestrian bridge across the railway lines to connect to Cathays Railway Station.

The Scope is **set out in Annex 3.**

The *language of this contract* is **English.**

The *law of the contract* is the law of **England and Wales, as it is applied in Wales**.

The *period for reply* is **2** weeks.

The *period for retention* is **12 years following Completion or earlier termination**.

The *Adjudicator nominating body* is **the Chartered Institute of Arbitrators.**

The *tribunal* is **litigation in the Courts of England and Wales**.

The following matters will be included in the Risk Register

**[ ].**

**The Parties' main responsibilities**

The *Employer* provides access to the following persons, places and things:

- The site at Park Place, Cardiff.

**As required to allow Completion of the whole of the *services* in accordance with this contract.**

**Time**

The *starting date* is **[ ].**

The Consultant submits revised programmes at intervals no longer than **4 weeks.**

**Quality**

The quality policy statement and quality plan are provided within **2** weeks of the Contract Date.

The *defects date* is **52** weeks after Completion of the whole of the *services*.

**Payment**

The *assessment interval* is **one calendar month.**

The *currency of this contract* is **Pounds Sterling (£).**

The *interest rate* is **2%** per annum above the **base rate in force from time to time of the Bank of England.**

**Indemnity insurance and liability**

The amounts of insurance and the periods for which the *Consultant* maintains insurance are

| **Event** | **Cover** | **period following Completion of the whole of the *services* or earlier termination** |
|---|---|---|
| Failure of *Consultant* to use the skill and care normally used by professionals providing services similar to the | **£15 million** in respect of each and every claim. | **12 Years** |

| | | |
|---|---|---|
| *services* | | |
| death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property resulting from an action or failure to take action by the *Consultant* | **£10 million** in respect of each claim. | **12 Years** |
| death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract | **£10 million** in respect of each claim. | **12 Years** |

The *Employer* provides the following insurances **None**

The *Consultant*'s total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to **£30 million each and every claim.**

**Optional Statements**

The *completion date* for the whole of the *services* is **[ ]**

The *key dates* and *conditions* to be met are:

| *condition* to be met | *key date* |
|---|---|
| 1……. | …… |
| 2…….. | …… |
| 3…….. | …….. |

The *Consultant* is to submit a first programme for acceptance within **2** weeks of the Contract Date.

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due:

- The period for payment is **21 days after the date when payment is due**.

The *Consultant* prepares forecasts of *expenses* at intervals no longer than **one calendar month**.

**Option X2** The *law of the project* is **the law of England and Wales, as it is applied in Wales.**

**Option X7** Delay damages for Completion of the whole of the *services* are **£0 per da**y.

**Option Z** The *additional conditions of contract* are **set out in Annex 2**.

**Part two – Data provided by the *Consultant***

The *Consultant* is

[ ]

The *key people* are

[ ]

The *staff rates* are **set out in Annex 4**

The following matters will be included in the Risk Register

[ ]

The *expenses* stated by the *Consultant* are:

[ ]

The *activity schedule* is **as set out in Annex 4**

The tendered total of the Prices is £[ ]

## Annex 2 Additional Conditions of Contract

The *additional conditions of contract* are part of this contract and are set out below:

**PART A: Amendments to the *conditions of contract*:**

The *conditions of contract* are amended as set out below:

Delete clause 11.2(4) and replace as follows:

"11.2(4) The Contract Date is the date of execution of the form of Agreement between the Parties to which this Contract Data is appended or (if earlier) the date when the *Consultant* first begins to Provide the Services"

Amend clause 11.2(15) to delete the words "which would delay immediately following work"

Delete clause 12.1 and replace as follows:

"12.1 In this contract, except where the context shows otherwise:

- words in the singular also mean in the plural and the other way round,
- words in the masculine also mean in the feminine and neuter and the other way round,
- references to a document include any revision made to it in accordance with this contract,
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it and
- references to a standard include any current relevant standard that replaces it."

Add a new clause 12.5 as follows:

"12.5 The *Consultant* shall not assign this contract without the written consent of the *Employer*."

Insert a new clause 13.9 as follows:

"13.9 If the *Consultant* does not reply to a communication from the *Employer* within the *period for reply* the *Employer* may charge the *Consultant* for any direct costs, losses or expenses that the *Employer* reasonably incurs by reason of the *Consultant's* failure to respond within the *period for reply*. The *Employer* may set off or deduct such amounts from the amount due to the *Consultant* at the next assessment date."

Delete clause 14.1 and replace as follows:

"14.1 The Parties agree that neither:

(a) any communication from the *Employer*; nor

(b) any acceptance by the *Employer* of a communication from the *Consultant*; nor

(c) any inspection, test or acceptance by the *Employer* changes the *Consultant's* liability under this contract (including the *Consultant's* responsibility to Provide the Services, and its liability for Defects and its design)."

Delete clause 18.

Add the following words to the end of clause 21.1:

"and in compliance with all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law which affect the *services* or performance of any of the *Consultant's* obligations under this contract."

Add the following words to clause 21.2 after the words "normally used by"

"competent and experienced"

Insert a new clause 21.4 as follows:

"21.4 Where and to the extent that the *Consultant* is responsible for the specification of work, goods or materials or for the inspection of work as a part of the *services*, the *Consultant* does not specify for use or permit to be used:

(a) any materials generally known at the time of specification to be deleterious to health or safety or to the integrity of buildings, structures, plant, machinery or their components*;* and/or

(b) any materials which, by their nature or application, contravene any British Standards or Code of Practice or European Union equivalent current at the date of specification or use."

Insert the following as a new final sentence in clause 22.1:

"An alternative reason for not accepting the person may be based upon the *Employer's* previous experience of the proposed replacement."

