

Dated

2013

LETTER OF APPOINTMENT

of

[ARCHITECTURAL AND ENGINEERING  
SUPPORT CONSULTANTS]

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relating to the development of the National  
Biologics Centre at Central Park, Darlington

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(Collateral warranties version)

## LETTER OF APPOINTMENT

From: Centre for Process Innovation Limited, a company registered in England and Wales under company number 05002194 whose registered office is at Wilton Centre, Wilton, Redcar, TS10 4RF (**Developer**)

To: ♦[of] [(No. ♦) whose registered office is at] ♦(**Consultant**)

Date: ♦2013

Dear Sirs

### **Development of National Biologics Centre at Central Park, Darlington**

This letter sets out the terms of your appointment (**Appointment**) as our [architectural and engineering support consultants] in connection with the above development (**Development**). This letter constitutes the entire agreement between us and replaces any previous agreement between us respecting the Development. Any services already provided by you relating to the Development are to be treated as having been provided under the terms of this Appointment.

#### **1 Scope of Appointment**

We intend to enter a building contract (**Building Contract**) with a contractor (**Contractor**) to construct the Development. The Building Contract will incorporate a version of the NEC3 Target Cost C 2013 version with special conditions or other similar conditions of contract. Your Appointment relates to the proposed site (**Site**) of the works (**Works**) under the Building Contract and to any roadworks, services installations and other enabling works adjacent to the Site which are required for the purposes of the Development.

#### **2 Services**

- 2.1 You are to provide the services for which you have tendered as specified in schedule 1 (**Services**).
- 2.2 You are to provide such additional services within your discipline and competence as we may reasonably request in writing, relating to the Development.
- 2.3 We may give you instructions to omit any of the services.
- 2.4 You are to obtain our written authority before initiating any work stage specified in schedule 1.
- 2.5 You are to comply with all reasonable instructions given by us in writing in connection with this Appointment.

#### **3 Budget and programme**

- 3.1 You are to have due regard in the performance of your services to our budget and programme requirements for the Development. If you become aware of circumstances which may prevent us from carrying out the Development in accordance with our budget or programme, you are to inform us without delay.
- 3.2 You are to collaborate with us and our other consultants to establish a co-ordinated programme for the carrying out of the Development and are to monitor progress against the design programme.
- 3A Design Changes
  - 3A.1. You must not without written consent make or permit any material change in the designs and specifications for the Development after they have been settled or approved.

- 3A.2. You shall keep us and our other consultants fully informed on a day-to-day basis of all changes in design and specification made or authorised by you.

#### **4 Duty of care**

- 4.1 You are to use in the performance of your duties all the professional skill and care and diligence reasonably to be expected of suitably qualified and experienced consultants undertaking services like those hereby undertaken by you in relation to projects of the scale and character of the Development.
- 4.2 You are to comply with any statutory duties to which you may be subject under the CDM Regulations.
- 4.3 No inspection or approval or review on our part or on our behalf, and no omission to inspect or review or to disapprove shall negate or diminish any duty or liability on your part under or in connection with this Appointment.

#### **5 Project leader**

You are to appoint the person named as project leader in the Project Data to take responsibility for the overall management, supervision and co-ordination of the performance of your services. The project leader is not to be replaced save with our consent or save for unavoidable necessity, and any replacement is to be subject to our prior approval.

