

CARDOE MARTIN



PROPOSAL FOR SERVICES

20:20 BUILDING, SKINNER LANE, LEEDS

PROJECT MANAGEMENT PROPOSAL

CLIENT: 20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED

DATE: 11th June 2020

INTRODUCTION

Dear Sirs,

Thank you for your enquiry for our services to act as Project Manager for the proposed ACM project works at 20:20 Building, Skinner Lane, Leeds. We are pleased to set out our proposal for services.

20:20 Building contains ACM cladding and has been identified as a building that requires remediation in accordance with the ACM Re-Cladding Programme funded by the Ministry of Housing, Communities and Local Government.

The building has already been subject to a warranty claim under the existing Premier Guarantee scheme for which a settlement agreement is pending. However the settlement claim relates to only 204 of the 265 apartments and funding from the ministry for the remaining 61 apartments is being progressed.

The insurance company has organised for a design of the new cladding to be developed with AOCA Engineers and this design has subsequently been tendered and a settlement figure agreed.

We understand you require support in delivering the project in accordance with your project brief contained herein and we set-out our proposal below:

Although a specification of works has been produced, the works tendered, and contract sum agreed in principal. We consider it prudent that discussions are undertaken with the contractor at the earliest in order to establish the following:

- Proposed Warranties and Guarantees
- Fire Engineering design responsibility / final sign off
- Building Control compliance and responsibility
- Contingency sums
- Project Programme

We note that a project team will need to be assembled to provide specialist services which we would coordinate over the project programme period. Based on our understanding of the project works, we have identified appropriate scopes for the following consultants and will obtain fee proposals in due course for each. However the appointment and requirement for said consultants is dependant upon the outcome of the initial contractor discussions:

- Chartered Fire Engineer
- Principal Designer (CDM Regulations 2015)
- Building Control Consultant
- Local Planning Authority consultation

The Employers Agent and Project Managers role is to manage the consultant team and monitor programme, cost, processes and deliveries throughout the duration of the project. This role is also critical to ensure consistency of delivery and coordination between the programmes the various stakeholders are working within, and to direct appropriate reporting and information provision to mitigate project risks such as cost and budget, time or quality.

Cardoe Martin will commit two senior team personnel to this project to ensure a good level of resource for continuity and expertise is in place, and the proposed resource allocation is as follows:

- Lee Rhodes – Regional Director
- Ian Baldrey – Surveyor

The hourly rates and fees which apply at staffing levels in the company are set out within the fees section, and we would endeavor at all times to allocate correct resource for various activities to deliver value.

SCOPE OF SERVICES: EMPLOYERS AGENT & PROJECT MANAGER

Our scope will generally include the following:

1.1 Pre-Contract

1.1.1 Accept Client's brief and advise the Client on the need for the appointment of other Specialist Consultants. All Consultants, Contractors and other professionals required during the course of the instruction will be instructed on behalf of the Client who will be responsible for the direct payment of their fees, costs and expenses.

1.1.2 Advise the Client on the implications of the Construction (Design & Management) Regulations and the need to appoint a CDM Principal Designer either within Cardoe Martin or externally.

1.1.3 Arrange for the collation and or preparation of all necessary site plans and drawings as required to facilitate the preparation of the Employer's Requirements Document. The cost of producing plans may be charged in addition to the EA fee subject to agreement with the Client and will be clarified in the proposal document.

1.1.4 Review insurance requirements for the building project with the Client and their insurers to enable the appropriate policies to be put in place.

1.1.5 Co-ordinate the preparation of the Employer's Requirements Document in conjunction with the Project Team and other Specialist Consultants and designer's.

1.1.6 Amplify the Employer's Requirements as necessary during design development. Incorporate any changes and obtain Client authorisation.

1.1.7 Ascertain the Client's requirements in respect of collateral warranties, Performance Bonds, Parent Company Guarantees and Decennial Insurance and include these in the Employer's Requirements document as appropriate.

1.1.8 Analyse the contractors tender received; obtain clarification of ambiguities and prepare tender report. Submit recommendation and obtain instructions from the Client.