In the existing clause 22.2 after "arranges" insert "at his own cost".

Delete clause 24.2 and replace as follows:

"The *Consultant* submits the name of each proposed Subconsultant to the *Employer* for acceptance. A reason for not accepting the Subconsultant is that this appointment will not allow the *Consultant* to Provide the Services, the *Employer* is concerned (on reasonable grounds) with the financial standing or expertise or experience or insurance cover of the proposed Subconsultant, or the *Employer* requires a collateral warranty and the Subconsultant is unable to provide a collateral warranty to the *Employer* in a form which is acceptable to the *Employer*.

The *Consultant* does not appoint a proposed Subconsultant until the *Employer* has accepted such Subconsultant."

Delete the following bullet point from clause 24.3:

- "an NEC contract is proposed or"

Add the following bullet point after the last bullet point in clause 24.3:

- "they limit rights under any collateral warranty to be provided by the Subconsultant to a greater extent than the rights under this contract in relation to the relevant subcontracted *services*."

Add the following new clause 24.6:

"The *Consultant* ensures that every Subconsultant is appointed on subcontract terms which are consistent in all material respects with the terms of this contract (including, but not limited to, terms relating to payment) and which pass down all relevant obligations under this contract to the Subconsultant, as applicable."

Add a new clause 25.5 as follows:

"25.5 The *Consultant* complies with:

(a) any rules, regulations, policies and procedures (including health and safety policies and quality assurance procedures) issued by the *Employer*; and

(b) any planning permissions notified by the *Employer* to the *Consultant*."

Insert new clauses 30.4 and 30.5 as follows:

"30.4 If the *Consultant* considers that it has been or is likely to be delayed in the performance of the whole or any part of its obligations then it shall immediately inform the *Employer* in writing and shall specify:

(a) the cause of the delay;

(b) the likely effect on progress; and

(c) such actions as it believes are required to remedy the delay or problem.

30.5 The *Consultant* uses all reasonable endeavours to mitigate the effects of any delay in the performance of its obligations."

Add the following additional bullet point to clause 31.3:

- "it is more onerous on the *Employer* or Others"

Add a new clause 42 as follows:

"42 Nothing in clause 41 affects any other right or remedy under the contract or at law, including the *Employer's* right to claim damages for a Defect as a breach of contract."

Delete clause 60.1(11).

Amend the final paragraph of clause 61.3 to read as follows:

"If the *Consultant* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date."

Delete the first bullet point of clause 61.4 and replace as follows:

- "arises by reason of any act, omission, breach or default (including any insolvency) of the *Consultant*, any Subconsultant or supplier, or any other person for whom the *Consultant* is responsible"

In clause 61.4, delete the words:

"A failure by the *Employer* to reply within two weeks of this notification is treated as acceptance by the *Employer* that the event is a compensation event and an instruction to submit quotations"

In clause 62.6, delete the words:

"If the *Employer* does not reply to the notification within two weeks and, unless the quotation is for a proposed instruction or a proposed changed decision, the *Consultant's* notification is treated as acceptance of the quotation by the *Employer*"

Add a new clause 63.15 as follows:

"Where a compensation event or its effect is in part attributable to the *Consultant's* fault (including any fault on the part of any Subconsultant or other person for whom the Consultant is responsible), the Prices, the Completion Date and Key Dates are not changed to the extent attributable to the *Consultant's* fault."

In clause 64.4, delete the words:

"If the *Employer* does not reply within two weeks of this notification the notification is treated as acceptance of the *Consultant's* quotation by the *Employer*"

In clause 65.1, delete the word "or" from the end of the second bullet point and delete the last bullet point.

Delete clause 70.1 and replace as follows:

"70.1 The *Consultant* grants to the *Employer*, with immediate effect, an irrevocable, non-exclusive, royalty-free licence to copy and make full use of all materials prepared by the *Consultant* for the *services* for any purpose relating to the *services* and/or the project to which the *services* relate. The *Employer's* licence carries the right to grant sub-licences and is transferable to third parties without the consent of the *Consultant* and survives termination (for any reason) of the *Consultant's* employment under this contract. The *Consultant*

obtains from a Subconsultant equivalent rights to use material prepared by a Subconsultant."

Add the following words to the start of clause 70.2

"The copyright in all documents prepared by the *Employer* is and remains the property of the *Employer*."

Delete clause 81.2 and replace as follows:

"81.2 As and when reasonably required by the *Employer*, the *Consultant* produces for inspection satisfactory documentary evidence that the insurances required by this contract are in force and that the premiums due under them are fully paid."

Add the following new bullet points to clause 82.1:

- "loss of or damage to any property owned or occupied by the *Employer* (other than the property which is the subject of the *services*),"

Delete clause 82.2.

Amend the first bullet point of clause 90.3 by adding the words "or any part of them" to the end.

Add the following new bullet points to clause 90.3:

- "the *Consultant* breaches Clause Z4.1 or Z4.2;
- there is a change of control of the *Consultant*(within the meaning of section 1124 of the Corporation Tax Act 2010);
- the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9)of the Public Contracts Regulations 2015;
- the *Consultant* has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015, and should therefore have been excluded from the procurement procedure; or
- the contract should not have been awarded to the *Consultant* in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union".

Add a new clause 90.5 as follows:

"90.5 Any termination of the *Consultant's* engagement under this contract is without prejudice to the Parties' rights and remedies accrued up to the date of termination, which shall survive such termination."

Delete the final sentence of clause 91.1 and replace as follows:

"91.2 Upon termination for whatever reason, the *Consultant* gives to the *Employer* all hard copy and electronic data (including material prepared by any Subconsultant) obtained or prepared by or on behalf of the *Consultant* under this contract. The *Employer* has the right to use such material for completion of the *services*."

