

DATED 29 October 20²¹

- (1) **20:20 HOUSE (RESIDENTIAL
MANAGEMENT) LIMITED**
- (2) **RPP LIMITED**

QUANTITY SURVEYOR'S APPOINTMENT
in respect of a development at
20:20 Building, Skinner Lane, Leeds



CONTENTS

Clause	Page
1. DEFINITIONS INTERPRETATION AND CIRCUMSTANCES	1
2. APPOINTMENT OF THE CONSULTANT	5
3. DUTY OF CARE	5
4. CO-OPERATION PROVISION OF INFORMATION AND COMPLIANCE WITH PROGRAMMES	6
5. STATUTORY REQUIREMENTS REQUIRED CONSENTS AND OTHER REQUIREMENTS	7
6. PROHIBITED MATERIALS	7
7. PERSONNEL	7
8. SUB-CONSULTANTS SUB-CONTRACTORS AND DELEGATION OF DUTIES	9
9. EMPLOYER'S OBLIGATIONS	9
10. THE FEE AND PAYMENT FOR ADDITIONAL SERVICES	9
11. INSURANCE	13
12. COPYRIGHT AND CONFIDENTIALITY	13
13. ASSIGNMENT	14
14. WARRANTIES AND THIRD PARTY RIGHTS	15
15. TERMINATION OF CONSULTANT'S ENGAGEMENT BY THE EMPLOYER	15
16. TERMINATION OF CONSULTANT'S ENGAGEMENT BY THE CONSULTANT	16
17. SUSPENSION OF CONSULTANT'S ENGAGEMENT BY THE EMPLOYER	16
18. CONSEQUENCES OF TERMINATION OR SUSPENSION OF CONSULTANT'S ENGAGEMENT	16
19. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	17
20. PERIODS OF RECKONING OF TIME	17
21. NOTICES	18
22. VARIATIONS TO THIS AGREEMENT	18
23. ADJUDICATION	18
24. COURTS AND LAW	18
SCHEDULE 1 – Main Details	21
SCHEDULE 2 – The Standard Services	22
SCHEDULE 3 – Third Party Rights	24
SCHEDULE 4 – Form of Nominating Notice	28
SCHEDULE 5 – Deed of Collateral Warranty	29

THIS AGREEMENT is made

29 october

20 21

BETWEEN

- (1) **20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED** (Company registration number 06770847) whose registered office is at Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB ("the Employer") and
- (2) **RPP LIMITED** (Company registration number 07159352) whose registered office is at First Floor Riverside West, Whitehall Road, Leeds LS1 4AW ("the Consultant")

NOW THIS DEED WITNESSETH as follows:**1. DEFINITIONS INTERPRETATION AND CIRCUMSTANCES****1.1 Definitions**

In this agreement unless the context otherwise requires the following expressions shall have the following meanings:

"Additional Services"	services which the Employer requires the Consultant to perform at any time during the Project in accordance with clause 2.2 which are not comprised in the Standard Services
"Building Contract"	the building contract entered or to be entered into by the Employer with the Contractor for the carrying out and completion of the Works and includes any subsequent agreement varying or supplementing such contract
"CDM Regulations"	the Construction (Design and Management) Regulations 2015 (SI2015/51)
"Construction Act"	the Housing Grants Construction and Regeneration Act 1996
"Construction Period"	the period during which the Works are being carried out under the Building Contract as may be amended or updated from time to time
"Construction Programme"	the programme prepared by the Contractor and agreed by the Employer for the carrying out of the works under the Building Contract as updated or amended from time to time
"Contractor"	Ballymore Contract Services Limited or such other person as may be engaged by the Employer as contractor in relation to the Project for the carrying out and completion of the Works
"Employer"	includes (in addition to the person named as the first party to this agreement) any person to whom this agreement is validly assigned under clause 13
"Employer's Agent"	Cardoe Martin Limited or such other person as may be appointed from time to time by the Employer as employer's agent in relation to the Project

"Fee"	the fee payable to the Consultant for the provision of the Standard Services
"Fund"	a person (whether acting for himself and/or where leading for a syndicate of persons as agent and trustee for such persons) who is providing or shall provide interim or other finance to the Employer for the carrying out of the Project itself and/or for the acquisition of the Site
"Group Company"	any subsidiary company or holding company of the Employer or another subsidiary or holding company of such company as subsidiary and holding company are defined in s1159 Companies Act 2006
"MHCLG"	The Ministry of Housing, Communities & Local Government, a UK government department whose principal office is at 2nd floor NW, Fry Building, 2 Marsham Street, London, SW1P 4DF, United Kingdom
"Moral Rights"	moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988
"Nominating Notice"	a written notice in the form set out at schedule 4
"Practical Completion"	practical completion of the whole of the Works as certified or otherwise evidenced pursuant to the terms of the Building Contract
"Principal Contractor"	shall have the same meaning as in the CDM Regulations
"Principal Designer"	Abco Management Ltd T/A Bell Safety Services or such other person as may be appointed from time to time by the Employer as principal designer in relation to the Project
"Professionals"	each of the following: (a) the Employer's Agent (b) the Principal Designer (c) International Fire Consultants Limited (the Fire Engineer) (d) Wintech Limited (the Façade Engineer)
"Project"	and such other persons (if any) engaged or to be engaged by the Employer in addition to the Consultant to provide professional services in relation to the Project
"Project Cost Plan"	the design and construction of ACM cladding remediation works at the Site
	the document drawn up or to be drawn up by the the Consultant and agreed with the Employer setting out the

	cost of carrying out and completing the Project and each element of it as updated or amended from time to time
"Project Manager"	the Employer's Agent or such other person as may be appointed from time to time by the Employer as project manager in relation to the Project
"Project Material"	all reports calculations and other documents (including without limitation any such items retained on or in any electronic medium) and other works prepared conceived or developed by or on behalf of the Consultant in the course of or as a result of performing the Services and whether in existence or to be made or produced and including all amendments and additions thereto
"Project Programme"	the programme for the carrying out of the Project as a whole a copy of which shall be drawn up and supplied by the Project Manager as updated or amended by the Project Manager from time to time
"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act is a bank holiday
"Purchaser"	any first person who has acquired or has agreed to acquire or may later acquire or agree to acquire a freehold interest in the whole or any part of the Site (and/or any premises constructed or to be constructed on the Site) excluding individual residential occupiers acquiring less than five units
"Required Consents"	planning permissions listed building consents building regulation approvals and all other permissions consents approvals licences certificates and permits whether of a public or private nature as may be necessary lawfully to commence carry out and complete the Project and the Works
"Scheme"	the Scheme for Construction Contracts SI 1998 No. 649 (as amended)
"Services"	the Standard Services any Additional Services and any other services provided by the Consultant in relation to the Project whatsoever
"Site"	20:20 Building, Skinner Lane, Leeds where the Works are to be carried out
"Standard Services"	the services set out in schedule 2 or otherwise stated in this agreement to be carried out provided or performed by the Consultant (other than those stated to be provided as Additional Services) or any other obligations of the Consultant referred to in this agreement
"Statutory Requirements"	any Acts of Parliament and any instruments rules orders regulations notices directions bye-laws permissions and plans for the time being made under or deriving validity from them any European Directives or Regulations

	legally enforceable in England and Wales (including any which although they have not yet come into effect whether in whole or in part will or may do so as to affect the Project and/or the buildings and structures the subject of the Project once built) and any rules regulations building regulations orders bye-laws or codes of practice of any local or other competent authority
"Sub-Consultant"	a person engaged or to be engaged (if any) by the Consultant in accordance with this agreement to carry out any of the Services
"Sub-Contractor"	a contractor or supplier engaged by the Contractor to supply goods or materials or to carry out works of design or construction in relation to the Project
"Team Director"	the person named in schedule 1 whose role it is to co-ordinate the Consultant's activities and obligations under this agreement
"Tenant"	any first person who has taken or has agreed to take or may later take or agree to take a lease of the whole or any part of the Site (and/or any premises constructed or to be constructed on the Site) excluding individual residential occupiers acquiring less than five units
"Third Party"	any or all of the Purchaser and/or the Tenant upon whom the benefit of the Third Party Rights has been conferred
"Third Party Rights"	the rights and benefits set out in schedule 3
"Working Day"	Mondays to Fridays inclusive excluding all statutory and bank holidays
"Works"	the works to be carried out by the Contractor and the Sub-Contractors in relation to the Project

1.2 Interpretation

In this agreement 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 authority board department or other body;
- 1.2.2 unless otherwise expressly stated all references to a clause or schedule or annexure mean a clause of or schedule or annexure to this agreement;
- 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 agreement;
- 1.2.5 at any time when any party to this agreement 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;
- 1.2.6 any obligations on a party to do any act matter or thing includes an obligation to procure that it be done and any obligation on a party not to do or omit to do any act matter or thing includes an obligation not to permit or suffer such act matter or thing to be done or omitted to be done by any person under its control.