1.2 Post -Contract

1.2.1 Prepare contract documents. Arrange signatures of parties to the contract. Obtain the Contractors insurance details for checking by the Client's insurers/brokers.

1.2.2 Review the Contractor's programme and seek clarification of the Contractor's programme proposals if necessary.

1.2.3 Monitor the performance of the Contractor, Consultants and any professional and other Sub-Contractors in the performance of their duties and the discharge of their responsibilities.

1.2.4 Monitor the planning process and check all approval/refusal documents. Check that any conditions attached to a planning consent are implemented and dealt with.

1.2.5 Monitor the applications (and approvals) to other statutory bodies made by the Contractor.

1.2.6 Monitor standards of workmanship and materials. Limited to a single monthly visit.

1.2.7 Ensure that variations and instructions are being issued and correctly circulated. Assess and deal with extensions of time and issue the appropriate certificates.

1.2.8 Monitor communications and distribution of information. Check appropriate information is provided to the Client. Notify the Client of decisions required from him.

1.2.9 Keep Client updated on anything that will materially vary the project or increase the cost or time taken or alter the quality of the project.

1.2.10 Check and recommend payment of Contractor's valuations. Check and agree final account.

1.3 Post-Completion

1.3.1 Confirm completion and issue appropriate Certificates (Practical Completion/ Payment Certificate etc).

1.3.2 On practical completion of the contract arrange formal handover with the Contractor.

1.3.3 Check the building at the end of the Defects Liability Period. Resolve outstanding defects and issue Certificate of Making Good Defects and issue final Payment Certificate.

1.3.4 Arrange for Contractor's maintenance and cleaning information, maintenance manuals, test certificates, guarantees, operating instructions, "as built" drawings and "as installed" diagrams as appropriate to be forwarded to the Client.

Scope of Service

1.3.5 Arrange for completed Health & Safety File to be issued to the Client.

2.0 Documents

2.1 We will first inspect all documents provided by the Client that are relevant to the instruction. Late disclosure of documents may have cost implications in respect of our fees and acting on our advice.

3.0 Limitations of Inspection

3.1 We will identify items during any site inspection that are relevant to the instruction, based on the examination of elements that can be seen without damaging the property, its decorations or contents. We will use best endeavors to see relevant parts of the property including reasonably accessible roof spaces, ducts and traps. We will not inspect parts that are covered, unexposed or inaccessible, move furniture, lift carpets or attempt to raise manhole covers and will therefore be unable to report that such parts of the property are free from defect. No voids or other concealed spaces will be inspected unless Asbestos Registers show that we can safely access these areas.

3.2 Where high level (roof) access or inspection of concealed areas is required this is to be agreed prior to our inspection. Contractors engaged to provide services such as provision of a cherry picker, lifting of manholes or testing of drain runs can be instructed by ourselves on behalf of the Client; the payment of a Contractors invoice will be the sole responsibility of the Client.

3.3 Unless otherwise stated the fee quoted is based on a single visit to the site/building. If, due to matters outside our control, we have made a second or subsequent visit to site due to full access not being available as informed, we reserve the right to charge additional fees for abortive time.

3.4 The inspection will be limited to the premises shown on documents provided. Where plans are not available, the Surveyor will make assumptions as to the extent of the property.

4.0 Testing and Sampling

4.1 Unless specifically instructed we will not carry out or arrange for the carrying out, of any sampling or testing. No testing or investigation will be undertaken to determine the presence of radon gas, any contamination, high alumina cement, calcium chloride, carbonation, insufficient depth of concrete cover to reinforcement, flammable insulation to composite panels, lead based paint, deleterious materials etc. These tests and reports can be organised upon receipt of your specific instructions. We will charge an additional fee for organising these tests and payment of any Contractor's or Specialist's invoices will remain the sole responsibility of the Client.

4.2 No testing or investigation will be undertaken in relation to toxic mould and asbestos. The Client acknowledges that all risks and liabilities relating to toxic mould and asbestos, howsoever arising, remain with the Client and the Client shall take such steps as it deems necessary to insure against or otherwise address such risks and liabilities.