Add new clauses 91.2 and 91.3 as follows:

"91.2 Upon termination of this contract (howsoever terminated) the *Consultant*:

- promptly takes all necessary steps to stop performance of the *services* in an orderly manner and with reasonable speed and economy and
- delivers to the *Employer* all documents belonging to the *Employer* that shall for the time being be under the control of the *Consultant* or any Subconsultant and
- ceases to access any of the *Employer*'s computer systems to which it previously had access.

91.3 The *Consultant* complies at its own cost with the reasonable requirements of the *Employer* to ensure the orderly hand over of the *services* to any incoming substitute consultant."

Delete the words "A final payment" from the start of clause 92.1 and replace as follows:

"Subject to clause 92.2, a final payment"

Delete clause 92.2 and replace as follows:

"92.2 If the *Employer* terminates

- because of the insolvency of the *Consultant;* or
- because of a substantial failure of the *Consultant* to comply with his obligations; or
- for a reason set out in regulation 73(1)(b) or73(1)(c) of the Public Contracts Regulations 2015; or
- because of the *Consultant's* breach of Clause Z4.1 or Z4.2

the *Employer* shall be entitled to be paid any loss or costs incurred by the *Employer* as a result of such termination including the additional cost to the *Employer* of completing the whole of the *services* and after termination the *Employer* shall not be obliged to make any further payment to the *Consultant* until the full extent of loss or costs can be fully ascertained. In the event that such loss or cost exceeds the amount otherwise payable to the *Consultant* in accordance

with this contract, without prejudice to any other right or remedy of the *Employer*, the *Employer* may recover such excess from the *Consultant* as a debt."

Delete the following words from the first bullet point in clause W2.3(4):

"and alter a quotation which has been treated as having been accepted"

Add the following new clause W2.5:

**"W2.5 Dispute avoidance**

W2.5(1) The *Consultant* and the *Employer* will endeavour to notify each other of any anticipated dispute under this contract so that it can be avoided by negotiation between them.

W2.5(2) The *Employer* and the *Consultant* will endeavour to resolve any dispute under this contract which does arise by direct negotiation in good faith between senior executives. Each of them will give serious consideration to any request by the other to refer the dispute to mediation if it cannot be resolved by direct negotiation."

In Option Y(UK)2, delete clause Y2.3 and replace as follows:

"If the *Employer* intends to pay less than the notified sum, he notifies the *Consultant* of the amount which the *Employer* considers to be due not later than seven days (the prescribed period) before the final date for payment. The *Employer's* notification states the basis on which the amount is calculated and includes details of the calculation. A Party pays the notified sum unless he has notified his intention to pay less than the notified sum. If the *Employer* issues a notification pursuant to this clause the *Consultant* submits a revised invoice to the *Employer* for the reduced sum notified by the *Employer*. Subject to receipt of the *Consultant's* revised invoice, the *Employer* pays the sum stated in the *Employer's* notification by the final date for payment"

**PART B: additional *conditions of contract*:**

The *conditions of contract* are supplemented by the following additional conditions of contract as set out below:

**"Z1 Confidentiality and Freedom of Information Act**

**Definitions**

In this clause Z1, the following defined terms shall bear the following meanings:

"**Code of Practice**" means any code of practice or guidance issued under or in connection with the FOIA and the EIR by the relevant governmental or statutory body and as the same may be amended, updated or replaced from time to time;

"**Confidential Information**" means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the contract and:

(i) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998)

(ii) the release of which is likely to prejudice the commercial interests of the *Employer* or the *Consultant* respectively; or

(iii) which is a trade secret;

"**EIR**" means the Environmental Information Regulations;

"**FOIA**" means the Freedom of Information Act 2000; and

"**Personal Data**" bears the meaning given in the Data Protection Act 2000.

Z1.1 In respect of any Confidential Information it may receive from the other Party (the "Discloser") and subject always to the remainder of this Clause Z1, each Party (the "Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

Z1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the contract;

Z1.1.2 the provisions of this Clause Z1 shall not apply to any Confidential Information which:

(a) is in or enters the public domain other than by breach of the contract or other act or omissions of the Recipient;

(b) is obtained by a third party who is lawfully authorised to disclose it;

(c) is authorised for release by the prior written consent of the Discloser; or

(d) the disclosure of which is required to ensure the compliance of the *Employer* with the FOIA and the EIR and/or any applicable Codes of Practice.

Z1.2 Nothing in this Clause Z1 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the *Consultant* is the Recipient, to the *Consultant's* immediate or ultimate holding company provided that the *Consultant* procures that such holding company complies with this Clause Z1 as if any reference to the *Consultant* in this Clause Z1 were a reference to such holding company.

Z1.3 The *Consultant* acknowledges that the *Employer* is subject to the FOIA and the EIR. The *Consultant* notes and acknowledges the FOIA and the EIR and the applicable Codes of Practice. The *Consultant* will act (and will provide reasonable assistance to the *Employer* to enable it to act) in accordance with the FOIA and the EIR and the Codes of Practice to the extent that they apply to the *Consultant's* performance under the contract.

Z1.4 The *Consultant* agrees that:

Z1.4.1 without prejudice to the generality of Clause Z1.2, the provisions of this Clause Z1 are subject to the respective obligations and commitments of the *Employer* under the FOIA and the EIR and the Codes of Practice;

Z1.4.2 subject to clause Z1.4, the decision on whether any exemption applies to a request for disclosure of information is a decision solely for the *Employer*.