1.3 Circumstances

- 1.3.1 The Employer intends to develop the Site by the carrying out and completion of the Project.
- 1.3.2 The Employer wishes to appoint the Consultant to act as quantity surveyor in accordance with this agreement in relation to the Project.
- 1.3.3 Notwithstanding the date of this agreement it shall have effect as if it had been executed upon the date that the Consultant first performed any Services in relation to the Project and accordingly the duties and obligations contained in this agreement shall be deemed to have applied to the carrying out of any of the Services prior to the date of this agreement.

2. APPOINTMENT OF THE CONSULTANT

- 2.1 The Employer hereby appoints the Consultant as quantity surveyor to perform the Services in relation to the Project and the Consultant hereby accepts such appointment and agrees to perform the Services on the terms and conditions of this agreement.
- 2.2 The Employer may instruct Additional Services and/or vary the Services whether by omission or alteration and where the Employer does so instruct the Fee shall be adjusted in accordance with this agreement.

3. DUTY OF CARE

- 3.1 The Consultant shall at all times in the performance of the Services under this agreement exercise the reasonable skill care and diligence to be expected of a appropriately qualified and competent quantity surveyor experienced in the provision of professional services for developments and projects of a similar size scope value character and complexity as the Project. Insofar as the same do not form part of the Services, the Consultant shall not have responsibility for the design of the Project.
- 3.2 No consent approval comment or expression of satisfaction given by the Employer or by any other person with regard to any matter or thing relating to the provision of the Services and no failure to give any such consent approval comment or expression of satisfaction shall operate in any way to derogate from the Consultant's obligations under this agreement nor diminish any liability on its part under this agreement. However, nothing in this agreement is intended to prevent the Consultant, when undertaking the Services, from relying on advice or information from the other consultants if an appropriately qualified and competent professional consultant of the

same profession, applying the standard of care required clause 3.1, would have relied on such advice or information.

- 3.3 The liability of the Consultant under this agreement shall not be released diminished or in any other way affected by any independent enquiry test or survey into any relevant matter which may be made or carried out by or on behalf of the Employer or by the appointment by the Employer of any independent person firm or company to review and report to the Employer in respect of the Project (including without limitation the Services being performed by the Consultant) or by any act or omission which might give rise to an independent liability of such person firm or company to the Employer PROVIDED THAT nothing in this clause shall modify or affect any rights which the Consultant might have to claim a contribution from any third party whether under statute or at common law.

4. CO-OPERATION PROVISION OF INFORMATION AND COMPLIANCE WITH PROGRAMMES

- 4.1 The Consultant shall perform the Services in liaison and co-operation with the Contractor all Sub-Contractors and the Professionals and shall so far as it is able supply such persons with any relevant information which they may reasonably require without charge and keep them fully and properly informed on all aspects of the progress and performance of the Services.
- 4.2 The Consultant shall at the Employer's request liaise and co-operate with any Fund and/or Purchaser and/or Tenant and/or MHCLG and/or any other person who has or may have at any time an interest in the Project and shall so far as he is able supply such persons with any relevant information which they may reasonably require and keep them fully and properly informed on all aspects of the progress and performance of the Services.
- 4.3 The Consultant shall upon becoming aware of anything the likely effect of which the Consultant believes would be either to vary the Project or to increase the cost of or the time taken to complete the Project or to change the financial viability quality or function of the Project promptly inform the Employer in writing of the same.
- 4.4 The Consultant will use the standard of skill care required by clause 3.1 not to do or omit to do anything which enables or is likely to enable the Contractor:
- 4.4.1 to treat the Building Contract as terminated; and/or
 - 4.4.2 to claim or become entitled to extra payment from the Employer (whether by means of a loss and/or expense claim or otherwise); and/or
 - 4.4.3 to apply for or become entitled to an extension of time under the Building Contract.
- 4.5 The Consultant shall have regard to any obligations imposed upon the Employer and/or a Group Company contained in or arising from:
- 4.5.1 the Building Contract or in any agreements with any Fund and/or Purchaser and/or Tenant and/or MHCLG and/or in any other agreement entered into by the Employer and/or a Group Company in connection with the Project before or after the date of this agreement copies of which (or relevant extracts therefrom) have been or will be provided to the Consultant by the Employer PROVIDED THAT the Employer has provided copies to the Consultant in sufficient time for the Consultant to take account of such obligations in performing its duties under this agreement; and/or

4.5.2 any Statutory Requirement or otherwise

and shall assist the Employer in complying timeously and properly with any such obligations and shall not do or omit to be done anything which results in the Employer being in breach of any such obligations.

- 4.6 The Consultant shall perform the Services in accordance with so as to comply with the Project Programme and the Construction Programme and the target dates contained in the Project Programme and the Construction Programme.
- 4.7 The Consultant shall in the performance of the Services have due regard to the Project Cost Plan and shall not do or omit to be done anything which has the effect or is likely to have the effect of increasing any elements of the Project Cost Plan without the consent of the Employer.
- 4.8 The Consultant where appropriate shall co-operate and liaise with the lead design consultant in connection with the Project and all others involved in the Project.
- 4.9 The Consultant further acknowledges the role of the Project Manager as the consultant with authority and responsibility for the overall coordination and management of the Project and shall cooperate and liaise with him fully and effectively.
- 4.10 The Consultant shall have no authority to amend waive or release the obligations owed to the Employer by any of the Contractor Sub-Contractors Professionals or other persons involved in the Project.
- 4.11 The Consultant confirms that it is fully aware of the provisions of the CDM Regulations and that it possesses the requisite degree of competence, knowledge, skill, qualification, experience, organisational capability and level of resources to meet (and will meet) the requirements of the CDM Regulations and shall at all times use reasonable endeavours to see that the Employer shall not breach its obligations under the CDM Regulations.
- 4.12 The Consultant shall comply with its obligations under the CDM Regulations. In conjunction with the Professionals, shall co-operate with and liaise with the person(s) or body(ies) who has/have or shall be appointed by the Employer as Principal Designer and Principal Contractor in respect of the Project and in particular shall provide the Principal Designer with such information as the Principal Designer shall require in the drawing up and completion of health and safety files as required by the CDM Regulations.

5. STATUTORY REQUIREMENTS REQUIRED CONSENTS AND OTHER REQUIREMENTS

- 5.1 The Consultant shall comply with all Statutory Requirements and all Required Consents in the performance of the Services.
- 5.2 To the extent that the obtaining of any Required Consents is not the responsibility of the Consultant the Consultant shall nevertheless as part of the Standard Services assist the Employer the Professionals the Contractor and/or the Sub-Contractors or such other persons involved in the Project in obtaining such Required Consents.

6. PROHIBITED MATERIALS

- 6.1 The Consultant has exercised and will continue to exercise the standard of skill care and diligence required by clause 3.1 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:

- 6.1.1 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;
 - 6.1.2 not in conformity with any relevant British or European Standards or Codes of Practice;
 - 6.1.3 which at the time the Project is being carried out are generally accepted as (or reasonably suspected of):
 - 6.1.3.1 being deleterious in themselves; or
 - 6.1.3.2 becoming deleterious in a particular situation or in combination with other materials; or
 - 6.1.3.3 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
 - 6.1.3.4 being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.
- 6.2 For the purposes of clause 6.1.3 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:
- 6.2.1 the material itself; or
 - 6.2.2 any material to which it is affixed; or
 - 6.2.3 the structure in which it is incorporated or to which it is affixed; or
 - 6.2.4 the Project or any part of the Project
- to a period less than that specified or which would normally be expected.
- 6.3 The Consultant warrants, subject to the standard of care set out at clause 3.1, 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 6.2.
- 6.4 The Consultant shall immediately notify the Employer if it becomes aware of any proposed or actual use in the Works of any materials not compliant with clauses 6.1 and 6.2.
- ## 7. PERSONNEL
- ### 7.1 Team Director and Key Personnel
- 7.1.1 The Consultant shall appoint the person named in schedule 1 to be Team Director who shall manage the overall performance of the Services by the Consultant and who shall at all times have full authority in all matters to act for the Consultant.
- 7.1.2 The Consultant shall use the key personnel listed in schedule 1 in connection with the performance of the Services.

7.2 Substitution of Team Director and Key Personnel

The Consultant shall not substitute any of the persons referred to in clause 7.1 without first consulting with the Employer and obtaining his consent save in the case where such substitution is necessitated by death illness retirement resignation or dismissal of any such person whereupon such consent of the Employer shall not be unreasonably withheld.

7.3 Removal of Team Director and Key Personnel

The Employer shall have the right after consultation with the Consultant to request the removal of any person engaged in the performance of the Services if the Employer considers his performance or conduct to be unsatisfactory in which case the Consultant shall promptly remove such person and replace him with such person as shall be agreed to by the Employer (such agreement not to be unreasonably withheld).

7.4 Staff generally

The Consultant warrants that all staff of the Consultant and its Sub-Consultants engaged on the Project shall be suitably qualified in their respective professions and shall be experienced in projects of a similar size scope value character and complexity as the Project and that such persons shall not be engaged on a freelance basis for major and ongoing roles.