5.0 Legal and Statutory

5.1 We will not carry out or arrange for the carrying out, of any examination or assessment in respect of statutory, service provider, Local Authority or health and safety information or other legislative requirements. We may comment on some of these elements however cannot be an expert in every area or be held liable for any omission. We can organize inspections to comment upon particular legislation following receipt of your specific instructions. We will charge an additional fee for organising these inspections and payment of any Contractor's or Specialist's invoices will remain the sole responsibility of the Client.

5.2 We will not carry out or arrange for any examination or assessment of legal documents. We advise that your solicitors deal with such matters. Where relevant, we may comment on some legal matters however cannot be an expert in every area or be held liable for any omission.

5.3 No Collateral Warranties or Performance Bonds will be provided for this Employer's Agent role. Warranties/Bonds may be provided subject to further discussion however, additional charges for such will be payable by the Client.

5.4 Where digital photographs are used during the completion of our professional services, we cannot guarantee their admissibility in Court in the event that they need to be used as evidence.

6.0 Additional Inspections and Specialist Services

6.1 All Consultants, Contractors and other professionals required during the course of the service will be instructed, with prior agreement, on behalf of the Client who will be responsible for the direct payment of their fees, costs and expenses.

7.0 Cost of Works

7.1 Cost of works figures where provided, unless expressly stated, are subject to our limitations upon budget estimates as follows:-

- All estimates are current prices and no adjustments have been made for future inflation.
- If elements of the work are undertaken individually the total cost may exceed the overall budget estimate.
- All estimates are quoted as budget estimates only and are not to be thought of as a substitute for obtaining competitive quotations from reputable Contractors.
- No costs have been included for any investigative works.

- Estimates do not include VAT, professional fees or statutory charges.
- No allowance has been made for out of hours working or any associated charges likely to be incurred e.g. security.
- No costs have been included regarding above and below ground drainage or other services within the building including heating, ventilation, mechanical and electrical, plant and equipment.
- We have not included costs associated with the discovery, removal or consequent delays to of works in connection with asbestos or other deleterious materials.

FEES

Based on the nature of our involvement and the likely resource needs fluctuating across the project, we would propose, to charge for **(1) Pre-contract services** on a time expended basis. On a project of this size, we would normally anticipate a time requirement between 40-60 hours for major activity (i.e. project meetings, design delivery/review, tender analysis period) and based on the current position would not expect this phase to take any longer than 60 hours (£6,000 - £9,000). If for any reason we exceed the time allowed we will advise you accordingly. We would propose to charge for **(2) Post-contract services** on a weekly input of 12 hours per week at £150 per hour over the proposed 12 week programme (£21,600). Should the contract extend beyond 12 weeks we would pro-rata our fees.

| Schedule of Hourly Rates | Rate p/h ex VAT |
|--------------------------|-----------------|
| Managing Director | £175.00 |
| Director | £150.00 |
| Associate | £140.00 |
| Senior Surveyor | £125.00 |
| Building Surveyor | £110.00 |

The above fees are exclusive of VAT and reasonable disbursements where applicable, such as travel, printing, postage, or reasonable out of pocket expenses. Any works outside of scope would be subject to the above rates and by prior client agreement.

We would keep an activity based record of our time expense each month to support our monthly invoicing.

Should there be a requirement for an excessive amount of time due to poor sub-consultant performance or significant unforeseen issues would be discussed at that point and agreement for resolution and services required.

3rd Party Specialists involved in the project will be subject to fee arrangements and signed terms directly between the employer/client and the respective consultant, and are separate and additional to our own fees and scope of services.

Out of hours services

Any services required during evenings or weekends outside office hours of 9am-5pm would be subject to prior arrangement and agreement and chargeable at out of hours rates of 1.5 times the hourly charge (i.e. the rate for a director under the circumstances would be £225.00 p/h ex VAT and disbursements).

SUMMARY

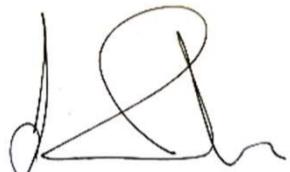
Thank you for your enquiry!

