



ACM REMEDIATION WORKS COMPLETION REPORT

UNDERTAKEN UPON:

20:20 BUILDING, SKINNER LANE, LEEDS

ON BEHALF OF:

20:20 HOUSE (RESIDENTIAL MANAGEMENT) LTD



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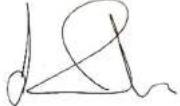
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Prepared By: Lee Rhodes MRICS	
	For and on Behalf of Cardoe Martin Limited
Approved By:	
	For and on Behalf of Cardoe Martin Limited
Date of Issue: 20 th January 2022	File Name: Completion Report

1.0 INTRODUCTION

This report provides a general overview of the works completed and all costs associated to the project at the site known as 20:20 Building, Skinner Lane, Leeds.

2.0 THE WORKS

The original scope of works included the removal of Aluminium Composite Material (ACM) and all other combustible materials forming the external wall system of the upper penthouse apartments at the site known as 20:20 Building, Skinner Lane, Leeds. Remediation works included replacing the external wall system with a non-combustible replacement.

As the works progressed several unknowns were identified and had to be addressed, including a Building Control requirement and condition for the installation of an internal Vapour Control Layer (VCL) to all effected apartments. These additional works had a knock-on effect to the overall project programme and costs.

3.0 PROCUREMENT ROUTE AND APPOINTMENTS

3.1 Procurement Route

A negotiated Design and Build procurement route were adopted and approved by Homes England.

3.2 Project Team

The project team included and comprised.

- Employers Agent – Cardoe Martin
- Quantity Surveyor – Rex Proctor
- Fire Engineer – International Fire Consultants
- Façade Engineer – Wintech
- Principal Designer – Bell Group
- Building Control – Local Authority
- Lawyers – Gowlings

3.3 Principal Contractor Appointment

Ballymore Services Limited were appointed as Principal Contractor under a JCT Design and Build contract with amendments.

3.4 Appointments and collateral warranties

Formal client appointments of IFC, Wintech and Rex Proctor were made and included the

requirement to agree and complete consultants' MHCLG collateral warranties and duty of care deeds.

All formal appointment documentation is included at Appendix VI.

4.0 PROJECT PROGRAMME

Works commenced on site on Monday 14th December 2020 with an initial programme of 14-16 weeks completing May 2021. Works however took longer than expected to complete due to the nature of design and build, several unknowns, and Building Control requirement for the installation of an internal Vapour Control Layer (VCL) to all effected apartments and associated delays in funding certainty.

The works completed 17th November 2021.

5.0 FINANCIALS

5.1 Original Financial Support

The project has been funded by a warranty settlement, majority stakeholder contribution and Homes England funding.

Warranty Settlement = £388,101.56

Homes England Funding = £441,572.33

Major Stakeholder Contribution (Tonia) = £146, 534.18

Total = £976,208.07

The original project budget breakdown (inclusive of VAT) was as follows.

Cost of Works:	£792,067.82
Pre-Construction, Professional & Contractors Fees:	£73,362.70
Post-Construction Professional Fees:	£110,777.55
Total:	£976,208.07

5.2 Additional Works (variation no.1 and no.2)

Because of the additional works (variation no. 1 and no.2) and delays in approval of the additional works, the programme was extended, and costs increased.

5.3 Financial Support following variation no.1 and no.2

The revised project cost breakdown following works variation 1 and 2 (inclusive of VAT).

Cost of Works:	£1,256,335.00
Pre-Construction, Professional & Contractors Fees:	£73,362.70
Post-Construction Professional Fees:	£265,894.30
Total:	£1,595,592.06

Funds received are detailed below and stands at:

Original funding (detailed above) = £976,208.07

Major Stakeholder Contribution toward variation no.1 and no.2 (Tonia) = £120,000.00

Homes England Funding toward variation no.1 and no.2 = £356,570.05

Total = £1,452,778.00

5.4 Financial Summary

The overall project has increased by £619,384.00 from £976,208.07 to £1,595,592.06. The primary reason for the uplift in costs were associated to the requirement to install an internal Vapour Control Layer (VCL) required to comply with Building Control conditions and unknowns with the original fabric of the building. The impact of these works resulted in increased costs and an extended programme.

Funding for the project has been provided as follows:

Warranty Settlement = £388,101.56

Homes England Funding = £441,572.33

Major Stakeholder Contribution (Tonia) = £146,534.18

Major Stakeholder Contribution toward variation no.1 and no.2 (Tonia) = £120,000.

Homes England Funding toward variation no.1 and no.2 = £356,570.05

Total = £1,452,778.00

The final account has now been agreed, penultimate certificate for payment issued and all professional fees reconciled and stands at £1,595,592.06.

Please refer to:

appendix 3 – penultimate certificate for payment

appendix 4 – final account summary

appendix 4 - invoice matrix for further clarification.

Homes England have completed the assessment of eligibility for funding which is compounded by a majority stakeholder owning 180 apartments. All State Aid allowances have now been exhausted and there is currently a shortfall of **£137,705.46**. The client has invoiced and recovering the shortfall

from the majority stakeholder in accordance with the conditions set out in the MHCLG Grant Funding Agreement. This sum includes the majority stakeholder items which are ineligible for MHCLG Grant Funding.

£5,108.54, the proportion of items ineligible for MHCLG Grant Funding will be recovered from the remaining 77 leaseholders.

5.5 Contractors Retention

As part of the contractual terms 2.5% of the value of the works is held back for 12 months from the date of practical completion. the retention amount is split between all stakeholders who have contributed to the works.

- Total cost of works = £1,256,335.00
- Retention 2.5% off the above = £31,408.37
- Homes England have contributed 49% toward the project
- Warranty settlement and Tonia investment have contributed 51% toward the project

Based on the above, homes England have held back £15,390.07 and other stakeholders (via 2020 Residential Management) will hold onto the remaining £16,018.30. The retention amount will be payable to Ballymore services Limited November 2022.

6.0 SUMMARY

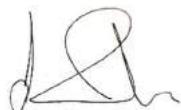
The works were completed 17th November 2021. A certificate of Practical Completion along with Building Control Completion Certification were issued on this date.

The original project budget was £976,208.07. Additional works were identified to include internal VCL works, which increased the overall project value and final account to £1,595,592.06.

Based on the above there is currently a shortfall of **£142,814.00** which the client has invoiced and recovering the shortfall from the majority stakeholder and Leaseholders in accordance with the MHCLG Grant Funding Agreement conditions.

We trust the above and attached is clear and satisfactory, but should you have any questions please do not hesitate to contact me.

Prepared by Lee Rhodes MRICS



Signed

FOR AND ON BEHALF OF CARDOE MARTIN LIMITED

Dated 18th January 2022

APPENDIX I

PRACTICAL COMPLETION CERTIFICATION

Practical Completion Certificate

Employer/address 20:20 HOUSE (RESIDENTIAL) MANAGEMENT LTD TWENTY TWENTY SKINNER LANE LEEDS LS7 1BB	Site address SKINNER LANE LEEDS LS7 1BB
	Description of work ACM CLADDING REMEDIATION WORKS
Architect/Contract Administrator/address CARDOE MARTIN LIMITED AIZLEWOOD BUSINESS CENTRE AIZLEWOOD MILL NURSERY STREET S3 8GG	
	Job reference 11741
	Contract date 7 TH DECEMBER 2020
	Issue date 17 TH NOVEMBER 2021
Contractor/address BALLYMORE CIVILS LTD 3 GORTRUSH BUSINESS CENTRE 27 GORTRUSH INDUSTRIAL ESTATE OMAGH BT78 5EJ	Practical Completion Certificate serial no. Notes
<i>PRACTICAL COMPLETION IS AGREED AS OF 17TH NOVEMBER 2021 SUBJECT TO RECTIFICATION OF ALL THOSE ITEMS IDENTIFIED WITHIN THE APPENDED SNAGGING LIST REF 01</i>	
	Date of Practical Completion 17 TH NOVEMBER 2021
	Expiry date of Rectification Period 17 TH NOVEMBER 2022

We certify that under the terms of Contract

Practical Completion occurred and that the
Rectification Period will expire on the dates stated
above.

Signature of Contract Administrator



RICS

APPENDIX II

BUILDING CONTROL COMPLETION CERTIFICATION



Building Control Services
Merrion House
110 Merrion Centre
Leeds LS2 8BB

LEEDS BUILDING CONTROL COMPLETION CERTIFICATE

The Building Act 1984 and The Building Regulations

Building Regulations Plan Number B/20/04877/OALFP
ACM cladding alterations

Details of work

Removal of ACM and re-cladding to 7th floor apartments

Location of building to which work relates

Twenty Twenty House Skinner Lane Sheepscar

Deposit of particulars

Full Plans were deposited under the Building Regulations made under Section 1(3) of the Building Act 1984 on 24 November 2020

Completion Date

Date of completion inspection : 17 November 2021

Compliance with the Building Regulations

It is hereby certified that the building works described above have been inspected and, so far as the authority has been able to ascertain, the requirements of the Building Regulations are satisfied.

Standard Assessment Procedure (SAP) Rating.....If required

Authority

This certificate has been authorised by the Director of the Development Department on the **17 November 2021**

A handwritten signature in black ink that appears to read "David Feeney".

David Feeney
Chief Planning Officer

This certificate has been issued for information purposes by Leeds Building Standards which delivers the comprehensive range of Building Control Services provided by Leeds City Council.

NOTE: This certificate relates only to the work described above. This certificate does not relate to any work carried out to which the Regulations did not apply on this occasion, for example to the existing building not affected by extension work, or the work of repair or the replacement of fittings, etc

APPENDIX III

CERTIFICATION FOR PAYMENT (PENULTIMATE)

Certificate for Interim Payment for use with the JCT Design & Build Building Contract 2016 Edition

Employer/address 20:20 House (Residential Management) Ltd Twenty Twenty, Skinner Lane, Leeds, LS7 1BB	Site address Skinner Lane, Leeds, LS7 1BB
	Description of work ACM Cladding Remediation Works
Architect/Contract Administrator/address Cardoe Martin Ltd Aizlewood Business Centre, Aizlewood Mill, Nursery Street, Sheffield S3 8GG	Job reference 11741
	Contract date 7 th December 2020
	Valuation date 18 th November 2021
	Issue date 29 th November 2021
	Due date 25 th December 2021
	Final Date for Payment 25 th December 2021
Contractor/address Ballymore Civils Ltd 3 Gortrush Business Centre, 27 Gortrush Industrial Estate, Omagh, BT78 5EJ	Instalment no. Valuation No. 13 (Penultimate)
	Serial no.
	Contract Sum £660,056.52
	Valuation £1,046,945.95
	2.5% Retention £26,173.65
	Less amount previously certified, notified or advanced (see note 2) £949,376.47
	Amount of this certificate exclusive of VAT £71,395.83

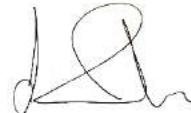
The basis on which the amount of this Certificate has been calculated is clause 4.3 of the conditions of contract (see note 1)

*⁴/We certify that under the terms of the contract, unless the Employer/Architect/Contract Administrator/Quantity Surveyor has given the Contractor written notice under clause 4.5.4 of the contract and, if the Employer is a 'Contractor' under the Construction Industry Scheme, subject to *him /her having the necessary authorisation under the Scheme to make a payment to the Contractor, payment is due from the Employer to the Contractor within 14 days of the due date plus any VAT payable (see below) in the sum of:

(amount in words)	Seventy One Thousand Three Hundred and Ninety Five Pounds and Eighty Three Pence	£71,395.83
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Signature of or for and on behalf of the *Contract Administrator

* MRICS



The VAT due on this Certificate is £14,279.17 which should be added by the Employer to the amount certified above when settling this Certificate.

Notes: 1. The Employer's attention should be drawn to the necessity of giving the appropriate written notice if he/she is not prepared to make the above payment or if he/she wishes to pay a lesser amount than the amount stated on this Certificate.
2. Include the amount previously certified or notified and NOT the amount previously paid. 'Advanced' refers to advance payments. Sums 'notified' includes sums included on Contractor's Payment Notices (see clause 4.5.2) and Pay Less Notices (see clause 4.5.4)
3. The due date is the date stated in the Contract Particulars.

* **Delete as appropriate**

APPENDIX IV

FINAL ACCOUNT BREAKDOWN

Invoice Matrix					
Project:	20:20 Building, Skinner Lane, Leeds		CARDOE MARTIN		
Date:	18/12/2021				
Revision:					
Notes	Total amount	Amount paid	Amount outstanding	Invoice no.	Status
Cardoe Martin invoice no.1 - Jul	£3,000.00	3,000.00		20772	paid
Cardoe Martin invoice no.2 - Aug	£3,000.00	3,000.00		20917	paid
Cardoe Martin invoice no.3 - Sep	£3,000.00	3,000.00		21089	paid
Cardoe Martin invoice no.4 - Oct	£3,000.00	3,000.00		21208	paid
Cardoe Martin invoice no.5 - Nov	£3,500.00	3,500.00		21388	paid
IFC invoice no.1	£8,000.00	8,000.00		P08417	paid
Invoice no.1 - initial investigation and opening up and ACM spec	£6,455.00	6,455.00		29133	paid
Invoice no.2 - initial investigation ACM report - £2,780	£2,780.00	2,780.00		29225	paid
Invoice no.3	£7,645.00	7,645.00		29429	paid
Invoice received	£10,118.00	10,118.00		501	Paid
	£9,720.00	9,720.00		504	Paid
Bell Group invoice no.1 (sep)	£917.60	917.60		12508	Paid
Sub total	61,135.60	61,135.60	0.00		
Vat	12,227.12	12,227.12	0.00		
Total Pre-Contrat (budget)	73,362.72	73,362.72	0.00		
Cardoe Martin					
Invoice no.6 - Feb	£3,500.00	3,500.00		21750	Paid previously on account
Invoice no.7 - March	£3,500.00	3,500.00		21824	Paid
Invoice no.8 - April	£3,500.00	3,500.00		21992	Paid
Invoice no.9 - May - August	£3,000.00	3,000.00		22557	Paid
Invoice no.10 - September	£3,000.00	3,000.00		22686	Paid
IFC					
Invoice no.2	£3,000.00	3,000.00		907466	Paid
Invoice no.3	£2,300.00	2,300.00		907698	Paid
Invoice no.4 - October	£6,000.00	6,000.00		908325	Paid
Final Invoice - November	£27,900.00		£27,900.00	9278	Outstanding
Wintech					
Invoice no.4 - Jan	1,590.00	1,590.00		29682	Paid
Invoice no.5 - Feb	2,409.50	2,409.50		29718	Paid
Invoice no. 6 - March	11,381.00	11,381.00		29992	Paid
Invoice no.7 - April	9,281.16	9,281.16		30136	Paid
Invoice no.8 - May	4,997.50	4,997.50		30249	Paid
Invoice no.9 - June	10,340.00	10,340.00		30373	Paid
Invoice no.10 - July	10,321.25	10,321.25		30507	Paid
Projection - August	12,835.84	12,835.84		30596	Paid
Projection - September	8,245.00	8,245.00		30714	Paid
Projection - October	11,394.00	11,394.00		30876	Paid
Projection - November	8,569.26		8,569.26	30974	Outstanding
Leeds City Council					
Invoice no.1	£360.00	360.00		184690	paid
Ballymore					
Valuation no.1	£41,117.48	41,117.48			Paid
Valuation no.2	£25,639.44	25,639.44			Paid
Valuation no.3	£65,418.40	£65,418.40			Paid
Valuation no.4	£149,477.57	£149,477.57			Paid
Valuation no.5	£78,236.65	78,236.65			Paid
Valuation no.6	£69,727.07	69,727.07			Paid
Valuation no.7	£68,379.06	68,379.06			Paid
Valuation no.8	£53,075.18	53,075.18			Paid
Valuation no.9	£94,611.28	94,611.28			Paid
Projection - No. 10 August	£118,302.94	118,302.94			Paid
Projection - No. 11 - September	£109,044.89	109,044.89			Paid
Projection - No.12 October	£76,346.51		£76,346.51		Outstanding
Projection - November	£71,395.83		£71,395.83		Outstanding
Retention	£26,173.65				
RPP					
Invoice no.1 - March	£4,800.00	4,800.00		LS8550	Paid
Invoice No.2 - April	£2,000.00	2,000.00		LS8637	Paid
Invoice No.3 - May	£2,000.00	2,000.00		LS8746	Paid

Invoice No.4 - June	£2,000.00	2,000.00		LS8830	Paid
Invoice no.5 - July	£2,000.00	2,000.00		LS8912	Paid
Invoice no.6- September	£2,000.00	2,000.00		LS9125	Paid
Invoice no.7 - Ocotober	£2,000.00	2,000.00		LS9198	Paid
Invoice no.8 - November	£2,000.00		£2,000.00	LS9282	Outstanding
Bell Group					
Bell Group invoice no.2 (Oct)	£792.00	£792.00		12520	Paid
Bell Group invoice no.2 (Nov)	£792.00	£792.00		12550	Paid
Bell Group invoice no.2 (Dec)	£2,446.00	£2,446.00		12584	Paid
Bell Group invoice no.2 (Jan)	£1,374.00	£1,374.00		12627	Paid
Bell Group invoice (feb)	£582.00	£582.00		12663	Paid
Bell Group invoice (march)	£858.00	£858.00		12693	Paid
Bell Group invoice (April)	£1,346.00	£1,346.00		12723	Paid
Bell Group invoice (May)	£814.00	£814.00		12764	Paid
Bell Group invoice (June)	£858.00	£858.00		12796	Paid
Bell Group invoice (July)	£976.80	£976.80		128330	Paid
Bell Group invoice (August)	£836.00	£836.00		12861	Paid
Bell Group invoice (September)	£858.00	£858.00		12906	Paid
Bell Group invoice (Ocotober)	£620.00	£620.00		12907	Paid
Bell Group Invoice (November)	£836.00	£836.00		12943	Paid
Bell Group Invoice(December)	£976.80		£976.80	12989	Outstanding
Bell Group Invoice(December)	£717.60		£717.60	12990	Outstanding
Gowlings					
Invoice no.1	£8,050.00	8,050.00		1576991	Paid
Invoice no.2	£8,200.00	8,200.00		1598765	Paid
Invoice no.3	£8,000.00	8,000.00		1631116	Paid
Relocation of residents					
Habito	£174.94	174.94		239	Paid
Scarlett	£160.00	£160.00		5127	Paid
HPS	£160.00	£160.00		2020-239	Paid
AHA	£220.00	£220.00		2020-239	Paid
Urban Square	£2,770.00	£2,770.00		3353	Paid
Urban Square	£1,510.00	£1,510.00		3375	Paid
Scarlett	£166.67	£166.67		5365	Paid
Scarlett	£166.67	£166.67		5366	Paid
Urban Square	£1,530.00	£1,530.00		3356	Paid
Urban Square	£1,530.00	£1,530.00		3597	Paid
Urban Square	£2,790.00	£2,790.00		3596	Paid
Urban Square	£3,780.00	£3,780.00		3595	Paid
AHA	£40.00	£40.00		2020-236	Paid
Urban Square	£90.00	£90.00		3595	Paid
20:20 House - Packing materials	£332.51	£332.51			Paid
Sub total	1,268,524.45	1,054,444.80	187,906.00		
Vat	253,704.89	210,888.96	37,581.20		
Total Post-Contract	1,522,229.34	1,265,333.76	225,487.20		
Total budget (Pre and Post Contract)	1,329,660.05	1,115,580.40	187,906.00		
VAT	265,932.01	223,116.08	37,581.20		
Total	1,595,592.06	1,338,696.48	225,487.20		

APPENDIX V

FUNDING AGREEMENT



Department for Levelling Up, Housing & Communities

20:20 House Ltd

By E-Mail via the Homes England

Alistair Watters

Director, Building Remediation and Grenfell
Directorate

Department for Levelling Up, Housing and Communities

2nd Floor, Fry Building
2 Marsham Street
London SW1P 4DF

www.gov.uk/mhclg

Our ref: P_LEED01 – 16/12/2021

Date: 24 December 2021

Dear Sir/Madam,

Private Sector ACM Cladding Remediation Fund: Cost Variation

Thank you for submitting an application for the Private Sector ACM Cladding Remediation Fund for the remediation of unsafe ACM and non-ACM cladding at 20:20 House, Block B, Skinner Lane, Leeds, LS7 1BB.

I am pleased to inform you that your application for additional funding has been successful, and you have been awarded an additional amount of **£115,955.09 (including VAT)**.

We have deducted £14,500 from the amount you applied for which was referable to the costs of replacement car parking. These costs are not eligible for funding, as they are not directly related to the costs of replacing unsafe ACM cladding. We have also deducted £243,925.65 from the amount you applied for due to the service charge liability for the works of one of the leaseholders exceeding the subsidy control de minimis threshold of 325,000 Special Drawing Rights.

This brings your total approved grant to **£798,142.38** (inc. VAT) for the remediation of unsafe ACM cladding on the building. Please note, the previous non-ACM full works and costs award of £604,218.32 made in March 2021 has been temporarily withdrawn pending submission of revised costs.

This increase in funding is an increase in the ‘Maximum Sum’ under the existing Grant Funding Agreement for this building. Approval of your application is subject to you continuing to meet all of the terms and conditions of this Grant Funding Agreement, including all Schedules.

Your next steps:

- Now that funding is conditionally approved, I recommend you work with contractors for works to progress. You should provide an update to Homes England if details of the works or completion dates have changed from when you submitted your application.
- You should inform leaseholders and residents of the outcome of this application. Responsible entities should also ensure leaseholders and residents are kept informed of the nature of the works and should provide regular updates to leaseholders and residents on the progress of their funding application and remediation works.

If you have any questions, please get in touch with Homes England.

Lastly, I would like to thank you for your continued engagement and take this opportunity to emphasise the importance of pace of remediation. The fund has been put in place to ensure public safety. By enabling remediation to happen quickly, it will restore peace of mind and allow residents living in these blocks to get on with their lives. We expect work on site to be completed efficiently and safely. We look forward to your co-operation in implementing the Private Sector ACM Cladding Remediation Fund.

Yours faithfully,



Alistair Watters
Director, Building Remediation and Grenfell
Department for Levelling Up, Housing and Communities

APPENDIX VI

CONTRACTUAL INFORMATION

CONTRACT

- D&B contract between 2020 House and Ballymore
- Sub-contractor warranty

FORMAL APPOINTMENT

- Wintech appointment
- RPP appointment
- IFC appointment
- IFC Novation
- IFC Post Novation
- ADP Architects – Condensation risk analysis

MHCLG WARRANTIES

- IFC
- Wintech
- RPP
- Ballymore



CONTRACT DOCUMENT

FOR:

**ACM CLADDING REMEDIATION WORKS AT 20:20 HOUSE,
SKINNER LANE, LEEDS LS7 1BE**

EMPLOYER:

**20:20 HOUSE (RESIDENTIAL MANAGEMENT) LTD, 2020 BUILDING, SKINNER
LANE, LEEDS LS7 1BB**

PRINCIPAL CONTRACTOR:

**BALLYMORE CIVILS LIMITED, UNIT 3 GORTRUSH BUSINESS CENTRE, 27
GORTRUSH INDUSTRIAL ESTATE, OMAGH, COUNTY TYRONE, NORTHERN
IRELAND, BT78 5EJ**

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1.0 JCT DESIGN & BUILD CONTRACT 2016 (DB2016)



This contract has been amended from the original template.

**DB 2016
Design and Build Contract 2016**

2016

DB 2016

3076975296 09/11/2021

DESIGN AND BUILD CONTRACT

Design and Build Contract (DB)

Appropriate:

- where detailed contract provisions are necessary and Employer's Requirements have been prepared and provided to the Contractor;
- where the Contractor is not only to carry out and complete the works, but also to complete the design; and
- where the Employer employs an agent (who may be an external consultant or employee) to administer the conditions.

Can be used:

- where the works are to be carried out in sections;
- by both private and local authority employers.

Where the Contractor's design responsibility is restricted to discrete parts of the works and he is not responsible for completing the design for the whole works, consideration should be given to using one of the JCT contracts that provide for the employment of an Architect/Contract Administrator and limited design input by the Contractor.

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For details of 2016 Edition changes, see the Design and Build Contract Guide (DB/G) and the Tracked Change Document.

www.jctltd.co.uk

Contents

Agreement

Recitals

Articles

- Article 1: Contractor's obligations
- Article 2: Contract Sum
- Article 3: Employer's Agent
- Article 4: Employer's Requirements and Contractor's Proposals
- Article 5: Principal Designer
- Article 6: Principal Contractor
- Article 7: Adjudication
- Article 8: Arbitration
- Article 9: Legal proceedings
- Article 10: Incorporation of Schedule of Amendments

Contract Particulars

Attestation

Conditions

Section 1 Definitions and Interpretation

1·1 Definitions

Interpretation

- 1·2 Reference to clauses etc.
- 1·3 Agreement etc. to be read as a whole
- 1·4 Headings, references to persons, legislation etc.
- 1·5 Reckoning periods of days
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Agreement

This Agreement is made the 17th November 2021

Between

The Employer 20:20 House (Residential Management) Limited

(Company No. 06770847)^[1]

Whose registered office is at Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB

And

The Contractor Ballymore Civils Limited

(Company No. NI615559)^[1]

whose registered office is at Unit 3 Gortrush Business Centre, 27 Gortrush Industrial Estate, Omagh,

County Tyrone, Northern Ireland, BT78 5EJ

[1] Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number. As to execution by foreign companies and matters of jurisdiction, see the Design and Build Contract Guide.

Recitals

Whereas

First the Employer wishes to have the design and construction of the following work carried out^[2]:

Removal of Aluminium Composite Material (ACM) cladding system and remediation works including installation of a replacement A1 / A2 system.

at

20:20 House, Skinner Lane, Leeds, LS7 1bE ('the Works')

and the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements ('the Employer's Requirements');

Second in response to the Employer's Requirements the Contractor has supplied to the Employer:

- documents showing and describing the Contractor's proposals for the design and construction of the Works ('the Contractor's Proposals'); and
- an analysis of the Contract Sum ('the Contract Sum Analysis');

Third the Employer has examined the Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements^[3];

Fourth for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

Fifth The Works are not divided into Sections;

Sixth the Contract is not supplemented by a Framework Agreement;

Seventh whether any of Supplemental Provisions 1 to 10 apply is stated in the Contract Particulars;

[2] State nature and location of intended works.

[3] Where the Employer has accepted a divergence from his requirements in the proposals submitted by the Contractor, the divergence should be removed by amending the Employer's Requirements before the Contract is executed.

Articles

Now it is hereby agreed as follows

Article 1: Contractor's obligations

The Contractor shall complete the design for the Works and carry out and complete the construction of the Works in accordance with the Contract Documents.

Article 2: Contract Sum

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of

Six hundred and sixty thousand and fifty six pounds and fifty two pence (£660,056.52) ('the Contract Sum')

or such other sum as becomes payable under this Contract.

Article 3: Employer's Agent

For the purposes of this Contract the Employer's Agent is

Cardoe Martin

of

Aizlewood's Mill, Nursery Street, Sheffield, S3 8GG

or such other person as the Employer nominates in his place. Save to the extent that the Employer may otherwise specify by notice to the Contractor, the Employer's Agent shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and otherwise to act for the Employer under any of the Conditions.

Article 4: Employer's Requirements and Contractor's Proposals

The Employer's Requirements, the Contractor's Proposals and the Contract Sum Analysis are those referred to in the Contract Particulars.

Article 5: Principal Designer

The Principal Designer for the purposes of the CDM Regulations is

Bell Group (Safety Services)

of

Offices 7 & 8, Toyson House, Methley Road, Castleford, WF10 1PA

or such replacement as the Employer at any time appoints to fulfil that role.

Article 6: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role.

Article 7: Adjudication

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9·2^[6].

Article 8: Arbitration

Not applicable.

Article 9: Legal proceedings^[7]

Subject to Article 7 and (where it applies) to Article 8, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

Article 10: Incorporation of Schedule of Amendments

The Recitals, Articles, Contract Particulars, Conditions and Schedules include and shall be subject to the Schedule of Amendments attached to this contract and signed on the cover sheet on behalf of the Employer and the Contractor. If there is any discrepancy between the Recitals, Articles, Contract Particulars, Conditions and Schedules and the Schedule of Amendments the wording contained in the Schedule of Amendments shall prevail.

^[6] As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Design and Build Contract Guide.

^[7] If it is intended, subject to the right of adjudication and exceptions stated in Article 8, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 8 and clauses 9·3 to 9·8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 9 (see also clause 1·11 and Schedule 5 Parts 1 and 2).

Contract Particulars

Note: An asterisk * indicates where selection has been or should have been made.

