

**DATED** 12 January 20 22

- (1) **INTERNATIONAL FIRE CONSULTANTS LIMITED**
- (2) **20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED**
- (3) **BALLYMORE CIVILS LIMITED**

**CONSULTANT'S WARRANTY  
in favour of Employer  
in respect of a development at  
20:20 Building, Skinner Lane, Leeds LS7 1BB**



"Site"	20:20 Building, Skinner Lane, Leeds LS7 1BB where the Works are to be carried out
"Working Day"	any day except Saturday Sunday and bank or other public holidays in England

## **1.2 Interpretation**

In this deed unless the context otherwise requires:

- 1.2.1 words importing one gender include any other gender and words importing the singular number include the plural number and vice versa and any reference to a person includes a reference to a company firm or other body;
- 1.2.2 unless otherwise expressly stated all references to a clause mean a clause of this deed;
- 1.2.3 any reference to a statute (whether specifically named or not) or a section of a statute includes any amendment or modification or re-enactment of such statute for the time being in force and all instruments orders notices regulations directions bye-laws permissions and plans for the time being made issued or given under or deriving validity from the same;
- 1.2.4 headings and titles to clauses are for reference purposes only and do not affect the construction or interpretation of this deed;
- 1.2.5 at any time when any party to this deed comprises two or more persons all references to such party include all or any of such persons and obligations expressed or implied to be made by or with any of them shall be deemed to be made by or with all or any two or more of such persons jointly and each of them severally.

## **1.3 Circumstances**

- 1.3.1 By the Appointment the Company employed the Consultant to act as fire engineer in relation to the Project.
- 1.3.2 The Appointment of the Consultant has been novated to the Contractor.
- 1.3.3 It is a term of the Appointment that the Consultant enter into this deed for the benefit of the Company and its permitted assigns.

## **2. DUTY OF CARE**

The Consultant warrants and undertakes to the Company that:

- 2.1 it has performed and will continue to perform its duties under the Appointment;
- 2.2 it has exercised and will continue to exercise the reasonable skill care and diligence to be expected of a properly qualified and competent fire engineer experienced in the provision of professional services for developments and projects of a similar size scope value character and complexity as the Project.

## **3. DELETERIOUS MATERIALS**

- 3.1 The Consultant has exercised and will continue to exercise the standard of skill care and diligence required by clause 2.2 to see that it has not and shall not specify authorise cause or allow to be used within or in relation to the Project any materials:
  - 3.1.1 where it is known or there are reasonable grounds for suspecting that such materials might in themselves or as a result of the manner of their use pose a hazard to health and in particular to the health of the persons involved in the installation construction or maintenance of the Project or to the eventual occupants of the Project;

- 3.1.2 not in conformity with any relevant British or European Standards or Codes of Practice;
- 3.1.3 which at the time the Project is being carried out are generally accepted or reasonably suspected of within the building industry of:
  - 3.1.3.1 being deleterious in themselves; or
  - 3.1.3.2 becoming deleterious in a particular situation or in combination with other materials; or
  - 3.1.3.3 becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of a comparable type; or
  - 3.1.3.4 being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.
- 3.2 For the purposes of clause 3.1 a material or combination of materials shall be regarded as being deleterious if its use would or might have the effect of reducing the normal life expectancy of:
  - 3.2.1 the material itself; or
  - 3.2.2 the material to which it is affixed; or
  - 3.2.3 the structure in which it is incorporated or to which it is affixed; or
  - 3.2.4 the Project or any part of the Projectto a period less than that which has been specified or would normally be expected.
- 3.3 The Consultant warrants that it shall comply with and have regard to the publication entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices" (current edition) in assessing whether or not an intended material is deleterious in the terms set out in clause 3.1.
- 3.4 The Consultant will as soon as reasonably practicable notify the Company if it becomes aware of any proposed or actual use in the Project of any materials not compliant with clause 3.1.

#### **4. RESTRAINTS ON CONSULTANT**

The Consultant may not exercise any rights of set-off or counterclaim which may be permissible against his liability under the Appointment against any claim or entitlement of the Company under this deed.

#### **5. INSTRUCTIONS**

The Company has no authority to issue any direction or instruction to the Consultant in relation to performance of the Consultant's duties under the Appointment unless and until the Company has given notice under clause 7.2.

#### **6. LIABILITY FOR PAYMENT**

The Company has no liability to the Consultant in respect of fees and expenses under the Appointment unless and until the Company has given notice under clause 7.2.