8. SUB-CONSULTANTS SUB-CONTRACTORS AND DELEGATION OF DUTIES

- 8.1 The Consultant shall not sub-let or delegate any of the Services except as specifically permitted under this clause 8.
- 8.2 The Consultant shall not appoint Sub-Consultants to perform any of the Services without first consulting with the Employer and obtaining the Employer's prior written consent.
- 8.3 If Sub-Consultants are appointed the Consultant shall be fully responsible for:
 - 8.3.1 co-ordinating and integrating the work of the Sub-Consultants into the Project; and
 - 8.3.2 such of the Services and any other duties as shall be performed by Sub-Consultants as if they had been performed by the Consultant itself.
- 8.4 If the Consultant considers that any professional service should be carried out by a specialist consultant to be engaged directly by the Employer the Consultant shall so advise the Employer.

9. EMPLOYER'S OBLIGATIONS

In circumstances where such information cannot be obtained by the Consultant by liaising with the Professionals the Contractor and any Sub-Contractors or Sub-Consultants the Employer shall use all reasonable endeavours to supply to the Consultant (if requested by the Consultant) any relevant information either in the possession or the control of the Employer in any way relating to the Project which is required by the Consultant so as to enable the Consultant to properly perform the Services.

10. THE FEE AND PAYMENT FOR ADDITIONAL SERVICES

10.1 The Fee

- 10.1.1 The Employer shall pay the Consultant the Fee stated in schedule 1 which is a fixed fee and full remuneration for the full and proper performance by the Consultant of the Standard Services (credit being given for any part of the Fee already paid to the Consultant prior to the date of this agreement).
- 10.1.2 Subject to clause 10.2.1 the Fee (including any adjustment of the Fee as referred to in clause 10.2.1) shall be deemed to be inclusive payment for the provision of the Standard Services and all other obligations or other matters contained or referred to in this agreement and shall (unless otherwise stated in schedule 1) also be inclusive of all costs disbursements expenses and overheads of whatsoever nature incurred by the Consultant in connection with this agreement.

10.2 Adjustment to the Fee, additional fees and Additional Services

- 10.2.1 If at any time the nature and scope of the Project materially changes at the instigation of the Employer with the result that the level of work required of the Consultant in providing the Standard Services is substantially increased or decreased or if the Employer requires the Consultant to carry out any Additional Services then the Employer and the Consultant shall agree a fair and reasonable adjustment to the Fee (or an additional fee or remuneration) to reflect such increase or decrease or any such Additional Services (which shall exclude any loss of profit in the event of omission of any of the Services).
- 10.2.2 If the Consultant considers that there should be an adjustment to the Fee in accordance with clause 10.2.1 the Consultant shall notify the Employer in writing before carrying out any services for which it expects adjustment to the Fee to be made or an additional fee or other remuneration to be paid otherwise no adjustment or additional fee or other remuneration shall be made or payable by the Employer unless the Employer shall at its absolute discretion otherwise agree.
- 10.2.3 Any adjustment to the Fee and/or any additional fees or remuneration in accordance with clause 10.2.1 shall be agreed in writing between the Employer and the Consultant.
- 10.2.4 The Employer shall be entitled to require the Consultant to accept compensation in full for the performance of any Additional Services either at the hourly rates set out in schedule 1 or alternatively (but at the Employer's absolute discretion) at a fixed additional fee to be agreed between the Employer and the Consultant (which the Consultant shall be obliged to quote and substantiate prior to the performance of any Additional Services).
- 10.2.5 No adjustment to the Fee and no additional fee shall be made or paid in respect of any Additional Services required as a result of a breach of this agreement by the Consultant.
- 10.2.6 Any costs disbursements expenses and overheads associated with the provision of any Additional Services shall be deemed to be included in any agreed fixed additional fee or within the hourly rates set out in schedule 1 unless and to the extent otherwise agreed between the Employer and the Consultant.

10.3 Payment schedule and submission of accounts

- 10.3.1 The Consultant shall submit accounts in respect of the Fee at the instalment dates and in the instalment amounts stipulated in schedule 1. In the event of any adjustment to the Fee being agreed pursuant to clause 10.2.1 then the Employer and the Consultant shall agree any necessary adjustments to the instalment dates and the instalment amounts.

- 10.3.2 If no instalment dates or amounts are stipulated in schedule 1 or if any additional fees are agreed for the provision of any Additional Services then the Consultant shall submit accounts in respect of the Fee or (as the case may be) any additional fees on such dates and in such amounts as shall be agreed between the Employer and the Consultant which dates shall not be more frequently than monthly and which amounts shall properly reflect the extent of services already performed by the Consultant at the date of submission of such accounts and shall specify the sum that the Consultant considers will become due on the payment due date in respect of the instalment of the Fee, and the basis on which that sum is calculated.
- 10.3.3 In the event that the Consultant has not performed the level or extent of services anticipated by any instalment date (whether stipulated in schedule 1 or otherwise agreed) whether due to any delay in the Project or any default of the Consultant or otherwise then the fee anticipated for payment on that instalment date shall be adjusted accordingly as shall the remaining fees and instalment dates and any such adjustment shall be recorded in writing between the Employer and the Consultant.
- 10.3.4 The Consultant shall when submitting any accounts to the Employer under this agreement submit them in such form and with such supporting evidence or documentation as may be required by the Employer.

10.4 Construction Act

- 10.4.1 For the purposes of the Construction Act the "due date" for any instalment of the Fee or any additional fee shall be the later of:
 - 10.4.1.1 the instalment date stipulated in schedule 1 or otherwise agreed between the Employer and the Consultant and
 - 10.4.1.2 the date seven days after receipt by the Employer of the account for such instalment submitted by the Consultant in accordance with clause 10.3
- 10.4.2 No later than five days after the due date for any instalment of the Fee or any additional fee the Employer shall give a notice to the Consultant of the amount that the Employer considers to be or to have been due at the payment due date in respect of the payment and the basis on which that amount is calculated (a **payment notice**).
- 10.4.3 For the purposes of the Construction Act the "final date for payment" by the Employer of any instalment of the Fee or any additional fee shall be the date 28 days from the payment due date of the instalment in question.
- 10.4.4 Unless the Employer has served a notice under clause 10.4.5, the Employer shall pay the Consultant the sum referred to in the Employer's notice under clause 10.4.2 (or if the Employer has not served notice under Clause 10.4.2, the sum referred to in the accounts referred to in clause 10.3 (in this clause 10, the **notified sum**)) on or before the final date for payment of each account.
- 10.4.5 If the Employer intends to pay less than the notified sum then the Employer shall give to the Consultant notice (a **pay less notice**) of:
 - 10.4.5.1 the sum that the Employer considers to be due on the date the notice is served; and
 - 10.4.5.2 the basis on which that sum is calculated

Such notice may be comprised in or accompany the notice to be given under clause 10.4.2 but in any event shall be given no later than three days before the final date for payment of the instalment in question (the **prescribed period**).

10.4.6 The Employer may not withhold payment of any instalment after its final date for payment unless it has served a pay less notice pursuant to clause 10.4.5 but where the Employer has served a pay less notice it must pay the sum specified in the pay less notice on or before the final date for payment.

10.4.7 Where the Employer has given a pay less notice complying with clause 10.4.5 and either the Employer or the Consultant refers a dispute concerning such notice and/or the withholding or deduction of any payment under that notice to adjudication under clause 23 and the adjudicator decides that the whole or any part of the amount withheld or deducted should be paid then payment of such amount shall be made not later than:

10.4.7.1 seven days from the date of the adjudicator's decision; or

10.4.7.2 the date which apart from the notice given under clause 10.4.5 would have been the final date for payment for such amount

whichever is the later

10.5 Right to suspend performance

10.5.1 Where a payment is provided for by this agreement and the Employer does not pay the notified sum (to the extent not already paid) on or before the final date for payment:-

10.5.1.1 the Consultant may (but without prejudice to any other right or remedy) suspend performance of any or all of its obligations under this agreement by giving not less than seven days' prior notice to the Employer of its intention to do so and stating the ground or grounds on which it intends to suspend performance. The right to suspend shall cease when the Employer makes payment in full of the sum referred to in clause 10.4.4 and any period during which performance is validly suspended pursuant to or in consequence of the exercise of this clause 10.5.1 shall be disregarded in assessing the time taken by the Consultant to complete any services to be performed by the Consultant which are affected by such suspension.

10.5.1.2 the Employer shall pay to the Consultant in addition to any amount not properly paid by the Employer:-

10.5.1.2.1 a reasonable amount in respect of costs and expenses reasonably incurred by the Consultant as a result of any exercise of its right referred to in clause 10.5.1; and

10.5.1.2.2 (taking into account any sum paid under clause 10.5.1.2.1) any adjustment to the Fee due under clause 10

and such payment shall be the Consultant's sole compensation for suspension of its Services and obligations under this agreement. For the purposes of this clause, the 'notified sum' in relation to any payment provided for by this agreement means; in a case where a **payment notice** as defined in clause 10.4.2 has been given pursuant to and in accordance with a requirement of this agreement the amount specified in that notice.