Clause etc.	Subject	
Fourth Recital and clause 4·5	Construction Industry Scheme (CIS)	* Employer at the Base Date is not a 'contractor' for the purposes of the CIS
Seventh Recital and Part 1 of Schedule 2	Supplemental Provisions – Part 1 <i>(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision does not apply.)</i>	
	Named Sub-Contractors	* Supplemental Provision 1 does not apply
	Valuation of Changes – Contractor's estimates	* applies
	Loss and expense – Contractor's estimates	* Supplemental Provision 3 applies
Seventh Recital and Part 2 of Schedule 2	Supplemental Provisions ^[9] – Part 2 <i>(Where neither entry against one of Supplemental Provisions 4 to 10 below is deleted, that Supplemental Provision applies.)</i>	
	Acceleration Quotation	* Supplemental Provision 4 does not apply
	Collaborative working	* Supplemental Provision 5 applies
	Health and safety	* Supplemental Provision 6 applies
	Cost savings and value improvements	* Supplemental Provision 7 applies
	Sustainable development and environmental considerations	* Supplemental Provision 8 applies

^[9] Supplemental Provision 11 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 12 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

	Performance Indicators and monitoring	* Supplemental Provision 9 applies
	Notification and negotiation of disputes	* Supplemental Provision 10 applies
	Where Supplemental Provision 10 applies, the respective nominees of the Parties are	Employer's nominee <u>Royal Institute of Chartered Surveyors</u> Contractor's nominee <u>Royal Institute of Chartered Surveyors</u> or such replacement as each Party may notify to the other from time to time
Article 4	Employer's Requirements (State reference numbers and dates or other identifiers of the relevant documents.) ^[8]	<u>Cardoe Martin Employers Requirements</u> <u>Report dated 11th September 2020 and incorporating Wintech Performance Specification Ref: 05218/JY/XX/50316/WL/01</u> <u>(3rd August 2020)</u>
Article 4	Contractor's Proposals (State reference numbers and dates or other identifiers of the relevant documents.) ^[8]	<u>Ballymore Services - Skinner Lane Rev1</u> <u>13.10.20 (Cladding Replacement Works priced document) and 2020 Cladding Remedial Works Project Master Rev 1 - Programme</u>
Article 4	Contract Sum Analysis (State reference numbers and dates or other identifiers of the relevant documents.) ^[8]	<u>Ballymore Services - Skinner Lane Rev1</u> <u>13.10.20 (Cladding Replacement Works priced document)</u>
Article 8	Arbitration (If neither entry is deleted, Article 8 and clauses 9·3 to 9·8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and clauses 9·3 to 9·8 apply.) ^[10]	* Article 8 and clauses 9·3 to 9·8 (Arbitration) do not apply
1·1	Base Date	<u>1st October 2020</u>
1·1	BIM Protocol (where applicable) (State title, edition, date or other identifiers of the relevant documents.)	Not applicable
1·1	Date for Completion of the Works (where completion by Sections does not apply)	<u>20th May 2021</u>

^[8] If the relevant document or set of documents takes the form of an Annex to this Contract, it is sufficient to refer to that Annex.

^[10] On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Design and Build Contract Guide. See also footnote [7].

1·7	Addresses for service of notices by the Parties <i>(If none is stated, the address in each case, subject to clause 1·7·3, shall be that shown at the commencement of the Agreement.)</i> ^[12]	Employer <u>Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB</u> Contractor <u>Unit 3 Gortrush Business Centre, 27 Gortrush Industrial Estate, Omagh, County Tyrone, Northern Ireland, BT78 5EJ</u>
2·3	Date of Possession of the site <i>(where possession by Sections does not apply)</i>	<u>7th December 2020</u>
2·4	Deferment of possession of the site <i>(where possession by Sections does not apply)</i>	* Clause 2·4 does not apply
2·17·3	Limit of Contractor's liability for loss of use etc. (if any)	<u>£Not Applicable</u>
2·29·2	Liquidated damages <i>(where completion by Sections does not apply)</i>	at the rate of <u>£4000.00 per week</u>
2·35	Rectification Period <i>(where completion by Sections does not apply)</i> <i>(If no other period is stated, the period is 6 months.)</i>	<u>12 months</u> months from the date of practical completion of the Works
4·2, 4·12 and 4·13	Fluctuations Provision ^[13] <i>(Unless another option or entry is selected, JCT Fluctuations Option A applies.)</i>	* <u>JCT Fluctuations Option A applies/</u> * <u>JCT Fluctuations Option B applies/</u> * <u>JCT Fluctuations Option C applies</u> ^[14] * <u>no Fluctuations Provision applies/</u> * <u>the following Fluctuations Provision applies</u> <hr/> <hr/>
4·6	Advance payment <i>(Not applicable where the Employer is a Local or Public Authority.)</i>	* Clause 4·6 does not apply
4·7·1	Method of payment – alternatives ^[17] <i>(If no Alternative is selected, Alternative B applies.)</i>	* <u>by stages in accordance with Alternative A (clause 4·12)/</u> * <u>periodically in accordance with Alternative B (clause 4·13)</u>
4·7·2	Interim Payments – Interim Valuation Dates <i>(The dates apply for each Alternative; if no date is</i>	The first Interim Valuation Date is <u>4 weeks from commencement</u>

[12] As to service of notices etc. outside the United Kingdom, see the Design and Build Contract Guide.

[13] Unless the Fluctuations Provision is to be JCT Fluctuations Option A (set out in Schedule 7), delete all but one of the asterisked choices. JCT Fluctuations Options B and C are no longer included in JCT contract documents but continue to be available on the JCT website www.jctltd.co.uk. If an alternative fluctuation or cost adjustment formula is to be used, the document(s) in which it is contained should be identified here.

[14] JCT Fluctuations Option C can only operate if a schedule to which rule 11b of the Formula Rules refers is included in the Contract Documents.

[17] Delete whichever Alternative is not applicable. Where Interim Payments are to be made by stages (including by quantity of units and sub-units completed) make the appropriate entries or prepare and insert a separate schedule of cumulative stage values.

	<i>stated, the first Interim Valuation Date is one month after the Date of Possession.)</i>	and thereafter the same date in each month or the nearest Business Day in that month ^[19]
4·15·4	Listed Items – uniquely identified <i>(Delete the entry if no bond is required.)</i>	* No bond is required for Listed Items uniquely identified.
4·15·5	Listed Items – not uniquely identified <i>(Delete the entry if clause 4·15·5 does not apply.)</i>	* No bond is required for Listed Items not uniquely identified.
4·17	Contractor's Retention Bond <i>(Not applicable where the Employer is a Local or Public Authority and, in other cases, not applicable unless stated to apply, with relevant particulars given below)</i>	* Clause 4·17 does not apply
4·18·1	Retention Percentage <i>(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert 'Nil' or '0'.)</i>	<u>2.5</u> per cent
5·5	Daywork	The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in the following document ^[8] <u>N/A</u>
6·4·1	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	<u>£5 million</u> for any one occurrence or series of occurrences arising out of one event
6·5·1	Insurance – liability of Employer	Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event ^[20] <u>£5 million</u>
6·7 and Schedule 3	Works insurance – Insurance Option applicable	Schedule 3: * <u>Insurance Option A applies/</u> * <u>Insurance Option B applies/</u> * <u>Insurance Option C applies</u>
	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i>	<u>15</u> per cent

[19] The first Interim Valuation Date should not be more than one month after the Date of Possession.

[8] If the relevant document or set of documents takes the form of an Annex to this Contract, it is sufficient to refer to that Annex.

[20] Insert an amount where it is stated in the Employer's Requirements that insurance under clause 6·5·1 is required. If the indemnity is to be for an aggregate amount and not for any one occurrence or series of occurrences, the entry should be amended to make this clear.

Where Insurance Option C applies, paragraph * applies

C·1^[21]

(Unless otherwise stated, paragraph C·1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)

6·10 and Schedule 3 Terrorism Cover – details of the required cover
(Unless otherwise stated, Pool Re Cover is required.)^[22] are set out in the following document(s)

6·15 Professional Indemnity insurance

Level of cover

(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)

(If no amount is stated, insurance under clause 6·15 shall not be required.)

Amount of indemnity required

- * relates to claims or series of claims arising out of one event/
- * is the aggregate amount for any one period of insurance

and is

£

Cover for pollution and contamination claims
(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)

* is required, with a sub-limit of indemnity of £ _____ /

* is not required

Expiry of required period of Professional Indemnity insurance is
(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works.)

* 6 years/
 * 12 years/
 * _____ years
 (not exceeding 12 years)

6·17 Joint Fire Code

* The Joint Fire Code
 * does not apply^[23]

7·2 Assignment/grant by Employer of rights under

Clause 7·2

[21] **Insurance Option C** is for use in the case of alterations of or extensions to Existing Structures. Under that option, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C·1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C·1. Where that is the case, alternative arrangements and amendments will be necessary. See the Design and Build Contract Guide.

Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

[22] Obtaining Terrorism Cover for the Works, which unless otherwise agreed is necessary in order to comply with the requirements of Insurance Option A, B or C, will involve an additional premium and in certain situations has been difficult to effect. If any difficulty might arise, there should be immediate pre-contract discussion between the Parties and their insurance advisers. See the Design and Build Contract Guide.

[23] Where Insurance Option A applies these entries are made on information supplied by the Contractor.

clause 7·2 * does not apply
(If neither entry is deleted, clause 7·2 applies.)

7·3·1	Performance bond or guarantee from bank or other approved surety ^[24] <i>(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)</i>	* is not required
7·3·2	Guarantee from the Contractor's parent company	* is not required
7·4	Third Party Rights and Collateral Warranties – details of the requirements for the grant by the Contractor and sub-contractors of P&T Rights, Funder Rights and/or (in the case of sub-contractors) Employer Rights in respect of the Works, either as third party rights or by collateral warranties ('Rights Particulars') are set out in the following document ^[25] <i>(State reference number and date or other identifier of the relevant document.)</i>	<u>Refer to the following document at section 2 of these contract documents - Schedule of Amendments to the JCT Design and Build Contract 2016 (DB2016) relating to cladding remediation works at 20:20 Building, Skinner Lane, Leeds, LS7 1BB prepared by Gowling WLG</u>
8·9·2	Period of suspension <i>(If none is stated, the period is 2 months.)</i>	<u>2 months</u>
8·11·1·1 to 8·11·1·6	Period of suspension <i>(If none is stated, the period is 2 months.)</i>	<u>2 months</u>
9·2·1	Adjudication ^[26]	The Adjudicator is
	Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) ^[27] <i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)</i>	<ul style="list-style-type: none"> * Royal Institute of British Architects * The Royal Institution of Chartered Surveyors * constructionadjudicators.com^[28] * Association of Independent Construction Adjudicators^[29] * Chartered Institute of Arbitrators

[24] If a performance bond is required, the identity of the issuer as well as the operative terms of the bond should be agreed prior to execution of the contract.

[25] The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights, specify whether rights are to be granted at each level as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Rights Particulars is included in the Design and Build Contract Guide and is also available on the JCT website www.jctltd.co.uk. In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Contract and Schedule 6 of the Design and Build Sub-Contract are the same as those required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CWa/P&T, CWa/F, SCWa/P&T, SCWa/F or SCWa/E). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Design and Build Contract Guide.

[26] The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body. The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

[27] Delete all but one of the nominating bodies asterisked.

[28] constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.

[29] Association of Independent Construction Adjudicators is controlled by and acts as an agent of the National Specialist Contractors' Council for the purpose of the nomination of adjudicators.

Attestation

Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to factors relevant to that choice, see the Design and Build Contract Guide.

Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or his authorised representative should sign where indicated in the presence of a witness who should then sign and set out his name and address.

Execution as a Deed

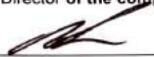
If this Agreement is to be executed as a deed, each Party should use the relevant form marked 'Execution as a Deed' in accordance with the notes provided.

Other forms of Attestation

In cases where the forms of attestation set out are not appropriate, e.g. in the case of certain housing associations and partnerships or if a Party wishes an attorney to execute this Agreement on his behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.

Notes on Execution as a Deed

- 1 For the purposes of execution as a deed, two forms are provided for execution, one for the Employer and the other for the Contractor. Each form provides four methods of execution, **(A)** to **(D)**, for use as appropriate. The full name of the Employer or Contractor (whether an individual, a company or other body) should be inserted where indicated at the commencement of the relevant form. This applies irrespective of the method used.
- 2 For public and private companies incorporated and registered under the Companies Acts, the three principal methods of execution as a deed are:
 - (A) through signature by a Director and the Company Secretary or by two Directors;
 - (B) by affixing the company's common seal in the presence of a Director and the *Company Secretary* or of two Directors or other duly authorised officers; or
 - (C) signature by a single Director in the presence of a witness who attests the signature.Methods **(A)** and **(C)** are available to public and private companies whether or not they have a common seal. (Method **(C)** was introduced by section 44(2)(b) of the Companies Act 2006.) Methods **(A)** and **(C)** are not available under companies legislation to local authorities or to certain other bodies corporate, e.g. bodies incorporated by letters patent or private Act of Parliament that are not registered under companies legislation and such bodies may only use method **(B)**.
- 3 Where method **(A)** is being used, delete the inappropriate words and insert in the spaces indicated the names of the two Directors, or of the Director and the Company Secretary, who are to sign.
- 4 If method **(B)** (affixing the common seal) is adopted in cases where either or both the authorised officers attesting its affixation are not themselves a Director or the *Company Secretary*, their respective office(s) should be substituted for the reference(s) to Director and/or to *Company Secretary/Director*. (In the case of execution by bodies that are not companies, the reference to "Company" under the second signature should be deleted where appropriate.)
- 5 Method **(C)** (execution by a single Director) has been introduced primarily, but not exclusively, for 'single officer' companies. The Director should sign where indicated in the presence of a witness who should then sign and set out his name and address.
- 6 Where the Employer or Contractor is an individual, he should use method **(D)** and sign where indicated in the presence of a witness who should then sign and set out his name and address.

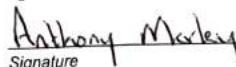
Executed as a Deed by the Employernamely 1 20:20 House (Residential Management) Limited(C) by attested signature of a single Director of the company^{2,3}
Signature

Director

in the presence of

Witness' signature  (Print name) BENEDICT MC CALLUMWitness' address 1 Minadina Rd, Carrickmore
Co. Tyrone N. Ireland.

Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.

Executed as a Deed by the Contractornamely ¹ Ballymore Civils Limited(C) by attested signature of a single Director of the company ^{2,3}
Signature Director

in the presence of

Witness' signature  (Print name) BRIAN MC CALLUM
Witness' address 2 Minnadiana Rd, Carrickmore
Co. Tyrone N. Ireland

Note. The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.

Conditions

Section 1 Definitions and Interpretation

Definitions

- 1.1** Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated or referred to below:

<i>Word or phrase</i>	<i>Meaning</i>
Acceleration Quotation:	a quotation by the Contractor for an acceleration in the carrying out of the Works or a Section made under Supplemental Provision 4 .
Adjudicator:	an individual appointed under clause 9·2 as the Adjudicator.
Agreement:	the Agreement to which these Conditions are annexed, including its Recitals, Articles and Contract Particulars.
All Risks Insurance:	see clause 6·8 .
Arbitrator:	an individual appointed under clause 9·4 as the Arbitrator.
Article:	an article in the Agreement .
Base Date:	the date stated as such date in the Contract Particulars (against the reference to clause 1·1) ^[32] .
BIM Protocol:	(where applicable) the document identified as such in the Contract Particulars (against the reference to clause 1·1).
Business Day:	any day which is not a Saturday, a Sunday or a Public Holiday.
C·1 Replacement Schedule:	(where applicable) the insurance schedule and/or other documents identified as such in the Contract Particulars (against the reference to clause 6·7 and Schedule 3).
CDM Regulations:	the Construction (Design and Management) Regulations 2015.
Change:	see clause 5·1 .
Completion Date:	the Date for Completion of the Works or of a Section as stated in the Contract Particulars or such other date as is fixed either under clause 2·25 or by a Pre-agreed Adjustment.
Conditions:	the clauses set out in sections 1 to 9 of these Conditions, together with and including the Schedules hereto.

^[32] The Base Date is relevant (inter alia) to clause 2·15·2·1 (changes in Statutory Requirements) and the JCT Fluctuations Options and it helps to determine the edition/issue and/or version of documents relevant to this Contract, e.g. definitions of the prime cost of daywork (clause 5·5).

Confirmed Acceptance:	the Employer's instruction under Supplemental Provision 4 confirming acceptance of an Acceleration Quotation.
Construction Industry Scheme (or 'CIS'):	see the Fourth Recital .
Construction Phase Plan:	the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions.
Consultants:	see clause 7·4 .
Contract Documents:	the Agreement and these Conditions, together with the Employer's Requirements, the Contractor's Proposals, the Contract Sum Analysis and (where applicable) the BIM Protocol.
Contract Particulars:	the particulars in the Agreement and there described as such, including the entries made by the Parties.
Contract Sum:	the sum stated in Article 2 .
Contract Sum Analysis:	see the Second Recital and the Contract Particulars .
Contractor:	the person named as Contractor in the Agreement .
Contractor's Design Documents:	the drawings, details and specifications of materials, goods and workmanship and other related documents and information prepared by or for the Contractor in relation to the design of the Works (including such as are contained in the Contractor's Proposals), together, where applicable, with any other design documents or information to be provided by him under the BIM Protocol.
Contractor's Persons:	the Contractor's employees and agents, all other persons employed or engaged on or in connection with the Works or any part of them and any other person properly on the site in connection therewith, excluding the Employer, Employer's Persons and any Statutory Undertaker.
Contractor's Proposals:	see the Second Recital and the Contract Particulars .
Date for Completion:	the date stated as such date in the Contract Particulars (against the reference to clause 1·1) in relation to the Works or a Section.
Date of Possession:	the date stated as such date in the Contract Particulars (against the reference to clause 2·3) in relation to the Works or a Section.
Design Submission Procedure:	such procedure as is specified by the BIM Protocol or, where that is not applicable, the procedure set out in Schedule 1 , subject to any modifications of that procedure specified in the Contract Documents.
Development Control Requirements:	any statutory provisions and any decision of a relevant authority thereunder which control the right to develop the site.
Employer:	the person named as Employer in the Agreement .
Employer Rights:	any rights in favour of the Employer to be granted by sub-contractors in accordance with the Rights Particulars, either by way of third party rights or JCT collateral warranty SCWa/E.
Employer's Agent:	see Article 3 .
Employer's Final Statement:	the final statement prepared by or on behalf of the Employer

pursuant to **clause 4·24·4.**

Employer's Persons:	all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, and any Statutory Undertaker but including any such third party as is referred to in clause 3·15·2.
Employer's Requirements:	see the First Recital and the Contract Particulars .
Excepted Risks:	see clause 6·8.
Existing Structures:	any and all existing structures within which the Works or part of them are to be executed or to which they are to form an extension, together with any Section for which a Section Completion Statement has been issued and, as from the Relevant Date, any Relevant Part taken into possession under clause 2·30.
Final Payment Notice:	see clause 4·8.
Final Statement:	see clauses 1·8 and 4·24.
Finance Agreement:	the agreement between the Funder and the Employer for the provision of finance for the Works.
Fluctuations Provision:	the provision (if any) specified by the Contract Particulars (against the reference to clauses 4·2, 4·12 and 4·13).
Funder:	the person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars and in respect of whom the Employer gives notice under clause 7B·1.
Funder Rights:	the rights in favour of the Funder to be granted by the Contractor as third party rights under Part 2 of Schedule 5 or by JCT collateral warranty CWa/F or those to be granted by sub-contractors in accordance with the Rights Particulars.
Gross Valuation:	see clauses 4·12 and 4·13.
Insolvent:	see clause 8·1.
Insurance Options A, B and C:	the provisions relating to insurance of the Works and (where applicable) Existing Structures set out in Schedule 3.
Interest Rate:	a rate 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Contract becomes overdue.
Interim Payment:	any of the payments to which clause 4·7 and the Contract Particulars refer.
Interim Payment Application:	see clause 4·7.
Interim Valuation Date:	each date as specified by the Contract Particulars (against the reference to clause 4·7·2).
Joint Fire Code:	the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire Protection Association, current at the Base Date.
Joint Names Policy:	see clause 6·8.

Listed Items:	materials, goods and/or items prefabricated for inclusion in the Works which are listed as such items by the Employer in a list supplied to the Contractor and annexed to the Employer's Requirements.
Local or Public Authority:	a body that is a 'contracting authority' as defined by the PC Regulations.
Named Sub-Contractor:	see Supplemental Provision 1 .
Non-Completion Notice:	see clause 2·28 .
Notice of Completion of Making Good:	see clause 2·36 .
P&T Rights:	the rights in favour of a Purchaser or Tenant to be granted by the Contractor as third party rights under Part 1 of Schedule 5 or by JCT collateral warranty CWa/P&T or those to be granted by subcontractors in accordance with the Rights Particulars.
Parties:	the Employer and the Contractor together.
Party:	either the Employer or the Contractor.
Pay Less Notice:	see clauses 4·9·5 and 4·10·1 .
Payment Notice:	see clause 4·7·5 .
PC Regulations:	the Public Contracts Regulations 2015.
Practical Completion Statement:	see clause 2·27 .
Pre-agreed Adjustment:	see clause 2·23·2 .
Principal Contractor:	the Contractor or other contractor named in Article 6 or any successor appointed by the Employer.
Principal Designer:	the Contractor or other person named in Article 5 or any successor appointed by the Employer.
Provisional Sum:	a provisional sum for work included in the Employer's Requirements.
Public Holiday:	Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday. ^[33]
Purchaser:	any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer transfers or agrees to transfer his interest in all or part of the Works.
Recitals:	the recitals in the Agreement .
Rectification Period:	the period stated as such period in the Contract Particulars (against the reference to clause 2·35) in relation to the Works or (where applicable) a Section.
Relevant Date:	see clause 2·30 .

^[33] Amend as necessary if different Public Holidays are applicable.

Relevant Event:	see clause 2·26.
Relevant Matter:	see clause 4·21.
Relevant Omission:	see clause 2·23·3.
Relevant Part:	see clause 2·30.
Retention:	see clauses 4·14 and 4·16 to 4·18.
Retention Percentage:	the percentage stated in the Contract Particulars (against the reference to clause 4·18·1).
Rights Particulars:	see clause 7·4 and the Contract Particulars for that clause.
Scheme:	Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.
Sections:	(where applicable) the Sections into which the Works have been divided, as referred to in the Fifth Recital and the Contract Particulars .
Section Completion Statement:	see clause 2·27·2.
Section Sum:	see clause 2·34 and the Contract Particulars .
Site Materials:	all unfixed materials and goods delivered to and placed on or adjacent to the Works which are intended for incorporation therein.
Specified Perils:	see clause 6·8.
Statutory Requirements:	any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the Works are, or are to be, connected, including Development Control Requirements.
Statutory Undertaker:	any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work.
Tenant:	any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars to whom the Employer grants or agrees to grant a leasehold interest in all or part of the Works.
Terrorism Cover:	see clause 6·8.
Valuation:	a valuation in accordance with the Valuation Rules, pursuant to clause 5·2.
Valuation Rules:	see clauses 5·4 to 5·7.
VAT:	Value Added Tax.
Works:	the works briefly described in the First Recital , as more particularly shown, described or referred to in the Contract Documents, including any changes made to those works in accordance with this Contract.

Works Insurance Policy: the Joint Names Policy or policies covering the Works and Site Materials to be effected and maintained under whichever of Insurance Options A, B or C applies under this Contract.

Interpretation

Reference to clauses etc.

- 1·2** Unless otherwise stated, a reference in the Agreement or in these Conditions to a clause or Schedule is to that clause in or Schedule to these Conditions and, unless the context otherwise requires, a reference in a Schedule to a paragraph is to that paragraph of that Schedule.

Agreement etc. to be read as a whole

- 1·3** The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Contract Document or any Framework Agreement, irrespective of their terms, shall override or modify the Agreement or these Conditions.

Headings, references to persons, legislation etc.

- 1·4** In the Agreement and these Conditions, unless the context otherwise requires:

- 1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;
- 2 the singular includes the plural and vice versa;
- 3 a gender includes any other gender;
- 4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
- 6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information, be deemed to include information in a form or medium conforming to that protocol.

Reckoning periods of days

- 1·5** Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.

Contracts (Rights of Third Parties) Act 1999

- 1·6** Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7A and/or 7B, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

Notices and other communications

- 1·7** ·1 Any notice or other communication between the Employer (or Employer's Agent) and the Contractor that is expressly referred to in the Agreement or these Conditions (including, without limitation, each application, approval, consent, confirmation, counter-notice, decision, instruction or other notification) shall be in writing.

- 2 Subject to clause 1·7·4, each such notice or other communication and any documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing for the purposes of this Contract.^[34]
- 3 Subject to clauses 1·7·2 and 1·7·4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if delivered by hand or sent by pre-paid post to:
 - 1 the recipient's address stated in the Contract Particulars, or to such other address as the recipient may from time to time notify to the sender; or
 - 2 if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.
- 4 Any notice expressly required by this Contract to be given in accordance with this clause 1·7·4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 5 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

Effect of Final Statement

- 1·8 ·1 As from the due date for the final payment specified in clause 4·24·5 and in addition to the effects referred to in clause 4·24·6, the Final Statement or, as the case may be, the Employer's Final Statement ('the relevant statement') shall, except as provided in clauses 1·8·2 and 4·24·6 (and save in respect of fraud), have effect in any proceedings under or arising out of or in connection with this Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:
 - 1 where and to the extent that any particular quality of any materials or goods or any particular standard of an item of workmanship was expressly described in the Employer's Requirements, or in any instruction issued by the Employer under these Conditions, to be for his approval, the particular quality or standard was to his reasonable satisfaction, but the relevant statement shall not be conclusive evidence that they or any other materials, goods or workmanship comply with any other requirement or term of this Contract;
 - 2 all and only such extensions of time, if any, as are due under clause 2·25 have been given; and
 - 3 the reimbursement of direct loss and/or expense, if any, due to the Contractor as agreed, ascertained or valued in accordance with these Conditions is in final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.
- 2 The effects of the relevant statement specified in clauses 1·8·1 and 4·24·6 shall in relation to the subject matter of any adjudication, arbitration or other proceedings be suspended pending the conclusion of such proceedings, and shall thereafter be subject to the terms of any decision, award or judgment in and any settlement of those proceedings:
 - 1 where those proceedings are commenced before or within 28 days after the date of issue of the relevant statement; or
 - 2 in the case of an adjudication commenced within the period referred to in clause 1·8·2·1 in which the Adjudicator gives his decision after the date of issue of the relevant statement, where arbitration or legal proceedings to determine the dispute or difference in question are commenced within 28 days of the date of that decision

^[34] In cases where there is no BIM Protocol, the Parties should agree a communications protocol on or before entering into the Contract, or as soon thereafter as is practicable, covering e.g. the medium or format to be used for the Design Submission Procedure (Schedule 1) if not stated in the Employer's Requirements or Contractor's Proposals. See the Design and Build Contract Guide.

but not otherwise.

- 3 For the purposes of clause 1·8·2 any proceedings shall be treated as concluded if during any period of 12 months commencing on or after the issue of the relevant statement neither Party takes a further step in them.

Effect of payments other than payment of Final Statement

- 1·9** Save as stated in clause 1·8, no payment by the Employer shall of itself be conclusive evidence that any works, any materials or goods or any design to which it relates are in accordance with this Contract.

Consents and approvals

- 1·10** Where consent or approval of either Party is expressly required under these Conditions and is requested, such consent or approval shall not be unreasonably delayed or withheld, except in the case of either Party's consent under clause 7·1 the giving of which shall be at the sole discretion of the Party from whom it is sought.

Applicable law

- 1·11** This Contract shall be governed by and construed in accordance with the law of England.^[35]

^[35] Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

Section 2 Carrying out the Works

Contractor's Obligations

General obligations

- 2·1**
- 1 The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents, the Construction Phase Plan and other Statutory Requirements and for that purpose shall complete the design for the Works including the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the construction of the Works so far as not described or stated in the Employer's Requirements or Contractor's Proposals, and shall give all notices required by the Statutory Requirements.
 - 2 The Contractor's obligation to the Employer to comply with the Statutory Requirements under clause 2·1·1 shall not apply to the extent that the relevant part or parts of the Employer's Requirements state specifically that the Employer's Requirements comply with the Statutory Requirements.
 - 3 The Contractor shall pass to the Employer all approvals received by the Contractor in connection with the Statutory Requirements.
 - 4 The Contractor shall comply with any instruction and be bound by any decision of the Employer issued or made under or pursuant to these Conditions and any such instruction or decision shall have effect except to the extent that it is varied by the Employer or under the dispute resolution procedures of this Contract.