Z1.4.3 where the *Employer* is managing a request for information the *Consultant* shall co-operate with the *Employer* and shall respond within five (5) working days of any request by the *Employer* for assistance in determining how to respond to a request for disclosure.

Z1.5 The *Employer* will consult the *Consultant* in relation to any request for disclosure of the *Consultant*'s Confidential Information in accordance with the Codes of Practice.

Z1.6 This Clause Z.1 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data. Save as aforesaid, this Clause Z1 shall remain in force for a period of three (3) years after the termination or expiry of this Contract."

**"Z2 Copyright**

Z2.1 The *Consultant* indemnifies the *Employer* in respect of all costs, claims, damages, proceedings and expenses arising out of any breach of copyright or other intellectual property right by the *Consultant* or its Subconsultants."

**"Z3 Information provided by the Employer**

Z3.1 The *Consultant* acknowledges that the *Employer* does not warrant or give any representation on the accuracy or completeness of any data or information provided to the *Consultant* by the *Employer*. The *Consultant* must rely on its own enquiries and carry out such further investigations or surveys as it considers appropriate."

**"Z4 Corrupt practices**

Z4.1 The *Consultant* warrants that he has not done and will not do any of the following:

- offer or give to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the Employer, or

- enter into this contract or any other contract with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

Z4.2 The *Consultant* warrants that in entering into this contract he has not:

- communicated to any person other than the *Employer*, or a person duly authorised by the *Employer*, the amount or approximate amount of the tender or submission, or proposed tender or submission, leading to this contract except where the disclosure, in confidence, of the approximate amount of the tender or submission was necessary to obtain insurance premium quotations required for the preparation of the tender or submission; or

- entered into any agreement or arrangement with any person, or requested of any person, that he or they shall refrain from tendering

or competing, that he or they shall withdraw any tender or submission once offered or that he or they will vary the amount of any tender or submission to be submitted."

**"Z5 Collateral warranties**

Z5.1 The *Consultant* shall procure and deliver collateral warranties in favour of the *Employer* in the form set out in **Annex 5** from each Subconsultant engaged by the *Consultant*. A certified copy of each Subconsultant's appointment shall also be provided to the *Employer*, together with a copy of the Subconsultant's up to date verification of professional indemnity insurance. Collateral warranties shall be procured and delivered to the *Employer* within 14 days of each Subconsultant's appointment.

Z5.2 If the *Consultant* defaults in the delivery of any collateral warranty required under this clause Z5 then, in addition to any other right which the *Employer* may have, the *Employer* may withhold payment of any sum due to the *Consultant* under this contract until the *Consultant* has remedied its default."

"**Z6 Records and audit**

Z6.1 The *Consultant* shall keep and maintain until twelve (12) years after the date of termination or expiry (whichever is the earlier) of this contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this contract.

Z6.2 The *Consultant* shall keep the records and accounts referred to in clause Z6.1 above in accordance with good accountancy practice.

Z6.2 The *Consultant* shall afford the *Employer* and/or any auditor such access to such records and accounts as may be required from time to time."

"**Z7 Novation**

Z7.1 Within 14 days of the date of a notice given by the *Employer* the *Consultant* shall execute as a deed and deliver to the *Employer* a novation agreement with the *Employer* and the contractor engaged by the *Employer* in the form of the novation agreement at **Annex 6**.

Z7.2 If the *Consultant* defaults in the execution or the delivery of the novation agreement required under clause Z7.1, in addition to any other right which the *Employer* may have, the *Employer* may:

- suspend payment of any sum due to the *Consultant* under this contract until the *Consultant* has remedied its default; and/or
- terminate this contract with immediate effect."

**Annex 3 Scope**

The *Consultant* is required to undertake the following *services*:

# Pre-Novation Services:

The Scope of services is to undertake the following activities in relation to the RIBA Plan of Work:

## Stage 1 – Preparation and Brief

**Core Objectives**
Review and confirm Project Objectives, including Quality Objectives and Project Outcomes, Sustainability Aspirations, Project Budget, other parameters or constraints and develop Initial Project Brief. Undertake Feasibility Studies and review of Site Information.

**Programme**

Review Project Programme

Prepare Design Programme

**Planning**

Pre-application discussions with Local Authority

**Key Support Tasks**

Agree Design Responsibility Matrix and Information Exchanges.

**Sustainability Checkpoint 1**
Review alternative sustainability strategies

**Information Exchange**
Initial Project Brief

**UK Government Exchanges**
As required

## Stage 2 – Concept Design

**Core Objectives**
Prepare **Concept Design**, including outline proposals for structural design, building services systems, outline specifications and preliminary **Cost Information** along with relevant **Project Strategies** in accordance with **Design Programme**. Agree alterations to brief and issue Final Project Brief

**Programme**

Review Design Programme and monitor for delay.

Review Project Programme

**Principle Designer**

Ensure that you carry out your role as Principal Designer.

**Cost**

Ensure that the Cost Consultant is kept up-to-date with design information and is utilised in the design process so that the University's construction budget is achieved.

Prepare option studies to meet target costs.

Participate in VE/VM process as required

**Risk**

Participate in the Risk Management process, attend workshops, input into Risk Register

**Planning**

Pre-application discussions with Local Authority

**Procurement**
Participate in Main Contractor procurement via 2-Stage tender process

**Key Support Tasks**
Prepare Maintenance and Operational Strategy and review Handover Strategy and Risk Assessments.

Undertake third party consultations as required and any Research and Development aspects.

Review and update Project Execution Plan.

Consider Construction Strategy, including offsite fabrication, and develop Health and Safety Strategy

Attend regular client meetings and design meetings

**Sustainability Checkpoint 2**
Prepare Sustainability Strategy, Consider BREEAM requirements

**Information Exchange**
Concept Design including outline structural and building services design, associated Project Strategies, preliminary Cost Information and Final Project Brief.