#### **6 Remuneration**

- 6.1 Your remuneration under this Appointment:
- (a) shall be as provided in this clause 6 and the Project Data; and
  - (b) shall be payable in accordance with schedule 3 (Construction Act 1996).
- 6.2 If for any reason we do not proceed with the Development, or if your employment is terminated or suspended by us other than for your breach, you will be entitled (in addition to any fee in instalments which are then due in full) to a fair and reasonable proportion of any fee instalments in respect of which your services are part-performed at the date of termination, but not to compensation for loss of profit.
- 6.3 If at our request you undertake any additional services, or if by reason of any design changes requested by us or any other circumstances beyond your control you are required to undertake significant extra work, then provided you notify us in writing before undertaking such work or additional services that you may require an additional fee, an additional fee will be payable. Such additional fee shall be calculated at the applicable hourly rates specified in the Project Data, or if no hourly rates are specified in the Project Data, shall be such amount as is fair and reasonable.
- 6.4 If we give instructions for you to omit any services we shall be entitled to a suitable reduction in your remuneration.
- 6.5 The specified fee in the Project Data is exclusive of VAT and inclusive of all your office, staff, travel, reproduction and incidental costs and inclusive of disbursements.
- 6.6 If the amount of any fees or disbursements is wrongfully withheld 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.

#### **7 Professional indemnity insurance**

- 7.1 You warrant that you have professional indemnity insurance covering your liabilities for negligence under this Appointment conforming to the relevant requirements specified in the Project Data. You are to maintain such insurance at all times until 12 years after the practical completion of the Works under the Building Contract (or, if sooner, until 12 years

after the completion or termination of your services), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and the policy terms obtainable.

- 7.2 If for any period such insurance is not obtainable on commercially reasonable terms, you are to inform us forthwith and are to obtain in respect of that period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for you to obtain. For the purposes of this clause 7, "commercially reasonable terms" shall include any increase in premium arising as a result of your own claims record or any act or omission for which you are responsible.
- 7.3 When reasonably requested by us you are to provide documentary evidence that the insurance required under this Appointment is being maintained.

## **8 Collateral warranties**

- 8.1 You are to promptly provide, as we may at any time or times require, a deed or deeds of warranty respecting your duties hereunder in favour of High Value Manufacturing Catapult and Technology Strategy Board (the **Public Funders**) in terms of the draft contained in the appendix.
- 8.2 If you fail to execute and deliver any such deed pursuant to clause 8.1 within 7 days of our written request, we may execute such deed on your behalf, and you hereby appoint us as your attorney for the purposes of executing any such deed. You are to ratify and confirm any act done by us pursuant to this power of attorney, and agree that this power is irrevocable, pursuant to section 4, Powers of Attorney Act 1971.

## **9 Documents**

- 9.1 We shall be entitled to use and reproduce all documents produced by you pursuant to this Appointment (**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 yourselves. You shall not be liable for the use of any of the Documents for any purpose other than those for which you produced them.
- 9.2 You warrant that the use of the Documents for the purposes of the Development will not infringe the rights of any third party.
- 9.3 You agree and undertake that you hereby irrevocably waive any rights you may have pursuant to Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patent Act 1988 in relation to the Works or any part thereof of the drawings or other documents referred to in clause 9.1 above relating thereto, and upon reasonable request us at any time shall obtain a written waiver from your employees or sub-consultants of any rights that they may have in respect of the same.

## **10 Assignment and sub-letting**

- 10.1 Our rights under this Appointment may be:
- (a) charged to any Mortgagee;
  - (b) assigned as security to any Mortgagee (and such rights may be reassigned on redemption);
  - (c) assigned by absolute assignment to any Group Company;
  - (d) assigned by absolute assignment on two other occasions only.
- 10.2 You shall not be entitled to assign or charge this Appointment.
- 10.3 You may not delegate or sub-let the whole or any part of your duties without our written consent.

## **11 Suspension**

- 11.1 We may suspend your services by written notice. If a suspension lasts more than 6 months, you may make a written request for your services to be resumed, and if no instructions to resume are given within 28 days after your request, your employment shall then terminate.