10.6 Interest on late payments

10.6.1 Where a payment is provided for by this agreement and the Employer does not pay the notified sum (to the extent not already paid) on or before the final date for payment the Employer shall pay to the Consultant in addition to any amount not properly paid

by the Employer simple interest thereon for the period until such payment is made at the rate of two per cent over the base rate of the Bank of England which is current at the date that the payment by the Employer became overdue.

- 10.6.2 Any payment of simple interest under this clause 10.6.1 shall not in any circumstances be construed as a waiver by the Consultant of his right to proper payment of the principal amount due from the Employer to the Consultant in accordance with the provisions of this agreement.
- 10.6.3 The Consultant and the Employer agree that the provision of this clause 10.6.1 constitutes a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

10.7 Value Added Tax

The Employer shall pay to the Consultant (subject to receipt of a valid value added tax invoice) value added tax properly chargeable on the Consultant on the supply to the Employer of any goods or services under this agreement.

11. INSURANCE

- 11.1 The Consultant warrants that, without prejudice to its liability under this agreement, 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 (notwithstanding that the Consultant's engagement may be terminated under this agreement) with reputable insurers carrying on business in the United Kingdom professional indemnity insurance cover for the amount referred to in schedule 1 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 terms and premium rates.
- 11.2 The Consultant shall throughout the period referred to in clause 11.1 provide to the Employer (when reasonably requested by him to do so) evidence (in the form of a broker's letter) that the insurance required by clause 11.1 is being maintained in accordance with that clause.
- 11.3 The Consultant shall immediately inform the Employer as soon as it becomes aware that the insurance referred to in clause 11.1 is not maintained in accordance with this schedule or for any reason becomes void or unenforceable and shall agree with the Employer the best means of protecting the Consultant and the Employer's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

12. COPYRIGHT AND CONFIDENTIALITY

- 12.1 The copyright in the Project Material shall remain vested in the copyright owner.
- 12.2 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.
- 12.3 The Consultant grants or shall procure the grant from third parties engaged by the Consultant (where copyright is vested in such parties) to the Employer of an irrevocable royalty-free non-exclusive licence of copyright 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 thereof 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.

- 12.4 The Consultant agrees that:
- 12.4.1 the Employer may assign the licence referred to in clause 12.3 or grant a sub-licence or sub-licences from such licence to any person with an interest (whether existing or to be acquired) in all or part of the Site (including any premises constructed or to be constructed on the Site) or the Project (including without limitation persons with a freehold or leasehold interest (but excluding individual residential occupiers acquiring less than five units) and any mortgagees);
 - 12.4.2 it will provide the Employer or any person acquiring an interest in all or part of the Site (excluding individual residential occupiers acquiring less than five units) (including any premises constructed or to be constructed on the Site) or the Project with such information and copies of the Project Material as may be requested by the Employer.
- 12.5 Notwithstanding clause 12.1 the Consultant shall not (and shall procure that third parties engaged by the Consultant shall not) without the Employer's consent use the Project Material on any other project or development which is of similar design appearance or concept to the Project and the Consultant and third parties engaged by the Consultant shall not likewise use the Project Material for any purpose whatsoever connected with the Site other than in the performance of the Services for the Employer under this agreement.
- 12.6 The Consultant shall not (and shall procure that none of its Sub-consultants and any of its or their employees or agents shall not) during the Project or at any time thereafter (except as may be required by law or in order to properly perform the Services) disclose to any third party (except the Consultant's professional advisers and insurers) any information relating to the Project or the business of the Employer of a confidential or commercially sensitive nature including the contents of this agreement without the prior written authority of the Employer.
- 12.7 The Consultant shall not contribute to or seek any publicity or advertising in any way relating to the Project whether through the divulgence of any photographic or written information relating to the Project or otherwise without the prior written approval of the Employer.
- 12.8 The provisions of this clause 12 including without limitation the licence granted to the Employer pursuant to clause 12.3 shall continue in full force and effect notwithstanding any suspension or termination of the Consultant's services or engagement in relation to the Project.
- 13. ASSIGNMENT**
- 13.1 The Consultant shall not assign its interest in this agreement or any part of this agreement nor any right arising under this agreement to any person without the prior written consent of the Employer.
- 13.2 The Employer may assign all of its rights and interests in or under this agreement at any time to:
- 13.2.1 any person with a freehold or leasehold interest in the whole or any substantial part of the Site; or

- 13.2.2 any person taking over the development of the Site; or
 - 13.2.3 any Fund; or
 - 13.2.4 a Group Company
- without the consent of the Consultant being required.
- 13.3 Notice of any assignment pursuant to clause 13.2 shall be served upon the Consultant within 10 Working Days of such assignment.

14. WARRANTIES AND THIRD PARTY RIGHTS

- 14.1 The Consultant shall within 10 Working Days of a request to do so from or on behalf of the Employer execute and deliver to the Employer a deed of collateral warranty in favour of:
- 14.1.1 any Purchaser; and/or
 - 14.1.2 any Tenant; and/or
 - 14.1.3 any Fund; and/or
 - 14.1.4 MHCLG

the form of such collateral warranties shall be as set out in schedule 5 with such amendments as the Employer may reasonably require and the Consultant approves (such approval not to be unreasonably withheld or delayed). The step in provisions of the collateral warranty set out in Part A of schedule 5 will only be required in collateral warranties in favour of Funders and/or Purchasers.

- 14.2 If the Consultant fails to execute and deliver any deed of collateral warranty in accordance with clause 14.1 then without prejudice to the Employer's other rights and remedies in relation to such breach the Employer shall not be obliged to make any further payment to the Consultant under this agreement until such deed of collateral warranty is duly executed and delivered to the Employer.
- 14.3 The Employer (or the Employer's solicitors on behalf of the Employer) may (except where a warranty has been executed and delivered to the Employer in favour of such Tenant and/or Purchaser in accordance with clause 14.1) from time to time serve a Nominating Notice on the Consultant conferring the benefit of the Third Party Rights in favour of the Purchaser and/or Tenant.
- 14.4 The Employer and the Consultant agree that as of the date of the Nominating Notice the Purchaser and/or the Tenant named in the relevant Nominating Notice shall be entitled to enforce the Third Party Rights pursuant to the Contracts (Rights of Third Parties) Act 1999.

15. TERMINATION OF CONSULTANT'S ENGAGEMENT BY THE EMPLOYER

- 15.1 The Employer may at any time terminate the Consultant's engagement under this agreement without cause and with immediate effect by giving to the Consultant written notice to that effect.
- 15.2 Where the Consultant either:
- 15.2.1 is in material or substantial breach of this agreement or has committed a material or substantial negligent act or omission or other default; and/or

- 15.2.2 persistently commits a breach of this agreement or negligent act or omission or other default or refuses to remedy a breach having been requested by the Employer to remedy the same

then the Employer may at any time terminate the Consultant's engagement under this agreement with cause and with immediate effect by giving to the Consultant written notice to that effect.

- 15.3 The Employer may at any time by written notice to the Consultant bring to an end the Consultant's performance and involvement in any part or parts of the Services at which point the Fee shall be adjusted in accordance with clause 10.2.1.

16. TERMINATION OF CONSULTANT'S ENGAGEMENT BY THE CONSULTANT

If as a result of a material breach of this agreement by the Employer the Consultant wishes to determine its engagement under this agreement the Consultant shall promptly notify the Employer in writing of such breach and if within a period of 28 days from the date of receipt of such notice the Employer has failed to remedy such breach or offer a reasonable compromise then the Consultant shall be entitled by further written notice on the Employer to terminate its engagement under this agreement.

17. SUSPENSION OF CONSULTANT'S ENGAGEMENT BY THE EMPLOYER

- 17.1 The Employer may at any time and from time to time by written notice to the Consultant suspend the performance by the Consultant of the Services (or any part or parts of the Services) without cause and with immediate effect by giving to the Consultant written notice to that effect.

- 17.2 The Consultant shall remain available to resume the Services (or such part or parts of the Services) so suspended supplying all Project Material relating to all or any of the services carried out before the date of suspension in its possession or control as may be required by the Employer without cost to the Consultant.

- 17.3 The Consultant shall comply with all reasonable instructions of the Employer during any period of suspension and if required by the Employer to carry out any services in addition to those which have or should have been carried out in accordance with the Project Programme before the date of suspension such services shall constitute Additional Services for the purposes of this agreement.

- 17.4 The Employer may at any time instruct the Consultant to resume the Services so suspended which the Consultant shall promptly do and an adjustment to the instalment dates for payment of the Fee shall be made to properly reflect the period of suspension.