Establish Information Release Schedule and monitor information exchange between the design disciplines

**UK Government Exchanges**
As required

## Stage 3 – Developed Design

**Core Objectives**

Prepare Developed Design, including coordinated and updated proposals for structural design, building services systems, outline specifications, Cost Information and Project Strategies in accordance with Design Programme.

**Procurement Strategy**

Review Information Exchange dates in relation to the Project Programme

Participate in Main Contractor procurement via 2-Stage tender process

**Programme**

Review Design Programme and monitor for delay.

Review Project Programme

Review Procurement Programme

**Principle Designer**

Ensure that you carry out your role as Principal Designer.

**Cost**

Ensure that the Cost Consultant is kept up-to-date with design information and is utilised in the design process so that the University's construction budget is achieved.

Prepare option studies to meet target costs.

Participate in VE/VM process as required

**Risk**

Participate in the Risk Management process, attend workshops, input into Risk Register

**Planning**

Prepare and submit Planning Application(s)

**Key Support Tasks**
Review and update Maintenance and Operational Strategy and Handover Strategy and Risk Assessments.

Undertake third party consultations as required and conclude Research and Development aspects.

Review and update Project Execution Plan including Change Control Procedures

Review and update Construction and Health and Safety Strategies

Attend regular client meetings and design meetings

**Sustainability Checkpoint 3**
Finalise Sustainability Strategy, Prepare Design Stage BREEAM Report

**Information Exchange**
Developed Design including the coordinated architectural, structural and building services design, and updated Cost Information

Establish Information Release Schedule and monitor information exchange between the design disciplines

**UK Government Exchanges**
As required

## Stage 4 – Technical Design

**Core Objectives**

Prepare Technical Design in accordance with Design Responsibility Matrix and Project Strategies to include all architectural, structural and building services information, specialist subcontractor design and specifications, in accordance with Design Programme.

Prepare Room Data Sheets

Prepare individual Room Layout drawings in both 2D and a 3D visual

Liaise with specialist sub-contractors and designers for specifc elements of the design

**Procurement Strategy**

Prepare documentation for tender issue by others.

**Novation**

The Lead Consultant and sub-consultants may be novated at some stage during this Stage 4.

**Programme**

Review Design Programme and monitor for delay.

Review Project Programme

Review Procurement Programme

**Cost**

Ensure that the Cost Consultant is kept up-to-date with design information and is utilised in the design process so that the University's construction budget is achieved.

Prepare option studies to meet target costs.

Participate in VE/VM process as required

**Risk**

Participate in the Risk Management process, attend workshops, input into Risk Register

**Principle Designer**

Ensure that you carry out your role as Principal Designer.

**Planning**

Monitor progress of Planning Application(s). Review Planning Conditions

**Key Support Tasks**

Review and update Maintenance and Operational Strategy and Handover Strategy and Risk Assessments.

Prepare and submit Building Regulations submission and any other third party submissions requiring consent

Review and update Project Execution Plan including Change Control Procedures

Review and update Construction and Health and Safety Strategies

Attend regular client meetings and design meetings

**Sustainability Checkpoint 3**
Finalise Sustainability Strategy, Finalise Design Stage BREEAM Report

**Information Exchange**
Completed Technical Design of the Project

Establish Information Release Schedule and monitor information exchange between the design disciplines

If the contract is novated, the *Consultant* is required to undertake the following *services*:

# Post-Novation Services:

## Stage 5 – Construction

**Core Objectives**
Resolution of Design Queries from Contractor

Issue updated design information as required by Contractor

Site visits and inspections and reports of quality of the Works

Review and update Sustainability Strategy and implement Handover Strategy, including agreement of information required for commissioning, training, handover, asset management, future monitoring and maintenance and ongoing compilation of 'As-constructed' Information.

Update Construction and Health and Safety Strategies

Attend regular progress meetings and design meetings

**Principle Designer**

Ensure that you carry out your role as Principal Designer.

**Sustainability Checkpoint 3**
Finalise Sustainability Strategy, Monitor progress on achieving BREEAM target

**Information Exchange**
"As-constructed" drawings and other information

## Stage 6 – Handover and Close Out

**Core Objectives**
Inspections and reports for snagging prior to Practical Completion

Carry out activities listed in Handover Strategy including Feedback for use during the future life of the building or on future projects.

Updating of Project Information as required.

**Information Exchange**
Updated “As-constructed” drawings and other information

**UK Government Exchanges**
As required

## Stage 7 – In Use

**Core Objectives**
Conclude activities listed in Handover Strategy including Post-occupancy Evaluation, review of Project Performance, Project Outcomes and Research and Development aspects.

Updating of Project Information, as required, in response to ongoing client Feedback until the end of the building’s life.

**Information Exchange**

As-constructed’ Information updated in response to ongoing client Feedback and maintenance or operational developments

**UK Government Exchanges**
As required

If the contract is not novated, the *Consultant* may be required to undertake the following *services*:

**Services to be provided in the event the contract is not novated:**

To be developed and agreed with the *Consultant* if and when required.