Materials, goods and workmanship

- 2·2**
- 1 All materials and goods for the Works shall, so far as procurable, be of the kinds and standards described in the Employer's Requirements or, if not there specifically described, as described in the Contractor's Proposals or other Contractor's Design Documents. The Contractor shall not substitute any materials or goods so described without the Employer's consent which, if given, shall not relieve the Contractor of his other obligations.
 - 2 Workmanship for the Works shall be of the standards described in the Employer's Requirements or, if not there specifically described, as described in the Contractor's Proposals or other Contractor's Design Documents.
 - 3 The Contractor shall before carrying out the relevant work and/or ordering the relevant goods or materials provide the Employer with such samples of the standard of workmanship or the quality of the goods or materials which the Contractor intends to provide as are specifically referred to in the Employer's Requirements or in the Contractor's Proposals.
 - 4 The Contractor shall at the Employer's request provide him with reasonable proof that the materials and goods used comply with this clause 2·2.
 - 5 The Contractor shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.

Possession

Date of Possession – progress

- 2·3**
- On the Date of Possession possession of the site or, in the case of a Section, possession of the relevant part of the site shall be given to the Contractor who shall thereupon begin the construction of the Works or Section and regularly and diligently proceed with and complete the same on or before the relevant Completion Date. For Works insurance purposes the Contractor shall retain possession:
- 1 of the site and the Works up to and including the date of issue of the Practical Completion Statement; or
 - 2 of each Section and the relevant part of the site up to and including the date of issue of the Section Completion Statement for that Section and, in respect of any balance of the site, up to

and including the date of issue of the Practical Completion Statement

and, subject to clause 2·30 and section 8, the Employer shall not be entitled to take possession of any part or parts of the Works or Section until such date.

Deferment of possession

- 2·4** If the Contract Particulars state that clause 2·4 applies in respect of the Works or a Section, the Employer may defer the giving of possession of the site or relevant part of it for a period not exceeding 6 weeks or lesser period stated in the Contract Particulars, calculated from the relevant Date of Possession.

Early use by Employer

- 2·5**
- 1 Notwithstanding clause 2·3, the Employer may, with the Contractor's consent, use or occupy the site or the Works or part of them, whether for storage or otherwise, before the date of issue of the Practical Completion Statement or relevant Section Completion Statement. Before the Contractor gives his consent to such use or occupation, the Party responsible for the Works Insurance Policy and/or, where there are Existing Structures, for any insurance cover relating to them shall notify the insurers and obtain confirmation that such use or occupation will not prejudice the insurance.
 - 2 Where Insurance Option A applies and/or the Contractor is to cover his own or any other risks in relation to any Existing Structures and any insurers' confirmation is conditional on an additional premium being paid, the Contractor shall notify the Employer of its amount. If the Employer continues to require such use or occupation, any additional premium shall be added to the Contract Sum and the Contractor shall if requested produce the receipt for it to the Employer.

Work not forming part of the Contract

- 2·6** In regard to any work not forming part of this Contract which the Employer requires to be carried out by the Employer himself or by any Employer's Person:
- 1 where the Contract Documents provide the information necessary to enable the Contractor to carry out and complete the Works or each relevant Section in accordance with this Contract, the Contractor shall permit the execution of such work;
 - 2 where the Contract Documents do not provide the information referred to in clause 2·6·1, the Employer may with the Contractor's consent arrange for the execution of that work.

Supply of Documents, Setting Out etc.

Contract Documents

- 2·7**
- 1 The Contract Documents shall remain in the custody of the Employer and shall be available at all reasonable times for inspection by the Contractor.
 - 2 Immediately after the execution of this Contract the Employer, without charge to the Contractor, shall (unless previously provided or unless the BIM Protocol or other communications protocol requires otherwise) provide him with one copy, certified on behalf of the Employer, of the Contract Documents, together with any pre-construction information required to be provided to the Contractor under regulation 4 of the CDM Regulations.
 - 3 The Contractor shall keep on the site or accessible there to the Employer's Agent at all reasonable times copies of the Contract Documents and the Contractor's Design Documents.
 - 4 Neither Party shall divulge or use except for the purposes of this Contract:
 - 1 the Contract Documents and the Contractor's Design Documents; or
 - 2 any confidential information of the other Party,
 save that the Employer may use in connection with the maintenance, use, repair, advertisement, letting or sale of the Works any of the documents supplied by the Contractor.
 - 5 Where the Employer is a Local or Public Authority or other body of the type mentioned in Supplemental Provision 11, his obligations of confidentiality shall be subject to that

Supplemental Provision.

Construction information

- 2·8** Save for any Contractor's Design Documents contained in the Contractor's Proposals, the Contractor shall without charge provide to the Employer copies of the Contractor's Design Documents as and when necessary from time to time in accordance with the Design Submission Procedure and the Contractor shall not commence any work to which such a document relates before that procedure has been complied with.

Site boundaries

- 2·9** The Employer shall define the boundaries of the site.

Discrepancies and Divergences

Divergence in Employer's Requirements and definition of site boundary

- 2·10** ·1 Any divergence between the Employer's Requirements and the definition of the site boundary as provided under clause 2·9 shall be corrected by an instruction issued by the Employer and such instruction shall be treated as a Change.
 ·2 If the Employer or the Contractor becomes aware of any such divergence he shall immediately give the other notice with details.

Preparation of Employer's Requirements

- 2·11** Subject to clause 2·15, the Contractor shall not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them.

Employer's Requirements – inadequacy

- 2·12** ·1 If an inadequacy is found in any design in the Employer's Requirements and the Contractor under clause 2·11 is not responsible for verifying its adequacy, then, if or to the extent that the inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be corrected, altered or modified accordingly.
 ·2 Subject to clause 2·15, any correction, alteration or modification under clause 2·12·1 shall be treated as a Change.

Notice of discrepancies etc.

- 2·13** If the Contractor becomes aware of any inadequacy as is referred to in clause 2·12 or any other discrepancy or divergence in or between any of the following, namely:
 ·1 the Employer's Requirements;
 ·2 the Contractor's Proposals and other Contractor's Design Documents; and
 ·3 any instruction issued by the Employer under these Conditions;

he shall immediately give notice with appropriate details to the Employer, who shall issue instructions in that regard.

Discrepancies in documents

- 2·14** ·1 Where the discrepancy or divergence to be notified under clause 2·13 is within or between the Contractor's Proposals and/or other Contractor's Design Documents, the Contractor shall notify the Employer of his proposed amendment to remove it; and (subject to compliance with Statutory Requirements) the Employer shall decide between the discrepant items or otherwise may accept the Contractor's proposed amendment: the Contractor shall be obliged to comply with the decision or acceptance by the Employer without cost to the Employer.
 ·2 Where the discrepancy is within the Employer's Requirements (including any Change to them)

the Contractor's Proposals shall prevail (subject to compliance with Statutory Requirements), without any adjustment of the Contract Sum. Where the Contractor's Proposals do not deal with the discrepancy, the Contractor shall notify the Employer of his proposed amendment to deal with it and the Employer shall either agree the proposed amendment or decide how the discrepancy is to be dealt with; that agreement or decision shall be notified to the Contractor and treated as a Change.

Divergences from Statutory Requirements

- 2·15** ·1 If the Contractor or Employer becomes aware of a divergence between the Statutory Requirements and
 - 1 the Employer's Requirements (including any Change); or
 - 2 the Contractor's Proposals or other Contractor's Design Documents,
 he shall immediately give the other notice specifying the divergence; and the Contractor shall notify the Employer of his proposed amendment for removing it. With the Employer's consent, the Contractor shall entirely at his own cost, save as provided in clause 2·15·2, complete the design and construction of the Works in accordance with the amendment and the Employer shall note the amendment on the Contract Documents.
- 2 ·1 If after the Base Date there is a change in the Statutory Requirements which necessitates an alteration or modification to the Works, such alteration or modification shall be treated as a Change.
- 2 If any amendment to the Contractor's Proposals becomes necessary for conformity with the terms of any permission or approval made by a decision of the relevant authority after the Base Date for the purposes of Development Control Requirements, such amendment shall be treated as a Change provided that such treatment is not precluded in the Employer's Requirements.^[36]
- 3 If any amendment to the part or parts of the Employer's Requirements to which clause 2·1·2 refers becomes necessary for conformity with Statutory Requirements the Employer shall issue an instruction requiring a Change.

Emergency compliance with Statutory Requirements

- 2·16** ·1 If in an emergency compliance with the Statutory Requirements necessitates the Contractor supplying materials and/or executing work before receiving the Employer's consent under clause 2·15·1, the Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance.
- 2 The Contractor shall forthwith notify the Employer of the emergency and the steps that he is taking under clause 2·16·1.

Design Work – liabilities and limitation

- 2·17** ·1 Insofar as his design of the Works is comprised in the Contractor's Proposals and in what he is to complete in accordance with the Employer's Requirements and these Conditions (including any further design that he is required to carry out as a result of a Change), the Contractor shall in respect of any inadequacy in such design have the same liability to the Employer, whether under statute or otherwise, as would an architect or other appropriate professional designer who holds himself out as competent to take on work for such design and who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design.
- 2 Where and to the extent that this Contract involves the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings, the clause 2·17·1 reference to the Contractor's liability includes liability under the Defective Premises Act 1972.
- 3 Where or to the extent that this Contract does not involve the Contractor in taking on work for

^[36] See the Design and Build Contract Guide.

or in connection with the provision of a dwelling or dwellings to which that Act applies, the Contractor's liability for loss of use, loss of profit or other consequential loss arising in respect of the liability of the Contractor referred to in clause 2·17·1 shall be limited to the amount, if any, stated in the Contract Particulars; but such a limitation shall not apply to or be affected by any liability for liquidated damages under clause 2·29.

Fees, Royalties and Patent Rights

Fees or charges legally demandable

- 2·18** The Contractor shall pay all fees or charges (including any rates or taxes) legally demandable under any Statutory Requirement and indemnify the Employer against any liability resulting from any failure to do so. No adjustment shall be made to the Contract Sum in respect of the amount of any such fees or charges (including any rates or taxes other than VAT) unless they are stated by way of a Provisional Sum in the Employer's Requirements, in which case 4·2 shall apply.

Patent rights and royalties – Contractor's indemnity

- 2·19** Where the carrying out of the Works involves the supply or use of any patented article, process or invention or drawings or models of buildings that are the subject of copyright, other than drawings or models provided by the Employer, all royalties or other sums payable in respect of such supply and use shall be deemed to have been included in the Contract Sum or, where appropriate, the quoted adjustment to that sum, and the Contractor shall indemnify the Employer from and against all claims and proceedings which may be brought or made against the Employer, and all damages, costs and expense to which he may be put, by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes and inventions or infringing or being held to have infringed copyright.

Patent rights – Instructions

- 2·20**
- 1 Where in order to comply with the Employer's instructions, it is necessary for the Contractor in carrying out the Works to supply and/or use any patented article, process or invention, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights relating to it and all royalties, damages or other sums which the Contractor may be liable to pay to the persons entitled to such rights shall be added to the Contract Sum.
 - 2 If prior to the instructions being carried out the Employer or the Contractor is or becomes aware that such supply or use may infringe any patent rights, he shall promptly notify and consult the other and the instructions shall not take effect unless confirmed by the Employer.

Unfixed Materials and Goods – property, risk etc.

Materials and goods – on site

- 2·21** Site Materials shall not be removed from storage on or adjacent to the Works except for use on the Works without the Employer's consent. Where their value has been included in any Interim Payment, they shall upon such payment become the Employer's property, but, subject to Insurance Option B or C (if applicable), the Contractor shall remain responsible for loss or damage to them.

Materials and goods – off site

- 2·22** Where the value of any Listed Items has in accordance with clause 4·15 been included in any Interim Payment, those items shall become the Employer's property and thereafter the Contractor shall not, except for use upon the Works, remove or cause or permit them to be moved or removed from the premises where they are. The Contractor shall be responsible for any loss of or damage to them and for the cost of their storage, handling and insurance until they are delivered to and placed on or adjacent to the Works. As from such delivery the provisions of clause 2·21 (except the words "Where their value" to "Employer's property, but,") shall apply to such items.

Adjustment of Completion Date

Related definitions and interpretation

2·23 In clauses 2·24 to 2·26 and, so far as relevant, in the other clauses of these Conditions:

- 1 any reference to delay or extension of time includes any further delay or further extension of time;
- 2 'Pre-agreed Adjustment' means the fixing of a revised Completion Date for the Works or a Section under Supplemental Provision 2 or by the Confirmed Acceptance of an Acceleration Quotation;
- 3 'Relevant Omission' means the omission of any work or obligation through an instruction for a Change under clause 3·9.

Notice by Contractor of delay to progress

2·24 ·1 If and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall forthwith give notice to the Employer of the material circumstances, including the cause or causes of the delay, and shall identify in the notice any event which in his opinion is a Relevant Event.

·2 In respect of each event identified in the notice the Contractor shall, if practicable in such notice or otherwise in writing as soon as possible thereafter, give particulars of its expected effects, including an estimate of any expected delay in the completion of the Works or any Section beyond the relevant Completion Date.

·3 The Contractor shall forthwith notify the Employer of any material change in the estimated delay or in any other particulars and supply such further information as the Employer may at any time reasonably require.

Fixing Completion Date

2·25 ·1 If on receiving a notice and particulars under clause 2·24:

- 1 any of the events which are stated to be a cause of delay is a Relevant Event; and
- 2 completion of the Works or of any Section is likely to be delayed thereby beyond the relevant Completion Date,

then, save where these Conditions expressly provide otherwise, the Employer shall give an extension of time by fixing such later date as the Completion Date for the Works or Section as he then estimates to be fair and reasonable.

·2 Whether or not an extension is given, the Employer shall notify the Contractor of his decision in respect of any notice under clause 2·24 as soon as is reasonably practicable and in any event within 12 weeks of receipt of the required particulars. Where the period from receipt to the Completion Date is less than 12 weeks, he shall endeavour to do so prior to the Completion Date.

·3 The Employer shall in his decision state:

- 1 the extension of time that he has attributed to each Relevant Event; and
- 2 (in the case of a decision under clause 2·25·4 or 2·25·5) the reduction in time that he has attributed to each Relevant Omission.

·4 After the first fixing of a later Completion Date in respect of the Works or a Section, either under clause 2·25·1 or by a Pre-agreed Adjustment, but subject to clauses 2·25·6·3 and 2·25·6·4, the Employer may by notice to the Contractor, giving the details referred to in clause 2·25·3, fix a Completion Date for the Works or that Section earlier than that previously so fixed if the fixing of such earlier Completion Date is fair and reasonable, having regard to any Relevant Omissions for which instructions have been issued after the last occasion on which a new Completion Date was fixed for the Works or for that Section.

·5 After the Completion Date for the Works or for a Section, if this occurs before the date of practical completion, the Employer may, and not later than the expiry of 12 weeks after the date of practical completion shall, by notice to the Contractor, giving the details referred to in clause 2·25·3:

- 1 fix a Completion Date for the Works or for the Section later than that previously fixed if it is fair and reasonable having regard to any Relevant Events, whether on reviewing a previous decision or otherwise and whether or not the Relevant Event has been specifically notified by the Contractor under clause 2·24·1; or

- 2 subject to clauses 2·25·6·3 and 2·25·6·4, fix a Completion Date earlier than that previously fixed if that is fair and reasonable having regard to any instructions for Relevant Omissions issued after the last occasion on which a new Completion Date was fixed for the Works or Section; or
- 3 confirm the Completion Date previously fixed.
- 6 Provided always that:
 - 1 the Contractor shall constantly use his best endeavours to prevent delay in the progress of the Works or any Section, however caused, and to prevent the completion of the Works or Section being delayed or further delayed beyond the relevant Completion Date;
 - 2 in the event of any delay the Contractor shall do all that may reasonably be required to the satisfaction of the Employer to proceed with the Works or Section;
 - 3 no decision of the Employer under clause 2·25·4 or 2·25·5·2 shall fix a Completion Date for the Works or any Section earlier than the relevant Date for Completion; and
 - 4 no decision under clause 2·25·4 or 2·25·5·2 shall alter the length of any Pre-agreed Adjustment except where that adjustment relates to a Change and that Change is itself the subject of a Relevant Omission.

Relevant Events

2·26 The following are the Relevant Events referred to in clauses 2·24 and 2·25:

- 1 Changes and any other matters or instructions which under these Conditions are to be treated as, or as requiring, a Change;
- 2 Employer's instructions:
 - 1 under clause 2·13, except for any instructions relating to a discrepancy or divergence in or between the Contractor's Proposals and/or other Contractor's Design Documents;
 - 2 under clause 3·10 or 3·11; or
 - 3 for the opening up for inspection or testing of any work, materials or goods under clause 3·12 or 3·13·3 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;
- 3 deferment of the giving of possession of the site or any Section under clause 2·4;
- 4 compliance with clause 3·15·1 or with Employer's instructions under clause 3·15·2;
- 5 suspension by the Contractor under clause 4·11 of the performance of any or all of his obligations under this Contract;
- 6 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person;
- 7 the carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations in relation to the Works, or the failure to carry out such work;
- 8 exceptionally adverse weather conditions;
- 9 loss or damage occasioned by any Specified Peril;
- 10 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 11 strike, lock-out or local combination of workmen affecting any trade employed upon the Works or engaged in the preparation, manufacture or transportation of any of the goods or materials required for them or any persons engaged in design work for the Works;
- 12 the exercise after the Base Date by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works;
- 13 delay in receipt of any necessary permission or approval of any statutory body which the Contractor has taken all practicable steps to avoid or reduce;

·14 force majeure.

Practical Completion, Lateness and Liquidated Damages

Practical completion

- 2·27** When practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clauses 2·37 and 3·16 in respect of the supply of documents and information, then:
- 1 in the case of the Works, the Employer shall forthwith issue a statement to that effect ('the Practical Completion Statement');
 - 2 in the case of a Section, he shall forthwith issue a statement of practical completion of that Section (a 'Section Completion Statement');

and practical completion of the Works or the Section shall be deemed for all the purposes of this Contract to have taken place on the date stated in that statement.

Non-Completion Notice

- 2·28** If the Contractor fails to complete the Works or a Section by the relevant Completion Date, the Employer shall issue a notice to that effect (a 'Non-Completion Notice'). If a new Completion Date is fixed after the issue of such a notice, such fixing shall cancel that notice and the Employer shall where necessary issue a further notice.

Payment or allowance of liquidated damages

- 2·29**
- 1 Provided:
 - 1 the Employer has issued a Non-Completion Notice for the Works or a Section; and
 - 2 the Employer has notified the Contractor before the due date for the final payment under clause 4·24·5 that he may require payment of, or may withhold or deduct, liquidated damages,
 the Employer may, not later than 5 days before the final date for payment of the amount payable under clause 4·24, give notice to the Contractor in the terms set out in clause 2·29·2.
 - 2 A notice from the Employer under clause 2·29·1 shall state that for the period between the Completion Date and the date of practical completion of the Works or that Section:
 - 1 he requires the Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or lesser rate stated in the notice, in which event the Employer may recover the same as a debt; and/or
 - 2 that he will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the Contractor.^[37]
 - 3 If the Employer fixes a later Completion Date for the Works or a Section, the Employer shall pay or repay to the Contractor any amounts recovered, allowed or paid under clause 2·29 for the period up to that later Completion Date.
 - 4 If the Employer in relation to the Works or a Section has notified the Contractor in accordance with clause 2·29·1·2 that he may require payment of, or may withhold or deduct, liquidated damages, then, unless the Employer states otherwise in writing, clause 2·29·1·2 shall remain satisfied in relation to the Works or Section, notwithstanding the cancellation of the relevant Non-Completion Notice and issue of any further Non-Completion Notice.

Partial Possession by Employer

Contractor's consent

^[37] In addition to the notice under clause 2·29·2, the Employer, if he intends to withhold or deduct all or any of the liquidated damages payable, must give the appropriate Pay Less Notice under clause 4·9·5.

- 2·30** If at any time or times before the Practical Completion Statement or relevant Section Completion Statement the Employer wishes to take possession of any part or parts of the Works or a Section and the Contractor's consent has been obtained, then, notwithstanding anything expressed or implied elsewhere in this Contract, the Employer may take possession of such part or parts. The Contractor shall thereupon give the Employer notice identifying the part or parts taken into possession and giving the date when the Employer took possession ('the Relevant Part' and 'the Relevant Date' respectively).

Practical completion date

- 2·31** For the purposes of clauses 2·35 and 4·18·2, practical completion of the Relevant Part shall be deemed to have occurred, and the Rectification Period in respect of the Relevant Part shall be deemed to have commenced, on the Relevant Date.

Defects etc. – Relevant Part

- 2·32** When any defects, shrinkages or other faults in the Relevant Part which the Employer has required to be made good under clause 2·35 have been made good, he shall issue a notice to that effect.

Insurance – Relevant Part

- 2·33** As from the Relevant Date the Works insurance obligation under Insurance Option A, B or C·2, whichever applies, shall cease in respect of the Relevant Part (but not otherwise) and the Existing Structures (if any) shall from that date be deemed to include the Relevant Part.

Liquidated damages – Relevant Part

- 2·34** As from the Relevant Date, the rate of liquidated damages stated in the Contract Particulars in respect of the Works or Section containing the Relevant Part shall reduce by the same proportion as the value of the Relevant Part bears to the Contract Sum or to the relevant Section Sum, as shown in the Contract Particulars.

Defects

Schedules of defects and instructions

- 2·35** If any defects, shrinkages or other faults in the Works or a Section appear within the relevant Rectification Period due to any failure of the Contractor to comply with his obligations under this Contract:

- 1 such defects, shrinkages and other faults shall be specified by the Employer in a schedule of defects which he shall deliver to the Contractor as an instruction not later than 14 days after the expiry of that Rectification Period; and
- 2 prior to issue of that schedule, the Employer may whenever he considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this clause 2·35·2 shall be issued after delivery of that schedule or more than 14 days after the expiry of the relevant Rectification Period.

Within a reasonable time after receipt of such schedule or instructions, the defects, shrinkages and other faults shall at no cost to the Employer be made good by the Contractor unless the Employer shall otherwise instruct. If he so instructs otherwise, an appropriate deduction may be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good.

Notice of Completion of Making Good

- 2·36** When the defects, shrinkages or other faults in the Works or a Section which under clause 2·35 the Employer has required to be made good have been made good, he shall issue a notice to that effect (a 'Notice of Completion of Making Good'). That notice shall not be unreasonably delayed or withheld, and completion of that making good shall for the purposes of this Contract be deemed to have taken place on the date stated in that notice.

Contractor's Design Documents

As-built Drawings

2·37 The Contractor, in addition to his obligations under the CDM Regulations in relation to information for the health and safety file, shall, before practical completion of the Works or relevant Section and without further charge to the Employer, supply for retention and use by the Employer such Contractor's Design Documents and related information as is specified in the Contract Documents or as the Employer may reasonably require that show or describe the Works as built or relate to the maintenance and operation of them or their installations.

Copyright and use

- 2·38**
- 1 Subject to any rights in any designs, drawings and other documents supplied to the Contractor for the purposes of this Contract by or on behalf of the Employer, all rights including (without limitation) copyright in all Contractor's Design Documents shall remain vested in the Contractor.
 - 2 Subject to all sums due and payable under this Contract to the Contractor having been paid, the Employer shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. That licence shall enable the Employer to copy and use the Contractor's Design Documents for an extension of the Works but shall not include any right or licence to reproduce the designs contained in them for any such extension.
 - 3 The licence shall be assignable to any owner from time to time of the Works or any part of them and may be sub-licensed to any owner or tenant of the Works or part of them and to any person engaged for the purposes permitted by clause 2·38·2.
 - 4 The Contractor shall not be liable for any use by the Employer of any of the Contractor's Design Documents for any purpose other than that for which they were prepared.

Section 3 Control of the Works

Access and Representatives

Access for Employer's Agent

- 3·1** The Employer's Agent and any person authorised by him or the Employer shall at all reasonable times have access to the Works and to the workshops or other premises of the Contractor where work is being prepared for this Contract. When work is to be prepared in workshops or other premises of a sub-contractor the Contractor shall by a term in the sub-contract secure so far as possible a similar right of access to those workshops or premises for the Employer and any person authorised by him and take any steps reasonably necessary to make that right effective. Access under this clause 3·1 may be subject to such reasonable restrictions as are necessary to protect proprietary rights.

Site Manager

- 3·2** The Contractor shall prior to the commencement of work on site appoint a full-time Site Manager, approved by the Employer, to act as the Contractor's representative there, in charge of the Works. The Contractor shall ensure that the appointee, or a competent deputy, is on site at all material times and, if the appointee ceases to hold the post, shall promptly appoint a replacement approved by the Employer. Any instructions issued to the Site Manager or his deputy shall be treated as issued to the Contractor.

Sub-Contracting

Consent to sub-contracting

- 3·3**
- 1 Save for any sub-contract entered into in accordance with Supplemental Provision 1, where it applies:
 - 1 the Contractor shall not without the Employer's consent sub-contract the whole or any part of the Works;
 - 2 the Contractor shall not without the Employer's consent sub-contract the design for the Works or any part of them.

In no case shall any such consent or any sub-contracting in any way affect the Contractor's obligations under any other provision of this Contract.

- 2 The provisions of this clause 3·3 and of clause 3·4 shall not apply to the execution of part of the Works by a Statutory Undertaker, who shall not in that capacity be a sub-contractor within the terms of this Contract.

Conditions of sub-contracting

- 3·4** Where considered appropriate, the Contractor shall engage the sub-contractor using the JCT Design and Build Sub-Contract. It shall be a condition of any sub-contract that^[38]:
- 1 the sub-contractor's employment under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor's employment under this Contract;
 - 2 the sub-contract shall provide:
 - 1 that, except for use on the Works, no Site Materials delivered to the Works by or for the sub-contractor shall be removed without the Contractor's written consent (such consent not to be unreasonably delayed or withheld) and (in addition to any provision for earlier vesting in the Contractor of title to any Listed Items for the purposes of clause 4·15·2·1

^[38] The JCT Design and Build Sub-Contract (DBSub) meets the requirements of clause 3·4 and also those of paragraphs A·3 and B·4 respectively of JCT Fluctuations Options A and B.

of these Conditions) that:

- 1 where, in accordance with clause 4·12 or 4·13 and clause 4·14 of these Conditions, the value of any Site Materials has been included in any Interim Payment and that Interim Payment has been paid by the Employer to the Contractor, they shall upon such payment become, and the sub-contractor shall not deny that they have become, the Employer's property;
- 2 if the Contractor pays the sub-contractor for any Site Materials before their value is included in an Interim Payment, they shall upon such payment become the Contractor's property;
- 2 that the sub-contractor shall give access to workshops or other premises in accordance with clause 3·1 of these Conditions;
- 3 that each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations;
- 4 in terms equivalent to those of clause 4·9·6 of these Conditions, that if by a final date for payment under the sub-contract the Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made;
- 5 that where the Rights Particulars provide for the grant of third party rights from and/or for the execution and delivery of collateral warranties by the sub-contractor:
 - 1 the sub-contract and, where applicable, those collateral warranties shall if those particulars require be executed as deeds;
 - 2 any third party rights required shall vest on receipt of notice from the Contractor to that effect and any collateral warranty required shall be executed and delivered by the sub-contractor within 14 days of receipt of the Contractor's notice requiring execution;
 - 3 the terms of and those governing such third party rights or collateral warranties shall in each case be consistent with those of clauses 2·26 and 2·27 and Schedule 6 of the JCT Design and Build Sub-Contract Conditions;
- 3 where documents or information and/or the grant of licences are or may be required from the sub-contractor for the BIM Protocol, where applicable, and/or for the purposes of clauses 2·37 and 3·16 of these Conditions, the sub-contract shall also provide for the supply and grant to and by the sub-contractor of all information and licences reasonably necessary for that purpose.

The Contractor shall not give such consent as is referred to in clause 3·4·2·1 without the Employer's prior consent under clause 2·21 of these Conditions.

Employer's Instructions

Compliance with instructions

- 3·5** The Contractor shall forthwith comply with all instructions issued to him by the Employer on any matter on which these Conditions expressly empower the Employer to issue instructions, save that:
- 1 where an instruction requires a Change of the type referred to in clause 5·1·2, the Contractor need not comply to the extent that he notifies a reasonable objection to it to the Employer;
 - 2 in the case of a notification by the Contractor under clause 2·20·2, the Contractor need not comply pending confirmation of the instruction.

Non-compliance with instructions

- 3·6** Subject to clauses 3·5 and 3·9, if within 7 days after receipt of a notice from the Employer requiring compliance with an instruction the Contractor does not comply, the Employer may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction may be made from the Contract Sum.

Instructions other than in writing

- 3·7** ·1 Where the Employer gives an instruction otherwise than in writing, it shall be of no immediate effect but the Contractor shall confirm its terms in writing to the Employer within 7 days, and, if he does not dissent by notice to the Contractor within 7 days from receipt of the Contractor's confirmation, it shall take effect as from the expiry of the latter 7 day period.
- 2 If prior to or within 7 days from receipt of the Contractor's confirmation the Employer confirms the terms of the instruction in writing, it shall take effect from the date and in the terms of the Employer's confirmation.
- 3 If neither the Contractor nor the Employer confirms such an instruction in the manner and time stated but the Contractor nevertheless complies with it, the Employer may at any time prior to the due date for final payment under clause 4·24·5 confirm it with retrospective effect.