## **7. STEP-IN RIGHTS**

- 7.1 The Consultant agrees that it will not without first giving the Company previous notice in writing exercise any right it may have to terminate the Appointment or to treat the same as having been repudiated by the Contractor or to discontinue the performance of any duties to be performed by the Consultant pursuant to the Appointment and if the grounds are that fees which are due have not been paid by the final payment date and no effective notice to withhold payment or pay less has been given such notice shall be not less than 7 days otherwise such notice shall be not less than 15 Working Days.
- 7.2 The right of the Consultant to terminate the Appointment with the Contractor or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice and subject to clause 7.4 the Company shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment PROVIDED THAT the rights of The Ministry of Housing, Communities and Local Government ("the MHCLG") under clauses 3-4 of the warranty given or to be given by the Consultant to the MHCLG shall have priority over the rights of the Company under this clause whether such rights are exercised by the MHCLG before or after the exercise by the Company of its rights under this clause.
- 7.3 The Consultant agrees that it will if required by notice in writing given by the Company and subject to clause 7.4 accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment The Contractor acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Company under this clause as conclusive evidence for the purposes of this deed that the right to serve such notice has accrued to the Company pursuant to the terms of the agreement between the Contractor and the Company.
- 7.4 Any notice given by the Company under this clause 7 shall state that the Company or its appointee accepts liability for payment of fees payable to the Consultant under the Appointment (including those due and owing under the Appointment at the date of any notice served by the Company) and for performance of the Contractor's obligations under the Appointment and in the case of the Company appointing a nominee the Company guarantees all payments due to the Consultant from its appointee.
- 7.5 Compliance by the Consultant with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.2.

## **8. PROFESSIONAL INDEMNITY INSURANCE**

- 8.1 The Consultant warrants that without prejudice to its liability under this deed, it shall effect and will maintain at all relevant times during the Project and for the period of twelve years from the date of Practical Completion or, in the event that Practical Completion is not achieved, 12 years from the date the Consultant finishes the Services with reputable insurers carrying on business in the United Kingdom professional indemnity insurance cover of at least two million pounds (£2,000,000) for any one occurrence or series of occurrences arising out of the same event PROVIDED ALWAYS such insurance continues to be available in the United Kingdom market to professional consultants of a similar size to and providing similar services as the Consultant upon reasonable terms and conditions and at commercially reasonable premium rates.

8.2 The Consultant shall throughout the period referred to in clause 8.1 provide to the Company, when reasonably requested by him to do so, evidence that the insurance required by clause 8.1 is being maintained in accordance with clause 8.1.

8.3 The Consultant shall immediately inform the Company as soon as it becomes aware that the insurance referred to in clause 8.1 is not maintained in accordance with this deed or for any reason becomes void or unenforceable and shall agree with the Company the best means of protecting the Consultant and the Company's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

## **9. COPYRIGHT**

9.1 Copyright in the Project Material shall remain vested in the copyright owner.

9.2 The Consultant waives any Moral Rights that it may have as author in respect of the Project Material and/or the Project and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Project Material and/or the Project.

9.3 The Consultant grants or shall procure the grant from third parties engaged by the Consultant (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Project Material for any purpose whatsoever connected with the Project and/or the Site and/or any premises constructed or to be constructed on the Site including without limitation the execution completion maintenance letting occupation management sale advertisement extension alteration reinstatement and repair of the Site and/or the Project and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Consultant shall not be liable for the consequences of any use of the Project Material for any purpose other than that for which the same was prepared. Such licence shall include a licence to use the Project Material for the extension of the Project but such use shall not include a licence to reproduce the designs contained in the Project Material for the extension of the Project.

9.4 The Consultant agrees that:

9.4.1 the Company may assign the licence referred to in clause 9.3 or grant a sub-licence or sub-licences from such licence to any person with an interest in the Site and/or the Project and/or any premises constructed or to be constructed on the Site;

9.4.2 subject to payment of its reasonable copying costs it will provide the Company with such information and copies of the Project Material as may be reasonably requested by the Company.

## **10. ASSIGNMENT**

10.1 The Company may (without the consent of the Consultant) assign its rights under this deed to:

10.1.1 any Mortgagee and by way of re-assignment on redemption;

10.1.2 any Group Company;

10.1.3 any other party on two occasions only.

10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.3.