**Annex 4 Activity Schedule**

| Activity No. | Activity Title | Price (£/p) |
|---|---|---|
| | | |
| | | |
| **1** | [ ] | [ ] |
| **2** | | |
| **3** | | |
| **4** | | |
| **TOTAL: £[ ]** | | |

The *staff rates* are:

[ ]

## Annex 5 Form of Collateral Warranty

**DATED** **20[ ]**

**[INSERT NAME OF SUBCONSULTANT]**

**- and -**

**CARDIFF UNIVERSITY**

**-and-**

**[INSERT NAME OF CONSULTANT]**

---

**SUBCONSULTANT'S DEED OF WARRANTY TO EMPLOYER**
**in respect of**
**[**insert description of project**]**

---

BLAKE MORGAN

**THIS AGREEMENT** is made the day of 20[ ]

**BETWEEN:-**

1. [All the Partners in] **[INSERT NAME OF SUBCONSULTANT]** [(all of whom have executed this Deed)] [registered in England under Company Number [ ]] of/whose registered office is situated at [ ] ("the Subconsultant"); and

2. **CARDIFF UNIVERSITY** of 30-36 Newport Road, Cardiff CF24 0DE ("the Beneficiary", which term shall include all permitted assignees under this Agreement); and

3. **[INSERT NAME OF CONSULTANT]** (Company Registration No. [ ]) of/whose registered office is at [ ] ("the Consultant")

**WHEREAS:-**

A The Beneficiary has appointed the Consultant under a contract ("the Contract", which term shall include any enforceable agreements reached between the Beneficiary and the Consultant and which arise out of and relate to the same) dated [insert date of the Contract] to carry out consultancy services ("the Services", which term shall include any changes to the services in accordance with the Contract referred to in this recital A) in connection with the project at [insert address of project] ("the Project")

B By a contract ("the Appointment", which term shall include any enforceable agreements reached between the Consultant and the Subconsultant which arise out of and relate to the same) dated [insert date of the appointment] the Consultant has appointed the Subconsultant as [insert details of the Subconsultant's role e.g. Architect, Structural Engineer] in connection with the Project.

C It is a condition of the Contract and the Appointment that the Subconsultant will enter into this Agreement with the Beneficiary

In consideration of the payment of one pound (£1.00) by the Beneficiary to the Subconsultant receipt of which the Subconsultant acknowledges and without prejudice to the rights and obligations of the parties to this Agreement under any other contract **IT IS HEREBY AGREED** as follows:-

1. The Subconsultant warrants to the Beneficiary that :-

   1.1 in respect of all services performed and to be performed by the Subconsultant in connection with the Appointment and the Project it has exercised and will continue to exercise all the reasonable skill and care to be expected of a properly qualified professional Subconsultant, who is where necessary a specialist and experienced in carrying out such services for projects of a similar size, scope, nature, complexity and value to the Project; and

1.2 it has complied and will continue to comply with the terms of the Appointment and has fulfilled and will continue to fulfil its duties and obligations under the Appointment.

The Subconsultant acknowledges that breach of the Appointment may cause the Beneficiary to suffer and incur loss damage and expense and the Subconsultant accepts that any such loss damage and expense (whether direct or indirect and whether or not purely economic in nature) is within the contemplation of the parties as being loss damage and expense which flows naturally from such breach.

2

2.1 Without prejudice to the generality of Clause 1, the Subconsultant further warrants that it has not specified and will not specify for use in the Project:

2.1.1 products, goods or materials generally accepted, or generally suspected, in the construction industry at the time of specification to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used; and/or

2.1.2 products, goods or materials which do not accord with British or European Union Standards and/or Codes of Practice and/or any applicable agrément certificate issued by the British Board of Agrément current at the time of specification or such equivalent standards or requirements and good building practice; and/or

2.1.3 products, goods or materials which do not accord with the guidelines contained in the edition of the publication "Good Practice in the Selection of Construction Materials" (British Council for Offices) current at the time of specification; and/or

2.1.4 products, goods or materials which have been supplied or placed on the market in breach of the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC) (or any amendment, modification, consolidation or re-enactment thereof current at the date of specification or use).

2.2 If in the performance of its duties under the Appointment the Subconsultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials prohibited by clause 2.1 of this Agreement, the Subconsultant will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Subconsultant to check the work of others which is not required by the Appointment.

3 The Beneficiary has no authority to issue any direction or instruction to the Subconsultant in relation to performance of the Subconsultant’s services under the Appointment unless and until the Beneficiary has given notice under clauses 5 or 6.

4 The Beneficiary has no liability to the Subconsultant in respect of fees and expenses under the Appointment unless and until the Beneficiary has given notice under clause 5 or clause 6.

5 The Subconsultant agrees that, in the event of the termination of the Contract or in the event of the Consultant becoming insolvent or having a liquidator, receiver, manager, administrator or administrative receiver appointed the Subconsultant will, if so required by notice in writing given by the Beneficiary to the Subconsultant, and subject to clause 7, accept the instructions of the Beneficiary or its appointee to the exclusion of the Consultant in respect of the Project and the Services upon the terms and conditions of the Appointment. The Consultant acknowledges that the Subconsultant shall be entitled to rely on a notice given to the Subconsultant by the Beneficiary under this clause 5 as conclusive evidence for the purposes of this Agreement of the termination of the Contract and further acknowledges that such acceptance of the instructions of the Beneficiary to the exclusion of the Consultant shall not constitute any breach of the Subconsultant's obligations to the Consultant under the terms and conditions of the Appointment.

6

6.1 The Subconsultant further agrees that it will not without first giving the Beneficiary not less than twenty-eight (28) days notice in writing exercise any right it may have to terminate the Appointment or to treat the same as having been repudiated by the Consultant or to discontinue or suspend the performance of any services to be performed by the Subconsultant pursuant thereto. Such right to terminate the Appointment with the Consultant or to treat the same as having been repudiated or discontinue or suspend performance shall cease if, within such period of notice and subject to clause 7 the Beneficiary shall give notice in writing to the Subconsultant requiring the Subconsultant to accept the instructions of the Beneficiary or its appointee to the exclusion of the Consultant in respect of the Services upon the terms and conditions of the Appointment.