Provisions empowering instructions

- 3·8** On receipt of an instruction the Contractor may request the Employer to notify him which provision of these Conditions empowers its issue and the Employer shall forthwith comply with the request. If the Contractor thereafter complies with that instruction with neither Party then having invoked any dispute resolution procedure under this Contract to establish the Employer's powers in that regard, the instruction shall be deemed to have been duly given under the specified provision.

Instructions requiring Changes

- 3·9** ·1 The Employer may issue instructions requiring a Change, subject to clause 3·9·4 and provided that the Employer may not effect a Change which is, or which makes necessary, an alteration or modification in the design of the Works without the Contractor's consent.
- 2 Any instruction of the type referred to in clause 5·1·2 shall be subject to the Contractor's right of reasonable objection set out in clause 3·5·1.
- 3 No Change required or sanctioned by the Employer shall vitiate this Contract.
- 4 The Contractor shall, within a reasonable time after receipt of an instruction effecting a Change or of an instruction in regard to the expenditure of a Provisional Sum included in the Employer's Requirements, notify the Employer whether in his capacity as Principal Designer and/or Principal Contractor he has any objection to such instruction. If the Contractor has any reasonable objection the Employer shall, to the reasonable satisfaction of the Contractor, vary the terms of the instruction so as to remove that objection; and, until the Employer has so varied the terms of the instruction, the Contractor shall not be required pursuant to clause 2·1 to comply with such instruction.

Postponement of work

- 3·10** The Employer may issue instructions in regard to the postponement of any work to be executed under this Contract.

Instructions on Provisional Sums

- 3·11** The Employer shall issue instructions in regard to the expenditure of Provisional Sums included in the Employer's Requirements.

Inspection – tests

- 3·12** The Employer may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work. The cost of that opening up or testing (including the cost of making good) shall be added to the Contract Sum unless provided for in the Employer's Requirements or in the Contractor's Proposals or unless the inspection or test shows that the materials, goods or work are not in accordance with this Contract.

Work not in accordance with the Contract

- 3·13** If any work, materials or goods are not in accordance with this Contract the Employer, in addition to his other powers, may:

- 1 issue instructions in regard to the removal from the site of all or any of such work, materials or goods;
- 2 after consultation with the Contractor, issue such Change instructions (to which the proviso in clause 3·9·1 applies) as are a reasonably necessary consequence of any instruction under clause 3·13·1 (but to the extent that such instructions are reasonably necessary, no addition shall be made to the Contract Sum and no extension of time shall be given); and/or
- 3 having due regard to the Code of Practice set out in Schedule 4, issue such instructions under clause 3·12 to open up for inspection or to test as are reasonable in all the circumstances to establish to his reasonable satisfaction the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that those instructions are reasonable, whatever the results of the opening up, no addition shall be made to the Contract Sum but clauses 2·25 and 2·26·2·3 shall apply unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract.

Workmanship not in accordance with the Contract

- 3·14** Where there is any failure to comply with clause 2·1 in regard to the carrying out of work in a proper and workmanlike manner or in accordance with the Construction Phase Plan, the Employer, in addition to his other powers, may, after consultation with the Contractor, issue such instructions (whether requiring a Change or otherwise) as are in consequence reasonably necessary. To the extent that such instructions are reasonably necessary, no addition shall be made to the Contract Sum and no extension of time shall be given.

Antiquities

- 3·15**
- 1 All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating it during the progress of the Works shall become the Employer's property. Upon discovery of any such object the Contractor shall forthwith:
 - 1 use his best endeavours not to disturb the object and cease work if and insofar as its continuance would endanger the object or prevent or impede its excavation or removal;
 - 2 take all steps necessary to preserve the object in the exact position and condition in which it was found; and
 - 3 inform the Employer of its discovery and precise location.
 - 2 The Employer shall issue instructions as to action to be taken concerning any object reported under clause 3·15·1, which (without limiting his powers) may require the Contractor to permit the examination, excavation or removal of the object by a third party.

CDM Regulations

- 3·16** Each Party undertakes to the other that in relation to the Works and site he will duly comply with applicable CDM Regulations. In particular but without limitation:
- 1 where the Contractor is not the Principal Designer, the Employer shall ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;
 - 2 where the Contractor is and while he remains the Principal Designer, he shall comply with the duties of a Principal Designer and shall without charge prepare, and deliver to the Employer, the health and safety file;
 - 3 the Contractor shall comply with regulations 8 to 10 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;^[39]
 - 4 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation

[39] Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8. (As to the CDM Regulations generally, see the Design and Build Contract Guide.)

15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;

- 5 if the Employer appoints a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

Section 4 Payment

Contract Sum and Adjustments

Adjustment only under the Conditions

- 4·1** The Contract Sum shall not be adjusted or altered in any way other than in accordance with the express provisions of these Conditions.

Items included in adjustments

- 4·2** The Contract Sum shall be adjusted by:

- 1 any amount agreed by the Employer and the Contractor in respect of Changes and other work of the types referred to in clause 5·2 and the amount of each Valuation;
- 2 any amount agreed by Confirmed Acceptance of an Acceleration Quotation;
- 3 (where the Contract Particulars state that a Fluctuations Provision applies) any amounts payable or allowable under that provision;
- 4 any other amounts referred to in clause 4·12·2 or 4·13·2 (excluding any loss and/or expense to the extent included under clause 4·2·2) and any other deductions referred to in clause 4·12·3 or 4·13·3;
- 5 the deduction of all Provisional Sums included in the Employer's Requirements; and
- 6 any other amount which under this Contract is to be added to the Contract Sum or may be deducted from it.

Taking adjustments into account

- 4·3** Where these Conditions provide that an amount is to be added to, deducted from or dealt with by adjustment of the Contract Sum, then, as soon as the amount is ascertained in whole or in part, the ascertained amount shall be taken into account in the next Interim Payment.

Taxes

VAT

- 4·4**
- 1 The Contract Sum is exclusive of VAT and in relation to each payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.
 - 2 If after the Base Date the supply of any goods or services to the Employer becomes exempt from VAT there shall be paid to the Contractor an amount equal to the input tax on the supply to the Contractor of goods and services that contribute to the Works which as a consequence of that exemption the Contractor cannot recover.

Construction Industry Scheme (CIS)

- 4·5** If the Employer is or at any time up to the final payment under clause 4·9 becomes a 'contractor' for the purposes of the CIS^[40], his obligation to make any payment under this Contract is subject to the provisions of the CIS.

^[40] See the Contract Particulars (Fourth Recital and clause 4·5).

Payments and Notices – general provisions

Advance payment

- 4·6** Where the Contract Particulars state that clause 4·6 applies, and an advance payment is to be made, it shall be paid to the Contractor on the date and reimbursed to the Employer on the terms stated in the Contract Particulars, save that, if the Contract Particulars state that an advance payment bond is required, payment shall only be made if the Contractor has provided to the Employer a bond in the terms set out in Part 1 of Schedule 6 from a surety approved by the Employer.^[41]

Interim Payments – Contractor's Interim Payment Applications, due dates and Payment Notices

- 4·7**
- 1 Interim Payments shall be made by the Employer to the Contractor in accordance with section 4 and whichever of Alternative A (Stage Payments) or Alternative B (Periodic Payments) is stated in the Contract Particulars to apply.
 - 2 During the period up to the due date for the final payment fixed under clause 4·24·5 and subject to clause 4·7·3, the monthly due dates for Interim Payments by the Employer shall in each case be the date 7 days after the relevant Interim Valuation Date.
 - 3 In relation to each Interim Payment, the Contractor shall make an application to the Employer (an 'Interim Payment Application'), stating the sum that the Contractor considers to be due to him at the due date and the basis on which that sum has been calculated. Where the Interim Payment Application is received no later than the relevant Interim Valuation Date, the due date shall be the date that would apply under clause 4·7·2; if the Interim Payment Application is received later, the due date shall be 7 days after the date of receipt by the Employer.
 - 4 Each Interim Payment Application shall be accompanied by such further information as may be specified in the Employer's Requirements.
 - 5 Not later than 5 days after each due date the Employer shall give a notice (a 'Payment Notice') to the Contractor, stating the sum that he considers to be or have been due to the Contractor at the due date, calculated in accordance with clause 4·12 or 4·13 and clause 4·14, and the basis on which that sum has been calculated.

Relevant statement and Final Payment Notice

- 4·8** Not later than 5 days after the due date for the final payment fixed under clause 4·24·5 and notwithstanding any dispute regarding the relevant statement (as defined in clause 4·24·5·3), the Party by whom the statement shows the final payment as payable ('the paying Party') shall give a notice (a 'Final Payment Notice') to the other Party, stating the sum that the paying Party considers to be or have been due under clause 4·24·2 at the due date and the basis on which that sum has been calculated.

Interim and final payments – final date and amount

- 4·9**
- 1 The final date for payment of each Interim Payment and the final payment shall be 14 days from its due date.
 - 2 Subject to any Pay Less Notice given by the Employer under clause 4·9·5, the Employer shall pay the sum stated as due in the Payment Notice on or before the final date for payment.
 - 3 If a Payment Notice is not given in accordance with clause 4·7·5, the Employer shall, subject to any Pay Less Notice under clause 4·9·5, pay the Contractor the sum stated as due in the Interim Payment Application.
 - 4 In the case of the final payment, subject to any Pay Less Notice under clause 4·9·5, the paying Party shall pay the sum stated as due in the Final Payment Notice or, if such notice is not given, the balance stated in the relevant statement on or before the final date for payment.

^[41] As to approval of sureties, see the Design and Build Contract Guide.

·5 Where:

- 1 the Employer intends to pay less than the sum stated as due from him in a Payment Notice or Interim Payment Application; or
- 2 the paying Party intends to pay less than the sum so stated as due in the Final Payment Notice or, in default of such notice, less than the amount stated as due in the relevant statement,

the Party by whom the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention in accordance with clause 4·10·1 (a 'Pay Less Notice'). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.

- 6 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by its final date for payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.
- 7 Any such unpaid amount and any interest under clause 4·9·6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under clause 4·11 or terminate his employment under section 8.

Pay Less Notices and other general provisions

- 4·10
- 1 A Pay Less Notice given by either Party shall specify the sum he considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated.
 - 2 A Payment Notice, a Final Payment Notice or a Pay Less Notice to be given by the Employer may be given on his behalf by the Employer's Agent or by any other person who the Employer notifies the Contractor as being authorised to do so.
 - 3 In relation to the requirements for the giving of Payment Notices, the Final Payment Notice, Pay Less Notices and the submission of a Final Statement, it is immaterial that the amount then considered to be due may be zero.
 - 4 The Employer's fiduciary interest in the Retention referred to in clause 4·16 shall not prevent him exercising any right under this Contract to withhold or deduct from a sum due to the Contractor, subject to clause 4·9·5, even if that sum includes any Retention due for release under clause 4·18.

Contractor's right of suspension

- 4·11
- 1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4·9 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend performance of any or all of his obligations until payment is made in full.
 - 2 Where the Contractor exercises his right of suspension under clause 4·11·1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
 - 3 Applications in respect of any such costs and expenses shall be made to the Employer and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

Interim Payments – calculation of sums due

Gross Valuation – Alternative A

4·12 The Gross Valuation for each Interim Payment shall be the total of the amounts referred to in clauses 4·12·1 and 4·12·2, less the deductions referred to in clause 4·12·3, each calculated as at the Interim Valuation Date:

- 1 the total of the following, which are subject to Retention:
 - 1 the cumulative value of stages completed;
 - 2 the value of any Changes or other work referred to in clause 5·2 that are relevant to the Interim Payment (whether agreed pursuant to clause 5·2 or valued under the Valuation Rules) but excluding any amounts referred to in clause 4·12·2·4;
 - 3 the value of any Listed Items for which the conditions set out in clause 4·15 are satisfied; and
 - 4 where JCT Fluctuations Option C is applicable and where in accordance with the Formula Rules amounts in the Value of Work are to be allocated to lift installations, structural steelwork installations or catering equipment installations, the total value of Site Materials of those descriptions, provided that their value shall only be included if they are adequately protected against weather and other casualties and they are not on the Works prematurely;
- those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision or any Acceleration Quotation for which there has been Confirmed Acceptance;
- 2 the total of the following, which are not subject to Retention:
 - 1 any amounts to be included in accordance with clause 4·3 by the Employer as a result of payments made or costs incurred by the Contractor under clause 2·5·2, 2·20, 3·12, 6·10·2 or 6·10·3, 6·11·3, 6·12·2 or 6·20;
 - 2 any amounts payable under clause 4·11·2;
 - 3 the amount of any loss and/or expense to which the Contractor is entitled under clause 4·19·1 or by a Confirmed Acceptance;
 - 4 where Insurance Option B or C applies or to the extent that the work is under clause 6·13·5·3 to be treated as a Change, any amounts in respect of reinstatement work under clause 6·13·4; and
 - 5 any amount payable to the Contractor under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4·12·1;
 - 3 the following deductions:
 - 1 any amounts deductible under clause 2·35, 3·6, 6·12·2 or 6·19·2; and
 - 2 any amount allowable by the Contractor under clause 6·10·2 or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4·12·1.

Gross Valuation – Alternative B

4·13 The Gross Valuation for each Interim Payment shall be the total of the amounts referred to in clauses 4·13·1 and 4·13·2, less the deductions referred to in clause 4·13·3, each calculated as at the Interim Valuation Date:

- 1 the total values of the following, which are subject to Retention:
 - 1 work properly executed including any design work carried out by the Contractor and work so executed for which a value has been agreed pursuant to clause 5·2 or which has been valued under the Valuation Rules, but excluding any amounts referred to in clause 4·13·2·4;
 - 2 Site Materials provided they are adequately protected against weather and other casualties and they are not on the Works prematurely; and
 - 3 Listed Items (if any) for which the conditions set out in clause 4·15 are satisfied;

those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision or any Acceleration Quotation for which there has been Confirmed Acceptance;

- 2 the total of the following, which are not subject to Retention:
 - 1 any amounts to be included in accordance with clause 4·3 by the Employer as a result of payments made or costs incurred by the Contractor under clause 2·5·2, 2·20, 3·12, 6·10·2 or 6·10·3, 6·11·3, 6·12·2 or 6·20;
 - 2 any amounts payable under clause 4·11·2;
 - 3 the amount of any loss and/or expense to which the Contractor is entitled under clause 4·19·1 or by a Confirmed Acceptance;
 - 4 where Insurance Option B or C applies or to the extent that the work is under clause 6·13·5·3 to be treated as a Change, any amounts in respect of reinstatement work under clause 6·13·4; and
 - 5 any amount payable to the Contractor under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4·13·1;
- 3 the following deductions:
 - 1 any amounts deductible under clause 2·35, 3·6, 6·12·2 or 6·19·2; and
 - 2 any amount allowable by the Contractor under clause 6·10·2 or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4·13·1.

Sums due as Interim Payments

4·14 The sum due as an Interim Payment shall in each case be an amount equal to the Gross Valuation under clause 4·12 where the Contract Particulars state that Alternative A applies, or clause 4·13 where Alternative B applies, in either case less the following deductions:

- 1 any amount which may be deducted and retained by the Employer under clauses 4·16 to 4·18 ('the Retention');
- 2 the cumulative total of the amounts of any advance payment that have then become due for reimbursement to the Employer in accordance with the terms stated in the Contract Particulars for clause 4·6; and
- 3 the amounts paid in previous Interim Payments.

Listed Items

4·15 The conditions for inclusion of the value of a Listed Item in the Gross Valuation before its delivery to or adjacent to the Works as referred to in clause 4·12·1·3 or 4·13·1·3 are:

- 1 the Listed Item is in accordance with this Contract;
- 2 the Contractor has provided the Employer with reasonable proof that:
 - 1 property in the Listed Item is vested in the Contractor; and
 - 2 the Listed Item is and will remain insured against loss or damage for its full value under a policy of insurance protecting the interests of the Employer and the Contractor in respect of the Specified Perils until delivered to, or adjacent to, the Works;
- 3 at the premises where the Listed Item is situated pending delivery, there is in relation to that item clear identification of:
 - 1 the Employer as the person to whose order it is held; and
 - 2 the Works as its destination,

each item being either set apart or clearly and visibly marked, individually or as a set, by letters, figures or a pre-determined code; and

- 4 for uniquely identified Listed Items, the Contractor, if it is stated in the Contract Particulars as required, has provided a bond in favour of the Employer from a surety approved by the Employer in the terms set out in Part 2 of Schedule 6^[41] ('the required bond') in the amount specified in the Contract Particulars for this clause 4·15·4; or
- 5 for Listed Items that are not uniquely identified, the Contractor has provided the required bond in the amount specified in the Contract Particulars for this clause 4·15·5.

Retention

Rules on treatment of Retention

- 4·16** The Retention which the Employer may deduct and retain as referred to in clause 4·14 shall be subject to the following rules:
- 1 the Employer's interest in the Retention is fiduciary as trustee for the Contractor (but without obligation to invest);
 - 2 except where the Employer is a Local or Public Authority, the Employer, to the extent that he exercises his right under clause 4·18 and if the Contractor so requests, shall at the time of each Interim Payment place the Retention in a separate bank account (so designated as to identify the amount as the Retention held by the Employer on trust as provided in clause 4·16·1) and notify the Contractor that the amount has been so placed. The Employer shall be entitled to the full beneficial interest in any interest accruing on the separate bank account and under no duty to account for any such interest to the Contractor.

Retention Bond

- 4·17** Where the Contract Particulars state that clause 4·17 applies, then:
- 1 subject to clauses 4·17·3 and 4·17·4, the provisions of clauses 4·14 and 4·18 permitting the deduction of the Retention shall not apply^[42];
 - 2 on or before the Date of Possession the Contractor shall provide to the Employer and thereafter maintain a bond ('the Retention Bond') in favour of the Employer from a surety approved by the Employer ('the Surety')^[41] in the terms set out in Part 3 of Schedule 6, incorporating in clauses 2 (*maximum aggregate sum*) and 6·3 (*expiry date*) of the bond the sum and date stated in the Contract Particulars;
 - 3 if the Contractor fails to provide or maintain the Retention Bond in accordance with clause 4·17·2, the provisions of clauses 4·14 and 4·18 permitting the deduction of the Retention shall apply in respect of Interim Payments issued after the date of the failure, save that if the Contractor subsequently provides the required bond, any Retention deducted during the period of failure shall become due for release to the Contractor on the next due date thereafter;
 - 4 if at any time the amount of the Retention that would have been deducted had the provisions of clauses 4·14 and 4·18 applied exceeds the aggregate sum stated in the Retention Bond, then either the Contractor shall arrange with the Surety for the aggregate sum to equate to such amount or the amount not covered by the bond may be deducted as Retention; and
 - 5 where the Contractor has provided a performance bond or guarantee of the type referred to in clause 7·3·1, then, in respect of any default for which the Employer is entitled to make a demand under both that performance bond or guarantee and the Retention Bond, the Employer shall first have recourse to the Retention Bond.

Retention – amounts and periods

- 4·18** During the period prior to issue of the Notice of Completion of Making Good (or last such notice) the Retention which may be deducted and retained by the Employer shall be the following percentages of

[41] As to approval of sureties, see the Design and Build Contract Guide.

[42] In view of the provisions of clauses 4·2 and 4·3 of the form of Retention Bond in Schedule 6, the Employer should keep up-to-date records of the amount of Retention that would have been retained had clauses 4·14 and 4·18 applied.

the total amount (or proportion of that amount) included in the Gross Valuation for any Interim Payment under clause 4·12·1 or 14·3·1, whichever is applicable, for work and (where applicable) Site Materials and Listed Items^[43]:

- 1 the Retention Percentage may be deducted from the total amount where the Works have not reached practical completion or (where there are Sections) from that proportion of the total amount that relates to uncompleted Sections (in either case excluding from the total amount any proportion of it attributable to a Relevant Part);
- 2 half the Retention Percentage may be deducted:
 - 1 from the total amount where the Works as a whole have reached practical completion but the Notice of Completion of Making Good has not been issued; or
 - 2 from the proportion of the total amount that relates to each Section that has reached practical completion but for which such a notice has not been issued or relates to a Relevant Part for which a notice has not been issued under clause 2·32.

Loss and Expense

Matters materially affecting regular progress

- 4·19**
- 1 If in the execution of this Contract the Contractor incurs or is likely to incur any direct loss and/or expense as a result of any deferment of giving possession of the site or part of it under clause 2·4 or because regular progress of the Works or any part of them has been or is likely to be materially affected by any Relevant Matter, he shall, subject to clause 4·19·2 and compliance with the provisions of clause 4·20 be entitled to reimbursement of that loss and/or expense.
 - 2 No such entitlement arises where these Conditions provide that there shall be no addition to the Contract Sum or otherwise exclude the operation of this clause 4·19 or to the extent that the Contractor is reimbursed for such loss and/or expense under another provision of these Conditions.

Notification and ascertainment

- 4·20**
- 1 The Contractor shall notify the Employer as soon as the likely effect of a Relevant Matter on regular progress or the likely nature and extent of any loss and/or expense arising from a deferment of possession becomes (or should have become) reasonably apparent to him.
 - 2 That notification shall be accompanied or, as soon as reasonably practicable, followed by the Contractor's initial assessment of the loss and/or expense incurred and any further amounts likely to be incurred, together with such information as is reasonably necessary to enable the Employer to ascertain the loss and/or expense incurred.
 - 3 The Contractor shall thereafter, in such form and manner as the Employer may reasonably require, update that assessment and information at monthly intervals until all information reasonably necessary to allow ascertainment of the total amount of such loss and expense has been supplied.
 - 4 Within 28 days of receipt of the initial assessment and information and 14 days of each subsequent update of them the Employer shall notify the Contractor of the ascertained amount of the loss and/or expense incurred, each ascertainment being made by reference to the information supplied by the Contractor and in sufficient detail to enable the Contractor to identify differences between it and the Contractor's assessment.

Relevant Matters

- 4·21** The following are the Relevant Matters:
- 1 Changes and any other matters or instructions which under these Conditions are to be treated as a Change;

^[43] For the effect of clause 4·18·2, see the Design and Build Contract Guide.

- 2 Employer's instructions:
 - 1 under clause 3·10 or 3·11; or
 - 2 for the opening up for inspection or testing of any work, materials or goods under clause 3·12 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract;
 - 3 compliance with clause 3·15·1 or with Employer's instructions under clause 3·15·2;
 - 4 delay in receipt of any permission or approval for the purposes of Development Control Requirements necessary for the Works to be carried out or proceed, which delay the Contractor has taken all practicable steps to avoid or reduce;
 - 5 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person.

Amounts ascertained – addition to Contract Sum

- 4·22** Amounts ascertained under clause 4·20 shall be added to the Contract Sum.

Reservation of Contractor's rights and remedies

- 4·23** The provisions of clauses 4·19 to 4·22 shall not limit or affect any other rights and remedies of the Contractor.

Final Statement and Final Payment^[44]

- 1 Following practical completion of the Works the Contractor shall submit the Final Statement to the Employer and supply him with such supporting documents as he may reasonably require.
- 2 The Final Statement shall set out the adjustments to the Contract Sum to be made in accordance with clause 4·2 and shall state:
 - 1 the Contract Sum, as so adjusted; and
 - 2 the sum of amounts already paid by the Employer to the Contractor,

and the final payment shall be the difference (if any) between the two sums, which shall be shown as a balance due to the Contractor from the Employer or to the Employer from the Contractor, as the case may be. The Final Statement shall state the basis on which that amount has been calculated, including details of all such adjustments.
- 3 If the Contractor does not submit the Final Statement within 3 months of practical completion of the Works, the Employer may on or after the expiry of that period give the Contractor notice that unless that statement is submitted within 2 months from the date of the notice the Employer may himself issue a final statement in lieu of that from the Contractor.
- 4 Unless the Contractor submits the Final Statement prior to the Employer exercising that right, the Employer may at any time after the 2 month notice period issue a final statement to the Contractor ('the Employer's Final Statement') in the form and with the details required by clause 4·24·2, so far as the Employer, on the information in his possession, is reasonably able to do so.
- 5 The due date for the final payment shall be the date one month after whichever of the following occurs last:
 - 1 the end of the Rectification Period in respect of the Works or (where there are Sections) the last such period to expire;
 - 2 the date stated in the Notice of Completion of Making Good under clause 2·36 or (where there are Sections) in the last such notice to be issued; or

^[44] The effect of the Final Statement is set out in clause 1·8.

- 3 the date of submission to the other Party of the Final Statement or, if issued first, the Employer's Final Statement ('the relevant statement').
- 6 Except to the extent that prior to the due date for the final payment the Employer gives notice to the Contractor disputing anything in the Final Statement or the Contractor gives notice to the Employer disputing anything in the Employer's Final Statement, and subject to clause 1·8·2, the relevant statement shall upon the due date become conclusive as to the sum due under clause 4·24·2 and have the further effects stated in clause 1·8.

Section 5 Changes

General

Definition of Changes

5·1 The term 'Change' means:

- 1 a change in the Employer's Requirements which makes necessary the alteration or modification of the design, quality or quantity of the Works, otherwise than such as may be reasonably necessary for the purposes of rectification pursuant to clause 3·13, including:
 - 1 the addition, omission or substitution of any work;
 - 2 the alteration of the kind or standard of any of the materials or goods to be used in the Works;
 - 3 the removal from the site of any work executed or Site Materials other than work, materials or goods which are not in accordance with this Contract;
- 2 the imposition by the Employer of any obligations or restrictions in regard to the following matters or any addition to or alteration or omission of any such obligations or restrictions that are so imposed or are imposed in the Employer's Requirements in regard to:
 - 1 access to the site or use of any specific parts of the site;
 - 2 limitations of working space;
 - 3 limitations of working hours; or
 - 4 the execution or completion of the work in any specific order.^[45]

Valuation of Changes and provisional sum work

5·2 The value of:

- 1 all Changes required by Employer's instructions;
- 2 all work which under these Conditions is to be treated as a Change; and
- 3 all work executed by the Contractor in accordance with Employer's instructions as to the expenditure of Provisional Sums included in the Employer's Requirements

shall be such amount as is agreed by the Employer and the Contractor or, where not agreed, the amount valued (a 'Valuation') in accordance with clauses 5·4 to 5·7 ('the Valuation Rules').

Giving effect to Valuations, agreements etc.

5·3 The Contract Sum shall be adjusted for each agreement by the Employer and the Contractor under clause 5·2 and for each Valuation.

The Valuation Rules

Measurable Work

5·4 Valuations shall be made in accordance with this clause 5·4 and, so far as is relevant, clauses 5·5 to 5·7.

- 1 Allowance shall be made in such Valuations for the addition or omission of the relevant design work.

^[45] See clause 3·5·1 for the Contractor's right of reasonable objection to Changes.

- 2 The valuation of additional or substituted work shall be consistent with the values of work of a similar character set out in the Contract Sum Analysis, making due allowance for any change in the conditions under which work is carried out and/or any significant change in the quantity of the work so set out. Where there is no work of a similar character set out in the Contract Sum Analysis a fair valuation shall be made.
- 3 The valuation of the omission of work set out in the Contract Sum Analysis shall be in accordance with the values therein for such work.
- 4 Any valuation of work under clauses 5·4·2 and 5·4·3 shall include allowance for any necessary addition to or reduction of the provision of site administration, site facilities and temporary works.

Daywork

5·5 Where the execution of additional or substituted work cannot be valued in accordance with clause 5·4, the Valuation shall comprise:

- 1 the prime cost of such work (calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by The Royal Institution of Chartered Surveyors (RICS) and Construction Industry Publications Ltd as current at the Base Date) together with Percentage Additions to each section of the prime cost at the rates stated in the document identified in the Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document; or
- 2 where the work is within the province of any specialist trade and the RICS and the appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of daywork^[46], the prime cost of such work calculated in accordance with that definition current at the Base Date, together with Percentage Additions on the prime cost at the rates stated in the document identified in the Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document.

Provided that in any case vouchers specifying the time daily spent upon the work, the workmen's names, the plant and the materials employed shall be delivered for verification to the Employer not later than 7 Business Days after the work has been executed.

Change of conditions for other work

5·6 If as a result of:

- 1 compliance with any instruction requiring a Change; or
- 2 compliance with any instruction as to the expenditure of a Provisional Sum,

there is a substantial change in the conditions under which any other work is executed, that other work shall be treated as a Change and shall be valued in accordance with the provisions of this section 5.

Additional provisions

- 1 To the extent that a Valuation does not relate to the execution of additional or substituted work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Change cannot reasonably be effected in the Valuation by the application of clauses 5·4 to 5·6, a fair valuation shall be made.
- 2 No allowance shall be made under the Valuation Rules for any effect upon the regular progress of the Works or of any part of them or for any other direct loss and/or expense for which the Contractor would be reimbursed by payment under any other provision in these Conditions.

^[46] There are currently three definitions to which clause 5·5·2 refers, namely those agreed between the RICS and the Electrical Contractors Association, the RICS and the Electrical Contractors Association of Scotland and the RICS and the Building and Engineering Services Association.