We hope that the above proposal and services have captured your needs and requirements accurately, and would be delighted to discuss any queries you may have at this stage further with you, and my contact details are set out below if you need to contact me. Following discussion we can tailor this proposal to meet your exact requirements duly.

Alternatively, if you are happy to proceed on the basis of this proposal, we would be grateful if you could sign and return this page to us.

We look forward to hearing from you and hope very much we can be of assistance on this occasion.

Yours Faithfully,



**Lee Rhodes BSc Hons MRICS
Regional Director
For and on behalf of Cardoe Martin Limited**

Direct Dial: 0114 4553 7802

Mobile: 0755 128 6996

Email: l.rhodes@cardoemartin.co.uk

Ref: Fee Proposal – 20:20 Building

I/We accept the above Conditions of Engagement:

Signed _____

Dated _____

For/on behalf of _____

NOTES

1. In accordance with the requirements of the RICS, our professional body, we are obliged to advise you that we have a complaints procedure, details of which can be made available upon request.

STANDARD TERMS OF BUSINESS

Our Terms and Conditions are set out below and shall be taken to mean **Cardoe Martin Ltd, Chartered Building Surveyors, Portsoken House, 155-157 Minories, London EC3N 1LJ**. These terms and conditions indicate the basis on which CM carries out Professional Services on behalf of their Clients.

| | |
|---|---|
| <p>1.CM charges a standard hourly rate, agreed fee percentage or lump sum for services as appropriate and as advised to the client by confirmation of instruction letter. All fees will be subject to VAT at the standard rate at the time of invoicing.</p> <p>2.With the exception of "Party Wall" work and "Licence" work, which are charged at an hourly rate, CM reserves the right to apply a MINIMUM FEE of £1,200+VAT for non-"Contract Administration" work. These fees may be requested upfront and will be held in a designated client account pending completion of the instructed work.</p> <p>3.All other fees due to CM shall be paid by the Client on presentation of our invoice together with any VAT and expenses due. The Client shall not be entitled to make any deductions or set-off in respect of any claim. CM reserve the right to charge interest at the prevailing statutory rate above the base lending rate of Barclays Bank (currently 8% above base rate) on any fees that remain unpaid after 30 days from the date of invoice.</p> <p>4.Invoices shall be issued at intervals as and when definitive stages of CM's services have been completed or in advance of certain work stages where this is confirmed by CM separately in writing.</p> <p>5.The specified fees do not include, and CM shall be entitled to payment and to reimbursement of, any expenses and disbursements incurred for any additional work not previously specified, including, but not limited to, work arising out of or in connection with:-</p> <p>changes in the scope or the timing of the works undertaken by the Client, whether or not caused by changes of instructions of the Client, or other professional adviser;</p> <p>delay, defective performance or insolvency of the Client, or other professional adviser, or any contractor or supplier;</p> <p>contested claims;</p> <p>tax claims;</p> <p>insurance claims.</p> <p>Payment for such additional work shall be based upon our firm's standard hourly rates.</p> <p>6.Instructions: We reserve the right to insist on written instructions. All instructions of the Client to CM with regard to CM's services, including instructions to vary, add to or suspend the services, shall be given to CM in writing or if given orally shall be confirmed in writing within 7 days.</p> <p>7.The Client shall promptly, upon request by CM, convey to CM any decision or information that CM considers necessary for the proper performance of CM's services.</p> <p>8.It shall be sufficient service of any written notice or other communication to send it by first class post to the Client's current and/or registered address or their last known address.</p> <p>9.Service may be effected by courier and shall be deemed to have been effected on delivery by the courier to the Client's current and/or registered address, or their last known address.</p> <p>10.Service of any written notice or other communication may be effected by fax or e-mail and shall be deemed to have been effected on transmission of the fax or e-mail to the Client's last known fax number or e-mail address.</p> <p>11.Neither Party may assign or transfer all or part of these terms and conditions without the written consent of the other.</p> <p>12.If performance of CM's services has been suspended or terminated:-</p> | <p>CM shall be entitled to invoice and receive payment by the Client for all outstanding fees earned by CM for the services performed (whether wholly or in part), all expenses and other disbursements incurred, and VAT due;</p> <p>The Client shall compensate CM for all subsequent and consequential expenses and disbursements incurred or properly to be incurred (including but not limited to the cost of engaging, redeploying or dismissing staff), and VAT due, unless CM's services have been terminated on account of a repudiatory breach of these terms and conditions by CM.</p> <p>CM shall be entitled to payment in accordance with Clause 3.</p> <p>13.Unless otherwise agreed in writing, CM shall retain copyright in and ownership of all documents prepared by CM. CM retain ownership and copyright of all documents which CM originate, except for items delivered as part of our service. CM shall otherwise be entitled to retain all files and papers, subject to settlement of our fees and outlays.</p> <p>14.CM shall perform the services with reasonable skill, care and diligence, but no liability shall attach to CM in respect of CM's Services except such liability as ought to be covered by CM's Professional Indemnity Insurance. Such liability shall be limited to the sum insured of £5,000,000.00 on each and every claim.</p> <p>15.No liability shall attach to CM either in contract or in tort for loss, injury or damage sustained as a result of the act, omission or insolvency of any person other than CM and CM shall not be liable to indemnify the Client in respect of any claim made against the Client for any such loss, injury or damage.</p> <p>16.Any dispute or complaint between the client and CM relating to CM's professional services, carried out on behalf of the client shall be dealt with in accordance with CM's complaints handling procedure; a copy of CM's procedure for complaints handling is available upon request.</p> <p>17.All work undertaken (including written or verbal advice) by CM for the Client shall be for the private and confidential use of the Client only and should not be reproduced in whole or in part or relied upon by third parties for any use whatsoever without the express written authority of CM.</p> <p>18.Unless otherwise agreed, and subject to the then current fees, these terms and conditions shall apply to any future instructions given by the Client to CM.</p> <p>19.These terms of business are deemed to be accepted by the Client by virtue of the Client's engagement of our services whether verbally or in writing.</p> <p>20.Conflict of Interest: We shall not normally act for two or more clients where a conflict of interest may arise and shall otherwise decline to act where we feel it would be improper or inappropriate to do so.</p> <p>21 Confidentiality: No Information from clients (unless already in the public domain or communicated as part of delivery of the services to be provided) will be further disclosed without strict authority.</p> <p>22.These terms of business are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the courts of England & Wales.</p> <p>23.In accordance with the requirements of the RICS, our professional body, we are obliged to advise you that we have a complaints procedure, details of which can be made available upon request.</p> |
|---|---|