6.2 The Consultant acknowledges that the Subconsultant shall be entitled to rely on a notice given to the Subconsultant by the Beneficiary under clause 6 and that acceptance by the Subconsultant of the instruction of the Beneficiary to the exclusion of the Consultant shall not constitute any breach of the Subconsultant's obligations to the Consultant under the Appointment. Provided that nothing in clause 6 shall relieve the Subconsultant of any liability it may have to the Consultant for any breach by the Subconsultant of the terms and conditions of the Appointment or where the Subconsultant has wrongfully determined or suspended the Appointment or has wrongfully treated the Appointment as having been repudiated by the Consultant.

7

7.1 It shall be a condition of any notice given by the Beneficiary under clause 5 or clause 6 that the Beneficiary or its appointee accepts liability for payment of the fees and expenses properly payable and due to the Subconsultant under the Appointment and for the performance of the Consultant's obligations

thereunder including payment of any fees and expenses properly due and outstanding at the date of such notice.

7.2 Upon the issue of any notice by the Beneficiary under clause 5 or clause 6 the Appointment shall continue in full force and effect as if no right of termination on the part of the Subconsultant has arisen and the Subconsultant shall be liable to the Beneficiary and its appointee under the Appointment in lieu of its liability to the Consultant.

7.3 If any notice given by the Beneficiary under clause 5 or clause 6 requires the Subconsultant to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Subconsultant as guarantor for the payment of all sums from time to time due to the Subconsultant from the Beneficiary's appointee.

8

8.1 The copyright in all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials and all updates, amendments, additions and revisions to them and any services, designs, or inventions incorporated or referred to in them (whether created or stored electronically or otherwise) prepared or under preparation by or on behalf of the Subconsultant in connection with the Appointment or the Services (together referred to in this Clause 8 as "the Documents") shall remain vested in the Subconsultant but the Beneficiary and its appointee shall have an irrevocable royalty-free and non-exclusive licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Services or to the Project including, but without limitation, the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of the Project. This licence allows the Beneficiary to use the Documents in connection with any extension of the Project, but not to reproduce the designs contained in the Documents in any such extension Such licence shall be transferable to third parties without the consent of the Subconsultant being required and shall include the right to grant sub-licences.

8.2 Subject to clause 8.3, the Subconsultant shall be liable for and shall indemnify the Beneficiary against all costs claims damages and losses incurred or suffered by the Beneficiary as a result of the infringement or alleged infringement of any copyright, patent or other industrial or intellectual property rights arising from the copying and use of the Documents.

8.3 The Subconsultant shall not be liable for any use by the Beneficiary or its appointee of any of the Documents for any purpose other than that for which the same were prepared by or on behalf of the Subconsultant.

8.4 Where the copyright in any of the Documents is not vested in the Subconsultant, the Subconsultant shall procure that the person in whom the copyright is vested grants to the Beneficiary a licence similar to that granted in clause 8.1 (or the Subconsultant shall itself grant a sub-licence having the same effect, if it has the right to do so) in relation to all such Documents.

8.5 The Subconsultant shall provide to the Beneficiary upon request copies of the Documents, the Beneficiary paying to the Subconsultant the reasonable copying charges.

9

9.1 The Subconsultant shall from the date of the Appointment take out and maintain (promptly paying all premiums) professional indemnity insurance with well-established insurers of good repute in an amount of [insert amount of insurance in words] (£[insert amount of insurance in figures]) for any one claim for a period of 12 years from the date of practical completion of the Project, provided always that at the date of this Agreement and thereafter such insurance is available at commercially reasonable rates.

9.2 The Subconsultant shall immediately inform the Beneficiary if professional indemnity insurance is not or ceases to be available at commercially reasonable rates in order that the Subconsultant and the Beneficiary can discuss the means of best protecting the Subconsultant and the Beneficiary in the absence of such insurance.

9.3 As and when it is reasonably requested to do so by the Beneficiary or its appointee, the Subconsultant shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

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

10

10.1 This Agreement may be assigned twice by the Beneficiary by way of absolute legal assignment to any party without the consent of the Subconsultant being required and such assignment shall be effective upon written notice thereof being given to the Subconsultant. Any assignment thereafter shall require the Subconsultant's consent (such consent not to be unreasonably withheld or delayed).

10.2 The Subconsultant shall not contend or argue that any person to whom the benefit of this Agreement may be assigned or otherwise dealt with by the Beneficiary pursuant to clause 10.1 shall be precluded or prevented from recovering under this Agreement any loss or damage resulting from any breach of this Agreement by the Subconsultant (whenever it happens) by reason of the fact that such person is an assignee only or otherwise not the

Beneficiary or because the loss or damage suffered has been suffered by such person only and not by the Beneficiary or because the loss or damage suffered is not the same as or is different from that which has been or would have been suffered by the Beneficiary.

11 Any notice to be given by the Subconsultant hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Beneficiary at the above address; and any notice given by the Beneficiary hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the above mentioned address of the Subconsultant or to the principal business address of the Subconsultant for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight hours after being posted.

12 The liability of the Subconsultant under this Agreement shall not be released diminished or in any other way affected by

12.1 any independent enquiry, testing or investigation into any relevant matter which may be made or carried out by or on behalf of the Beneficiary or the failure to carry out any such independent enquiry, testing or investigation; and/or

12.2 any approval, consent, perusal or endorsement given or made by or on behalf of the Beneficiary or the failure to give or make any such approval, consent, perusal or endorsement

13 The provisions of this Agreement shall be without prejudice to any other right or remedy which the Beneficiary may have in tort or otherwise.