Section 6 Injury, Damage and Insurance

Personal Injury and Property Damage

Contractor's liability – personal injury or death

- 6·1** The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer, any Employer's Person or any Statutory Undertaker.

Contractor's liability – loss, injury or damage to property

- 6·2** Subject to clause 6·3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

Loss or damage to Existing Structures or their contents

- 6·3**
- 1 Where paragraph C·1 of Insurance Option C applies, the Contractor's liability and indemnity under clause 6·2 excludes any loss or damage to Existing Structures or to any of their contents required to be insured under that option that is caused by any of the risks or perils required or agreed to be insured against under that option.
 - 2 The exclusion in clause 6·3·1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.
 - 3 Where Insurance Option C applies but a C·1 Replacement Schedule applies in lieu of paragraph C·1, the Contractor's liability and indemnity under clause 6·2 shall, in respect of loss, injury or damage to the Existing Structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that schedule.
 - 4 The reference in clause 6·2 to 'property real or personal' does not include the Works, work executed or Site Materials up to and including the date of issue of the Practical Completion Statement or, if earlier, the date of termination of the Contractor's employment, except that:
 - 1 after the date of issue of a Section Completion Statement, the Section to which it relates shall no longer be regarded as 'the Works' or 'work executed' for these purposes; and
 - 2 if partial possession is taken under clause 2·30, the Relevant Part shall no longer be so regarded after the Relevant Date.

Insurance against Personal Injury and Property Damage

Contractor's insurance of his liability

- 6·4**
- 1 Without limiting or affecting his indemnities to the Employer under clauses 6·1 and 6·2, the Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:
 - 1 in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and

- 2 for all other claims to which clause 6·4·1 applies^[47], shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars for clause 6·4·1.^[48]
- 2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6·12 shall apply.

Contractor's insurance of liability of Employer

- 6·5**
- 1 If the Employer's Requirements state that insurance under clause 6·5·1 is required, the Contractor shall effect and maintain a policy of insurance in the names of the Employer and the Contractor for the amount of indemnity stated in the Contract Particulars in respect of any expense, liability, loss, claim or proceedings which the Employer may incur or sustain by reason of injury or damage to any property caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works, excluding injury or damage:
 - 1 for which the Contractor is liable under clause 6·2;
 - 2 which is attributable to errors or omissions in the designing of the Works;
 - 3 which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed and the manner of its execution;
 - 4 (if Insurance Option C applies) which it is the responsibility of the Employer to insure under paragraph C·1 of Schedule 3;
 - 5 to the Works and Site Materials except where the Practical Completion Statement has been issued or in so far as any Section is the subject of a Section Completion Statement;
 - 6 which arises from any consequence of war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion or revolution, insurrection or military or usurped power;
 - 7 which is directly or indirectly caused by or contributed to by or arises from the Excepted Risks;
 - 8 which is directly or indirectly caused by or arises out of pollution or contamination of buildings or other structures or of water or land or the atmosphere happening during the period of insurance, save that this exception shall not apply in respect of pollution or contamination caused by a sudden identifiable, unintended and unexpected incident which takes place in its entirety at a specific moment in time and place during the period of insurance (all pollution or contamination which arises out of one incident being considered for the purpose of this insurance to have occurred at the time such incident takes place); or
 - 9 which results in any costs or expenses being incurred by the Employer or in any other sums being payable by the Employer in respect of damages for breach of contract, except to the extent that such costs or expenses or damages would have attached in the absence of any contract.
 - 2 Any insurance under clause 6·5·1 shall be placed with insurers approved by the Employer, and the Contractor shall upon its issue deposit the policy with the Employer.
 - 3 As to evidence that such insurance has been effected and is being maintained and the consequences of failure to comply, clause 6·12 shall apply.

Excepted Risks

^[47] It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 6·4·1 may not be co-extensive with the indemnity given to the Employer in clauses 6·1 and 6·2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

^[48] The Contractor may, if he wishes, insure for a sum greater than that stated in the Contract Particulars.

- 6·6** Notwithstanding clauses 6·1, 6·2 and 6·4·1, the Contractor shall neither be liable to indemnify the Employer nor obliged to insure against any personal injury to or the death of any person or any damage, loss or injury to the Works, Site Materials, work executed, the site or any other property, caused by the effect of an Excepted Risk.

Insurance of the Works and Existing Structures

Insurance Options and period

- 6·7**
- 1 Insurance Options A, B and C are set out in Schedule 3. The Insurance Option that applies to this Contract is that stated in the Contract Particulars.^[49]
 - 2 In each case the Party responsible for effecting a Joint Names Policy under the Insurance Option that applies (the 'Works Insurance Policy') shall maintain that policy up to and including the date of issue of the Practical Completion Statement, or last Section Completion Statement, or (if earlier) the date of termination of the Contractor's employment, except that the obligation to maintain a Works Insurance Policy:
 - 1 shall not apply in relation to a Section after the date of issue of its Section Completion Statement; and
 - 2 if partial possession is taken under clause 2·30, shall not as from the Relevant Date apply in relation to the Relevant Part.

Related definitions

- 6·8** In these Conditions the following phrases shall have the following meanings:

All Risks Insurance ^[50] :	insurance which provides cover against any physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:
	<p>(a) property which is defective due to:</p> <ul style="list-style-type: none"> (i) wear and tear, (ii) obsolescence, or

^[49] **Insurance Options A and B** are for use in the case of new buildings. **Insurance Option A** is applicable where the **Contractor** is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; **Insurance Option B** is applicable where the **Employer** has elected to take out that Joint Names Policy.

Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C·1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C·1. Where that is the case, alternative arrangements through use of a C·1 Replacement Schedule or as otherwise described in the Design and Build Contract Guide will be necessary.

Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

^[50] The risks and costs that All Risks Insurance is required to cover are defined by exclusions. Policies issued by insurers are not standardised; the way in which insurance for these risks is expressed varies and **in some cases it may not be possible for insurance to be taken out against certain of the risks required to be covered**. In the case of Terrorism Cover, where the extension of cover will involve an additional premium and may in certain situations be difficult to effect, the requirement is now expressly limited to Pool Re Cover or such other cover as is agreed and set out in the Contract Particulars. That extension and any other relevant details of Works insurance also require discussion and agreement between the Parties and their insurance advisers at an early stage, **prior to entering into the Contract**. See the Design and Build Contract Guide.

(iii) deterioration, rust or mildew;

(b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective^[51];

(c) loss or damage caused by or arising from:

(i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,

(ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or

(iii) an Excepted Risk.

Excepted Risks:

the risks comprise:

(a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar, as it is included in the Terrorism Cover from time to time required to be taken out and maintained under this Contract);

(b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and

(c) any act of terrorism that is not within the Terrorism Cover from time to time required to be taken out and maintained under this Contract.

Joint Names Policy:

a policy of insurance which includes the Employer and the Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or, pursuant to clause 6·9, recognised as an insured thereunder.

Pool Re Cover:

such insurance against loss or damage to work executed and Site Materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.^[52]

Specified Perils:

fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks.

Terrorism Cover:

Pool Re Cover or other insurance against loss or damage to work

[51] In an All Risks Insurance policy for the Works, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of the relevant Insurance Options or that definition. In relation to design defects, wider All Risks cover than that specified may be available, though it is not standard.

[52] As respects Terrorism Cover and the requirements of Insurance Options A, B and C, see footnote [50] and the Design and Build Contract Guide.

executed and Site Materials (and/or, for the purposes of clause 6·11·1, to an Existing Structure and/or its contents) caused by or resulting from terrorism.^[52]

Sub-contractors – Specified Perils cover under Works Insurance Policies

- 6·9** ·1 The Contractor, where Insurance Option A applies, and the Employer, where Insurance Option B or C applies, shall ensure that the Works Insurance Policy either:
- 1 provides for recognition of each sub-contractor as an insured under the policy; or
 - 2 includes a waiver by the insurers of any right of subrogation which they may have against any such sub-contractor
- in respect of loss or damage by the Specified Perils to the Works or relevant Section, work executed and Site Materials and that this recognition or waiver continues up to and including the date of issue of any statement or other document which states that in relation to the Works, the sub-contractor's works are practically complete or, if earlier, the date of termination of the sub-contractor's employment. Where there are Sections, the recognition or waiver for a sub-contractor in relation to a Section shall cease upon the issue of such statement or other document for his work in that Section.
- 2 Clause 6·9·1 applies also in respect of any Works Insurance Policy taken out in default under clause 6·12·2.

Terrorism Cover – policy extensions and premiums

- 6·10** ·1 To the extent that the Works Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Contractor, where Insurance Option A applies, or the Employer, where Insurance Option B or C applies, shall unless otherwise agreed effect and maintain, either as an extension to the Works Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Works Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars, subject to clauses 6·10·4 and 6·11.
- 2 Where Insurance Option A applies and the Contractor is required to take out and maintain Pool Re Cover, the cost of that cover and its renewal shall be deemed to be included in the Contract Sum save that, if at any renewal of the cover there is a variation in the rate on which the premium is based, the Contract Sum shall be adjusted by the net amount of the difference between the premium paid by the Contractor and the premium that would have been paid but for the change in rate.
- 3 Where Insurance Option A applies and Terrorism Cover other than Pool Re Cover is specified as required, the cost of such other cover and of its renewal shall be added to the Contract Sum.
- 4 Where Insurance Option A applies and the Employer is a Local or Public Authority, if at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, he may instruct the Contractor not to renew the Terrorism Cover. If he so instructs, clause 6·13·5·3 shall apply with effect from the renewal date.

Terrorism Cover – non-availability – Employer's options

- 6·11** ·1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately notify the other Party.
- 2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor either:
- 1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover,

^[52] As respects Terrorism Cover and the requirements of Insurance Options A, B and C, see footnote [50] and the Design and Build Contract Guide.

- the Employer requires that the Works continue to be carried out; or
- 2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) the Contractor's employment under this Contract shall terminate.
 - 3 Where Insurance Option A applies and the Employer gives notice under clause 6·11·2·1 requiring continuation of the Works, he may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor, the net additional cost to the Contractor of any such cover and its renewal shall be added to the Contract Sum.
 - 4 If the Employer gives notice of termination under clause 6·11·2·2, then upon and from such termination the provisions of clause 8·12 (excluding clause 8·12·3·5) shall apply.
 - 5 If the Employer does not give notice of termination under clause 6·11·2·2, but work executed and/or Site Materials thereafter suffer physical loss or damage caused by terrorism, clauses 6·13 and 6·14 shall as appropriate apply.

Evidence of insurance

- 1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 6·4, 6·5, 6·7 and 6·10, or is responsible for ensuring that it is effected and maintained, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.
- 2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which he may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable for the costs that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Contractor shall be added to the Contract Sum; any costs payable to the Employer may be deducted from any sums due or to become due to the Contractor or shall be recoverable from the Contractor as a debt.

Loss or damage – insurance claims and reinstatement

- 1 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any of the Existing Structures or their contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice to the Employer of its nature, location and extent.
- 2 Subject to clauses 6·13·5·1 and 6·13·6, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under this Contract.
- 3 The Contractor, for himself and for all his sub-contractors recognised as an insured under the Works Insurance Policy, shall authorise the insurers to pay to the Employer all monies from such insurance, and from any policies covering Existing Structures or their contents that are effected by the Employer.
- 4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 6·14 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Works.
- 5 Where Insurance Option A applies:
 - 1 the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work statements issued by the Employer at the same dates as those for Payment Notices under clause 4·7·5 but without deduction of Retention and less only the amounts referred to in clause 6·13·5·2;

- 2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by him to insurers in respect of professional fees up to the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;
- 3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 6·10·4 or 6·11 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as a Change and under clause 4·12·2·4, 4·13·2·4 or 6·13·5·1 included in Payment Notices. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any subcontractor which may have contributed to the physical loss or damage.
- 6 Where Insurance Option B or paragraph C·2 of Insurance Option C applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Change.

Loss or damage to Existing Structures – right of termination

- 6·14** If there is material loss of or damage to any of the Existing Structures, the Employer shall be under no obligation to reinstate those structures, but either Party may, if it is just and equitable, terminate the Contractor's employment under this Contract by notice given to the other in accordance with clause 1·7·4 within 28 days of the occurrence of that loss or damage. If such notice is given, then:
- 1 unless within 7 days of receiving the notice (or such longer period as may be agreed) the Party to whom it is given invokes a dispute resolution procedure of this Contract to determine whether the termination is just and equitable, it shall be deemed to be so;
 - 2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 8·12 (except clause 8·12·3·5) shall apply.

Professional Indemnity Insurance

Obligation to insure

- 6·15** The Contractor shall:
- 1 forthwith after this Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars^[53];
 - 2 thereafter, provided it is available at commercially reasonable rates, maintain such insurance until the expiry of the period stated in the Contract Particulars from the date of practical completion of the Works; and
 - 3 as and when reasonably requested to do so by the Employer, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.

Increased cost and non-availability

- 6·16** If the insurance referred to in clause 6·15 ceases to be available at commercially reasonable rates, the Contractor shall immediately give notice to the Employer so that the Contractor and the Employer can discuss the means of best protecting their respective positions in the absence of such insurance.

Joint Fire Code – compliance

Application of clauses

^[53] See the Design and Build Contract Guide.

- 6·17** Clauses 6·18 to 6·20 apply where the Contract Particulars state that the Joint Fire Code applies.

Compliance with Joint Fire Code

- 6·18** The Parties shall comply with the Joint Fire Code and any amendments or revisions to it; the Employer shall ensure such compliance by all Employer's Persons and the Contractor shall ensure such compliance by all Contractor's Persons.

Breach of Joint Fire Code – Remedial Measures

- 6·19**
- 1 If a breach of the Joint Fire Code occurs and the insurers under the Works Insurance Policy specify by notice to the Employer or the Contractor the remedial measures they require (the 'Remedial Measures'), the Party receiving the notice shall copy it to the other and the Contractor shall ensure that the Remedial Measures are carried out.
 - 2 If the Contractor, within 7 days of receipt of a notice specifying Remedial Measures, does not begin to carry out or thereafter fails without reasonable cause regularly and diligently to proceed with the Remedial Measures, then the Employer may employ and pay other persons to carry out those Remedial Measures. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction shall be made from the Contract Sum.

Joint Fire Code – amendments/revisions

- 6·20** Where the Joint Fire Code is, under a Joint Names Policy, applicable to the Works and amendments or revisions are made to it after the Base Date, any cost of compliance by the Contractor with amendments or revisions made after that date shall be borne as stated in the Contract Particulars. If the cost is to be borne by the Employer, it shall be added to the Contract Sum.

Section 7 Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties

Assignment

General

- 7·1** Subject to clause 7·2, neither the Employer nor the Contractor shall without the consent of the other assign this Contract or any rights thereunder.

Rights of enforcement

- 7·2** Where clause 7·2 is stated in the Contract Particulars to apply, then, in the event of transfer by the Employer of his freehold or leasehold interest in, or of a grant by the Employer of a leasehold interest in, the whole of the premises comprising the Works or (if the Contract Particulars so state) any Section, the Employer may at any time after practical completion of the Works or of the relevant Section grant or assign to any such transferee or lessee the right to bring proceedings in the name of the Employer (whether by arbitration or litigation, whichever applies under this Contract) to enforce any of the terms of this Contract made for the benefit of the Employer. The assignee shall be estopped from disputing any enforceable agreements reached between the Employer and the Contractor which arise out of and relate to this Contract (whether or not they are or appear to be a derogation from the right assigned) and which are made prior to the date of any grant or assignment.

Performance Bonds and Guarantees

- 7·3** The Contractor shall on the execution of this Contract provide to the Employer whichever of the following Contract Particulars state as being required:
- 1 a performance bond or guarantee of the Contractor's due performance of the Contract from a bank or other surety approved by the Employer in an amount equal to the percentage of the Contract Sum and for the period stated in the Contract Particulars;
 - 2 a guarantee by the Contractor's parent company identified in the Contract Particulars;

any such bond or guarantee, unless otherwise agreed by the Employer, being substantially in the form of the document identified by the Contract Particulars.

Clauses 7A to 7E – Preliminary

Rights Particulars

- 7·4** The requirements for the grant of P&T Rights and Funder Rights by the Contractor and sub-contractors and any requirement for the grant of Employer Rights by any sub-contractors ('Rights Particulars') are set out in the document(s) identified in the Contract Particulars against the reference to clause 7·4.^[54] As respects those requirements:

[54] The relevant Rights Particulars should identify the beneficiaries (by name, class or description) and the sub-contractors who are also required to grant rights, specify whether rights are to be granted at each level as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Rights Particulars is included in the Design and Build Contract Guide and is also available on the JCT website www.jctltd.co.uk. In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Contract and Schedule 6 of the Design and Build Sub-Contract are the same as required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (CWa/P&T, CWa/F, SCWa/P&T, SCWa/F or SCWa/E). Directions may be needed as to mode of execution of sub-contracts and/or collateral warranties by relevant sub-contractors. See also the Design and Build Contract Guide.

- 1 such rights are conferred only on persons sufficiently identified (by name, class or description) in the Rights Particulars;
- 2 if in relation to an identified beneficiary the Rights Particulars fail to specify the method by which such rights are to be conferred, the Contractor in relation to rights to be granted by him may elect to do so either as third party rights or by collateral warranty;
- 3 unless otherwise stated in the Rights Particulars, the term 'the Consultants' shall in all third party rights and/or collateral warranties to be granted mean the Employer's Agent (including any replacements) and any other consultants providing design services to the Employer in connection with the Works.

Notices

- 7·5** Each notice to the Contractor referred to in clauses 7A to 7E shall be given in accordance with clause 1·7·4.

Execution of Collateral Warranties

- 7·6** Where this Contract is executed as a deed, any collateral warranty to be entered into by the Contractor pursuant to clause 7C or 7D shall be executed as a deed. Where this Contract is executed under hand, any such warranty may be executed under hand.^[55]

Third Party Rights from Contractor

Rights for Purchasers and Tenants

- 7A**
- 1 Where the Rights Particulars state that the Contractor shall confer P&T Rights on a Purchaser or Tenant as third party rights, those rights shall vest in that Purchaser or Tenant on the date of receipt by the Contractor of the Employer's notice to that effect, stating the name of the Purchaser or Tenant and the nature of his interest in the Works.
 - 2 Where P&T Rights have vested in any Purchaser or Tenant, the Employer and the Contractor shall not be entitled without the consent of that Purchaser or Tenant to amend or vary the express provisions of this clause 7A or of Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants) but, subject thereto, the rights of the Employer and/or the Contractor:
 - 1 to terminate the Contractor's employment under this Contract (whether under section 8 or otherwise), or to agree to rescind this Contract;
 - 2 to agree to amend or otherwise vary or to waive any terms of this Contract;
 - 3 to agree to settle any dispute or other matter arising out of or in connection with this Contract, in each case in or on such terms as they shall in their absolute discretion think fit,

shall not be subject to the consent of any Purchaser or Tenant.

Rights for a Funder

- 7B**
- 1 Where the Rights Particulars state that the Contractor shall confer Funder Rights on a Funder as third party rights, those rights shall vest in the Funder on the date of receipt by the Contractor of the Employer's notice to that effect.
 - 2 Where Funder Rights have been vested in the Funder pursuant to clause 7B·1:
 - 1 no amendment or variation shall be made to the express terms of this clause 7B, to Part 2 of Schedule 5 (Third Party Rights for a Funder) or to the relevant Rights Particulars without the prior written consent of the Funder; and

^[55] See the footnote to clause 7·4 above.

- 2 neither the Employer nor the Contractor shall agree to rescind this Contract, and the rights of the Contractor to terminate his employment under this Contract or to treat it as repudiated shall in all respects be subject to the provisions of paragraph 6 of Part 2 of Schedule 5

but, subject thereto, unless and until the Funder gives notice under paragraph 5 or paragraph 6·4 of Part 2 of Schedule 5, the Contractor shall remain free without the consent of the Funder to agree with the Employer to amend or otherwise vary or to waive any term of this Contract and to settle any dispute or other matter arising out of or in connection with this Contract, in each case in such terms as they think fit, without any requirement that the Contractor obtain the consent of the Funder.

Collateral Warranties from Contractor

Contractor's Warranties – Purchasers and Tenants

- 7C Where the Rights Particulars state that the Contractor shall confer P&T Rights on a Purchaser or Tenant by way of collateral warranty, the Employer may by notice to the Contractor, identifying the Purchaser or Tenant and his interest in the Works, require that the Contractor within 14 days from receipt of that notice enter into a Collateral Warranty with such Purchaser or Tenant in the form CWa/P&T, completed in accordance with the relevant Rights Particulars.

Contractor's Warranty – Funder

- 7D Where the Rights Particulars state that the Contractor shall confer Funder Rights on a Funder by way of collateral warranty, the Employer may by notice to the Contractor require that the Contractor within 14 days from receipt of the Employer's notice enter into a Collateral Warranty with the Funder in the form CWa/F, completed in accordance with the relevant Rights Particulars.

Third Party Rights and Collateral Warranties from Sub-Contractors

- 7E Where the Rights Particulars state that a sub-contractor shall confer third party rights on a Purchaser, Tenant or Funder and/or the Employer or execute and deliver a Collateral Warranty in favour of such person:
 - 1 the Contractor shall comply with the Contract Documents as to the obtaining of such rights or warranties including:
 - 1 on receipt of notice from the Employer identifying in each case the sub-contractor, type of right or warranty and beneficiary, promptly giving notice under clause 2·26·3 or, where appropriate, 2·26·4 of the JCT Design and Build Sub-Contract Conditions or other equivalent sub-contract condition to each sub-contractor identified in the Employer's notice; and
 - 2 in the case of each Collateral Warranty specified in the Employer's notice and within 21 days of receipt of that notice, taking such steps as are required to obtain each warranty, promptly forwarding the executed document to the Employer or as he may direct and, where Collateral Warranty SCWa/F is required, having himself also executed and delivered the document;
 - 2 any amendment to the form of any third party rights or collateral warranty proposed by a sub-contractor shall require approval by both the Contractor and the Employer;
 - 3 in the case of vested third party rights, the Contractor shall not without the consent of each beneficiary in whom those rights have been vested:
 - 1 agree any amendment or variation to the express terms of clause 2·26, clause 2·27 or Schedule 6 (Third Party Rights) of the JCT Design and Build Sub-Contract Conditions or other equivalent conditions of the sub-contract; or
 - 2 where such beneficiary is the Employer or a Funder, agree to rescind the sub-contract.

Section 8 Termination

General

Meaning of insolvency

8·1 For the purposes of these Conditions:

- 1 a company becomes Insolvent:
 - 1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
 - 2 on the appointment of an administrative receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
 - 3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
 - 4 on the making of a winding-up order under Part IV or V of that Act;
- 2 a partnership becomes Insolvent:
 - 1 on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or
 - 2 when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.
- 3 an individual becomes Insolvent:
 - 1 on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or
 - 2 on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors;
- 4 a person also becomes Insolvent if:
 - 1 he enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
 - 2 (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this clause 8·1.

Each of clauses 8·1·1 to 8·1·4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

Notices under section 8

- 8·2**
- 1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
 - 2 Such termination shall take effect on receipt of the relevant notice.
 - 3 Each notice referred to in this section shall be given in accordance with clause 1·7·4.

Other rights, reinstatement

- 8·3**
- 1 The provisions of clauses 8·4 to 8·7 are without prejudice to any other rights and remedies of the Employer. The provisions of clauses 8·9 and 8·10 and (in the case of termination under either of those clauses) the provisions of clause 8·12, are without prejudice to any other rights and remedies of the Contractor.
 - 2 Irrespective of the grounds of termination, the Contractor's employment may at any time be reinstated if and on such terms as the Parties agree.

Termination by Employer

Default by Contractor

- 8·4** ·1 If, before practical completion of the Works, the Contractor:
- 1 without reasonable cause wholly or substantially suspends the carrying out of the Works; or
 - 2 fails to proceed regularly and diligently with the performance of his obligations under this Contract; or
 - 3 refuses or neglects to comply with a notice or instruction from the Employer requiring him to remove any work, materials or goods not in accordance with this Contract and by such refusal or neglect the Works are materially affected; or
 - 4 fails to comply with clause 3·3 or 7·1; or
 - 5 fails to comply with clause 3·16,
- the Employer may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).
- 2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 8·4·1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.
 - 3 If the Employer does not give the further notice referred to in clause 8·4·2 (whether as a result of the ending of any specified default or otherwise) but the Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor terminate that employment.

Insolvency of Contractor

- 8·5** ·1 If the Contractor is Insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.
- 2 The Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8·1.
- 3 As from the date the Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:
- 1 clauses 8·7·3 to 8·7·5 and (if relevant) clause 8·8 shall apply as if such notice had been given;
 - 2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended; and
 - 3 the Employer may take reasonable measures to ensure that the site, the Works and Site Materials are adequately protected and that such Site Materials are retained on site; the Contractor shall allow and shall not hinder or delay the taking of those measures.

Corruption and regulation 73(1)(b) of the PC Regulations

- 8·6** The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this or any other contract with the Employer if, in relation to this or any other such contract, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or, where the Employer is a Local or Public Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972, or, where this Contract is one to which regulation 73(1) of the PC Regulations applies, the circumstances set out in regulation 73(1)(b) of the PC Regulations apply.

Consequences of termination under clauses 8·4 to 8·6

- 8·7** If the Contractor's employment is terminated under clause 8·4, 8·5 or 8·6:

- 1 the Employer may employ and pay other persons to carry out and complete the Works and to make good any defects of the kind referred to in clause 2·35, and he and they may enter upon and take possession of the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;
- 2 the Contractor shall:
 - 1 when required in writing by the Employer to do so (but not before), remove or procure the removal from the Works of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Contractor or Contractor's Persons;
 - 2 provide the Employer with copies of all Contractor's Design Documents then prepared, whether or not previously provided;
 - 3 if so required by the Employer within 14 days of the date of termination, assign (so far as assignable and so far as he may lawfully be required to do so) to the Employer, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract^[56];
- 3 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 8·7·5 or 8·8·2 and the Employer need not pay any sum that has already become due either:
 - 1 insofar as the Employer has given or gives a Pay Less Notice under clause 4·9·5; or
 - 2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8·1·1 to 8·1·3;
- 4 following the completion of the Works and the making good of defects in them (or of instructions otherwise, as referred to in clause 2·35), an account of the following shall within 3 months thereafter be set out in a statement prepared by the Employer:
 - 1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 8·7·1 and, where applicable, clause 8·5·3·3, and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;
 - 2 the amount of payments made to the Contractor; and
 - 3 the total amount which would have been payable for the Works in accordance with this Contract;
- 5 if the sum of the amounts stated under clauses 8·7·4·1 and 8·7·4·2 exceeds the amount stated under clause 8·7·4·3, the difference shall be a debt payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor.

Employer's decision not to complete the Works

- 8·8 ·1 If within the period of 6 months from the date of termination of the Contractor's employment the Employer decides not to have the Works carried out and completed, he shall forthwith notify the Contractor. Within a reasonable time from the date of such notification, or if no notification is given but within that 6 month period the Employer does not commence to make arrangements for such carrying out and completion, then within 2 months of the expiry of that 6 month period, the Employer shall send to the Contractor a statement setting out:
 - 1 the total value of work properly executed at the date of termination or date on which the Contractor became Insolvent, ascertained in accordance with these Conditions as if that employment had not been terminated, together with any amounts due to the Contractor under these Conditions not included in such total value; and
 - 2 the aggregate amount of any expenses properly incurred by the Employer and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise.

^[56] Clause 8·7·2·3 may not be effectual in cases of Contractor's insolvency.

- 2 After taking into account amounts previously paid to the Contractor under this Contract, if the amount stated under clause 8·8·1·2 exceeds the amount stated under clause 8·8·1·1, the difference shall be a debt payable by the Contractor to the Employer or, if the clause 8·8·1·2 amount is less, by the Employer to the Contractor.

Termination by Contractor

Default by Employer

- 8·9**
 - 1 If the Employer:
 - 1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4·9 and/or any VAT properly chargeable on that amount; or
 - 2 fails to comply with clause 7·1; or
 - 3 fails to comply with clause 3·16,

the Contractor may give to the Employer a notice specifying the default or defaults (a 'specified' default or defaults).
 - 2 If after the Date of Possession (or after any deferred Date of Possession pursuant to clause 2·4) but before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length stated in the Contract Particulars by reason of any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, then, unless it is caused by the negligence or default of the Contractor or any Contractor's Person, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).
 - 3 If a specified default or a specified suspension event continues for 14 days from the receipt of notice under clause 8·9·1 or 8·9·2, the Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.
 - 4 If the Contractor for any reason does not give the further notice referred to in clause 8·9·3, but (whether previously repeated or not):
 - 1 the Employer repeats a specified default; or
 - 2 a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby,

then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

Insolvency of Employer

- 8·10**
 - 1 If the Employer is Insolvent, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract;
 - 2 the Employer shall immediately notify the Contractor if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8·1;
 - 3 as from the date the Employer becomes Insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended.

Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations

- 8·11**
 - 1 If, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of the length stated in the Contract Particulars by reason of one or more of the following events:
 - 1 force majeure;
 - 2 Employer's instructions under clause 2·13, 3·9 or 3·10 issued as a result of the negligence or default of any Statutory Undertaker;

- 3 loss or damage to the Works occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk;
- 4 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 5 the exercise by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Contractor or any Contractor's Person but which directly affects the execution of the Works; or
- 6 delay in receipt of any permission or approval for the purposes of Development Control Requirements necessary for the Works to be carried out or proceed, which delay the Contractor has taken all practicable steps to avoid or reduce,

then either Party, subject to clause 8·11·2, may upon the expiry of that relevant period of suspension give notice to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, he may terminate the Contractor's employment under this Contract. Failing such cessation within that 7 day period, he may then by further notice terminate that employment.

- 2 The Contractor shall not be entitled to give notice under clause 8·11·1 in respect of the matter referred to in clause 8·11·1·3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.
- 3 Where this Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the grounds set out in regulation 73(1)(a) or 73(1)(c) of the PC Regulations apply.

Consequences of Termination under clauses 8·9 to 8·11, etc.

- 8·12** If the Contractor's employment is terminated under any of clauses 8·9 to 8·11 or under clause 6·11·2·2 or 6·14:
- 1 no further sums shall become due to the Contractor otherwise than in accordance with this clause 8·12;
 - 2 the Contractor shall:
 - 1 with all reasonable dispatch, remove or procure the removal from the site of any temporary buildings, plant, tools and equipment belonging to the Contractor and Contractor's Persons and, subject to the provisions of clause 8·12·5, all goods and materials (including Site Materials); and
 - 2 provide to the Employer copies of the documents referred to in clause 2·37 then prepared;
 - 3 where the Contractor's employment is terminated under clause 8·9 or 8·10, the Contractor shall as soon as reasonably practicable prepare and submit an account or, where terminated under clause 8·11, 6·11·2·2 or 6·14, the Contractor shall at the Employer's option either prepare and submit that account or, not later than 2 months after the date of termination, provide the Employer with all documents necessary for the Employer to do so, which the Employer shall do with reasonable dispatch (and in any event within 3 months of receipt of such documents). The account shall set out the amounts referred to in clauses 8·12·3·1 to 8·12·3·4 and, if applicable, clause 8·12·3·5, namely:
 - 1 the total value of work properly executed at, and of any design work properly carried out before, the date of termination of the Contractor's employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Contractor under these Conditions;
 - 2 any sums ascertained in respect of direct loss and/or expense under clause 4·20 (whether ascertained before or after the date of termination);
 - 3 the reasonable cost of removal under clause 8·12·2;
 - 4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
 - 5 any direct loss and/or damage caused to the Contractor by the termination;

- 4 the account shall include the amount, if any, referred to in clause 8·12·3·5 only where the Contractor's employment is terminated either:
 - 1 under clause 8·9 or 8·10; or
 - 2 under clause 8·11·1·3, if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person;
- 5 after taking into account amounts previously paid to the Contractor under this Contract, the Employer shall pay to the Contractor (or vice versa) the amount properly due in respect of the account within 28 days of its submission to the other Party, without deduction of any Retention. Payment by the Employer for any such materials and goods as are referred to in clause 8·12·3·4 shall be subject to those materials and goods thereupon becoming the Employer's property.

Section 9 Settlement of Disputes

Mediation

- 9·1** Subject to Article 7, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.^[57]

Adjudication

- 9·2** If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply, subject to the following:

- 1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars;
- 2 where the dispute or difference is or includes a dispute or difference relating to clause 3·13·3 and as to whether an instruction issued thereunder is reasonable in all the circumstances:
 - 1 the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute;
 - 2 if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the instruction under clause 3·13·3 is reasonable in all the circumstances.

Arbitration

Clauses 9·3 to 9·8 not applicable.

^[57] See the Design and Build Contract Guide.

Schedules

Schedule 1 Design Submission Procedure

(Clause 2·8)

- 1 The Contractor shall prepare and submit each of the Contractor's Design Documents to the Employer by the means and in the format stated in the Employer's Requirements or the Contractor's Proposals and in sufficient time to allow any comments of the Employer to be incorporated prior to the relevant Contractor's Design Document being used for procurement and/or in the carrying out of the Works. Where the means and format are not so stated, then, unless and until otherwise agreed with the Employer, the Contractor shall submit 2 copies of each of the Contractor's Design Documents to him.
- 2 Within 14 days from the date of receipt of any Contractor's Design Document, or (if later) 14 days from either the date or expiry of the period for submission of the same stated in the Contract Documents, the Employer shall return one copy of that Contractor's Design Document to the Contractor marked 'A', 'B' or 'C' provided that a document shall be marked 'B' or 'C' only where the Employer considers that it is not in accordance with this Contract.
- 3 If the Employer does not respond to a Contractor's Design Document in the time stated in paragraph 2, it shall be regarded as marked 'A'.
- 4 Where the Employer marks a Contractor's Design Document 'B' or 'C', he shall identify by means of a written comment why he considers that it is not in accordance with this Contract.
- 5 When a Contractor's Design Document is returned by the Employer:
 - 1 if it is marked 'A', the Contractor shall carry out the Works in strict accordance with that document;
 - 2 if it is marked 'B', the Contractor may carry out the Works in accordance with that document, provided that the Employer's comments are incorporated into it and an amended copy of it is promptly submitted to the Employer; or
 - 3 if it is marked 'C', the Contractor shall take due account of the Employer's comments on it and shall either forthwith resubmit it to the Employer in amended form for comment in accordance with paragraph 1 or notify the Employer under paragraph 7.
- 6 The Contractor shall not carry out any work in accordance with a Contractor's Design Document marked 'C' and the Employer shall not be liable to pay for any work within the Works executed otherwise than in accordance with Contractor's Design Documents marked 'A' or 'B'.
- 7 If the Contractor disagrees with a comment of the Employer and considers that the Contractor's Design Document in question is in accordance with this Contract, he shall within 7 days of receipt of the comment notify the Employer that he considers that compliance with the comment would give rise to a Change. Such notification shall be accompanied by a statement setting out the Contractor's reasons. Upon receipt of such a notification the Employer shall within 7 days either confirm or withdraw the comment and, where the comment is confirmed, the Contractor shall amend and resubmit the document accordingly.
- 8 Provided always that:
 - 1 confirmation or withdrawal of a comment in accordance with paragraph 7 shall not signify acceptance by the Employer that the relevant Contractor's Design Document or amended document is in accordance with this Contract or that compliance with the Employer's comment would give rise to a Change;
 - 2 where in relation to a comment by the Employer the Contractor does not notify him in accordance with paragraph 7, the comment in question shall not be treated as giving rise to a Change; and
 - 3 neither compliance with the design submission procedure in this Schedule nor with the Employer's comments shall diminish the Contractor's obligations to ensure that the Contractor's Design Documents and Works are in accordance with this Contract.

Schedule 2 Supplemental Provisions

(Seventh Recital)

Part 1

Supplemental Provisions 1 to 3 apply only if so stated in the Contract Particulars.

Named Sub-Contractors

- 1 ·1 Where the Employer's Requirements state that work ('Named Sub-Contract Work') is to be executed by a named person as the Contractor's sub-contractor (a 'Named Sub-Contractor'):
 - 1 as soon as reasonably practicable after entering into this Contract the Contractor shall enter into a sub-contract with the Named Sub-Contractor that includes the undertaking referred to in paragraph 1·5 and notify the Employer of the date of such sub-contract;
 - 2 if for any reason the Contractor is unable to enter into that sub-contract he shall immediately notify the Employer of the grounds and provided the Contractor has acted reasonably the Employer shall by a Change instruction:
 - 1 remove the grounds;
 - 2 direct the Contractor to carry out that work using either his own resources or, at the Contractor's option, a sub-contractor selected by the Contractor and approved by the Employer; or
 - 3 omit the Named Sub-Contract Work from this Contract,
- but shall not require that the work be executed by another Named Sub-Contractor.
- 2 Subject to the provisions contained in paragraph 1·1·2, the provisions of clause 5·2 (*Valuation of Changes*), clauses 2·23 to 2·26 (*Adjustment of Completion Date*) and clauses 4·19 to 4·23 (*Loss and Expense*) shall as relevant apply to the Change instruction issued under that paragraph.
 - 3 If the Contractor becomes entitled to terminate a Named Sub-Contractor's employment under his sub-contract or to give notice of a specified default which, if continued, would be grounds for such termination or is entitled to treat the sub-contract as repudiated, the Contractor:
 - 1 shall promptly, and prior to giving any notice to that effect to the Named Sub-Contractor, notify the Employer and consult with him, if requested;
 - 2 save where the Named Sub-Contractor is or becomes Insolvent, shall not give notice of termination, or notice that he is treating the sub-contract as repudiated, without the Employer's consent; and
 - 3 shall at the time of issue send the Employer a copy of each notice that he gives to the Named Sub-Contractor.
 - 4 If the Named Sub-Contractor's employment is terminated or if he repudiates the sub-contract:
 - 1 the Contractor shall himself or by his selected sub-contractor complete any balance of the Named Sub-Contract Work;
 - 2 such completion shall be treated as a Change except where the termination has resulted from the Contractor's default, whether by act or omission, or where there has been a material breach of paragraph 1·3; and
 - 3 the Contractor shall account to the Employer for such proportion of any amount that he recovers, or with reasonable diligence could have recovered, from the Named Sub-Contractor in respect of the termination, as may properly and fairly be regarded as due

to the Employer to offset the cost to him of the Change.

- 5 The Contractor shall include in any Named Sub-Contract a condition stating that the Named Sub-Contractor, having had notice of the terms in this Supplemental Provision 1, undertakes not to contend, whether in proceedings or otherwise, that the Contractor has suffered or incurred no loss and/or expense or that his liability to the Contractor should be in any way reduced or extinguished by reason of this Supplemental Provision 1 and in particular paragraph 1·4.
- 6 The Contractor's responsibility for carrying out and completing the Works in all respects in accordance with clause 2·1 shall not be affected in any manner by the naming of any person for any work in accordance with this Supplemental Provision 1 or by any of the events that it refers to.

Valuation of Changes – Contractor's estimates

- 2 ·1 Section 5 (*Changes*) clauses 2·23 to 2·26 (*Adjustment of Completion Date*) and clauses 4·19 to 4·23 (*Loss and Expense*) shall have effect as modified by the provisions of paragraphs 2·2 to 2·6.
- 2 Where compliance with instructions of the Employer under clause 3·9 will in the opinion of the Contractor or of the Employer entail a Valuation under clause 5·2 and/or the making of an adjustment of time in respect of the Relevant Event and/or the ascertainment of direct loss and/or expense under clause 4·20 the Contractor, before such compliance, shall submit to the Employer within 14 days of the date of the relevant instruction (or within such other period as may be agreed or, failing agreement, within such other period as may be reasonable in all the circumstances) estimates, or such of those as are relevant, as referred to in paragraphs 2·3·1 to 2·3·5 unless:
 - 1 the Employer with the instructions or within 14 days thereafter states in writing that such estimates are not required; or
 - 2 the Contractor within 10 days of receipt of the instructions raises for himself or on behalf of any sub-contractor reasonable objection to the provision of all or any of such estimates.
- 3 The estimates required under paragraph 2·2 shall be in substitution for any Valuation under clause 5·2 and/or any ascertainment under clause 4·20 and shall comprise:
 - 1 the value of the adjustment to the Contract Sum, supported by all necessary calculations by reference to the values in the Contract Sum Analysis;
 - 2 the additional resources (if any) required to comply with the instructions;
 - 3 a method statement for compliance with the instructions;
 - 4 the length of any extension of time required and the resultant change in the Completion Date; and
 - 5 the amount of any direct loss and/or expense, not included in any other estimate, which results from the regular progress of the Works or any part of them being materially affected by compliance with the instructions under clause 3·9.
- 4 Upon submission of the estimates required under paragraph 2·2 the Employer and Contractor shall take all reasonable steps to agree those estimates and upon such agreement those estimates shall be binding on the Employer and Contractor.
- 5 If within 10 days of receipt of the Contractor's estimates the Contractor and Employer cannot agree on all or any of the matters therein the Employer:
 - 1 may instruct compliance with the instruction and this Supplemental Provision 2 shall not apply in respect of that instruction; or
 - 2 may withdraw the instruction.
- Where the Employer withdraws the instructions under paragraph 2·5·2 such withdrawal shall be at no cost to the Employer except that where the preparation of the estimates involved the Contractor in any additional design work solely and necessarily carried out for the purpose of preparing his estimates such design work shall be treated as a Change.
- 6 If the Contractor is in breach of paragraph 2·2 compliance with the instruction shall be dealt

with in accordance with clauses 2·23 to 2·26, 3·9 and 4·20 but any resultant addition to the Contract Sum in respect of such compliance shall not be included in Interim Payments but shall be included in the adjustment of the Contract Sum under clause 4·2. Provided that such addition shall not include any amount in respect of loss of interest or any financing charges in respect of the cost to the Contractor of compliance with the instruction which have been suffered or incurred by him prior to the date of issue of the Final Statement or Employer's Final Statement.

Loss and expense – Contractor's estimates

- 3 ·1 Clauses 4·19 to 4·23 (*Loss and Expense*) shall have effect as modified by the provisions of paragraphs 3·2 to 3·6.
- 2 Where the Contractor pursuant to clause 4·19 is entitled to an amount in respect of direct loss and/or expense to be added to the Contract Sum, he shall (except in respect of direct loss and/or expense dealt with or being dealt with under Supplemental Provision 2) on presentation of the next Interim Payment Application submit to the Employer an estimate of the addition to the Contract Sum which the Contractor requires in respect of such loss and/or expense which he has incurred in the period immediately preceding that for which the Interim Payment Application has been made.
- 3 Following the submission of an estimate under paragraph 3·2 the Contractor shall for so long as he has incurred direct loss and/or expense to which clause 4·19 refers, on presentation of each Interim Payment Application submit to the Employer an estimate of the addition to the Contract Sum which the Contractor requires in respect of such loss and/or expense which has been incurred by him in the period immediately preceding that for which each Interim Payment Application is made.
- 4 Within 21 days of receipt of any estimate submitted under paragraph 3·2 or 3·3 the Employer may request such information and details as he may reasonably require in support of the Contractor's estimate but within the aforesaid 21 days the Employer shall give to the Contractor notice that:
 - 1 he accepts the estimate;
 - 2 he wishes to negotiate on the amount of the addition to the Contract Sum and in default of agreement to refer the issue as a dispute or difference to the Adjudicator in accordance with the provisions of clause 9·2; or
 - 3 the provisions of clauses 4·19 and 4·20 shall apply in respect of the loss and/or expense to which the estimate relates.

If the Employer elects to negotiate pursuant to paragraph 3·4·2 and agreement is not reached, the provisions of clauses 4·19 and 4·20 shall apply in respect of the loss and/or expense to which the estimate relates.

- 5 Upon acceptance or agreement under paragraph 3·4·1 or 3·4·2 as to the amount of the addition to the Contract Sum such amount shall be added to the Contract Sum and no further additions to the Contract Sum shall be made in respect of the direct loss and/or expense incurred by the Contractor during the period and in respect of the matter set out in clauses 4·19 to 4·21 to which that amount related.
- 6 If the Contractor is in breach of paragraphs 3·2 and 3·3 direct loss and/or expense incurred by the Contractor shall be dealt with in accordance with clauses 4·19 and 4·20 save that any resultant addition to the Contract Sum shall not be included in Interim Payments but shall be included in the adjustment of the Contract Sum under clause 4·2. Provided that such addition shall not include any amount in respect of loss of interest or financing charges in respect of such direct loss and/or expense which have been suffered or incurred by the Contractor prior to the date of issue of the Final Statement or Employer's Final Statement.

Part 2

Supplemental Provisions 4 to 10 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 11 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 12 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

Acceleration Quotation

- 4 ·1 ·1 If the Employer wishes to investigate the possibility of achieving practical completion before the Completion Date for the Works or a Section he shall invite proposals from the Contractor in that regard (an 'Acceleration Quotation'). The Contractor on receiving such an invitation shall either:
- 1 provide an Acceleration Quotation accordingly, identifying the time that can be saved, the amount of the adjustment to the Contract Sum (inclusive of such amounts as are referred to in paragraph 4·1·2) and any other conditions attached; or
 - 2 explain why it would be impracticable to achieve practical completion earlier than the Completion Date.
- 2 The adjustment to the Contract Sum to be specified under paragraph 4·1·1·1 shall include the amount to be paid in respect of any direct loss and/or expense that is not included in any other Confirmed Acceptance or in any ascertainment under clause 4·20 together with a fair and reasonable amount in respect of the cost of preparing the quotation.
- 3 The Employer may on or before receipt of the quotation seek revised proposals.
- 4 Without affecting his obligations under clauses 2·1 and 2·3, the Contractor shall be under no obligation to accelerate, or take any steps for that purpose, until he receives a Confirmed Acceptance of his Acceleration Quotation under paragraph 4·3.
- 2 ·1 Unless otherwise agreed, the Acceleration Quotation shall be submitted in compliance with the invitation not later than 21 days from the later of:
- 1 the date of receipt of the invitation; or
 - 2 the date of receipt by the Contractor of information sufficient to enable him to prepare the quotation.
- 2 The quotation shall remain open for acceptance by the Employer for not less than 7 days from its receipt.
- 3 The Parties may agree to increase or reduce any of the periods referred to in this Supplemental Provision 4; confirmation of such agreement shall be notified to the Contractor by or on behalf of the Employer.
- 3 If the Employer wishes to accept an Acceleration Quotation, he shall within the period for acceptance confirm such acceptance by an instruction to the Contractor (a 'Confirmed Acceptance') stating:
- 1 the adjustment of the Contract Sum (including any amounts referred to in paragraph 4·1·2) to be made for complying with the instruction;
 - 2 the adjustment to the time required by the Contractor for completion of the Works and/or Section and the resultant revised Completion Date(s) (which, where relevant, may be a date earlier than the Date for Completion); and
 - 3 any such conditions as are referred to in paragraph 4·1·1·1.
- 4 ·1 If an Acceleration Quotation is not accepted, a fair and reasonable amount shall be added to the Contract Sum in respect of the cost of its preparation provided that it has been prepared on a fair and reasonable basis. Non-acceptance by the Employer of a quotation shall not of itself be evidence that the quotation was not prepared on such a basis.
- 2 Unless the Employer issues a Confirmed Acceptance, neither the Employer nor the Contractor may use the quotation for any purpose whatsoever.

Collaborative working

- 5 The Parties shall work with each other and with other project team members in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect. To that end, each shall support collaborative behaviour and address behaviour which is not collaborative.

Health and safety

- 6**
- 1 Without limiting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of this Contract, the Parties will endeavour to establish and maintain a culture and working environment in which health and safety is of paramount concern to everybody involved with the project.
 - 2 In addition to the specific health and safety requirements of this Contract, the Contractor undertakes to:
 - 1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
 - 2 ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
 - 3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and
 - 4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.

Cost savings and value improvements

- 7**
- 1 The Contractor is encouraged to propose changes to designs and specifications for the Works and/or to the programme for their execution that may benefit the Employer, whether in the form of a reduction in the cost of the Works or their associated life cycle costs, through practical completion at a date earlier than the Completion Date or otherwise.
 - 2 The Contractor shall provide details of his proposed changes, identifying them as suggested under this Supplemental Provision 7, together with his assessment of the benefit he believes the Employer may obtain, expressed in financial terms, and a quotation.
 - 3 Where the Employer wishes to implement a change proposed by the Contractor, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the Completion Date. Upon agreement, the change and the amount of any adjustment of the Contract Sum shall be confirmed in an Employer's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the Completion Date.
 - 4 Original proposals by the Contractor under this Supplemental Provision 7 may only be instructed in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after practical completion of the Works.

Sustainable development and environmental considerations

- 8**
- 1 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a Change, may result in an improvement in environmental performance in the carrying out of the Works or of the completed Works.
 - 2 The Contractor shall provide to the Employer all information that he reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

Performance Indicators and monitoring

- 9**
- 1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.
 - 2 The Contractor shall provide to the Employer all information that he may reasonably require to monitor and assess the Contractor's performance against the targets for those performance indicators.
 - 3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Contractor who shall submit his proposals for improving his performance against that target to the Employer.

Notification and negotiation of disputes

- 10** With a view to avoidance or early resolution of disputes or differences (subject to Article 7), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.

Transparency

- 11** Where the Employer is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2.7.4 or any other term of this Contract:

- 1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;
- 2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.

The Public Contracts Regulations 2015

- 12** Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations^[59]:
- 1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract entered into by him suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
 - 2 the Contractor shall include in any sub-contract entered into by him provisions requiring the sub-contractor:
 - 1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
 - 2 to include in any sub-subcontract he in turn enters into provisions to the same effect as required under paragraph 12.2.1 of Supplemental Provision 12;
 - 3 ·1 the Contractor shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
 - 2 in the event the Employer requires the Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that employment and where required by the Employer under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.

^[59] An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Design and Build Contract Guide. Provisions relating to the PC Regulations are also set out in section 8 (Termination) of this Contract. The JCT Design and Build Sub-Contract (DBSub) meets the requirements of Supplemental Provision 12.

Schedule 3 Insurance Options

(Clause 6·7)

Insurance Option A

(New Buildings – All Risks Insurance of the Works by the Contractor)^[60]

Not applicable.

^[60] **Insurance Options A and B** are for use in the case of new buildings. **Insurance Option A** is applicable where the **Contractor** is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; **Insurance Option B** is applicable where the **Employer** has elected to take out that Joint Names Policy.

Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C·1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C·1. Where that is the case, alternative arrangements through use of a C·1 Replacement Schedule or as otherwise described in the Design and Build Contract Guide will be necessary.

Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

Insurance Option B

(New Buildings – All Risks Insurance of the Works by the Employer)^[60]

Not applicable.

^[60] **Insurance Options A and B** are for use in the case of new buildings. **Insurance Option A** is applicable where the **Contractor** is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; **Insurance Option B** is applicable where the **Employer** has elected to take out that Joint Names Policy.

Insurance Option C is for use in the case of alterations of or extensions to Existing Structures. Under that option, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C·1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C·1. Where that is the case, alternative arrangements through use of a C·1 Replacement Schedule or as otherwise described in the Design and Build Contract Guide will be necessary.

Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

Insurance Option C

(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)^[61]

Existing Structures and contents – Joint Names Policy for Specified Perils

- C·1 The Employer shall unless otherwise stated by the Contract Particulars for clause 6·7 and this Schedule effect and for the period specified in clause 6·7·2 maintain a Joint Names Policy in respect of the Existing Structures together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils.

The Works – Joint Names Policy for All Risks

- C·2 The Employer shall effect and for the period specified in clause 6·7·2 maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6·8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

Loss or damage

- C·3 If during the carrying out of the Works there is any loss of or damage of any kind to any executed work, Site Materials and/or to any Existing Structures or their contents the provisions of clauses 6·13 and 6·14 shall as relevant apply.

[61] **Insurance Option C** is for use where there are Existing Structures. It can be used in its existing printed form by those Employers who are able to effect the Joint Names, Specified Perils cover for the Contractor in respect of the Existing Structures and those contents that are owned by the Employer or for which he is responsible.

However, the Joint Names Policy required by paragraph C·1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where Existing Structures insurance is the landlord's responsibility.

Joint Names cover may also not be readily available to some domestic owner-occupiers looking to undertake refurbishments or extensions to their property.

The Contract Particulars for clause 6·7 and Schedule 3 therefore expressly allow the Parties in those circumstances to disapply paragraph C·1 and, by means of a C·1 Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements.

In JCT's view the preparation of such replacement provisions must be assigned to insurance professionals.

An explanatory summary of the alternative arrangements generally adopted to overcome those difficulties is, however, contained in the Design and Build Contract Guide.

Schedule 4 Code of Practice

(Clause 3·13·3)

The purpose of the Code is to assist in the fair and reasonable operation of the requirements of clause 3·13·3.

The Employer and the Contractor should endeavour to agree the amount and method of opening up or testing, but in any case, in issuing his instructions pursuant to that clause, the Employer is required to consider the following criteria:

- 1 the need in the event of non-compliance to demonstrate at no cost to the Employer either that it is unique and not likely to occur in similar elements of the Works or alternatively, the extent of any similar non-compliance in the Works already constructed or still to be constructed;
- 2 the need to discover whether any non-compliance in a primary structural element is a failure of workmanship and/or materials such that rigorous testing of similar elements must take place; or, where the non-compliance is in a less significant element, whether it is such as is to be statistically expected and can simply be repaired; or whether the non-compliance indicates an inherent weakness such as can only be found by selective testing, the extent of which must depend upon the importance of any detail concerned;
- 3 the significance of the non-compliance, having regard to the nature of the work in which it has occurred;
- 4 the consequence of any similar non-compliance on the safety of the building, its effect on users, adjoining property, the public, and compliance with any Statutory Requirements;
- 5 the level and standard of supervision and control of the Works by the Contractor;
- 6 the relevant records of the Contractor and, where relevant, those of any sub-contractor, whether resulting from the supervision and control referred to in paragraph 5 or otherwise;
- 7 any Codes of Practice or similar advice issued by a responsible body which are applicable to the non-compliant work, materials or goods;
- 8 any failure by the Contractor to carry out, or to secure the carrying out of, any tests specified in the Employer's Requirements or Contractor's Proposals or in an instruction of the Employer;
- 9 the reason for the non-compliance, when this has been established;
- 10 any technical advice that the Contractor has obtained in respect of the non-compliant work, materials or goods;
- 11 current recognised testing procedures;
- 12 the practicability of progressive testing in establishing whether any similar non-compliance is reasonably likely;
- 13 if alternative testing methods are available, the time required for and the consequential costs of such alternative testing methods;
- 14 any proposals of the Contractor; and
- 15 any other relevant matters.

Schedule 5 Third Party Rights

(Clauses 7A and 7B)

Part 1: Third Party Rights for Purchasers and Tenants

(‘P&T Rights’)

- 1 ·1 The Contractor warrants as at and with effect from practical completion of the Works (or, where there are Sections, practical completion of the relevant Section) that he has carried out the Works or, as the case may be, that Section, in accordance with this Contract. In the event of any breach of this warranty and subject to paragraphs 1·2 and 1·3:
 - 1 the Contractor shall be liable for the reasonable costs of repair, renewal and/or reinstatement of any part or parts of the Works to the extent that the Purchaser or Tenant incurs such costs and/or the Purchaser or Tenant is or becomes liable either directly or by way of financial contribution for such costs; and
 - 2 where the Rights Particulars state that paragraph 1·1·2 applies, the Contractor shall in addition to the costs referred to in paragraph 1·1·1 be liable for any other losses incurred by the Purchaser or Tenant up to the maximum liability stated in or by the Rights Particulars.
 - 2 Where paragraph 1·1·2 does not apply, the Contractor shall not be liable for any losses incurred by the Purchaser or Tenant other than the costs referred to in paragraph 1·1·1.
 - 3 The Contractor’s liability to a Purchaser or Tenant in respect of its P&T Rights shall be limited to the proportion of the Purchaser’s or Tenant’s losses which it would be just and equitable to require the Contractor to pay having regard to the extent of the Contractor’s responsibility for the same, on the assumptions that the Consultant(s)^[62]:
 - 1 has or have provided contractual undertakings to or conferred third party rights on the Purchaser or Tenant as regards the performance of his or their services in connection with the Works in accordance with the terms of his or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and
 - 2 has or have paid to the Purchaser or Tenant such proportion of the Purchaser’s or Tenant’s losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Purchaser’s or Tenant’s losses.
 - 4 The Contractor shall be entitled in any action or proceedings by the Purchaser or Tenant to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract.
 - 5 The obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Purchaser or Tenant to carry out any independent enquiry into any relevant matter.
- 2 The Contractor further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer (or, where such authorisation is given orally, confirmed in writing by the Contractor to the Employer), he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of ‘Good Practice in Selection of Construction Materials’ (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.
 - 3 The Purchaser or Tenant has no authority to issue any direction or instruction to the Contractor in relation to this Contract.
 - 4 The Purchaser or Tenant, insofar as it is the purchaser or tenant of any part(s) of the site, and subject to the Contractor having been paid all sums due and payable under this Contract, shall in respect of

^[62] See the Design and Build Contract Guide.

such parts have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.38, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.