CARDOE MARTIN LIMITED
CHARTERED BUILDING SURVEYORS

CLIENT BRIEF



20:20 House (Residential Management) Limited

20:20 Building, Skinner Lane, Leeds

Project PM – Brief and Outline Scope of Service

Project Brief

20:20 Building contains ACM cladding and has been identified as a building that requires remediation in accordance with the ACM Re-Cladding Programme funded by the Ministry of Housing, Communities and Local Government.

The building has already been subject to a warranty claim under the existing Premier Guarantee scheme for which a settlement agreement is pending. However the settlement claim relates to only 204 of the 265 apartments and therefore we are seeking funding from the ministry for the remaining 61 apartments.

In respect of the warranty claim, the insurance company has organised for a design of the new cladding to be developed with AOCA Engineers and this design has subsequently been tendered. Therefore in addition to the settlement figure, we have a design and tendered price.

We do however require support in delivering the project and therefore set out our initial requirements below:

Pre-Contract

- Organise other consultants required to assist and support in delivering the remediation works.
This can be but not limited to:
 - Cost Management Services – this can be in-house and form part of your fee proposal.
 - Building Control – to ensure that the local authority building control team are fully aware of the scheme and as appropriate can sign off the scheme.
 - Fire/ Façade Engineers – to ensure that the design proposed is compliant and make relevant comment to ensure that approval is granted by the Local Authority.

Agree scope of works and appointment documents, including appropriate levels of PI and warranties where required. Report back on progress.

