

**FROM :** BALLYMORE CIVILS LTD (Company registration number NI615559) whose registered office is at UNIT 3 GORTRUSH BUSINESS CENTRE, 27 GORTRUSH INDUSTRIAL ESTATE, OMAGH, CO. TYRONE, BT78 5EJ

**TO :** JOHN MCBRIDE and PETER DOLAN who together are carrying on business in partnership as ADP ARCHITECTS whose principal place of business is at 1 Holmview Avenue, Omagh, Co. Tyrone BT79 0AH

**DATED :** 16<sup>TH</sup> NOVEMBER 2021

Dear Sirs

**20:20 Building, Skinner Lane, Leeds, LS7 1BB ("the Site")**

We write to confirm your firm's appointment by us as Architects in connection with the design and construction of 20:20 Building, Skinner Lane, Leeds, LS7 1BB ("the Project") at the Site for which we have been appointed as the main contractor by 20:20 House (Residential Management) Limited ("the Employer"). Your appointment is on the following terms:

## **1 SCOPE OF SERVICES**

The services to be performed by you are set out in Appendix 1 of this deed ("the Services"). In the absence of a separate appointment the terms of this deed will apply to any other services you have carried out or will carry out in the future in relation to the Project even if they are not specifically mentioned in Appendix 1. You will also perform additional services for us at our request, which shall then form part of the Services.

## **2 DUTY OF CARE**

You will exercise all the reasonable skill care and diligence to be expected of a competent and appropriately qualified consultant of the same profession as you who is experienced in carrying out projects of a similar size, scope, complexity, and timescale as the Project in providing the Services.

## **3 BUDGET AND PROGRAMME REQUIREMENTS**

- 3.1 When performing the Services you will have due regard to the Employer's budget and programme requirements for the Project. If you become aware of circumstances which may cause these requirements to be exceeded, you will inform us without delay.
- 3.2 You will at all times comply with our proper written instructions in relation to the Project in the performance of the Services.

## **4 FEES**

- 4.1 We will pay you the fee stated in part 1 of Appendix 2 ("the Fee") in the manner set out in part 2 of Appendix 2, which is full remuneration for the full and proper performance by

you of the Services.

- 4.2 The Fee shall be adjusted if the performance of the Services is materially delayed or disrupted due to a change in the scope, size, complexity or duration of the Project or if we ask you to carry out additional services, provided that you shall not be entitled to any adjustment of the Fee where delay or disruption arises from your default or negligence, or the default or negligence of your sub-contractors or suppliers (if any).
- 4.3 You shall notify us of your intention to claim an adjustment to the Fee as soon as reasonably practicable after you become aware of any material delay or disruption to the Services.
- 4.4 Unless the parties agree otherwise, any adjustment of the Fee under paragraph 4.2 shall be a reasonable amount calculated by reference to the time charges set out in part 1 of Appendix 2. Any additional fee payable by us shall be included in the next invoice following performance of the additional services to which it relates.

## **5 STATUTORY OBLIGATIONS**

- 5.1 You warrant that you have the competence and have allocated or (as appropriate) will allocate adequate resources to comply with your obligations under the Construction (Design and Management) Regulations 2015.
- 5.2 You will comply with and take into account in the performance of the Services all applicable statutes statutory instructions regulations bye-laws European Directives and other legal restraints or obligations whether now in existence or which are likely to come into effect in the foreseeable future and which consultants in your discipline ought reasonably to be aware of.

## **6 PROHIBITED MATERIALS**

- 6.1 You will exercise the standard of skill care and diligence required by clause 2 not to specify authorise cause or allow to be used within or in relation to the Project any materials:
- (a) 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;
  - (b) not in conformity with any relevant British or European Standards or Codes of Practice;
  - (c) which at the time the Project is being carried out are generally accepted as (or reasonably suspected of):



- (i) being deleterious in themselves; or
- (ii) becoming deleterious in a particular situation or in combination with other materials; or
- (iii) 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
- (iv) 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(c) 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:

- (a) the material itself; or
- (b) any material to which it is affixed; or
- (c) the structure in which it is incorporated or to which it is affixed; or
- (d) the Project or any part of the Project

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

6.3 You warrant subject to the standard of skill care and diligence required by clause 2 that you will 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 You shall immediately notify us if you become aware of any proposed or actual use in the Works of any materials not compliant with clauses 6.1 and 6.2.