- 17.5 If the Employer shall have suspended the whole of the Services for a period in excess of twelve months the Consultant may serve written notice on the Employer requesting an instruction to resume the Services and if the Employer fails to order resumption of such Services within 28 days of receipt of such notice the Consultant may at any time thereafter (but not once the Employer has instructed the Consultant to resume the Services) terminate its engagement under this agreement by serving further written notice on the Employer to that effect.

18. CONSEQUENCES OF TERMINATION OR SUSPENSION OF CONSULTANT'S ENGAGEMENT

- 18.1 Upon termination of the Consultant's engagement under clauses 15 or 16 or upon suspension of the whole of the Services under clause 17:

- 18.1.1 the Consultant shall deliver to the Employer all Project Material in its possession or control (PROVIDED THAT the Consultant shall be entitled to retain a copy of the Project Material) and cease its involvement in the Project in an orderly and co-operative manner with all reasonable speed and economy; and
 - 18.1.2 the Employer shall (subject to any right of set-off or counterclaim) pay to the Consultant that part of the Fee and any other additional fees arising under this agreement which properly and reasonably reflect the Services performed by the Consultant up to such termination and which remain unpaid; and
 - 18.1.3 the Employer shall not be liable to the Consultant for any loss of profit or loss of contracts or (subject only to clauses 18.1.2 and 18.2) for any other costs losses and/or expenses arising out of or in connection with such termination or suspension.
- 18.2 In addition to any sum payable by the Employer pursuant to clause 18.1.2 the Employer shall where the Consultant's engagement has been terminated without cause under clause 15.1 or pursuant to clause 17.5 pay to the Consultant such direct costs and expenses which have been incurred by the Consultant and are directly attributable to such termination save to the extent that they could have been avoided or mitigated against and/or arise due to the negligence default or omission on the part of the Consultant.
- 18.3 Any termination of the Consultant's engagement under this agreement shall in no way affect the rights of any party to this agreement against any other party and the provisions of this agreement shall continue to bind the parties insofar as and for as long as may be necessary to give effect to their respective rights and obligations under this agreement.

19. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 19.1 Subject to clause 14 and schedule 3 nothing in this agreement confers or is intended to confer any right to enforce any of its terms on any party who is not a party to it (save for permitted assignees) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 19.2 The Employer and the Consultant shall be entitled to agree any amendment waiver settlement or compromise in respect of this agreement or to terminate the Consultant's employment under this agreement without the consent of the Purchaser and/or Tenant on whom the benefit of Third Party Rights have been conferred pursuant to clause 14 PROVIDED THAT the Employer and the Consultant shall not be entitled to vary any provision of schedule 3 to this agreement after the right to enforce such Third Party Rights has vested in any Purchaser and/or Tenant pursuant to clause 14 without the consent of each such Purchaser and/or Tenant (such consent not to be unreasonably withheld or delayed).

20. PERIODS OF RECKONING OF TIME

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

21. NOTICES

- 21.1 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 to the persons and the addresses specified in clauses 21.3 and 21.4 as the case may be by either:
- 21.1.1 personal delivery; or
 - 21.1.2 pre-paid registered or recorded delivery mail.
- 21.2 Notices and communications shall be deemed to have been served or received as follows:
- 21.2.1 in the case of personal delivery on the date of delivery;
 - 21.2.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted.
- 21.3 Notices and communications to the Employer shall be addressed to the address above or to such other address as may be notified by the Employer.
- 21.4 Notices and communications to the Consultant shall be addressed to Alex Blenard RPP Limited, First Floor, Riverside West, Whitehall Road, Leeds, LS1 4AW or to such other address as may be notified by the Consultant.

22. VARIATIONS TO THIS AGREEMENT

- 22.1 This agreement constitutes the entire contract between the Employer and the Consultant and there are no other arrangements between the parties relating to the subject matter of this agreement.
- 22.2 Subject to clause 22.3 any variations to this agreement shall be set out in a formal written agreement and signed by the Employer and the Consultant agreeing such variations.
- 22.3 The requirements of clause 22.2 shall not apply to the instruction of Additional Services or the variation of the Services by the Employer which may be instructed by the Employer by way of written correspondence served in accordance with clause 21.

23. ADJUDICATION

- 23.1 Subject to either party's right to adjudicate at any time, the Employer and the Consultant shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation.
- 23.2 If any dispute or difference arising out of or concerning or touching upon this Contract shall arise between the Employer and the Consultant and such dispute or difference cannot be resolved by negotiation or mediation, or if either the Employer or the Consultant requires the dispute to be referred to adjudication then either the Employer or the Consultant may refer the dispute or difference to adjudication under the Construction Act and such adjudication shall be conducted in accordance with the Scheme.

24. COURTS AND LAW

- 24.1 Subject to clause 23 the Employer and the Consultant agree that any difference or dispute of whatever nature arising out of or concerning or touching upon this

agreement shall be referred to the English courts and specifically (unless otherwise agreed) to the Technology and Construction Court.

24.2 This agreement shall be governed by English law.

25. BRIBERY ACT 2010 (AS VARIED AMENDED OR RE-ENACTED)

25.1 The Consultant shall:

- 25.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("the Relevant Requirements");
 - 25.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 25.1.3 comply with the Employer's ethics, anti-bribery and anti-corruption policies (copies of which are available on request) as the Employer may update from time to time ("the Relevant Policies");
 - 25.1.4 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 25.1.2, and will enforce them where appropriate;
 - 25.1.5 promptly report to the Employer any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this agreement;
 - 25.1.6 immediately notify us (in writing) if a foreign public official becomes its officer or employee or acquires a direct or indirect interest in the Consultant (and the Consultant warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);
 - 25.1.7 on the date of this agreement, and annually thereafter, certify to the Employer in writing signed by one of the Consultant's officers, its compliance with this clause 25 and that of all persons associated with the Consultant under clause 25.2. The Consultant shall provide such supporting evidence of compliance as the Employer may reasonably request.
- 25.2 The Consultant shall ensure that any person associated with the Consultant who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consultant in this clause 25 ("the Relevant Terms"). The Consultant shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Employer for any breach by such persons of any of the Relevant Terms.
- 25.3 For the purpose of this clause 25, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 26 a person associated with the Consultant includes but is not limited to any of the Consultant's sub-consultants.

IN WITNESS whereof this agreement has been executed as a deed by the Employer and the Consultant on the date first above written

Executed as a deed by
**20:20 HOUSE (RESIDENTIAL
MANAGEMENT) LIMITED**

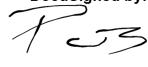
acting by a director in the
presence of a witness

.....
Witness

Philip Pogson

.....
Address

Executed as a deed by
RPP LIMITED
acting by two Directors/a
Director and the Secretary

.....
DocuSigned by:

60CA06G750D1496.....

.....
DocuSigned by:


Nick Massingham

465ED14708344D7.....

Director

Nick Massingham

Print name.....

Philip Pogson

Print Name

Philip Pogson

Occupation

.....
DocuSigned by:


425D8QBECE0014F6.....

Director

Andrew Cooper

Print name.....

.....
DocuSigned by:


C54003B48QAF402.....

Director/Secretary

Alex Blenard

Print name.....

SCHEDULE 1
Main Details

- 7.1.1 The Team Director is Alex Blenard
- 7.1.2 The Consultant's key personnel are:
- (i) Alex Blenard
 - (ii) Sam Berryman
- 10.1.1 The Fee is TWELVE THOUSAND AND TWO HUNDRED AND FIFTY POUNDS (£12,250)
- 10.1.2 Reimbursable expenses disbursements costs overheads etc: none
- 10.2.4 Hourly rates for Additional Services are:
- | | |
|--------------------------|------|
| Director | £120 |
| Associate Director | £95 |
| Senior Quantity Surveyor | £75 |
| Quantity Surveyor | £60 |
| Assistant Surveyor | £45 |

The above mentioned rates are fixed for the duration of the Project and are subject to annual review by the Consultant. The Employer and the Consultant shall agree changes to the above mentioned rates throughout the duration of the Project to take into account any annual reviews as and when required.

- 10.3.2 Instalment dates and instalments amounts in respect of the Fee are:

Instalments/ Milestones	% of Fee
Commencement of Works on site	10%
Construction period at equal monthly instalments	80%
Upon calculation of the adjusted contract sum in accordance with the contract	10%

- 11.1 The level of professional indemnity insurance cover required is £5,000,000 (five million pounds) any one claim plus defence costs and expenses other than asbestos and/or pollution claims where the limit is £5,000,000 (five million pounds) in the aggregate including defence costs and expenses.

SCHEDULE 2

The Standard Services

SCHEDULE OF SERVICES - QUANTITY SURVEYING (D&B)

The services listed below do not include responsibility or liability for producing a design or for verifying the design of others.