- Liaison with Local Authority in ensuring the following:
 - Planning – where appropriate establish whether planning is required and support and assist in obtain planning.
 - Building Control/ Fire Officer Approval – again establish with Local Authority the measures required to ensure the scheme is compliant and approved, support and assist in ensuring the scheme is compliant and signed off.



20:20 House (Residential Management) Limited

- Liaison with Contractor – establish that the contractor is competent and capable, agree contractual arrangement including design responsibility as the designing engineer is not taking responsibility for the design going forward.
- Samples and Testing with BRE and further surveys – review existing sample testing undertaken, O+M information and surveys undertaken and establish if further samples, testing and surveys are required. Organise samples and testing to be undertaken and obtain results.
- Programme – identify key milestones and deliverables. The tendered contractor has confirmed that they can be on site within 6 – 8 weeks. Therefore liaise with the contractor and consider programme. Identify any risks or opportunities to achieve this, including removal of cladding in advance, sample and testing, approval process.
- Organise and arrange any pre-contract meetings required including taking notes, minutes and providing regular updates to the employer.
- Arrange Pre-Start Meeting inviting relevant parties – chair and take minutes/ actions and circulate.
- Contract Documents – organise and arrange for contract documents to be drawn up and executed by both parties. Presently the form of contract is a traditional form but the Contractor has indicated they would be prepared to undertake works through a Design and Build Contract. Review and advise best form of contract, including ensuring collateral warranties for Homes England and The Ministry are made available.
- Prepare all relevant documents such as project execution plans, project directories and other reports where required and appropriate.

Post Contract

- Regular review of the works in progress including site attendance and reports to confirm compliance with scope, programme, costs and quality.
- Organise and arrange regular meetings where required and including invites to relevant individuals, chairing meetings, taking and distributing minutes and actions.
- Provide cost management to ensure that contractors applications for payment are scheduled and recommended in accordance with the contract.
- Ensure that the works are approved and obtain all necessary certification and approvals (via contractor if appropriate).
- Close out meeting with Contractor and relevant parties to ensure works meet the requirements and issue relevant certification.

CONSULTANTS COLLATERAL WARRANTY REQUIREMENT



Private Sector Remediation - Delivery Workstream

Phase 2:

Detailed Design & Implementation Preparation

Collateral Warranty – from Consultant to Funder Homes England

| Version No | Author | Date | Contents | Reviewed by (draft) Circulation (issued) | Status |
|------------|--------------------|------------|---|--|--------|
| 0.1 | Simon Lewis (WBD) | 10 Sept 19 | Collateral Warranty – from Consultant to MHCLG relating to ACM cladding remedial works at | James H, Balraj P, Andrew B,Eleanor H, Angela L (WBD), Mark C (WBD), John C (WBD), Steve T, Catherine, I, Megan L, Dan M | Draft |
| 0.2 | Simon Lewis (WBD) | 23 Sept 19 | Collateral Warranty – from Consultant to MHCLG relating to ACM cladding remedial works at | James H, Balraj P, Andrew B,Eleanor H, Angela L (WBD), Mark C (WBD), John C (WBD), Steve T, Catherine, I, Megan L, Dan M | Draft |
| 0.3 | Simon Lewis (WBD) | 03 Oct 19 | Collateral Warranty – from Consultant to MHCLG relating to ACM cladding remedial works at | James H, Andrew Butt, | Draft |
| 0.4 | Angela Lopes (WBD) | 15 Oct 19 | Collateral Warranty – Consultant to Funder Homes England Document updated with minor changes and Homes England cited in this version | James H, Balraj P, Andrew B,Eleanor H, Simon L (WBD), Mark C (WBD), John C (WBD), Steve T, Catherine, I, Megan L, Dan M | Issued |
| 0.5 | Balraj P | 24 Mar 20 | Amended MHCLG execution clause | | Issued |
| 0.6 | Balraj P | 11 May 20 | Amended definition for 'Practical Completion' | | Final |



Date.....2020 insert date

Collateral Warranty
from Consultant to MHCLG
relating to ACM cladding remedial works at [●]

[Consultant]⁽¹⁾

The Ministry of Housing, Communities & Local Government⁽²⁾ and

[Employer]⁽³⁾



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PARTIES

- (1) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership) [whose registered office is [●] / whose principal place of business is [●]] (**Consultant**).
- (2) **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 (**MHCLG**).
- (3) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership) [whose registered office is [●] / whose principal place of business is [●]] (**Employer**).