## **7 PERSON IN CHARGE**

You agree that Peter Dolan will be appointed as the person in charge for the Project and that they will be responsible for the overall management supervision and co-ordination of your services. You may not replace Peter Dolan without our prior written consent.

## **8 PROFESSIONAL INDEMNITY INSURANCE**

8.1 You will maintain professional indemnity insurance with a reputable insurer carrying on business in the United Kingdom in an amount of not less than ONE MILLION POUNDS (£1,000,000) for any one claim from the date you commence the Services and for a period of twelve years from the date of completion of the Project provided always that

such insurance is available in the market at commercially reasonable rates to competent

8.2 You will, at our reasonable request, produce evidence that such insurance is being maintained.

8.3 If such insurance ceases to be available at commercially reasonable rates you will advise us as soon as reasonably practicable so that we can discuss and implement the best means of protecting our respective positions.

## **9 COPYRIGHT**

9.1 You hereby grant to us an irrevocable non-exclusive royalty free licence of copyright and design right without limitation of time to us to use copy and reproduce, free of charge, the plans, drawings, bills of quantities, charts, diagrams, models, specifications and calculations and other similar records or documents and any amendments or additions which you, or others on your behalf, prepare in connection with the Project ("the Documents"). You shall not be liable for the use of the Documents for any purpose other than that for which you prepared them.

9.2 We may assign the above mentioned licence and/or grant sub-licence(s) from the said licence.

9.3 You agree to supply (after as well as before any termination of your services hereunder) copies of any of the documents you produce. You shall be entitled to payment of your reasonable copying costs if these are incurred after termination.

## **10 TERMINATION OF YOUR ENGAGEMENT**

10.1 We may at any time suspend your services under this deed by seven days' written notice. We may also terminate your employment under this deed at any time by seven days' written notice.

10.2 Either you or we may immediately terminate your engagement under this deed by giving written notice to the other party if:

(a) the other party is in material breach of its obligations under this deed and fails to remedy such breach within seven days of receiving written notice requiring it to do so; or

(b) the other party becomes insolvent as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996 ("Insolvent").

10.3 Upon any termination or suspension (provided that all fees properly due and owing to you have been paid) you will deliver to us all drawings specifications calculations and other similar documents or records which you, or others on your behalf, have prepared in connection with the Project.



10.4 If we suspend or terminate your services under this deed we shall (subject to any deductions or set-offs which we are entitled to make, if any) pay to you the balance of the fee for services undertaken prior to the date of such termination or suspension (except where your engagement under this deed is terminated by us under clause 10.2 or otherwise as a result of any act, omission, default or negligence on your part) together with the direct costs wholly and necessarily and reasonably incurred by you and resulting from such termination or suspension provided always that the same have not arisen as a result of any act, omission, default or negligence on your part and that no such payment shall be made where your engagement under this deed is terminated by us under clause 10.2.

10.5 Except as expressly set out in this paragraph 10 upon any termination or suspension howsoever arising we shall not be liable to you for any loss of profit, loss of contracts or other costs losses and/or expenses arising out of or in connection with such termination or suspension.

## **11 CONFIDENTIALITY**

You will treat all information relating to your appointment and the Project as confidential and will take all reasonable steps to ensure that your employees do so as well. You will not use any drawings or photographs in any advertising without our prior written consent.

## **12 ASSIGNMENT**

12.1 You may not assign your interest in this deed or any part thereof nor any arising under this deed.

12.2 You may not sub-let or sub-contract to any person the performance of any or all of your obligations or duties or any of your services under this deed.

12.3 We may assign or transfer all or any of the benefit in/under this deed.

## **13 OTHER CONSULTANTS**

The Employer has appointed or intends to appoint the consultants details of which have been provided to you. You will liaise with them as and when necessary when carrying out the Services and your obligations under this deed.

## **14 WARRANTIES AND THIRD PARTY RIGHTS**

14.1 You agree to provide deeds of warranty in the form attached in Appendix 3 in favour of the Employer and/or The Ministry of Housing, Communities & Local Government and/or purchasers or purchasers of a freehold or long leasehold interest in the whole or any part of the Site (and/or any premises to be constructed on the Site) and/or tenants of the whole or any part of the Site (and/or any premises to be constructed on the Site) and/or funders providing finance for the carrying out of the Project itself and/or for the acquisition of the Site (each "a Third Party") within fourteen days of a request from us at any time.