1. POST-CONTRACT SERVICES

- 1.1 Attend the pre-start meeting and each site meeting, which are taken to be monthly. The date of the monthly site meetings are to coincide with the valuation dates for the contractor's interim applications. This permits the assessment/inspection of the work done to be undertaken on the same day as the monthly site meeting.
- 1.2 Check that the contractor's application(s) for interim payment is in accordance with the building contract and amend as necessary. Produce a 'valuation' based on the contractor's application and issue to Client / Client's Representative.
- 1.3 Value any changes to the Employer's Requirements instructed under and in accordance with the building contract.
- 1.4 Prepare periodic cost reports showing the anticipated final cost of the works.
- 1.5 Should the contractor fail to prepare and submit a 'final account' or similar financial statement, then on behalf of the Client prepare a 'final account' or similar financial statement in accordance with the building contract. Issue the appropriate documents to the contractor on behalf of the Client. (For the purpose of this service, the 'final account' or similar documents excludes the assessment of loss and/or expense or contractor's claims).

2. GENERAL

- 2.1 When undertaking the Services RPP may rely on a confirmation, approval, inspection, test, report or communication from the other consultants if a competent professional, applying the standard of reasonable skill and care would have relied on that confirmation, approval, inspection, test, report or communication.
- 2.2 The reference to 'other consultants' refers to those consultants engaged by the Client whether or not they are subsequently novated to the contractor.

3. EXCLUSIONS

The services specifically exclude the following:-

- 3.1 Advice on or the ascertainment of any loss and/or expense claim by the contractor.
- 3.2 Advice on the calculation or determination of a Contractor's entitlement to extensions of time.
- 3.3 Administration of the building contract unless expressly stated above.
- 3.4 Calculation of capital allowances and resolution of other tax issues.
- 3.5 Quantity surveying or consultancy services in respect of mechanical, electrical or other specialist services installations.
- 3.6 Dealing with a contractor's insolvency, receivership, administration or similar and subsequent appointment of an alternative contractor.
- 3.7 Printing or copying documents, drawings, etc. This includes all drawings necessary for tender purposes, hard copies of which are to be provided by others.

- 3.8 Services of a Principal Designer.
- 3.9 VAT matters.
- 3.10 Any involvement in adjudication, mediation, arbitration and/or legal proceedings.
- 3.11 Quality management and compliance inspection or supervision services such as checking, verifying or testing the standards of completed workmanship and/or materials and/or to ensure that the works comply with the contract documents.
- 3.12 Management, liaison or interface with tenants, purchasers or similar third parties.
- 3.13 Design, lead designer and/or design co-ordination services.
- 3.14 The issue of certificates.

SCHEDULE 3
Third Party Rights

1. DEFINITIONS

1.1 Unless stated otherwise below defined terms in this schedule shall have the meanings given to them in the Appointment:

"Appointment"	the terms of appointment entered into between the Consultant and the Employer
"Group Company"	any subsidiary company or holding company of the Third Party or any other subsidiary or holding company of such company as subsidiary and holding company are defined in s1159 Companies Act 2006 (as amended)
"Mortgagee"	a person having or acquiring a mortgage or charge over the Project or any part of the Project

1.2 Unless stated otherwise references to a paragraph or clause are to a paragraph or clause in this schedule

2. DUTY OF CARE

The Consultant warrants and undertakes to the Third Party 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 an appropriately qualified and competent quantity surveyor experienced in the provision of professional services for developments and projects of a similar size scope value character and complexity as the Project.

3. RESTRAINTS ON THE 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 Third Party under this schedule.

4. PROFESSIONAL INDEMNITY INSURANCE

4.1 The Consultant warrants that, without prejudice to its liability under this schedule, 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 with reputable insurers carrying on business in the United Kingdom professional indemnity insurance cover of the amount and terms referred to in the Appointment 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.

4.2 The Consultant shall throughout the period referred to in paragraph 4.1 provide to the Third Party (when reasonably requested by him to do so) evidence (in the form of a broker's letter) that the insurance required by paragraph 4.1 is being maintained in accordance with that paragraph.

4.3 The Consultant shall immediately inform the Third Party as soon as it becomes aware that the insurance referred to in paragraph 4.1 is not maintained in accordance with this schedule or for any reason becomes void or unenforceable and shall agree with the Third Party the best means of protecting the Consultant and the Third Party's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

5. COPYRIGHT

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

5.2 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.

5.3 The Consultant grants or shall procure the grant from third parties engaged by the Consultant (where copyright is vested in such parties) to the Third Party of an irrevocable royalty-free non-exclusive licence of copyright 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 Site and/or the Project 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.

5.4 The Consultant agrees that:

5.4.1 the Third Party may assign the licence referred to in paragraph 5.3 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;

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

6. ASSIGNMENT

6.1 The Third Party may (without the consent of the Consultant) assign its rights under this schedule to:

6.1.1 any Mortgagee and by way of re-assignment on redemption; and/or

6.1.2 any Group Company; and/or

6.1.3 any other party on two occasions only.

6.2 Notice of assignment shall be provided to the Consultant.

6.3 In this schedule references to the Third Party shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 6.1.3.

6.4 The Consultant undertakes with the Third Party not to contend that any person to whom the benefit of this schedule may be assigned will be precluded from recovering

under this schedule any loss resulting from any breach of this schedule either by reason that the person is an assignee and not the original party on whom the benefit of this schedule was conferred or by reason that the Third Party to whom the benefit of this schedule was originally conferred or any intermediate owner of the Third Party's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

7. LIMITATION AND MISCELLANEOUS

- 7.1 The liability of the Consultant under this schedule shall be limited to claims arising within twelve years after the date of Practical Completion or, if sooner, 12 years from termination of the Services.
- 7.2 The rights of the Third Party conferred by this schedule are additional to any other that it may enjoy by grant assignment or at law.
- 7.3 Any consent approval or expression of satisfaction given by the Third Party 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 schedule.
- 7.4 The Consultant acknowledges that:
 - 7.4.1 the Third Party shall be deemed to have relied upon the Consultant's reasonable skill care and diligence set out at clause 2.2 in respect of those matters relating to the Project which lie within the scope of its responsibilities under the Appointment or under this schedule;
 - 7.4.2 no negligent or other act omission or delay by or on behalf of the Third Party 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 schedule to the Third Party and its respective successors in title and assigns.

8. NOTICES

- 8.1 Any notice to be served under this schedule 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.
- 8.2 Notice may be served by:
 - 8.2.1 personal delivery; or
 - 8.2.2 pre-paid registered or recorded delivery mail.
- 8.3 Notices and communications shall be deemed to have been served or received as follows:
 - 8.3.1 in the case of personal delivery on the date of delivery;
 - 8.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted.

9. LAW

This schedule shall be governed by English law and the Consultant and the Third Party hereby submit to the exclusive jurisdiction of the English courts.

SCHEDULE 4
Form of Nominating Notice

TO: [] (Company registration number []) whose registered office is at []

FROM: **GOWLING WLG (UK) LLP** of 4 More London Riverside London SE1 2AU for and on behalf of [] (company registration number []) whose registered office is at [] ("the Employer")

Date: []

Dear Sirs

[] ("the Project")

You have entered into an appointment with the Employer dated [] in respect of the Project ("the Appointment").

Schedule 3 of the Appointment sets out the benefits and rights which may be enforced by a third party on the issue of this notice. On behalf of the Employer we hereby nominate [] (Company registration number []) as a third party ("the Third Party") entitled to enforce the benefits and rights set out in Schedule 3 of the Appointment in accordance with the terms of the Appointment as from the date of this notice.

[The Third Party has taken or agreed to take a lease of the premises known as [] forming part of the Project] [The Third Party has agreed to purchase the whole of the property of which the Project forms part]

Yours faithfully,

.....
For and on behalf of []

SCHEDULE 5
PART A
Deed of Collateral Warranty in favour of Funder/Purchaser/Tenant

DATED _____ 20[]

- (1) []
- (2) []
- (3) []

CONSULTANT'S WARRANTY
in favour of [Purchaser] [Fund] [Tenant]
in respect of a development at

[]



GOWLING WLG

THIS DEED is made

20[]

BETWEEN

(1) [] (Company registration number []) whose registered office is at [] ("the Consultant")

OR

[] [] [] [] and [] who together [and with others] are carrying on business in partnership as [] at [] ("the Consultant")

(2) [] (Company registration number []) whose registered office is at [] ("the Company")

(3) [] (Company registration number []) whose registered office is at [] ("the Employer")

DRAFTING NOTE : Employer only to be a party to warranty where step in rights are granted

In consideration of the sum of one pound (£1.00) paid by the Company to the Consultant (receipt of which is hereby acknowledged) **THIS DEED WITNESSETH** as follows:

1. DEFINITIONS INTERPRETATION AND CIRCUMSTANCES

1.1 Definitions

In this deed unless the context otherwise requires the following expressions shall have the following meanings:

"Appointment" the terms of appointment entered into between the Consultant and the Employer dated [] 20[]

"Employer" [] (Company registration number []) whose registered office is at []

DRAFTING NOTE : only insert definition of "Employer" in warranty if step in rights are not being granted

"Group Company" any subsidiary company or holding company of the Company or another subsidiary or holding company of such company as subsidiary and holding company are defined in s1159 Companies Act 2006

"Moral Rights" moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988

"Mortgagee" a person having or acquiring a mortgage or charge over the Project or any part of the Project

"Practical Completion" shall have the same meaning as in the Appointment

"Project"	[] at the Site
"Project Material"	all reports calculations and any other documents (including without limitation any such items retained on or in any computer software or other electronic medium) and any other works prepared conceived or developed by or on behalf of the Consultant in the course of or as a result of performing the Services and whether in existence or to be made and additions thereto.
"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act is a bank holiday
"Services"	the services which the Consultant has been retained to carry out under the Appointment
"Site"	[]
"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 Employer employed the Consultant to act as quantity surveyor in relation to the Project.
- 1.3.2 The Company has agreed to [purchase [the whole] [part] of the Project from the Employer] [provide funding for the Employer to complete the Project] [take a lease of the premises known as [] forming part of the Project].