BACKGROUND

- (A) By the Appointment, the Employer has engaged the Consultant to act in the capacity of **[NOTE – insert Consultant's discipline]** in relation to the design, specification, construction and completion of Remedial Works at the Site 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 [●] 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, gaskets and sealants. |
| ACM Fund | has the definition ascribed to in Recital (B). |
| Appointment | the [deed of] appointment between the Employer and the Consultant dated [●] for the carrying out of [NOTE – insert Consultant's discipline] services, 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. |



**Construction Products
Regulations**

a day which is not a Saturday or Sunday or a bank or national holiday in England.

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).

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 definition ascribed to it in recital (C).

Material

all designs, drawings, calculations, charts, diagrams, sketches, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, data, databases, schedules, programmes, bills of quantities, budgets, surveys, levels, setting out dimensions 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, designs or inventions contained incorporated or referred to in them for any purpose relating to the Remedial Works and/or Site.

Practical Completion

the date of practical completion of the Remedial Works in accordance with the definition of "practical completion" (or equivalent) in the Appointment and if there is no such definition (or equivalent) it means the date on which Homes England is satisfied that the Remedial Works have been completed in accordance with the Funding Agreement and the Appointment.

Remedial Works

the Unsafe ACM Cladding remedial works by the Employer at the Site.

Site

building(s) known as [●] 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 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;
- 1.2.10 if the Consultant is a partnership each partner shall be jointly and severally liable under this Deed. Where the context so requires and where the Consultant is a partnership, the term **Consultant** shall be deemed to include any additional partner(s) who may be admitted into the partnership of the Consultant during the currency of this Deed. This Deed shall not automatically terminate upon the death, retirement or resignation of one or more members of such partnership; and
- 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 than it would have been if the MHCLG had been a party to 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 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 all reasonable skill, care and diligence to be expected of a properly qualified and competent [●] 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, and in particular:
- 2.2.1 any design services carried out by the Consultant in respect of the Remedial Works; and
 - 2.2.2 in the selection of goods and materials by or on behalf of the Consultant in respect of 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 unless the right of termination and/or right to discontinue shall have ceased under the provisions of Clause 4.

4. OBLIGATIONS OF THE CONSULTANT TO THE MHCLG

- 4.1 The right of the Consultant to terminate the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations shall cease within the period of 28 days referred to in Clause 3.1 if the MHCLG shall give written notice to the Consultant:
- 4.1.1 requiring the Consultant to continue performing its services, duties and obligations under the Appointment in relation to the Remedial Works;
 - 4.1.2 acknowledging that the MHCLG is assuming all the services, duties and obligations of the Employer under the Appointment;
 - 4.1.3 undertaking unconditionally to the Consultant to discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment;

and shall pay to the Consultant any sums which have become due and payable to it under the Appointment but which were then unpaid.



- 4.2 Upon compliance by the MHCLG with the requirements of Clause 4.1 the Appointment shall continue in full force and effect as if the right of termination and/or discontinuance on the part of the Consultant had not arisen and in all respects as if the Appointment had been made between the Consultant and the MHCLG to the exclusion of the Employer.
- 4.3 Notwithstanding that as between the Employer and the Consultant the Consultant's rights of termination of the Appointment and/or discontinuance may not have arisen, the provisions of Clause 4.2 shall nevertheless apply if the MHCLG gives notice to the Consultant and the Employer to that effect and the MHCLG complies with the requirements on its part under Clause 4.1.
- 4.4 The Consultant shall not be concerned or required to enquire whether, and shall be bound to assume that, as between the Employer and the MHCLG the circumstances have occurred permitting the MHCLG to give notice under Clause 4.1.
- 4.5 The Consultant acting in accordance with the provisions of this Clause 4 shall not by so doing incur any liability to the Employer.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 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 designs and 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 designs 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.