## **12 Termination and remedies**

- 12.1 We may at any time by service of written notice, terminate your employment under this Appointment.
- 12.2 If we terminate your employment on account of your Insolvency or (acting reasonably) on account of your breach of any term of this Appointment, we shall be entitled to recover from you the costs and losses we reasonably or necessarily incur by reason of the termination.
- 12.3 If you fail to comply with any requirement of clause 7 (Professional indemnity insurance) or fail to comply with clause 8 (Collateral warranties) or if you become Insolvent, we shall be entitled to recover from you any premiums we reasonably incur to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection, but this clause 12.3 does not exclude any other remedy we might have for breach of clause 7 or 8.
- 12.4 If we are materially in breach of our obligations under this Appointment in any respect that would reasonably justify your terminating your employment, you may serve 28 days' written notice of your intention to terminate, stating the grounds for termination, and if in such 28 day period we fail to rectify our breach, you may at the expiry of that period serve further written notice terminating your employment with immediate effect.
- 12.5 Termination does not determine the operation of any provisions of this Appointment that are capable of operation after termination.

## **13 Confidentiality**

Save as may be necessary for the performance of your services hereunder, or as required by law, or as we may allow in writing, you are to treat as confidential all information relating to this Appointment and to the Development, and are to take all reasonable steps to see that your employees are bound by and adhere to the same duty of confidentiality.

## **14 Bribery Act 2010**

- 14.1 You warrant that no offence under the Bribery Act 2010 (**the Act**) has been or will be committed by you or any person associated with you, in connection with the procurement or implementation of this Appointment.
- 14.2 For the purposes of and without derogation from clause 14.1, 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.
- 14.3 For the purposes of clause 14.1, the definition of associated person in section 8 of the Act applies.
- 14.4 If at any time you have knowledge of, or have reasonable grounds to suspect the occurrence of, a breach of the warranty in clause 14.1, you shall promptly notify us in writing of such matters within your knowledge, or of such grounds for suspicion, and shall co-operate with us in the investigation of such breach or suspected breach of warranty.

## **15 Construction Act 1996**

Schedule 3 (Construction Act 1996) has effect.

## 16 **Contracts (Rights of Third Parties) Act 1999**

Save pursuant to clause 8, this Appointment is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

## 17 **Service of notice**

17.1 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 party 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.

17.2 Any notice delivered or sent in accordance with clause 17.1 takes effect as being given and served:

(a) if delivered by hand by 4.00 pm on a Working Day, on the day of delivery; but otherwise

(b) on the first Working Day after it is delivered or sent.

## 18 **Governing law and interpretation**

18.1 This Appointment shall be governed by English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.

18.2 In this Appointment:

(a) **person** includes any firm and any entity having legal capacity;

(b) any term importing gender includes any gender;

(c) any term importing the singular includes the plural and vice versa;

(d) unless the context requires otherwise, any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Appointment;

(e) any reference to any enactment includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;

(f) **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;

(g) **CDM Regulations** means the Construction (Design and Management) Regulations 2007;

(h) **Construction Act 1996** means Part II, Housing Grants, Construction and Regeneration Act 1996 as amended;

(i) **Group Company** means any subsidiary or holding company of ours or of another subsidiary or holding company of ours, as **subsidiary** and **holding company** are understood within section 1159, Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a);

(j) **Insolvent** and related terms derive their meaning from section 113, Construction

Act 1996;

- (k) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it;
- (l) **Project Data** means the project data in schedule 2;
- (m) **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;
- (n) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).
- (o) **Working Day** means any day other than a Bank Holiday.

18.3 For the purposes of clause 18.2, **Development** means the Site and/or the Works.

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

Executed as a deed and delivered by ) ...  
**Centre for Process Innovation Limited** ) Director  
acting by a director )  
in the presence of: ) ...  
Name

...

Witness

...

Name

We, ♦[a partnership between the individuals named in the Project Data] confirm our acceptance of this Appointment on the terms and conditions set out in this letter.

Executed as a deed and delivered by ) ...  
**[Full name of Partner]** ) Partner  
in the presence of: ) ...  
Name

...

Witness

...