- 10.3 The Consultant undertakes with the Company not to contend that any person to whom this deed may be assigned will be precluded from recovering under this deed any loss resulting from any breach of this deed either by reason that the person is an assignee and not the original party to this deed or by reason that the Company named in this deed or any intermediate owner of the Company's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

## **11. CONTRACTOR ACKNOWLEDGEMENT**

The Contractor has joined in this deed to confirm its compliance with the arrangements made and contemplated by this deed and confirms that by acting in accordance with clause 7 the Consultant shall not incur any liability to the Contractor.

## **12. PERIODS OF RECKONING TIME**

Where under this deed an act is required to be done within a specified period of days after or from a specified date that period shall begin immediately after that date. Where the period could include a day which is a Public Holiday that day shall be excluded.

## **13. LIMITATION AND MISCELLANEOUS**

- 13.1 The liability of the Consultant under this deed shall be limited to claims arising within twelve years after the date of Practical Completion or, in the event that Practical Completion is not achieved, 12 years from the date the Consultant finishes the Services.
- 13.2 The rights of the Company conferred by this deed are additional to any other that it may enjoy by grant assignment or at law.
- 13.3 Any consent approval comment or expression of satisfaction given by the Company with regard to any matter or thing relating to the Appointment shall not in any way derogate from the Consultant's obligations under this deed nor diminish any liability on its part under this deed.
- 13.4 The Consultant acknowledges that:
- 13.4.1 the Company shall be deemed to have relied upon the Consultant's reasonable skill care and diligence in respect of those matters relating to the Project which lie within the scope of its responsibilities under the Appointment or under this deed;
  - 13.4.2 no negligent or other act omission or delay by or on behalf of the Company and their respective successors in title and assigns in inspecting approving or informing itself about anything relating to the Project shall abate or reduce the Consultant's liability under this deed to the Company and its respective successors in title and assigns.
- 13.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend any terms of this deed to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been entitled to enforce such terms.
- 13.6 Subject to clause 4:
- 13.6.1 the Consultant shall have no greater liability to the Company by virtue of this deed than it would have had if the Company had been named in the Appointment jointly with the Employer; and
  - 13.6.2 the Consultant shall be entitled in any action or proceedings by the Company to rely on any limitation or exclusion in the Appointment and to raise equivalent rights of defence of liability as it would have against the Employer under the Appointment.

**14. ADDITIONAL WARRANTIES**

Within 10 Working Days of a request to do so from the Company the Consultant shall execute as a deed and deliver to the Company a deed of collateral warranty in favour of any Purchaser and/or Tenant and/or Fund (as those terms are defined in the Appointment) in the same form as this deed (save that this clause and the step in provisions shall be deleted and the recitals amended to reflect the correct factual position).

**15. NOTICES**

15.1 Any notice to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered office for the time being or in any other case to any address for the time being of the person to be served.

15.2 Notice may be served by:

15.2.1 personal delivery; or

15.2.2 pre-paid registered or recorded delivery mail; or

15.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.

15.3 Notices and communications shall be deemed to have been served or received as follows:

15.3.1 in the case of personal delivery on the date of delivery;

15.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;

15.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

**16. LAW**

This deed shall be governed by English law and the Consultant and the Company hereby submit to the jurisdiction of the English courts.

**EXECUTED** and delivered as a deed on the date at the head of this deed.

Executed as a deed by  
**INTERNATIONAL FIRE  
CONSULTANTS LIMITED**  
acting by two Directors/a  
Director and the Secretary

DocuSigned by:  
  
.....5BADE66FA82243F...  
Director

Print name..... Mark Horwood

DocuSigned by:  
  
.....9E0BB3126EBA49A...  
Director/Secretary

Print name..... Paul Brown



Executed as a deed by  
**20:20 HOUSE (RESIDENTIAL MANAGEMENT)  
LIMITED**  
acting by two Directors/a  
Director and the Secretary

DocuSigned by:  
*Nick Massingham*  
.....465ED14708344D7.....  
Director  
  
Nick Massingham  
Print name.....

DocuSigned by:  
*Philip Pogson*  
.....60CA06C753D1496.....  
Director/Secretary  
  
Philip Pogson  
Print name.....

Executed as a deed by  
**BALLYMORE CIVILS LIMITED**  
acting by two Directors/a  
Director and the Secretary

DocuSigned by:  
*Anthony Marley*  
.....2059D8E1C55C40A.....  
Director  
  
Anthony Marley  
Print name.....

DocuSigned by:  
*Mary McCallan*  
.....699E607097FF447.....  
Director/Secretary  
  
Mary McCallan  
Print name.....