6. INSURANCE

- 6.1 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 insurance with reputable insurers lawfully carrying on such insurance business in the United Kingdom with a limit of indemnity 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.
- 6.2 As and when reasonably required by the MHCLG the Consultant shall provide satisfactory documentary evidence of the terms of insurance referred to in Clause 6.1 and that the insurance referred to in Clause 6.1 is being properly maintained, and shall confirm that payment has been made in respect of the last preceding premium due under such insurance.
- 6.3 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 6.1 and all of the insurance provisions contained or referred to in the Appointment. 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 The Consultant warrants that it has not and shall not use and/or 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**:

Names:

Address:

.....

in the case of the **MHCLG**:

The Director of Building Safety

Ministry of Housing, Communities and Local Government

2 Marsham Street, London, SW1P 4DF

in the case of the **Employer**:

Names:

Address:



- 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 from time to time 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 on three occasions only. In this Deed references to the MHCLG include where the context admits its permitted assignees.
- 10.2 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.
- 10.3 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 Clauses 3 and 4 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.
- 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 15 shall not affect or prevent any assignees who take the benefit of this Deed pursuant to Clause 11 or successors in title to the MHCLG from enforcing the provisions of this Deed.



Ministry of Housing,
Communities &
Local Government

Final

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

Signed as a deed by Director's

printed name for and on behalf of [Consultant] in the
presence of:

..... witness' signature

Name.....

Address.....

.....
Occupation.....

**EXECUTED AS A DEED by the SECRETARY OF
STATE FOR HOUSING, COMMUNITIES AND LOCAL
GOVERNMENT**

**The Corporate Seal of the Secretary of State for
Housing, Communities and Local Government is
hereunto affixed and authenticated in the presence
of:**

Authorised Signatory _____

Print Name: _____

Signed as a deed by..... for
and on behalf of [Employer] in the presence of:

Director's signature

..... witness' signature

Name.....

Address.....

.....
Occupation.....

CARDOE MARTIN

PROFESSIONAL INDEMNITY



VERIFICATION OF INSURANCE

TO WHOM IT MAY CONCERN

We act as Insurance Brokers to the client named below and in this capacity can provide brief details of the **Professional Indemnity** Insurance cover in force at this date as follows:-

INSURED: **Cardoe Martin Ltd**
TYPE OF INSURANCE: **Professional Indemnity**
PERIOD: **1st July 2019 to 30th June 2020**
LIMIT OF INDEMNITY: **GBP 5,000,000 any one claim**
POLICY NO.: **B0808P9031759**

This document is provided for information only and is subject to Insurers policy terms, conditions, limitations and exclusions. Cover may also be subject to cancellation provisions and warranties.

The issuance of this document does not make the person or organisation to whom it has been issued an additional insured and confers no rights upon the recipient, nor does it modify in any manner the contract of insurance between the Insured and Insurers.

Without prejudice to the foregoing no assurance is given by us to the adequacy or otherwise of limit of indemnity under the insurance policies. Nor do we express any view or assume any liability as to the solvency or future ability to pay of any of the insurance companies with whom the insurance policies have been placed. In each case you must rely upon your own assessment of such matters. We cannot comment as to whether the client has done or omitted to do anything which has rendered or may render any policy of insurance (including the insurance policy/policies noted in this document) taken out by it or by any other person in relation to any of the client's assets or liabilities void or voidable and you must similarly rely upon your own enquiries in this respect.

The subscribing Insurers' obligations under policies to which they subscribe are several and not joint and are limited to the extent of their individual subscriptions. The subscribing Insurers are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

Lockton does not accept any liability or responsibility to any Third Party (including, but not limited to, any person to whom this document is addressed) in respect of the information provided nor do Lockton have any obligation to advise any changes to or cancellation of the insurances described.

This letter shall be governed by and shall be construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction.

We trust that this information is sufficient for your purposes however, should you require additional detail this can be provided upon agreement from our client.

SIGNED:

A handwritten signature in black ink, appearing to read "Paddy Synott".

DATED: 13th September 2019

PRINT NAME: Paddy Synott

**Global Professional & Financial Risks,
A division of Lockton Companies LLP**

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