- 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 appropriately qualified and competent quantity surveyor 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 Project

to a period less than that which has been specified or would normally be expected.

- 3.3 The Consultant warrants, subject to the standard of care set out at clause 2.2, 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].

DRAFTING NOTE: wording in brackets only to be included in warranty where step in rights being granted

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].

DRAFTING NOTE: wording in brackets only to be included in warranty where step in rights being granted

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 Employer 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 Employer 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 Employer 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 [Fund] under clause 7 of the warranty given or to be given by the Consultant to the [Fund] shall have priority over the rights of the Company under this clause whether such rights are exercised by the [Fund] before or after the exercise by the Company of its rights under this clause.

DRAFTING NOTE : delete clause 7.3 if the agreement between the Employer and the Company does not give the Company the right to issue a notice to the Consultant and step into the

Appointment in the case of breach of the agreement between the Employer and the Company by the Employer.

- 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 Employer in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment. The Employer 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 Employer 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 Employer'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 Employer 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.

DRAFTING NOTE: clause 7 is only to be included where step in rights are to be granted and if step in rights granted to more than one company then need to resolve priority of step in rights – see 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 with reputable insurers carrying on business in the United Kingdom professional indemnity insurance cover of £5,000,000 (five million pounds) for any one claim plus defence costs and expenses other than asbestos and/or pollution claims where the limit is £5,000,000 (five million pounds) in the aggregate including defence costs and expenses. 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 (in the form of a broker's letter) 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 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.
- 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 Notice of any such assignment shall be provided to the Consultant.
- 10.3 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.
- 10.4 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. EMPLOYER ACKNOWLEDGEMENT

The Employer 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 Employer.

DRAFTING NOTE: clause 11 is only to be included in warranty where step in rights are granted

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.

DRAFTING NOTE: clause 12 is only to be included in warranty where step in rights are granted

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, if sooner, 12 years from termination of 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 set out at clause 2.2 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.

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.

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.

16. LAW

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

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

PART B
Deed of Collateral Warranty in favour of MHCLG



Ministry of Housing,
Communities &
Local Government

Issued

Do not Date

2021

Duty of Care Agreement
for ACM cladding remedial works at
20:20 Block B Flats

RPP Limited ⁽¹⁾
20:20 House (Residential Management) Limited ⁽²⁾ and
The Secretary of State for Housing, Communities and Local Government ⁽³⁾



CONTENTS

Clause	Page
1. DEFINITIONS AND INTERPRETATION	3
2. EXERCISE OF SKILL AND CARE.....	5
3. OBLIGATIONS PRIOR TO TERMINATION OF THE APPOINTMENT	6
4. INTELLECTUAL PROPERTY RIGHTS	6
5. INSURANCE	6
6. HEALTH AND SAFETY.....	7
7. EXCLUDED MATERIALS	7
8. COMMUNICATIONS.....	7
9. CONCURRENT LIABILITIES.....	8
10. ASSIGNMENT.....	8
11. LIMITATION PERIOD	8
12. EMPLOYER	8
13. GOVERNING LAW AND JURISDICTION.....	8
14. RIGHTS OF THIRD PARTIES	9



Ministry of Housing,
Communities &
Local Government

Issued

DATE *Do not Date*

PARTIES

- (1) RPP Limited (registered in England and Wales with company No. 07159352) whose registered office is c/o Mazars LLP, 5th Floor, 3 Wellington Place, Leeds, LS1 4AP (**Consultant**).
- (2) 20:20 House (Residential Management) Limited (registered in England and Wales with company No. 06770847) whose registered office is Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB (**Employer**).
- (3) The Secretary of State for Housing, Communities and Local Government (**MHCLG**).

BACKGROUND

- (A) By the Appointment, the Employer has engaged the Consultant to act in the capacity of cost consultant in relation to the completion of the Remedial Works on the terms and subject to the conditions set out in the Appointment.
- (B) The MHCLG has established the private sector ACM cladding remediation fund (ACM Fund). The ACM Fund provides funding for the replacement of unsafe ACM cladding systems on private residential buildings. The Employer is an applicant of the ACM Fund.
- (C) Pursuant to a funding agreement dated in or around the date of this Deed between the MHCLG, the Delivery Partner and the Employer, the MHCLG has agreed to fund the Remedial Works at the Site (**Funding Agreement**).
- (D) The Consultant has agreed to enter into this Deed for the benefit of the MHCLG and its successors in title and assigns.

AGREED TERMS

In consideration of the payment of £1 by the MHCLG to the Consultant (receipt of which is hereby acknowledged) and which the parties hereby agree to be full and valuable consideration it is hereby agreed that:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the words below have the meanings next to them unless the context requires otherwise:

ACM	Aluminium Composite Material.
ACM Cladding	ACM cladding which shall include the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding includes the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashings, fixings, gaskets and sealants.
ACM Fund	has the meaning ascribed in recital (B).
Appointment	the deed of appointment between the Employer and the Consultant dated 25 January 2021 for the carrying out of cost consulting services (as identified in the Appointment), duties and obligations in relation to the Remedial Works including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise. The Appointment services



Issued

do not include the design, specification or products and/or materials and/or the inspection of quality and/or compliance of the Remedial Works.

Business Day	a day which is not a Saturday or Sunday or a bank or national holiday in England.
Construction Products Regulations	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).
Contract	the building contract in respect of the Remedial Works made between 20:20 House (Residential Management) Limited and Ballymore Services Limited.
Delivery Partner	Homes England.
EU Exit	the UK ceasing to be a member state of the European Union and ceasing to be subject to any transitional arrangements which substantively treat the UK as a member state of the European Union.
Funding Agreement	has the meaning ascribed in recital (C).
Material	all calculations, photographs, brochures, reports, notes of meetings, data, databases, schedules, programmes, bills of quantities, budgets and/or other documents or materials produced or prepared by or on behalf of the Consultant in relation to and/or connection with the Remedial Works and/or Site (whether in existence or to be made) and all updates, amendments, additions and revisions to them and any works contained incorporated or referred to in them for any purpose relating to the Remedial Works and/or Site. Material shall exclude any documents or materials prepared by or on behalf of any other consultant or contractor appointed by the Employer, and any subcontractor thereof, notwithstanding that the Consultant may include them within documentation produced or generated by the Services.
Practical Completion	the date of practical completion of the Remedial Works in accordance with the definition of "practical completion" (or equivalent) in the Contract and if there is no such definition (or equivalent) it means the date on which the Delivery Partner is satisfied that the Remedial Works have been completed in accordance with the Funding Agreement and the Contract.
Remedial Works	the Unsafe Cladding remedial works by Ballymore Services Limited at the Site.
Site	the building known as 20:20 Block B Flats upon which the Remedial Works are to be performed.
Unsafe Cladding	any ACM Cladding that has been identified as containing combustible materials (e.g. a polyethylene core in an aluminium composite panel) and which failed the series of BS8414 tests commissioned by the government over summer 2017. Full details



Ministry of Housing,
Communities &
Local Government

Issued

are set out in the consolidated advice note published by the Building Safety Programme on 5 September 2017, available here:

<https://www.gov.uk/government/publications/building-safety-programme-update-and-consolidated-advice-for-building-owners-following-large-scale-testing>

1.2 In this Deed unless the context requires otherwise:

- 1.2.1 references to a Clause or Schedule are to a clause of, or schedule to this Deed, references to this Deed include its schedules, and references in a Schedule to a paragraph are to a paragraph of that Schedule;
- 1.2.2 references to this Deed or any other document are to this Deed or that document as amended from time to time;
- 1.2.3 words denoting the singular include the plural and vice versa;
- 1.2.4 references to a person include any corporate or unincorporated body;
- 1.2.5 the table of contents and headings in this Deed do not affect its interpretation;
- 1.2.6 writing or written does not include e-mail or any other form of electronic communication;
- 1.2.7 the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.8 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives;
- 1.2.9 unless otherwise specified, a reference to a statutory provision is a reference to that provision as amended, consolidated, extended or re-enacted from time to time (whether before or after the date of this Deed) and to any subordinate legislation made under it, except to the extent that it would increase the liability of any party under this Deed; and
- 1.2.10 Not used.
- 1.2.11 unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended or re-enacted on or after EU Exit.