Name

*(In the case of a partnership all partners to execute in the above form)*

**[OR in the case of a company]**

Executed as a deed and delivered by ) ...

**[the Consultant]** acting by a director  
in the presence of:

) Director  
) ...  
) Name

...

Witness

...

Name

**[OR in the case of an LLP]**

Executed as a deed and delivered by  
**[the Consultant]** acting by a member  
in the presence of:

) ...  
) Member  
) ...  
) Name

...

Witness

...

Name



## **SCHEDULE 1**

### **1 Services**

*[Insert relevant ITT]*

**SCHEDULE 2**  
**2 Project Data**

**Clause 5: (Project leader) [◆]**

**Clause 6: (Remuneration)**

- (a) [A lump sum, inclusive of expenses and disbursements and exclusive of VAT and statutory fees, of £◆.]

**[OR]**

[A fee inclusive of expenses and disbursements and exclusive of VAT and statutory fees, of ◆percent of the final contract sum under the Building Contract (but excluding any amounts payable to the Contractor in respect of loss and expense due to delay or disruption and excluding VAT payable under the Building Contract).]

- (b) The fee may be invoiced in the following installments:

◆

- (c) The hourly rates applicable to any additional services to which clause 6.3 applies are as follows:

◆

**Clause 7: (Professional indemnity insurance)**

- (a) Limit of indemnity: not less than £◆,000,000.00 for any occurrence or series of occurrences arising out of each and every event, 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) Excess: not exceeding £◆,000.00.

**Clause 17.1(a) (Service of notice)**

- (a) Notices to the Developer are to be addressed to ◆at ◆, e-mail address ◆,
- (b) Notices to the Consultant are to be addressed to ◆at ◆, e-mail address ◆.

**SCHEDULE 3**  
**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.

1.1 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.

1.2 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

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 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) the 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; and
- (c) at the same time as he gives a decision, the adjudicator must give written reasons.

**APPENDIX**  
**Form of required collateral warranty**

**DATED** **2013**

**[CONSULTANT]**

**And**

**[HIGH VALUE MANUFACTURING CATAPULT]  
[TECHNOLOGY STRATEGY BOARD]**

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**DEED OF COLLATERAL WARRANTY**

**relating to the development of the  
National Biologics Centre at Central Park, Darlington**

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**THIS DEED** is made

day of

2013

**PARTIES:**

- (1) **[CONSULTANT]** (Company Number: [xxx]) whose registered office is at [address] ("**the Consultant**"); and
- (2) **[HIGH VALUE MANUFACTURING CATAPULT]** (Company number 07708659) whose registered office is at The Oracle Building, Blythe Valley Business Park, Shirley, Solihull, B90 8AD] ("**the Beneficiary**") and its successors permitted assigns. OR  
  
**[TECHNOLOGY STRATEGY BOARD]** (Company number: RC000818 and whose office is at North Star House, North Star Avenue, Swindon, SN2 1UE ("**the Beneficiary**") and its successors permitted assigns.]
- (3) **CENTRE FOR PROCESS INNOVATION LIMITED** (Company number 05002194) whose registered office is at The Wilton Centre, Wilton, Redcar, TS10 4RF ("**the Employer**").

**AGREEMENT**

**1. DEFINITIONS**

Throughout this Deed the following words and expressions which begin with capital letters shall have the following meanings:

- 1.1 "**Appointment**" means the appointment between the Employer and the Consultant dated 2013;
- 1.2 "**Building Contract**" means the agreement made between the Employer and the Contractor in the form [NEC3 together with bespoke amendments] and dated [date];
- 1.3 "**Contractor**" means [Contractor] (Company Number [xxx]) whose registered office is [address] or such other replacement as the Employer may appoint;
- 1.4 "**Grant Funding Agreement**" means the agreement entered into between the Beneficiary and High Value Manufacturing Catapult dated [date];]
- 1.5 "**Grant Funding Allocation Agreement**" means the agreement entered into between the Employer and the Beneficiary dated [date];]

1.6 "Site" means [address];

1.7 "Works" means the [ ].