- 5 Where this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that he has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.15 and its related Contract Particulars^[63]. The Contractor shall immediately give written notice to the Purchaser or Tenant if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Purchaser or Tenant can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Purchaser or Tenant the Contractor shall produce for inspection documentary evidence that his Professional Indemnity insurance is being maintained.
- 6 P&T Rights may be assigned without the Contractor's consent by a Purchaser or Tenant, by way of absolute legal assignment, to another person (P1) taking an assignment of the Purchaser's or Tenant's interest in the Works and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of a Purchaser's or Tenant's rights under this Schedule will be permitted and in particular P2 shall not be entitled to assign these rights.
- 7 Any notice to be given by the Purchaser or Tenant to the Contractor or by the Contractor to the Purchaser or Tenant shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 8 No action or proceedings for any breach of P&T Rights shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections no action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
 - 1 where this Contract is executed under hand, 6 years; and
 - 2 where this Contract is executed as a deed, 12 years.
- 9 For the avoidance of doubt, the Contractor shall have no liability to the Purchaser or Tenant under this Schedule for delay in completion of the Works.
- 10 This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Contractor and any Purchaser or Tenant which arises out of or in connection with the P&T Rights of that Purchaser or Tenant.

Part 2: Third Party Rights for a Funder

(‘Funder Rights’)

- 1 The Contractor warrants that he has complied and will continue to comply with this Contract. In the event of any breach of this warranty:
 - 1 the Contractor's liability to the Funder for costs under this Schedule shall be limited to the proportion of the Funder's losses which it would be just and equitable to require the Contractor to pay having regard to the extent of the Contractor's responsibility for the same, on the assumptions that the Consultant(s)^[62]:
 - 1 has or have provided contractual undertakings to or conferred third party rights on the

^[63] For Contractors who do not carry Professional Indemnity insurance, see the Design and Build Contract Guide.

^[62] See the Design and Build Contract Guide.

Funder that he or they has or have and will perform his or their services in connection with the Works in accordance with the terms of his or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and

- 2 has or have paid to the Funder such proportion of the Funder's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Funder's losses;
 - 2 the Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract;
 - 3 the obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.
- 2 The Contractor further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer (or, where such authorisation is given orally, confirmed in writing by the Contractor to the Employer), he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.
- 3 The Funder has no authority to issue any direction or instruction to the Contractor in relation to this Contract unless and until the Funder has given notice under paragraph 5 or 6·4.
- 4 The Funder has no liability to the Contractor in respect of amounts due under this Contract unless and until the Funder has given notice under paragraph 5 or 6·4.
- 5 The Contractor agrees that, in the event of the termination of the Finance Agreement by the Funder, the Contractor shall, if so required by written notice given by the Funder and subject to paragraph 7, accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 5 as conclusive evidence for the purposes of this Contract of the termination of the Finance Agreement by the Funder; and further acknowledges that such acceptance of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract.
- 6 ·1 The Contractor shall not exercise any right of termination of his employment under this Contract without having first:
 - 1 copied to the Funder any notices required by this Contract to be sent to the Employer prior to the Contractor being entitled to give notice under this Contract that his employment under this Contract is terminated; and
 - 2 given to the Funder written notice that he has the right under this Contract forthwith to notify the Employer that his employment under this Contract is terminated.
- 2 The Contractor shall not treat this Contract as having been repudiated by the Employer without having first given to the Funder written notice that he intends so to notify the Employer.
- 3 The Contractor shall not:
 - 1 issue a notice to the Employer to which paragraph 6·1·2 refers; or
 - 2 notify the Employer that he is treating this Contract as having been repudiated by the Employer as referred to in paragraph 6·2
- before the lapse of 14 days from receipt by the Funder of the notice by the Contractor which the Contractor is required to give under paragraph 6·1·2 or 6·2.
- 4 The Funder may, not later than the expiry of the period referred to in paragraph 6·3, require the Contractor by written notice and subject to paragraph 7 to accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 6·4 and that acceptance by the Contractor of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract. Provided that nothing in this paragraph 6·4 shall relieve the Contractor of any

liability he may have to the Employer for any breach by the Contractor of this Contract.

- 7 It shall be a condition of any notice given by the Funder under paragraph 5 or 6·4 that the Funder or its appointee accepts liability for payment of the sums due and payable to the Contractor under this Contract and for performance of the Employer's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Funder under paragraph 5 or 6·4, this Contract shall continue in full force and effect as if no right of termination of the Contractor's employment under this Contract, nor any right of the Contractor to treat this Contract as having been repudiated by the Employer, had arisen and the Contractor shall be liable to the Funder and its appointee under this Contract in lieu of his liability to the Employer. If any notice given by the Funder under paragraph 5 or 6·4 requires the Contractor to accept the instructions of the Funder's appointee, the Funder shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Funder's appointee.
- 8 Subject to the Contractor having been paid all sums due and payable under this Contract, the Funder shall have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2·38, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.
- 9 Where this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that he has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6·15 and its related Contract Particulars^[63]. The Contractor shall immediately give written notice to the Funder if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Funder can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Funder or its appointee under paragraph 5 or 6·4 the Contractor shall produce for inspection documentary evidence that his Professional Indemnity insurance is being maintained.
- 10 The rights contained in this Schedule may be assigned without the Contractor's consent by the Funder, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Works and by P1, by way of absolute legal assignment, to another person (P2) providing finance or re-finance in connection with the carrying out of the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of Funder Rights will be permitted and in particular P2 shall not be entitled to assign these rights.
- 11 Any notice to be given by the Contractor to the Funder or by the Funder to the Contractor shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 12 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections no action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
 - 1 where this Contract is executed under hand, 6 years; and
 - 2 where this Contract is executed as a deed, 12 years.
- 13 Notwithstanding the rights contained in this Schedule, the Contractor shall have no liability to the Funder for delay under this Contract unless and until the Funder serves notice pursuant to paragraph 5 or 6·4. For the avoidance of doubt the Contractor shall not be required to pay damages in respect of the period of delay where the same has been paid to or deducted by the Employer.
- 14 ·1 This Schedule shall be governed by and construed in accordance with the law of England and subject to paragraph 14·2 the English courts shall have jurisdiction over any dispute or difference between the Contractor and the Funder which arises out of or in connection with this Schedule.
- 2 Following the giving of any notice by the Funder pursuant to paragraph 5 or 6·4, any dispute or

^[63] For Contractors who do not carry Professional Indemnity insurance, see the Design and Build Contract Guide.

difference which shall arise between the Contractor and the Funder (including any appointee or permitted assignee) shall be subject to the provisions of Article 7 and (where they apply) Article 8 and clauses 9·3 to 9·8.

Schedule 6 Forms of Bonds

(Clauses 4·6, 4·15 and 4·17)

(Agreed between the JCT and the British Bankers' Association)

Part 1: Advance Payment Bond^[64]

Not applicable.

^[64] Not applicable where the Employer is a Local Authority or other public sector body.

Part 2: Bond in respect of payment for off-site materials and/or goods

Not applicable.

Part 3: Retention Bond^[65]

Not applicable.

^[65] Not applicable where the Employer is a Local Authority or other public sector body.

Schedule 7 JCT Fluctuations Option A

(Clause 4·2, 4·12 and 4·13)

(Contribution, levy and tax fluctuations)

Not applicable.



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2.0 SCHEDULE OF AMENDMENT TO THE JCT DESIGN & BUILD CONTRACT 2016 (DB2016)

DATED

2021

(1) **20:20 HOUSE (RESIDENTIAL
MANAGEMENT) LIMITED**

(2) **BALLYMORE CIVILS LIMITED**

**SCHEDULE OF AMENDMENTS TO THE JCT DESIGN AND BUILD CONTRACT 2016
(DB 2016)**

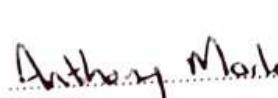
relating to a cladding remediation works at
20:20 Building, Skinner Lane, Leeds, LS7 1BB

These are the Schedule of Amendments referred to in Article 10 of the above-mentioned building
contract

Signed for and on behalf of
THE EMPLOYER


Nick Massighan 20:20 House (Residential
Management) Limited

Signed for and on behalf of
THE CONTRACTOR

 Anthony Morley Ballymore Civils Ltd



GOWLING WLG

This Contract shall incorporate all the provisions of the JCT Design and Build Contract 2016 subject to the following amendments:

AGREEMENT

RECITALS

Third Recital

Delete Third Recital and insert:

"The Contractor has checked the Employer's Requirements and confirms that the Contractor's Proposals meet with the Employer's Requirements and there is no discrepancy within and /or between the two documents and (other than for the Fire Engineering Design) the Contractor shall be fully responsible in all respects for the design of the Works (whether contained in the Employer's Requirements or the Contractor's Proposals) and design development, selection of goods and materials and satisfaction of performance specifications."

ARTICLES

Article 1:Contractor's obligations

In line 1 insert "carry out and" after "shall"

Article 3:Employer's Agent

Insert new paragraph at end of Article 3:

"Provided that despite the appointment of the Employer's Agent the Employer shall retain authority to issue comments instructions requests and notices from time to time for the purposes of this Contract."

Article 4:Employer's Requirements and Contractor's Proposals

In line 2 before "." insert "(except to the extent that the Contractor's Proposals are developed and completed after the date of this Contract)"

Article 6:Principal Contractor

Insert at end of final paragraph:

"The Contractor warrants to the Employer that he has the necessary expertise to undertake the role of Principal Contractor as defined in the CDM Regulations and has sufficient resources and will allocate those resources to the fulfilment of his duties as Principal Contractor. The Contractor shall carry out all those obligations imposed on him as Principal Contractor under the CDM Regulations fully and faithfully and to this end shall co-operate and liaise with the Principal Designer appointed by the Employer and any designer appointed in connection with the Works."

Article 8:Arbitration

Delete Article 8 and insert "Not used."

Article 9:Legal Proceedings

In line 1 delete "and (where it applies) to Article 8"

Article 10:Incorporation of Schedule of Amendments

"The Recitals, Articles, Contract Particulars, Conditions and Schedules include and shall be subject to the Schedule of Amendments attached to this contract and signed on the cover sheet on behalf of the Employer and the Contractor. If there is any discrepancy between the Recitals, Articles, Contract Particulars, Conditions and Schedules and the Schedule of Amendments the wording contained in the Schedule of Amendments shall prevail."

Insert new article:

Article 11:Professional Team

"The Employer reserves the right to appoint at any time any independent consultants to advise and assist the Employer and details of such consultants shall be notified to the Contractor by the Employer or the Employer's Agent from time to time. The Contractor shall co-operate with such consultants in the performance of their duties and shall liaise with them as necessary (or as the Employer or Employer's Agent on his behalf may direct) in connection with the Works."

Insert new article:

Article 12:Retrospective effect of contract

"Notwithstanding the date of this Contract it shall have effect as if it had been executed upon the date the Contractor first performed any work (including design enabling temporary or other preliminary demolition or permanent works) or activities in relation to the Works and accordingly the duties and obligations contained in this Contract shall be deemed to have applied to the carrying out of any of those works and / or the Works prior to the date of this Contract."

CONTRACT PARTICULARS

The following entries (and any associated text) shall be deemed deleted:

Article 8	Arbitration
Clause 4.2, 4.12 and 4.13	Fluctuations Options
Clause 6.15	Professional Indemnity Insurance
Clause 7.3.1	Performance bond or guarantee from bank or other approved surety
Clause 7.3.2	Guarantee from the Contractor's parent company
Clause 7.4	Third Party Rights and Collateral Warranties
Clause 9.4.1	Arbitration – appointor of Arbitrator (and of any replacement)

ATTESTATION CLAUSE

This Contract is a deed and references to the document being executed under hand will be deemed deleted.

CONDITIONS

SECTION 1 : DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

1.1

Delete the reference to and the definition of "Arbitrator"

Between the definitions of "Confirmed Acceptance" and "Construction Industry Scheme (or 'CIS')" insert:

Consents	the planning permissions referred to in the Employer's Requirements or any other planning permissions relating to the Works, approval of reserved matters and all details pursuant thereto, building regulation approval, fire officer approval and any other permissions, approvals, certificates and licences that may be necessary pursuant to the Statutory Requirements or otherwise (including for the avoidance of doubt any consents obtained in accordance with clause 2.54) to the carrying out of the Works and if they are destroyed or damaged, the reinstatement of the Works
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Delete the definition of "Consultants"

Delete existing definition of "Contractor's Design Documents" and insert:

Contractor's Design Documents	all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed by or on behalf of the Contractor (including by any of the Novated Consultants, Sub-Consultants and Sub-Contractors) in the course of or as a result of carrying out the Works whether in existence or to be made or produced and including all amendments additions and all designs ideas concepts and inventions contained in them
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Between the definitions of "Contractor's Proposals" and "Date for Completion" insert:

Contractor's Report	<p>report prepared by the Contractor which shall include (without limitation)</p> <ul style="list-style-type: none"> (a) a list of information outstanding from the Employer; (b) an estimate of the final cost of the Works (which shall take account of any monies which are due or may become due to the Contractor in accordance with the Conditions); (c) design consultants' reports in accordance with clause 2.47; and
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(d) comparison of progress of design and execution of the Works with the then current programme and in the event of any delay or disruption a summary of the measures the Contractor is taking or proposes to take to minimise or make good such delay or disruption.

Copyright Act	Copyright Designs and Patents Act 1988
Data Controller	has the meaning set out in the General Data Protection Regulation ("GDPR")
Data Protection Laws	the Data Protection Act 2018, the GDPR and all supplemental legislation enacted from time to time which relate to privacy and data protection

Personal Data has the meaning set out in the GDPR
Between the definitions of "Date of Possession" and "Development Control Requirements" insert:

Deed of Novation the deed or deeds of novation in the form set out in **Annex 7 to this Schedule of Amendments**

Delete the definition of "Employer" and insert:

Employer the person named as Employer in the Agreement and their successors in title and assigns

Delete the definition of "Employer's Rights"

Between the definitions of "Existing Structures" and "Final Payment Notice" insert:

Fire Engineering Design the fire engineering design to be carried out by International Fire Consultants Limited pursuant to the appointment entered into or to be entered into between (1) the Employer and (2) International Fire Consultants Limited in respect of the Works

Delete the definition of "Finance Agreement"

Delete the definition of "Fluctuations Provision"

Delete the definition of "Funder" and insert:

Funder 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 for the carrying out of the Works itself and / or for the acquisition of the Site

Delete the definitions of "Funder Rights" and insert :

Funder Rights the rights and benefits in favour of a Funder set out in **Annex 1 to this Schedule of Amendments**

Between the definitions of "Funder" and "Gross Valuation" insert:

Funder's Surveyor such employee of any Funder or such surveyor or firm of surveyors appointed by any Funder as may be notified from time to time to the Contractor and "Funders' Surveyors" shall be construed accordingly

Gross Internal Area the gross internal area of the building or buildings to be constructed as part of the Works as measured in accordance with the Code of Measuring Practice issued by the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers current at the Base Date

Group Company any subsidiary 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

Delete the definition of "Named Sub-Contractor"

Between the definitions of "Local or Public Authority" and "Non-Completion Notice" insert:

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 **Annex 2 to this Schedule of Amendments**

Between the definitions of "Notice of Completion of Making Good" and "P&T Rights" insert:

Novated Consultants each of the following:
 (a) International Fire Consultants Limited (Fire Engineer)

Delete the definition of "P&T Rights" and insert:

P&T Rights the rights and benefits in favour of a Purchaser and Tenant set out in **Annex 1 to this Schedule of Amendments**

Delete the definition of "Purchaser" and insert:

Purchaser a person who has acquired or has agreed to acquire or may later acquire or agree to acquire a freehold or long leasehold (at a premium) interest in the whole or any part of the Site (and/or any premises constructed or to be constructed on the Site) and "Purchasers" shall be construed accordingly

Between the definitions of "Purchaser" and "Recitals" insert:

Purchaser's Surveyor such employee of any Purchaser or such surveyor or firm of surveyors appointed by any Purchaser, as may be notified from time to time to the Contractor and "Purchasers' Surveyors" shall be construed accordingly

At the beginning of the definition of "Retention" after "clauses" insert "2.37.1, "

Delete the definition of "Rights Particulars"

Between the definitions of "Section Sum" and "Site Materials" insert:

Site the site at 20:20 Building, Skinner Lane, Leeds LS7 1BB

and all references to "site" in the Contract shall be deemed to read "Site"

Between the definitions of "Specified Perils" and "Statutory Requirements" insert:

Statutory Agreements an agreement pursuant to section 38 and/or 278 of the Highways Act 1980 and/or an agreement pursuant to section 104 of the Water Industry Act 1991 and/or an agreement pursuant to section 106 of the Town and Country Planning Act 1990 and/or section III of the Local Government Act 1972

Delete the definition of "Statutory Requirements" and insert:

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 Works and/or the buildings and structures the subject of the Works once built) and any rules regulations building regulations orders bye-laws or codes of practice of any local or other competent authority or of any statutory undertaker which has jurisdiction with regard to the Works or with whose systems the same are or will be connected including Development Control Requirements

Between the definitions of "Statutory Undertaker" and "Tenant" insert:

Sub-Consultants (1) BGP Consulting Limited

(2) ADP Architects

and any consultants engaged or to be engaged by the Contractor in relation to the Works to provide design or other professional services in addition to the Novated Consultants

Sub-Contractors any sub-contractor engaged or to be engaged to carry out any elements of the Works including but not limited to cladding and reference to a "Sub-Contractor" means any one of them

Delete the definition of "Tenant" and insert:

Tenant	a 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) and "Tenants" shall be construed accordingly
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Between the definitions of "Tenant" and "Terrorism Cover" insert:

Tenant's Surveyor	such employee of any Tenant or such surveyor or firm of surveyors appointed by any Tenant as may be notified from time to time to the Contractor and "Tenants' Surveyors" shall be construed accordingly
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Between the definitions of "Terrorism Cover" and "Valuation" insert:

Third Party Agreements	any agreement set out in Annex 3 to this Schedule of Amendments and any and all agreements relating to or affecting the Works or the completed Works (including the execution of the Works and their design) or any part of the Works which have been entered into or may be entered into by the Employer and/or any Group Company from time to time and disclosed to the Contractor (whether on or before the date of this Contract or after the date of this Contract once the Employer and/or the Group Company has entered into the same) including the agreements referred to as such in the Employer's Requirements and any agreements for lease
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Delete the definition of "Works" and insert:

Works	comprises the design and construction of the removal and replacement of aluminium composite material (ACM) cladding systems and associated remediation works in accordance with the employer's requirements document and Ballymore Services tender document – Skinner Lane Rev 1 13.10.20 including all pre construction work, works for the provision of and diversion of services and all ancillary works carried out on or about the Site and briefly described in the First Recital and referred to in the Employer's Requirements and the Contractor's Proposals and including any changes made to those works in accordance with this Contract
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INTERPRETATION

1.3 Agreement etc. to be read as a whole

Delete clause 1.3 and insert:

"The Agreement and these Conditions are to be read as a whole. Subject to clause 2.14 in the event of any inconsistency occurring between the contents of respectively and in that order this Schedule of Amendments, the Articles of Agreement, Conditions, Annexes, Schedules, the Employer's Requirements, Contractor's Proposals, Contract Sum Analysis, Novated Consultants appointments and the Sub-Consultants

appointments the contents of the document earlier in the order shall prevail over any document later in the order."

1.8 Effect of Final Statement

1.8.1.1 Delete clause 1.8.1.1 and insert "Not used."

Delete clauses 1.8.2 – 1.8.4 and insert:

- 1.8.2 "The Final Statement or the Employer's Final Statement shall not have effect as provided in clause 1.8.1:
- 1.8.2.1 in any legal proceedings or adjudication commenced before on or within 28 days after the issue of the relevant statement if commenced for the purpose of contesting any such issue as is mentioned in clause 1.8.1; or
 - 1.8.2.2 in any legal proceedings begun before on or within 28 days of an adjudicator's decision in any adjudication commenced in accordance with clause 1.8.2.1 if the purpose of such legal proceedings is to contest such decision or the dispute or difference to which such decision relates.
- 1.8.3 After the final conclusion of such adjudication and/or legal proceedings referred to in clause 1.8.2 the relevant statement shall be subject to the final outcome of such adjudication and / or legal proceedings.
- 1.8.4 The powers of the court or adjudicator to open up and review any certificate shall not extend to the Final Statement or the Employer's Final Statement to the extent that such statement is given conclusive effect pursuant to clause 1.8 and section 9 shall be construed accordingly."

1.9 Effect of payments other than payment of Final Statement

In line 1 delete "Save as stated in clause 1.8 no" and insert "No"

1.10 Consents and approvals

In line 3 after "case of" delete the remainder of the clause and insert "the Employer's consent under clause 7.1.1 the giving of which shall be at the sole discretion of the Employer".

Insert new clause as follows:

"1.12 GDPR

- 1.12 Each party to the Contract 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 the Contract. Each party undertakes to the other that in processing such Personal Data it will comply with all Data Protection Laws."

Insert new clause as follows:

- 1.13 Neither party shall commence any action or proceedings against the other under this Contract after 12 years from the date of practical completion of the Works and any adjudicator's decision under clause 9.2, other than a decision that has already become finally binding under clause 1.8, shall be finally binding on them unless either party has referred that dispute for final determination by legal proceedings, or has commenced any action or proceedings to recover any overpayment to which the decision has led, before that date."

SECTION 2 : CARRYING OUT THE WORKS

CONTRACTOR'S OBLIGATIONS

2.1 General obligations

2.1.1 In line 1 after "workmanlike manner" insert ", in accordance with good building practice"

Insert new clauses:

2.1.5 "The Contractor shall not specify nor use nor authorise cause or allow to be used within or in relation to the Works any materials:

2.1.5.1 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 persons involved in the installation construction or maintenance of the Works or to the eventual occupants of the Works;

2.1.5.2 not in conformity with any relevant British or European Standards or Codes of Practice;

2.1.5.3 which at the time the Works are being carried out are generally accepted as (or are reasonably suspected of):

2.1.5.3.1 being deleterious in themselves; or

2.1.5.3.2 becoming deleterious in a particular situation or in combination with other materials; or

2.1.5.3.3 being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.

2.1.6 For the purposes of clause 2.1.5 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:

2.1.6.1 the material itself; or

2.1.6.2 any material to which it is affixed; or

2.1.6.3 the structure in which it is incorporated or to which it is affixed; or

2.1.6.4 the Works or any part of the Works

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

2.1.7 The Contractor warrants that it shall comply with and have regard to the guide entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices or such other version of such publication current at the time of use) in assessing whether or not an intended material is deleterious in the terms set out in clauses 2.1.5 and 2.1.6.

2.1.8 The Contractor agrees that it 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 2.1.5 and 2.1.6.

- 2.1.9 In performing its obligations under this Contract, the Contractor shall and shall ensure where relevant that each of its sub-contractors shall comply with the Modern Slavery Act 2015.
- 2.1.10 The Contractor represents and warrants to the Employer that neither the Contractor nor any of his officers, employees or other persons associated with him:
- 2.1.10.1 has been convicted of any offence involving slavery and human trafficking; and
 - 2.1.10.2 having made reasonable enquiries, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 2.1.11 The Contractor shall implement due diligence procedures for any person he engages, to ensure that there is no slavery or human trafficking by such persons and notify the Employer as soon as it becomes aware of any actual or suspected slavery or human trafficking by any person engaged by the Contractor in connection with this Contract."

2.2 Materials, goods and workmanship

- 2.2.1 Delete clause 2.2.1 and insert:

"All materials, goods and workmanship used in the execution of the Works shall be of such kinds and of such quality as are necessary to enable the Contractor to comply with his obligations under this Contract."

- 2.2.2 Delete clause 2.2.2 and insert:

"The Contractor shall not make any substitution for any materials goods or workmanship specified or described in the Employer's Requirements or (if not specified or described in the Employer's Requirements) as set out in the Contractor's Proposals or in the specifications revised and returned to the Contractor by the Employer in accordance with the Contractor's Design Submission Procedure without the consent (not to be unreasonably withheld or delayed) in writing of the Employer."

POSSESSION

2.3 Date of Possession – progress

- Delete clause 2.3 and insert:

"On the Date of Possession, the Contractor shall be given a non-exclusive licence to access and occupy such part or parts of the Site at such times and for such periods as may be reasonably necessary to enable the Contractor to execute and complete the Works and any Section thereof in accordance with the Contract. Access to and occupation of the Site shall be subject to any third party rights, restrictions and/or constraints which are or maybe identified and/or referred to in the Employer's Requirements and/or the Development Agreements. Upon access to and occupation of the Site being given, the Contractor shall commence the construction of the Works and Sections and shall regularly and diligently proceed with and complete the same on or before the relevant Completion Date."

2.5 Hidden Early use by Employer

2.6 Work not forming part of the Contract

At the end of the first paragraph, after "or by any Employer's Persons" insert "or by any persons (including but not limited to any Tenant or Purchaser) authorised by the Employer"

Delete clauses 2.6.1 and insert:

- 2.6.1 "where the Employer's Requirements provide the information necessary to enable the Contractor to co-ordinate the carrying out and completion of the Works with the works which the Employer requires to be carried out by the Employer or by any Employer's Persons, the Contractor shall permit the execution of such work and shall co-ordinate the carrying out and completion of the Works with such work;"
- 2.6.2 At the end of clause 2.6.2 delete "that work" and insert "such work, such consent not to be unreasonably withheld or delayed".

SUPPLY OF DOCUMENTS, SETTING OUT ETC

2.7 Contract Documents

- 2.7.1 Delete clause 2.7.1 and insert:

"The Contract Documents shall be prepared in duplicate and once completed one set shall remain in the custody of the Employer and the other set shall be returned to the Contractor"

- 2.7.2 Delete "one copy, certified on behalf of the Employer, of the Contract Documents together with"
- 2.7.3 In line 1 after "Employer's Agent" insert "any Funder's Surveyor and/or any Tenant's Surveyor and/or any Purchaser's Surveyor"

2.8 Construction information

Delete "Save for any Contractor's Design Documents contained in the Contractor's Proposals" and change "the" to "The".

After "Design Submission Procedure", insert "or as otherwise stated in the Contract Particulars".

DISCREPANCIES AND DIVERGENCES

2.11 Preparation of Employer's Requirements

Delete clause 2.11 and insert:

"The Contractor shall be responsible for the contents of the Employer's Requirements (save for the Fire Engineering Design) and for verifying the adequacy of any design contained within them"

In line 2 delete "or" and insert "and"

2.12 Employer's Requirements – inadequacy

Delete clause 2.12 and insert:

"Any correction, alteration or modification of the Fire Engineering Design shall be treated as a Change".

2.14 Discrepancies in documents

Delete clause 2.14 and insert:

- 2.14.1 "Where there is a discrepancy within the Contractor's Proposals or within the Employer's Requirements or between the Employer's Requirements and the Contractor's Proposals the Contractor shall inform the Employer in writing of his proposed amendment to remove the discrepancy; and (subject always to compliance with Statutory Requirements) the Employer shall decide between the discrepant items or otherwise may accept the Contractor's proposed amendment and the Contractor shall be obliged to comply with the decision or acceptance by the Employer without cost to the Employer.
- 2.14.2 The Contractor accepts entire responsibility for the Contractor's Proposals and for any mistake inaccuracy or omission in the Contractor's Proposals whether or not the whole or any part of the Contractor's Proposals has been prepared by or on behalf of the Employer. Any mistake, inaccuracy or omission in the Contractor's Proposals or in any drawings details documents or information referred to in clause 2.8 and schedule 1 shall be corrected by the Contractor without cost to the Employer.
- 2.14.3 The Contractor shall not have or make any claim for an extension of time under clauses 2.25 and 2.26 or for loss and/or expense under clauses 4.19 to 4.21 and clause 8.9 shall not have effect where and to the extent that the cause of the progress of the Works having been delayed affected or suspended is any such discrepancy mistake inaccuracy or omission as is referred to in clauses 2.14.1 or 2.14.2 or any failure by the Contractor to provide necessary drawings or documents in due time."

2.15 Divergences from Statutory Requirements

- 2.15.1 Delete clause 2.15.1 and insert:

"The Contractor shall comply with and give all notices required by Statutory Requirements and the Contractor shall pass to the Employer all approvals received by the Contractor in connection therewith and when requested to do so by the Employer the Contractor shall provide the Employer with evidence that he has complied with all such requirements and given all such notices."

- 2.15.2 At the end of the clause before ":" insert "PROVIDED ALWAYS that any amendment to the Contractor's Proposals necessary for conformity with Building Regulations or for conformity with any requirement or decision of a building control officer and/or fire officer shall not be treated as a Change"

Insert new clause:

- 2.15.3 "The provisions of clause 2.15.2.1 and clause 2.15.2.2 in respect of a change in the Statutory Requirements shall only apply if the change could not reasonably have been foreseen by the Contractor prior to the Base Date"

DESIGN WORK – LIABILITIES AND LIMITATION

- 2.17 Delete clause 2.17.1 and 2.17.2 and insert:

- 2.17.1 "Other than the Fire Engineering Design, the Contractor shall (to the extent set out in clause 2.17.2 below) be fully responsible in all respects for the design of the Works including:

- 2.17.1.1 any design contained in the Employer's Requirements and for any discrepancy in or divergence between the Employer's Requirements and

/ or the Contractor's Proposals and / or any drawings, details, documents and other information submitted by him in accordance with clause 2.8;

- 2.17.1.2 but not limited to co-ordination and integration of all design and the interface between design elements for the Works whether carried out by the Contractor or by any other party engaged on the Works and shall adopt and take responsibility for any design work in relation to the Works which may be carried out or which may have been carried out by professional consultants or specialist sub-contractors or by any other person at the request of the Employer. Without prejudice to the generality of this clause, the Contractor shall be fully responsible and liable to the Employer for all aspects of design and design development, selection of goods and materials and the satisfaction of performance specifications included or referred to in the Employer's Requirements, the Contractor's Proposals, this Contract or any Change.