## 14.2

- (a) Except for any Third Party or parties in whose favour a deed of warranty has been provided under clause 14.1, you agree that any Third Party referred to in clause 14.1 may enforce the benefits and rights set out in this deed upon notice of the relevant third party or parties' interests being served on you by us or by our solicitors.
- (b) The benefits conferred by and the rights in the Documents shall be deemed to be extended to any Third Party notice of which has been served under clause 14.2(a) with an appropriate licence to use and reproduce them on the terms set out in clause 9.
- (c) Subject to clause 14.2 and except in the case of permitted assignees, for the purposes of the Contracts (Rights of Third Parties) Act 1999 we agree that we do not intend any terms of this deed to be enforceable by any third party who, but for that Act, would not have been entitled to enforce them.
- (d) We and you shall both be entitled to agree any amendment, waiver, settlement or compromise in respect of this deed or to terminate your engagement under it without the consent of any party referred to in clause 14.2. Neither of us shall be entitled to vary the provisions of clause 2 or 8 after notice of a Third Party's rights has been served.

## 15 DISPUTES

- 15.1 Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation.
- 15.2 Notwithstanding any other provision of this deed, either party may refer a dispute arising under it to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations (as amended), which Part shall take effect as if it was incorporated into this paragraph.
- 15.3 The adjudicator shall be appointed by The Technology and Construction Solicitors' Association (TeCSA).

## 16 LIMITATION PERIOD

No action or proceedings for any breach of this deed shall be commenced against you after the expiry of twelve years from the date of completion of the Project.

## 17 GENERAL DATA PROTECTION REGULATION ("GDPR")

### 17.1 Definitions:

Data Protection the Data Protection Act 2018, the General



Laws	Data Protection Regulation ("GDPR") and all supplemental legislation enacted from time to time which relate to privacy and data protection.
Data Controller	has the meaning set out in the GDPR.
Personal Data	has the meaning set out in the GDPR.

- 17.2 Each party to this deed acknowledges that it acts as a Data Controller in relation to any Personal Data that it receives from the other party and which is processed pursuant to this deed. Each party undertakes to the other that in processing such Personal Data it will comply with all Data Protection Laws.

## 18 GOVERNING LAW

This deed shall be governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.

## 19 BRIBERY ACT AND SUPPLY CHAIN

### 19.1 You shall:

- (a) 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");
- (b) 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;
- (c) comply with our ethics, anti-bribery and anti-corruption policies (copies of which are available on request) as we may update from time to time ("the Relevant Policies");
- (d) have and shall maintain in place throughout the term of this deed your 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 19.1(b), and will enforce them where appropriate;
- (e) promptly report to us any request or demand for any undue financial or other advantage of any kind received by you in connection with the performance of this deed;
- (f) immediately notify us (in writing) if a foreign public official becomes your officer or employee or acquires a direct or indirect interest in you (and you warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this deed);

- (g) on the date of this deed, and annually thereafter, certify to us in writing signed by one of your officers, your compliance with this clause 19 and that of all persons associated with you under clause 19.2. You shall provide such supporting evidence of compliance as we may reasonably request.
- 19.2 You shall ensure that any person associated with you who is performing services in connection with this deed does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on you in this clause 19.2 ("the Relevant Terms"). You shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to us for any breach by such persons of any of the Relevant Terms.
- 19.3 For the purpose of this clause 19, 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 19 a person associated with you includes but is not limited to any of your subcontractors or sub-consultants.
- 19.4 You shall, and shall procure that your subcontractors and suppliers, and any other person who performs services and/or supplies goods within its supply chain for you in relation to the Appointment shall:
- (a) comply with all applicable law relating to slavery and human trafficking ("Anti-Slavery Requirements") including, without limitation, the Modern Slavery Act 2015;
  - (b) not take or knowingly permit any action to be taken that would or might cause or lead us to be in breach of any Anti-Slavery Requirements; and
  - (c) at our request and cost, provide us with any reasonable assistance to enable us to perform any activity required by any regulatory body for the purpose of complying with Anti-Slavery Requirements.
- 19.5 You represent, warrant and undertake to us that neither you nor any other person in your supply chain (including those described in clause 20.3) use trafficked, bonded, child or forced labour or have attempted to use trafficked, bonded, child or forced labour within its supply chain.

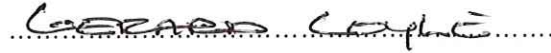
Executed and delivered as a deed on the date appearing at the head of this letter.

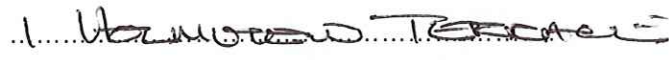


in the presence of a witness:

  
.....