## 2. INTRODUCTION

2.1 The Employer has appointed the Consultant to provide [description of services, e.g., structural engineer consultancy service] ("**the Services**") in connection with the Works upon the terms contained in the Appointment.

2.2 HVM Catapult version - [The Beneficiary is the Funder to the Employer in respect of the Works and has entered the Grant Funding Allocation Agreement.]

OR

TSB version - [The Beneficiary is the ultimate Funder of the Works under the Grant Funding Agreement.]

2.3 The Consultant has agreed to enter into direct obligations with the Beneficiary in the terms of this Deed.

## 3. CONSIDERATION

3.1 In consideration of the payment of £1 (one pound) by the Beneficiary to the Consultant receipt of which the Consultant acknowledges the Consultant has agreed to enter into this Deed with the Beneficiary.

## 4. WARRANTIES

The Consultant warrants and undertakes to the Beneficiary that:

4.1 In respect of such matters as lie within the scope of its professional responsibilities under the Appointment in relation to the Works it has exercised and will continue to exercise all the reasonable skill and care required under the Appointment.

4.2 It owes to the Beneficiary the same (but no greater) duty of care in respect of its professional responsibilities as aforesaid as it would owe to the Beneficiary under or in connection with the Appointment if the Beneficiary was named as the employer in the Appointment.



- 4.3 The Consultant acknowledges that the Beneficiary shall be entitled to rely upon the Consultant exercising the skill and care required by clause 4.1 in respect of such matters as are within the scope of the Consultant's professional responsibilities pursuant to the Appointment.

## **5. INSURANCE**

- 5.1 The Consultant warrants to and undertakes with the Beneficiary that it has and shall maintain professional indemnity insurance covering its liabilities under this Deed and continuing for a period of 12 years after the date of practical completion of the Works (as defined by the Building Contract) with a well-established and reputable insurance office or underwriter of repute carrying on business in the United Kingdom with a limit of indemnity of not less than [£[number] million ([words] million pounds)] for each and every claim or series of claims arising from the same original cause or event PROVIDED ALWAYS that such insurance is available in the United Kingdom market to the business of the Consultant on commercially reasonable terms. Commercially reasonable terms shall include any increase in premium arising as a result of the Consultant's own claims record or any act or omission for which the Consultant is responsible.
- 5.2 The Consultant shall inform the Beneficiary if such insurance ceases to be available on commercially reasonable terms and with the approval of the Beneficiary whose approval is not to be unreasonably withheld or delayed take out such lower level of insurance or cover as is available (if any) in the market to the profession of the Consultant on commercially reasonable terms.
- 5.3 As and when the Consultant is reasonably requested to do so by the Beneficiary, the Consultant shall produce for inspection sufficient documentary evidence to prove that the insurance required under this clause is being maintained in accordance with the terms of this Deed.

## **6. COPYRIGHT**

- 6.1 The Copyright in all drawings reports specifications bills of quantities calculations and other similar documents including but not limited to any produced by Autocad provided by the Consultant in connection with the Works and the completed Works shall remain vested in the Consultant but the Consultant grants to the Beneficiary with full title

guarantee a non-exclusive and royalty free licence to use such drawings and other documents for any purpose whatsoever in connection with the Works or the Site and the extension of the Works such use shall not include a licence to reproduce the designs contained in them for any extensions other than to the Works and the completed Works. The Consultant shall not be liable for any use of such drawings and other documents other than for the purposes for which they were produced.

6.2 The Consultant agrees and undertakes that it hereby irrevocably waives any rights it may have pursuant to Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patent Act 1988 in relation to the Works or any part thereof of the drawings or other documents referred to in clause 6.1 above relating thereto, and upon reasonable request from the Beneficiary at any time shall obtain a written waiver from its employees or sub-consultants of any rights that they may have in respect of the same.