2. EXERCISE OF SKILL AND CARE

- 2.1 The Consultant warrants and undertakes to the MHCLG that it has observed and performed and shall continue to observe and perform each and all of its services, duties and obligations contained in or implied by the Appointment. Save as expressly provided for in this Deed the duty of the Consultant is to be treated as being no greater (and of no longer duration) than it would have been if the MHCLG had been a party to the Appointment in accordance with the provisions of the Appointment instead of this Deed but neither this provision nor any other provision in this Deed shall entitle the Consultant to raise any defence based on set-off or counterclaim and/or prevent the MHCLG from recovering loss and/or damage from the Consultant as a result of the



**Ministry of Housing,
Communities &
Local Government**

Issued

Consultant's breach of any provisions of this Deed on the basis that the Employer has not suffered any loss and/or damage and/or the same loss and/or damage and the Consultant hereby irrevocably agrees and undertakes not to raise any such arguments by way of defence and/or set-off and/or counterclaim to any claim made by the MHCLG.

- 2.2 Without prejudice to the generality of Clause 2.1 the Consultant warrants and undertakes to the MHCLG that it has exercised and shall continue to exercise in the performance of the services, duties and obligations contained in or implied by the Appointment the reasonable skill and care to be expected of a properly qualified and competent consultant experienced in performing similar services, duties and obligations in relation to works of a similar nature, value, scope, character, complexity and timescale to the Remedial Works.
- 2.3 The Consultant acknowledges that the MHCLG has relied and shall rely on the warranties under this Clause 2 and the other terms of this Deed and may and/or shall suffer loss and/or damage in the event of a breach of these warranties and/or the other terms of this Deed.
- 2.4 The obligations of the Consultant under this Deed shall not be released or diminished by the appointment of any person by the MHCLG to carry out any independent enquiry into any matter.

3. OBLIGATIONS PRIOR TO TERMINATION OF THE APPOINTMENT

- 3.1 The Consultant warrants and undertakes to the MHCLG that it shall not exercise or seek to exercise any right of termination of the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations thereunder for any reason whatsoever (including any services, duties and/or obligations in relation to the Remedial Works by reason of breach on the part of the Employer) without giving to the MHCLG not less than 28 days' notice of its intention to do so and specifying the grounds for the proposed termination and/or discontinuance.
- 3.2 Any period stipulated in the Appointment for the exercise by the Consultant of a right of termination of the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations in relation to the Remedial Works shall be extended as may be necessary to take account of the period of notice required under Clause 3.1.
- 3.3 Compliance by the Consultant with the provisions of Clause 3.1 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of termination of the Appointment and/or to discontinue the performance of any of the Consultant's services, duties and/or obligations in relation to the Remedial Works, nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice.

4. INTELLECTUAL PROPERTY RIGHTS

All rights including copyright in all the Materials, if any, shall remain vested in the Consultant but, subject to the Consultant having been paid all sums due and payable under the Appointment, the MHCLG and its appointee shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Materials and to reproduce the content of them for any purpose relating to the Remedial Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Remedial Works. Such licence shall enable the MHCLG and its appointee to copy and use the Consultant's Materials for an extension of the Remedial Works but shall not include any right or licence to reproduce the content contained in them for any extension of the Remedial Works. The Consultant shall not be liable for any such use by the MHCLG or its appointee of any of the Materials for any purpose other than that for which they were prepared.

5. INSURANCE

- 5.1 The Consultant warrants to the MHCLG that it maintains, has at all relevant times maintained, and shall continue to maintain throughout the duration of the Remedial Works and for a period of 12 years following Practical Completion (irrespective of any termination of the Appointment or the Consultant's employment under the Appointment for any reason) professional indemnity



**Ministry of Housing,
Communities &
Local Government**

Issued

insurance with reputable insurers lawfully carrying on such insurance business in the United Kingdom with a limit of indemnity of not less than that set out in the Appointment for any one occurrence or series of occurrences arising out of any one event to cover any claims made under this Deed against the Consultant in relation to the Remedial Works.

- 5.2 As and when reasonably required by the MHCLG the Consultant shall provide satisfactory documentary evidence (in the form of a broker's note) of the terms of insurance referred to in Clause 5.1 and that the insurance referred to in Clause 5.1 is being properly maintained, and shall confirm that payment has been made in respect of the last preceding premium due under such insurance.
- 5.3 The Consultant warrants that it has at all relevant times observed and shall continue to observe all of the conditions of the insurance policy referred to in Clause 5.1 and all of the insurance provisions contained or referred to in the Appointment.

6. HEALTH AND SAFETY

The Consultant warrants that it has complied and shall comply with all of its obligations in relation to the Remedial Works as set out in the Construction (Design and Management) Regulations 2015.

7. EXCLUDED MATERIALS

- 7.1 Subject to the standard of care set out at clause 2.1, the Consultant warrants that it has not and shall not permit the use of and/or specify for use in or in connection with the Remedial Works any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the Consultant's trade and/or the construction industry:

- 7.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
- 7.1.2 to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the Remedial Works or any part thereof and/or to other structures, finishes, plant and/or machinery;
- 7.1.3 not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or
- 7.1.4 to be supplied or placed on the market in breach of the Construction Products Regulations.

8. COMMUNICATIONS

- 8.1 Except as otherwise provided for in this Deed, all notices or other communications under or in respect of this Deed to either party shall be deemed to be duly given or made when delivered to that party at the address appearing below (or at such other address as that party may hereafter specify for this purpose to the other):

in the case of the Consultant: Alex Blenard, RPP Limited, First Floor, Riverside West, Whitehall Road, Leeds LS1 4AW



**Ministry of Housing,
Communities &
Local Government**

Issued

- in the case of the MHCLG: Director of Building Safety, Ministry of Housing, Communities and Local Government, 2 Marsham Street, London SW1P 4DF
- in the case of the Employer: Nick Massingham, Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB

8.2 A notice or other communication which is not received on a Business Day or which is received after business hours in the place of receipt shall be deemed to be given or made on the next following Business Day in that place.

9. CONCURRENT LIABILITIES

The rights and benefits conferred upon the MHCLG by this Deed are in addition to any other rights and remedies it may have against the Consultant including, without prejudice to the generality of the foregoing, any remedies in negligence.

10. ASSIGNMENT

- 10.1 The MHCLG may without the consent of the Consultant assign transfer and/or charge the benefit of all or any of the Consultant's obligations under this Deed and/or any benefit arising under or out of this Deed:
- 10.1.1 by absolute assignment to any other government department, body or organisation; and
- 10.1.2 by absolute assignment on two other occasions only.

The Beneficiary shall notify the Consultant of any assignment. If the Beneficiary fails to do this the assignment shall still be valid.

- 10.2 In this Deed references to the MHCLG include where the context admits its permitted assignees.
- 10.3 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named party under this Deed.
- 10.4 The Consultant shall not be entitled to assign, transfer and/or charge the benefit of any (if any) of the MHCLG's obligations under this Deed and/or any benefit (if any) arising to the Consultant out of this Deed.

11. LIMITATION PERIOD

The liability of the Consultant under this Deed shall cease 12 years following Practical Completion save in relation to any claims made by the MHCLG against the Consultant and/or notified by the MHCLG to the Consultant in writing prior thereto.

12. EMPLOYER

The Employer agrees that it shall not take any steps which would prevent or hinder the MHCLG from exercising its rights under this Deed and confirms that the rights of the MHCLG in Clause 3 override any obligations of the Consultant to the Employer under the Appointment.

13. GOVERNING LAW AND JURISDICTION

- 13.1 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.



**Ministry of Housing,
Communities &
Local Government**

Issued

- 13.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales which shall have jurisdiction to hear and decide any suit, action or proceedings and/or to settle any dispute or claim which may arise out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

14. RIGHTS OF THIRD PARTIES

Unless the right of enforcement is expressly provided for it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999. This Clause 14 shall not affect or prevent any assignees who take the benefit of this Deed pursuant to Clause 10 or successors in title to the MHCLG from enforcing the provisions of this Deed.

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



Ministry of Housing,
Communities &
Local Government

Issued

Signed as a deed by Director print name

for and on behalf of **RPP LIMITED**

in the presence of:

..... Witness signature

Name

Address

Occupation

Director

Signed as a deed by Director's print name

for and on behalf of **20:20 HOUSE (RESIDENTIAL
MANAGEMENT) LIMITED**

in the presence of:

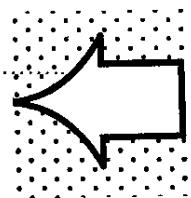
..... witness signature

Name

Address

Occupation

Director



**The Corporate Seal of The Secretary Of State
For Housing, Communities And Local
Government herewith affixed is authenticated by:**

Authorised by the Secretary of State