  
Witness Signature


  
Witness Name

  
BT 79 OAH  
Witness Address

Executed as a deed by


**PETER DOLAN**

in the presence of a witness:

  
.....

  
Witness Signature

  
Witness Name

  
BT 79 OAH  
Witness Address

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

*Anthony Marley.*  
.....  
Director

Print name *ANTHONY MARLEY*  
.....

*James Call.*  
.....  
Director/Secretary

Print name *JAMES MC CALLAN*  
.....





in the presence of a witness:

  
.....

  
Witness Signature

  
Witness Name


  
  
Witness Address

Executed as a deed by



**PETER DOLAN**

in the presence of a witness:

  
.....

  
Witness Signature

  
Witness Name

  
  
Witness Address

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

*Anthony Marley.*  
.....  
Director

Print name *ANTHONY MARLEY.*

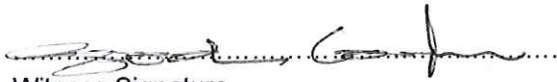
*James Callan.*  
.....  
Director/Secretary


Print name *JAMES MC CALLAN*

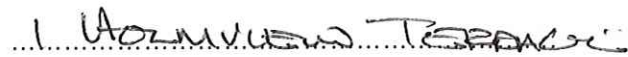



in the presence of a witness:

  
.....

  
Witness Signature

  
Witness Name


  
.....


  
Witness Address


Executed as a deed by

**PETER DOLAN**


in the presence of a witness:

  
.....

  
Witness Signature

  
Witness Name

  
.....

  
Witness Address

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

*Anthony Marley.*  
.....  
Director

Print name *ANTHONY MARLEY.*  
.....

*James Callan.*  
.....  
Director/Secretary

Print name *JAMES MCCALLAN*  
.....



## **APPENDIX 1**

### **Services**

1. Condensation Analysis to the external walls only of the 17nr penthouse apartments at 20:20 House, Skinner Lane, Leeds.

## APPENDIX 2

### Fees

#### Part 1

Fee: A lump sum of £9750.00 inclusive of expenses and disbursements but exclusive of VAT

Instalments:

Instalment date/milestone/key date	Amount/percentage of the Basic Fee
17.11.2021/ Practical Completion	100%

Time charges for adjustments of the Fee:

Name	Role/position	Hourly rate	Daily rate
NA	NA	NA	NA

#### Part 2

- 1.1 The Fee shall be calculated and paid in instalments as set out in part 1 above. If not set out above, the Fee shall be paid at intervals of not less than one month, beginning one month after you begin performing the Services.
- 1.2 You ("the Consultant") shall submit to us ("the Client") an invoice for each instalment of the Fee, together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) 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.
- 1.3 Payment shall be due on the date the Client receives each invoice.
- 1.4 No later than five days after payment becomes due, the Client shall notify the Consultant of the sum that it considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated.
- 1.5 The final date for payment shall be 28 days after the date on which payment becomes due.
- 1.6 Subject to paragraph 1.9 and unless the Client has served a notice under paragraph 1.7, it shall pay the Consultant the sum referred to in the Client's notice under paragraph 1.4 (or, if the Client has not served notice under paragraph 1.4, the sum referred to in the invoice referred to in paragraph 1.2) (in this part "the notified sum") on or before the final date for payment of each invoice.
- 1.7 Not less than seven days before the final date for payment (in this part "the prescribed period"), the Client may give the Consultant notice that it intends to pay



less than the notified sum (in this part "a pay less notice"). Any pay less notice shall specify:

- 1.7.1 the sum that the payer considers to be due on the date the notice is served; and
- 1.7.2 the basis on which that sum is calculated.
- 1.8 If the Client fails to pay an amount due to the Consultant by the final date for payment and fails to give a pay less notice under paragraph 1.7, simple interest shall be added to the unpaid amount from the final date for payment until the actual date of payment. This shall be calculated on a daily basis at the annual rate of 2% above the base rate for the time being of the Bank of England. The parties acknowledge that the Client's liability under this paragraph 1.8 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 1.9 Notwithstanding paragraph 1.6 and paragraph 1.7 and without prejudice to clause 11, if the Consultant becomes Insolvent after the prescribed period, the Client shall not be required to pay the Consultant the notified sum on or before the final date for payment.

**NOTE:**

- 1. In the event that the Services intended to be performed by the dates listed above have not been performed, the fees payable on each of the dates mentioned shall be adjusted so that they properly reflect the level of services actually performed.