14 No action or proceedings for any breach of this Agreement shall be commenced against the Subconsultant after the expiry of 12 years from the date of completion of the Subconsultant's services under the Appointment or after the expiry of 12 years from the date of completion of the Project (whichever is the later).

15 Save as expressly stated herein the Contracts (Rights of Third Parties) Act 1999 shall not operate to create rights in favour of anyone other than the parties to this Agreement.

16 The construction validity and performance of this Agreement shall be governed by the law of England and Wales (as it is applied in Wales) and the parties agree to submit to the non-exclusive jurisdiction of the English and Welsh Courts.

**EXECUTED AS A DEED BY THE BENEFICIARY**

hereinbefore mentioned namely **CARDIFF UNIVERSITY**

By affixing hereto its common seal in the presence of

Signed …….

Name …….

Job title…….

**AND AS A DEED BY THE SUBCONSULTANT**

hereinbefore mentioned namely **[INSERT NAME OF SUBCONSULTANT]**

EITHER

acting by the following )

officers who have each signed their names:- )

Director:

Director/Secretary:

OR

by [ - each Partner - ] )

in the presence of:- )

<u>Witness</u>

Signature:

Name:

Address:

Occupation:

**AND AS A DEED BY THE CONSULTANT**

hereinbefore mentioned namely **[INSERT NAME OF CONSULTANT]**

by affixing hereto its common seal

in the presence of:-

…… Director

…… Director/Secretary

OR ----------

acting by a director and its secretary/two directors whose signatures are here subscribed

namely……..

[Signature]……..……. Director

and……...

[Signature]……..…… Director/Secretary

**Annex 6 Form of Novation**

**DATED**

**----------**

# NOVATION OF PROFESSIONAL APPOINTMENT: EMPLOYER TO CONTRACTOR

relating to a project at

**[SHORT DESCRIPTION OF PROJECT]**

between

**CARDIFF UNIVERSITY**

and

**[CONTRACTOR]**

and

**[CONSULTANT]**

BLAKE MORGAN

**THIS DEED** is dated [DATE]

**PARTIES**

(1) **CARDIFF UNIVERSITY** of 30-36 Newport Road, Cardiff CF24 0DE (**"Employer"**).

(2) [**FULL COMPANY NAME**] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**"Contractor"**).

(3) [**FULL COMPANY OR LLP NAME**] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**"Consultant"**).

**BACKGROUND**

(A) By an agreement in writing dated [DATE] (**"Appointment"**), the Employer appointed the Consultant to provide [CONSULTANT'S SERVICES] services in connection with the development of [SHORT DESCRIPTION OF PROJECT] at [ADDRESS] (**"Project"**).

(B) The Employer and the Contractor have entered into a building contract [incorporating [STANDARD FORM]], under which the Contractor has been appointed to carry out and complete the design and construction of the Project.

(C) The parties have agreed to novate the Appointment from the Employer and the Consultant to the Contractor and the Consultant on the terms of this deed.

**AGREED TERMS**

1. **INTERPRETATION**

The following rules of interpretation apply in this deed.

1.1 Clause, schedule and paragraph headings shall not affect the interpretation of this deed.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

1.3 The schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the schedules.

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a party shall include that party's personal representatives, successors or permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.11 A reference to writing or written includes fax but not e-mail.

1.12 A reference to this deed or to any other agreement or document referred to in this deed is a reference to this deed or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

1.13 References to clauses and schedules are to the clauses and schedules of this deed; references to paragraphs are to paragraphs of the relevant schedule.

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

## 2. NOVATION OF APPOINTMENT

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

## 3. RELEASE OF CONSULTANT

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

## 4. RELEASE OF EMPLOYER

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

## 5. BINDING OF CONSULTANT TO CONTRACTOR

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

5.2 The Consultant undertakes and warrants to the Contractor that it has carried out, and will carry out, its duties and obligations under the Appointment. In performing its services under the Appointment, the Consultant has exercised, and will continue to exercise, all the reasonable skill, care and diligence to be expected of a qualified and experienced member of

the Consultant's profession undertaking the design of works similar in scope and character to the Project.

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

(a) the acts or omissions causing that breach occurred before this deed took effect; or

(b) the Employer will not incur, has not incurred or would not have incurred those losses.

## 6. BINDING OF CONTRACTOR TO CONSULTANT

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

## 7. VESTING OF REMEDIES IN CONTRACTOR

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

## 8. VESTING OF REMEDIES AGAINST CONTRACTOR

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

## 9. FEES AND DISBURSEMENTS

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

## 10. [AMENDMENT OF APPOINTMENT

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

## 11. AFFIRMATION OF APPOINTMENT

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

## 12. COLLATERAL WARRANTIES AND THIRD PARTY RIGHTS

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

## 13. THIRD PARTY RIGHTS

13.1 A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed. This does not affect any right or remedy of a third party which exists or is available, apart from that Act.

## 14. GOVERNING LAW

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

## 15. JURISDICTION

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

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

## Schedule 1 Variations to the terms of the Appointment

**EXECUTED AS A DEED** by **CARDIFF UNIVERSITY**
by affixing hereto its common seal in the presence of

Signed
…….

Name
…….

Job title…….

Executed as a deed by [NAME OF CONTRACTOR] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

**OR**

Executed as a deed by [NAME OF CONTRACTOR] acting by [NAME OF DIRECTOR], a director, in the presence of:
.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

.....
[SIGNATURE OF DIRECTOR]
Director

Executed as a deed by [NAME OF CONSULTANT] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

**OR**

Executed as a deed by [NAME OF

.....

CONSULTANT] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

[SIGNATURE OF DIRECTOR]

Director