6.3 The Beneficiary shall be entitled to grant sub-licence(s) to third parties on the basis that any sub-licence granted by the Beneficiary shall be subject to identical terms of the Beneficiary's licence in clause 6.1 in this Deed.

6.4 Subject to payment by the Beneficiary of the reasonable copying charges of the Consultant the Beneficiary shall be entitled to full and proper copies of all drawings and other documents relating to the Works and the completed Works in the possession or control of the Consultant. The Consultant will not claim copyright or a lien in respect of them against the Beneficiary.

## **7. EXTRANEIOUS RIGHTS**

7.1 This Deed shall not negate nor diminish any duty or liability otherwise owed by the Consultant to the Beneficiary.

7.2 The rights and remedies provided by this Deed are and shall be cumulative and shall not exclude any rights or remedies provided by law.

7.3 The Consultant's duties and obligations and liability under or pursuant to this Deed shall not be released, diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by the Beneficiary or any firm, company or party on its behalf nor by any action or omission by the Beneficiary or any such firm, company or party whether or not such action or omission might give rise an

independent liability of such firm, company or party to the Beneficiary.

**8. ASSIGNMENT AND FURTHER WARRANTIES**

- 8.1 The benefit of this Deed and/or any of the present or future rights interests and benefits of the Beneficiary hereunder may be assigned on two occasions only without consent but which shall be notified to the Consultant in writing.
- 8.2 This Deed shall be binding upon and shall inure to the benefit of the permitted assigns of the Beneficiary.
- 8.3 Within 21 days of a written notice from the Beneficiary, the Consultant shall execute and deliver as a deed a collateral warranty in favour of any other person not already provided with a collateral warranty but who has a legal or equitable interest in the Works (including following completion of the Works), any such collateral warranties to each be in the form required by the Appointment.

**9. NOTICES**

Any notice provided for in accordance with this Deed shall be in writing and shall be deemed to be duly given if delivered by hand or sent by prepaid recorded delivery or special delivery post to the party named therein at the address of a such party shown in this Deed or such other address in the United Kingdom as such party may by notice in writing nominate for the purpose of service and if sent by post shall be deemed to have received forty-eight hours after the same shall have been posted.

**10. LIMITATION**

No action shall be brought against the Consultant under this Deed after the expiration of 12 years from the date of practical completion of the whole of the Works under the Building Contract.

**11. GOVERNING LAW AND INTERPRETATION**

- 11.1 The law of this Deed is English Law and the English Courts shall have jurisdiction with regard to all matters arising from this Deed.
- 11.2 Any reference to "person" "firm" or "company" includes any entity which has legal

capacity.

- 11.3 Any term importing the singular number includes the plural number and vice versa.
- 11.4 Clause headings are for convenience only and do not form part of or affect the interpretation of this Deed.
- 11.5 Any reference to any clause, schedule or appendix is a reference to that clause of or schedule or appendix to this Deed.
- 11.6 Notwithstanding any other provision of this Deed, nothing in this Deed confers or purports to confer any right to enforce any of its terms on any person who is not a party to it, save for any assignee of this Deed to whom the same shall be expressly assigned pursuant to clause 8 hereof, and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be of no effect in respect of this Deed.
- 11.7 Nothing in this Deed shall create or be deemed to create a partnership or joint venture nor shall it be construed so as to constitute either party to be the agent or employee of the other.

**Executed as a Deed by**  
**[CONSULTANT]**

acting by its:

Director:  
Signature: .....  
Name: .....

Director/Secretary:  
Signature: .....  
Name: .....

**Executed as a Deed by**  
**[TECHNOLOGY STRATEGY BOARD][HIGH VALUE MANUFACTURING CATAPULT]**

acting by its:

Director  
Signature: .....  
Name: .....

Director/Secretary  
Signature: .....  
Name: .....