- 2.17.2 Without prejudice to any expressed or implied warranties or conditions or to the generality of the foregoing, the Contractor warrants to the Employer that:

 - 2.17.2.1 the design of the Works (including any design carried out by any design consultant or any sub contractor with design responsibility or by any other person whether or not employed or engaged by the Contractor) has been and will be carried out using all the reasonable skill care and diligence to be expected of a professionally qualified designer of the relevant discipline to the design experienced in works of the same size scope complexity nature and timescale as the Works;
 - 2.17.2.2 the Works will when completed comply with any performance specification or requirements included or referred to in the Employer's Requirements or the Contractor's Proposals, this Contract or in any Change;
 - 2.17.2.3 the Works will comprise only materials and goods which are of sound and merchantable quality and all workmanship manufacture and fabrication, will be of a standard appropriate to works of a similar size, scope, complexity and nature as the Works;
 - 2.17.2.4 the Contractor shall design and construct the Works in compliance with all Consents (including the discharge of any reserved matters in planning consents relating to the Works), Statutory Agreements, Statutory Requirements, relevant codes of practice British Standards or EU equivalents and manufacturers recommendations and the requirements of the insurers of the Employer (insofar as details have been provided to the Contractor at the date of this Contract).

PROVIDED THAT nothing in this Contract or in any other warranty (whether express or implied) shall impose any fitness for purpose obligation upon the Contractor in respect of the Works."

ADJUSTMENT OF COMPLETION DATE

2.25 Fixing Completion Date

Insert new clause:

- 2.25.1.3 "and PROVIDED THAT the Contractor has complied with clause 2.25.6;"

2.26 Relevant Events

In line 1, first paragraph, before ":" insert "(but only to the extent that such events are not in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor, his servants or agents or any sub-contractor or supplier or their respective servants or agents)."

- 2.26.2.3 In line 2 after "or test" insert "or series of inspections or tests"
- 2.26.10 Delete clause 2.26.10 and insert "Not used."
- 2.26.11 In line 3 after "materials required for them" insert "save where such events arise only upon the Site or concern only the Contractor's employees and do not arise out of or in connection with a regional or national labour dispute"
- 2.26.12 In line 2 before ";" insert "which the Contractor could not have reasonably foreseen at the Base Date"

PRACTICAL COMPLETION, LATENESS AND LIQUIDATED DAMAGES

2.27 Practical completion

In line 1 delete "When" and insert "The Contractor shall notify the Employer in writing when he considers that practical completion of the Works or a Section has been reached and PROVIDED THAT"

Insert new paragraph at end of clause 2.27:

"The Employer at his discretion may issue the Practical Completion Statement or Section Completion Statement notwithstanding that minor items of work and / or final commissioning and adjustment of mechanical and electrical service installations remain to be completed, in which event the Contractor shall be obliged to complete such incomplete work and/or commissioning and adjustment within one month of the date of the Practical Completion Statement or Section Completion Statement or within such other period as the Employer may reasonably stipulate"

2.29 Payment or allowance of liquidated damages

- 2.29.3 In line 3 before "." insert "PROVIDED ALWAYS that the fixing of such later Completion Date shall not invalidate the Employer's notice or the notification in writing from the Employer as to deduction of liquidated and ascertained damages and the payment or repayment of the amounts under this clause shall be limited to the net difference between the amounts deducted and the amounts properly due after the fixing by the Employer of the later completion date. Interest shall not be payable by the Employer on any amounts payable or repayable hereunder."

PARTIAL POSSESSION BY EMPLOYER

DEFECTS

2.35 Schedules of defects and instructions

- 2.35.2 In line 1, delete "prior to the issue of that schedule". In line 4 delete "after delivery of that schedule or more" and insert "later".

In line 1 of the final paragraph delete "Within a reasonable time after receipt of" and insert "Within the period specified in".

In line 3 of the final paragraph before "." insert:

"PROVIDED THAT where the Employer states in his instruction that, in his opinion, any such defect shrinkage or other fault is likely to cause unreasonable inconvenience to any such person lawfully in occupation of or using the whole or any part of the Works or that such defect shrinkage or other fault is likely directly or indirectly to cause any further damage to the Works the Contractor shall comply with the Employer's instruction forthwith and in any event within 48 hours from its receipt"

Insert new paragraph at end of clause:

"The provisions of this clause 2.35 are without prejudice to any other rights and remedies the Employer may have."

CONTRACTOR'S DESIGN DOCUMENTS

2.37 As-built Drawings

Delete clause 2.37 and insert:

2.37.1 "On or before practical completion or in the case of a Section, the relevant Completion Date relating to that Section the Contractor shall without further charge to the Employer supply for the retention and use of the Employer:

- 2.37.1.1 two complete copies of the as built drawings, plans, sections and specifications;
- 2.37.1.2 one draft of every maintenance and operating manual (including copies of all test and commissioning certificates and / or statements);
- 2.37.1.3 originals of all warranties, guarantees and certificates or other documents in respect of plant and machinery installed in the Works;
- 2.37.1.4 a schedule listing the names and addresses of all sub-contractors, sub-consultants and suppliers who have been involved in or concerned with the Works;
- 2.37.1.5 one copy of all maintenance and operating agreements;
- 2.37.1.6 the original notice of passing of plans under the Building Regulations and confirmation from the relevant authority that all conditions under the Building Regulations have been complied with; and
- 2.37.1.7 the original and two copies of the health and safety file.

Notwithstanding any provision to the contrary in this Contract the Contractor shall not be entitled to any payment of Retention that would (but for this provision) become due and payable under this Contract until the provisions of clause 2.37.1 have been complied with PROVIDED THAT the provisions of this clause shall not apply to any retention payable to the Contractor prior to practical completion by virtue of clauses 2.31 and 4.18.3.

2.37.2 Within three weeks of the date of practical completion the Contractor shall without further charge to the Employer supply to the Employer (to the extent they have not been provided in accordance with clause 2.37.1) :

- 2.37.2.1 6 (six) complete reproducible sets of the as built drawings (together with negatives);

- 2.37.2.2 5 (five) copies of all maintenance and operating manuals, test and commissioning certificates and statements and any service or other agreements available for all heating, air conditioning and other equipment, plant and machinery installed in the Works;
 - 2.37.2.3 all correspondence and documentation relating to obtaining of the Consents together with the originals of the Consents and copies of all associated drawings and plans and copies of all applications relative thereto;
 - 2.37.2.4 evidence that all Consents have been obtained and complied with in full in relation to the Works;
 - 2.37.2.5 one copy of the Construction Phase Plan; and
 - 2.37.2.6 the original completion certificate issued by the relevant authority under the Building Regulations.
- 2.37.3 If during the course of the Rectification Period errors are discovered in the drawings and information supplied by the Contractor in accordance with clauses 2.37.1 and 2.37.2 or if as the result of any adjustment or remedial work carried out during the course of the Rectification Period the said drawings and information no longer show or describe the Works as required by clause 2.37.1 or clause 2.37.2 then the Contractor as soon as reasonably practicable shall amend the said drawings and information so that they comply with the requirements of clause 2.37.1 or clause 2.37.2."
- 2.38 Copyright and use**
- 2.38.2 Delete clause 2.38.2 and insert:
- "The Contractor grants or shall procure the grant from third parties engaged by the Contractor (where copyright is vested in such parties) to the Employer of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Contractor's Design Documents for any purpose whatsoever connected with the Works 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 Works and/or the Site and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Contractor shall not be liable for the consequences of any use of the Contractor's Design Documents for any purpose other than that for which the same was prepared."
- 2.38.3 Delete clause 2.38.3 and insert "The Contractor agrees that the Employer may assign the licence referred to in clause 2.38.2 or grant a sub-licence or sub-licences from such licence to any person with an interest in the Works and/or the Site and/or any premises constructed or to be constructed on the Site";
- 2.38.4 Delete clause 2.38.4 and insert "The Contractor agrees that it will provide the Employer with such information and copies of the Contractor's Design Documents as may be reasonably requested by the Employer".
- Insert new clauses:
- 2.39 "Moral rights**

The Contractor waives any Moral Rights that it might have as author in respect of the Contractor's Design Documents and/or the Works 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 Contractor's Design Documents and/or the Works.

2.40 Confidentiality

- 2.40.1 The Contractor shall not (and shall procure that none of the Sub-Consultants Sub-Contractors and/or Novated Consultants shall) disclose to any person or publish or make any statement concerning this Contract or the Works or any matters arising from or relating to the Contract or the Works directly or indirectly without the prior written authority of the Employer during the Works or at any time thereafter (except as may be required by law or in order to properly perform its obligations under this Contract).
- 2.40.2 Both the Employer and the Contractor shall keep confidential and shall not without the other's written consent disclose to any third party any trade or business secrets or similar confidential information supplied by the other party except as shall be absolutely necessary for the proper performance of this Contract.

2.41 Restriction on use of Contractor's Design Documents

The Contractor shall not without the Employer's consent use the Contractor's Design Documents to design any other project or development which is of similar design appearance or concept to the Works and the Contractor shall not likewise use the Contractor's Design Documents for any purpose whatsoever connected with the Site other than in the carrying out of the Works under this Contract.

2.42 Continuing effect of clauses 2.38 – 2.41

The provisions of clauses 2.38 to 2.41 including without limitation the licence granted to the Employer pursuant to clause 2.38.2 shall continue in full force and effect notwithstanding any suspension or determination of the employment of the Contractor and/or the determination of this Contract.

PROGRAMME AND PROGRESS

2.43 Preparation and provision of programme

Prior to the Date of Possession the Contractor shall produce to the Employer a programme for the design and execution of the Works consistent with the orderly and efficient production of the design of the Works and with the completion of the Works by or before the Date for Completion. Thereafter the Contractor shall from time to time revise the programme as appropriate to minimise or avoid any or any anticipated delay or disruption to the carrying out of the Works.

2.44 Provision of revised programme

Forthwith after the production of the programme or any revised programme the Contractor shall supply a copy to the Employer.

THIRD PARTY DOCUMENTS

2.45 Provision of and compliance with Third Party Documents

The Employer has provided the Contractor with copies of the Third Party Agreements and the Contractor shall be deemed to have full knowledge of the requirements of the Third Party Agreements and shall perform the Works so as to ensure that the

Employer and/or any Group Company are not put in breach of their obligations in the Third Party Agreements and/or rendered liable to pay compensation under any of the Third Party Agreements provided always that if any Third Party Agreement received by the Contractor after the date of the Contract has an effect which adds, omits, alters or substitutes the Works then such addition, omission, alteration or substitution of the Works or the programme of Works shall be treated as a Change.

CONTRACTOR'S REPORTING

2.46 Provision of Contractor's Report

Each month, on a date to be determined by the Employer's Agent, the Contractor shall provide to the Employer the Contractor's Report for the preceding month.

2.47 Inclusion of information from Sub-Consultants and Novated Consultants in Contractor's Report

The Contractor shall procure from each of the Sub-Consultants and the Novated Consultants reports on the quality of the Contractor's work and the compliance of the Works (or otherwise) with the Employer's Requirements. The reports, in their original and unedited form, shall be incorporated into the Contractor's Report.

GROUND CONDITIONS AND REPORTS

2.48 Contractor to inspect the site

2.48.1 Subject to clause 2.48.2, the Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before the date of this Contract as to the nature of the sub-surface conditions, the form and nature of the Site, the extent, nature and difficulty of the work and materials necessary for the completion of the Works, the means of communication with and restrictions of access to the Site, the accommodation he may require, and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the Works. Save as provided in clause 2.48.2, the Contractor shall not be entitled to any extension of time or to any additional payment on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Contractor be released from any of the risks accepted or obligations undertaken by him under this Contract on the ground that he did not or could not have foreseen any matter which might affect for have affected the execution of the Works.

2.48.2 The Contractor shall only be deemed to be satisfied as to the form and nature of the Site of the sub-surface conditions and the existing structure to the extent the form and nature of the sub-surface conditions and the existing structure could have been discovered or foreseen by a competent design and build contractor experienced in developments of this nature having completed the same level of inspections and having access to the same level of information as the Contractor as at the date of this Contract, (including any reports included within the Employer's Requirements or provided to the Contractor by or on behalf of the Employer) and exercising the standard of care required under clause 2.17.2 (**Foreseeable Site Conditions**). If the Contractor encounters conditions in respect of the sub-surface or the existing structure which is not a Foreseeable Site Condition (a condition which is not a Foreseeable Site Condition shall be an "**Unforeseeable Site Condition**"), the Contractor shall, as soon as reasonably practical following the discovery of the condition the Contractor considers to be an Unforeseeable Site Condition, provide the Employer with full particulars of the condition and the Contractor's assessment of impact of the condition (including the options and methodology available for dealing with the condition and the time and cost impact of each). The Contractor shall be

entitled to treat additional work required as a result of a condition agreed or determined under this Contract to be an Unforeseeable Site Condition as a Change.

2.49 Determination of location of obstructions, services and drainage etc

Without limitation to clause 2.48 in the inspection of the Site the Contractor will be deemed to have determined the position of any obstructions and all underground and over-ground services and drainage which could have been discovered or foreseen by a competent design and build contractor experienced in developments of this nature having completed the same level of inspections and having access to the same level of information as the Contractor as at the date of this Contract (including any reports included within the Employer's Requirements or provided to the Contractor by or on behalf of the Employer) and exercising the standard of care required under clause 2.17.2 (**Foreseeable Services / Drainage**) and the Contract Sum shall be deemed to be inclusive of all costs which may be incurred in carrying out any diversions Foreseeable Services / Drainage and the costs of the Contractor's operations in the vicinity of any Foreseeable Services / Drainage (unless otherwise provided for in the Employer's Requirements). Liaison with and obtaining the agreement of any public or Statutory Authority in this respect is the sole responsibility of the Contractor (unless otherwise provided for in the Employer's Requirements).

- 2.49.1 If the Contractor encounters any obstructions and all underground and over-ground services and drainage which is not Foreseeable Services / Drainage (any obstructions and all underground and over-ground services and drainage which is not Foreseeable Services / Drainage shall be **Unforeseeable Services / Drainage**), the Contractor shall, as soon as reasonably practical following the discovery of the condition the Contractor considers to be Unforeseeable Services / Drainage, provide the Employer with full particulars of the condition and the Contractor's assessment of impact of the condition (including the options and methodology available for dealing with the condition and the time and cost impact of each). The Contractor shall be entitled to treat additional work required as a result of a condition agreed or determined under this Contract to be Unforeseeable Services / Drainage as a Change.

2.50 Reports provided for information only

So far as the Employer's Requirements contain any ground report or reports these are included for information purposes only and the Employer shall have no responsibility for and gives no warranty as to the accuracy of information contained within such report or reports and the Contractor shall remain fully responsible for ascertaining the ground conditions in accordance with clause 2.48 and 2.49.

2.51 No claim for misrepresentation etc

The Contractor shall not have or make any claim whether in contract or by way of negligent or innocent misrepresentation or otherwise, in respect of information provided or statements made by or on behalf of the Employer in respect of such risks contingencies or circumstances relating to the Site.

STATUTORY REQUIREMENTS

2.52 Contractor to obtain Consents

The Contractor shall be responsible for obtaining all Consents to enable the Works to be completed in accordance with the Employer's Requirements and should any Consent be refused the Contractor shall take such reasonable steps including any appeal to enable the Works to progress.

2.53 Provision of documentation relating to Statutory Requirements to Employer

Where the Employer's authorisation or completion of documentation in respect of the Statutory Requirements is required the Contractor shall furnish the relevant documentation to the Employer and permit the Employer a period of 10 Business Days to authorise or complete it.

NUISANCE

2.54 Contractor to take all reasonable steps to avoid nuisance

Without prejudice to the generality of clause 6.2 the Contractor shall at all times take all reasonable steps to prevent any nuisance (including, but without limitation, any noisy working operations noxious fumes or the deposit on public highways of any material or debris) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works or of any obligation pursuant to clause 2.35 and shall defend or, at the Employer's option, assist the Employer in defending any action or proceeding which may be instituted in relation thereto. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing his obligations under this clause 2.54 save only where such nuisance or interference is the consequence of a Change or other instruction of the Employer (which is not itself the result of any negligence default or breach of contract by or on behalf of the Contractor) and which could not have been avoided by the Contractor using all reasonable and practical means.

2.55 Licence

Without prejudice to the Contractor's obligations under clause 2.54 if the carrying out of the Works is likely to necessitate any interference with the rights of adjoining or neighbouring landowners tenants or occupiers then the Contractor shall without cost to the Employer provide assistance to the Employer in obtaining the prior written agreement of such landowner tenants and / or occupiers and such agreement shall be subject to the approval of the Employer before execution. The Contractor shall comply in every respect with any conditions contained in such agreement.

2.56 No trespass

Without prejudice to the obligations of the Contractor under clauses 2.54 and 2.55 the Contractor shall at all times ensure that there is no trespass by the Contractor, its servants, agents, sub-contractors, design consultants or suppliers (including without limitation the over sailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by the carrying out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons (including but without limitation) the occupiers of adjoining or neighbouring property and members of the public."

SECTION 3 : CONTROL OF THE WORKS

ACCESS AND REPRESENTATIVES

3.1 Access for Employer's Agent

In line 1 after "Employer" insert "(including for the avoidance of doubt the Purchaser's Surveyor and/or Tenant's Surveyor and/or Funder's Surveyor and/or MHCLG)"

SUB-CONTRACTING

3.4 Conditions of sub-contracting

- In line 1, delete the first sentence.
- 3.4.1 In line 1 before "the Sub-Contractor's employment" insert "subject to clause 8.7.2.3"
- 3.4.2 In line 1, after "sub-contract shall" insert "be executed as a deed pursuant to a form of sub-contract which has been previously approved by the Employer in writing and shall"
- 3.4.2.5 Delete clause 3.4.2.5 and insert:
 "that the Sub-Contractor execute and deliver within 10 Business Days of a written request deeds of collateral warranty in respective forms contained in Annex 5 to this Schedule of Amendments in favour of the Employer and/or Purchaser and/or Tenant and/or Funder and/or MHCLG coupled with a provision to the effect that the Contractor shall not be obliged to make any payment or further payment to the Sub-Contractor concerned in circumstances where such a collateral warranty has been requested but not executed and delivered within the 10 Business Day period;"
- Insert new clause:
- 3.4.2.6 "that to the extent that any Sub-Contractor is carrying out any design or other professional services that the Sub-Contractor maintains professional indemnity insurance cover at a level reasonably acceptable to the Employer with a reputable insurer for a period of twelve years from practical completion of the Works and that it shall provide sufficient evidence of such insurance."

EMPLOYER'S INSTRUCTIONS

3.5 Compliance with instructions

Delete the remainder of the clause from and including ", save that" up to and including "the instruction"

3.6 Non-compliance with instructions

In line 1, delete "Subject to clauses 3.5 and 3.9, if" and insert "If"

3.8 Provisions empowering instructions

Delete second sentence and insert:

"Notwithstanding such request the Contractor shall comply with the said instruction and unless it is subsequently decided in any adjudication or legal proceedings that the provision specified by the Employer in answer to the Contractor's request does not empower the issue of the said instruction, then the issue of the same shall be deemed for all the purposes of this Contract to have been empowered by the provision of the Conditions specified by the Employer."

3.9 Instructions requiring Changes

3.9.1 Delete clause 3.9.1 and insert:

"Subject to clause 3.9.4 the Employer may issue instructions effecting a change in the Employer's Requirements."

3.9.2 Delete clause 3.9.2 and insert "Not used."

3.12 Inspections – tests

In line 1 after "to" insert "provide samples of materials or"

3.16 CDM Regulations

3.16.1 Delete and insert "Not used"

3.16.6 Insert a new clause 3.16.6 as follows:

"the Contractor warrants and undertakes to the Employer that:

- 3.16.6.1 he is competent and possesses the requisite degree of skill knowledge experience competence and level of resources and organisational capability to perform all duties imposed on him by the CDM Regulations;
- 3.16.6.2 he has allocated and will continue to allocate both sufficient time and adequate resources to ensure that he performs and fulfils his duties under the CDM Regulations; and
- 3.16.6.3 he has advised and supported and will continue to advise and provide support to the Employer to assist the Employer in performing the duties imposed by the CDM Regulations on a "client" (as defined by the CDM Regulations)."

Insert new clauses:

"SUB-CONSULTANTS AND NOVATED CONSULTANTS

3.17 Novation

The Contractor shall (to the extent that it has not already done so) forthwith execute and complete Deeds of Novation with the Novated Consultants.

3.18 Conditions of appointing Sub-Consultants

3.18.1 The Contractor shall obtain the Employer's approval to the form of the appointment of any Sub-Consultant (in addition to the approval required by clause 3.3.2) which appointment (without limitation) shall:

- 3.18.1.1 be executed as a deed;
- 3.18.1.2 include an obligation on the Sub-Consultant to execute and deliver as a deed within 10 Business Days of a request to do so a deed or deeds of collateral warranty in favour of the Employer and/or Purchaser and/or Tenant and/or Funder and/or MHCLG in the form set out at Annex 6 to this Schedule of Amendments;
- 3.18.1.3 include a provision to the effect that the Contractor shall not be obliged to make any payment or further payment to the Sub-Consultant concerned in circumstances where such a collateral warranty has been requested but not executed and delivered within the 10 Business Day period referred to in clause 3.18.1.2;
- 3.18.1.4 to the extent that any Sub-Consultant is carrying out any design or other professional services include an obligation to maintain professional indemnity insurance cover at a level reasonably acceptable to the Employer for a period of twelve years from practical completion of the Works with a reputable insurer and to provide sufficient evidence of such insurance.

3.19 Compliance by Contractor with appointments of Novated Consultants and Sub-Consultants

- 3.19.1 In relation to the appointments of the Novated Consultants and any Sub-Consultants the Contractor shall:
- 3.19.1.1 properly enforce the obligations of such consultants under their appointments and shall not determine or vary the terms of any such appointments or release such consultants from their obligations under their respective appointments without the prior consent of the Employer;
 - 3.19.1.2 (without limitation to clause 3.19.1.1) procure that such consultants comply with their obligations in relation to the provision of collateral warranties under the terms of their appointments;
 - 3.19.1.3 duly perform and observe all the obligations and duties on the part of the Contractor under the appointments of any Sub-Consultants and Novated Consultants;
 - 3.19.1.4 ensure that the Novated Consultants and Sub-Consultants are fully and properly instructed in connection with the Works;
 - 3.19.1.5 diligently take all steps necessary effectually to procure due performance and observance of the obligations and duties of the Novated Consultants and the Sub-Consultants;
 - 3.19.1.6 not waive, release, vary or estop itself from enforcing or seeking redress for any such obligation or duty without the consent of the Employer;
 - 3.19.1.7 not to do or omit to do any act or thing which would entitle any of the Novated Consultants and / or the Sub-Consultants to treat as terminated by breach their appointment in connection with the Works.

APPROVAL

3.20 Effect of approval, consent etc by Employer

Notwithstanding any other provision of this Contract no direction, admission, approach, consent, approval, confirmation, comment, sanction, acknowledgement or advice made or given by or on behalf of the Employer or the Employer's Agent shall in any way relieve the Contractor from his liabilities or obligations under this Contract, nor shall such liabilities or obligations be restricted or qualified in any way.

3.21 Contractor to notify Employer if instruction may relieve Contractor of liability

Should the Employer issue an instruction pursuant to this Contract which could in any way be deemed, but for the provisions of clause 3.20, to relieve the Contractor from his liabilities or obligations or be against statute or good building practice, then the Contractor shall notify the Employer in writing of the effect of such instruction and the Employer shall then confirm whether or not the instruction remains effective within 5 Business Days.

3.22 No release

The Contractor also acknowledges that the Contractor's liability under this Contract shall not be released, diminished or in any other way affected by:

- 3.22.1 any negligent or other act omission or delay by or on behalf of the Employer in inspecting approving or informing itself about anything relating to the Works;
- 3.22.2 any enquiry or inspection into any relevant matter which may be made or carried out by or on behalf of the Employer or the Employer's Agent;
- 3.22.3 the appointment or failure to appoint any clerk of works or other person to inspect or otherwise report in respect of the Works or by any act or omission of any clerk of works or other person whether or not such act or omission might give rise to an independent liability to such clerk of works or another person to the Employer the Employer's Agent and / or any third party."

SECTION 4 : PAYMENT

4.2 Items included in adjustments

- 4.2.3 Delete clause and insert "not used"

PAYMENTS AND NOTICES – GENERAL PROVISIONS

4.9 Interim and final payments – final date and amount

- 4.9.1 Delete "14 days" and insert "30 days"

Insert new clause 4.9.8:

- 4.9.8 "Where the Employer has given notice or notices complying with clauses 4.9.2 or 4.9.5 and either Party refers a dispute concerning such notice or notices and/or the withholding, paying less or deduction of any payment under that notice to adjudication under clause 9.2 and the Adjudicator finds that any further amount over and above that set out in the notice should be paid then payment of such amount should be made not later than 5 days from the Adjudicator's decision or the final date for payment of that instalment whichever is the later date"

4.10 Pay Less Notices and other general provisions

- 4.10.4 In line 1 delete "The Employer's fiduciary interest in the Retention as referred to in clause 4.16, shall not prevent him from exercising" and insert "The Employer is entitled to exercise"

4.11 Contractor's right of suspension

- 4.11.1 In line 5 after "performance of" insert "any or all of"

- 4.11.3 In line 2 delete "or on request"

At the end of the clause after "." insert:

"The Contractor shall, on request, submit such further details as are reasonably required by or on behalf of the Employer"

RETENTION

4.16 Rules on treatment of Retention

Delete clause 4.16 and insert:

"The Employer shall have the full and unencumbered beneficial interest in the Retention. The Contractor shall have no proprietary right or other interest (whether at law or in equity) in or over the Retention except as unsecured creditor and the Employer shall owe no fiduciary obligations to the Contractor in relation to the Retention."

4.18 Retention – amounts and periods

- 4.18.1 At the end of the clause insert "and for which the drawings and other information referred to in clause 2.37 have not been provided to the Employer"
- 4.18.2.1 After "practical completion" insert "and for which the drawings and other information referred to in clause 2.37 have not been provided to the Employer"

At the end of clause 4.18 insert as a new paragraph:

"PROVIDED ALWAYS where the Employer has exercised its discretion under clause 2.27 and notwithstanding any other provisions of this Contract, the Employer shall not be obliged to pay to the Contractor any part of the Retention deducted prior to and upon practical completion, unless and until the Contractor has carried out and completed to the reasonable satisfaction of the Employer, all work and / or remedied all defects in the Works as may be notified to the Contractor as outstanding and to be carried out or remedied (as the case may be) as a condition of practical completion, or as may be detailed in any list annexed to the Practical Completion Statement, provided that if the Employer has been unable for any reason to provide access to the Contractor to remedy or complete defects or outstanding work within three months of the date of practical completion, the Employer shall pay to the Contractor the half of Retention otherwise due when the work has reached practical completion."

LOSS AND EXPENSE

4.19 Matters materially affecting regular progress

Insert new clauses 4.19.3 – 4.19.4:

- 4.19.3 "The Contractor shall have no entitlement under clauses 4.19 and 4.20 unless it shall have made reasonable and proper efforts to avoid or reduce such loss and expense;
- 4.19.4 The following shall apply in relation to any claim under clauses 4.19 and 4.20:
 - 4.19.4.1 any direct loss and/or expense resulting from any delay in the regular progress of the Works or any part of the Works where such delay is caused by a matter or matters referred to in clause 4.21 which is concurrent with another delay for which the Contractor is responsible shall not be taken into account.
 - 4.19.4.2 notwithstanding any other provision the Contractor shall not be entitled to any claim for loss and expense on account of any circumstances arising by reason of any error omission negligence or default of the Contractor or of any sub-contractor or supplier or of any of his or their employees or agents.
 - 4.19.4.3 notwithstanding any other provision of this clause 4.19 and clauses 4.20 to 4.22, the Contractor shall not become entitled to the addition of any amount to the Contract Sum or to any other payment (other than any amount which is recovered by the Employer under any policy of insurance maintained in accordance with this Contract) in respect of any costs, loss or expense incurred by reason of any error, omission, negligence or

default of the Contractor, his employees or agents or of any sub-contractor or supplier or any of their employees or agents."

4.21 Relevant matters

4.23 Reservation of Contractor's rights and remedies

Delete clause 4.23 and insert:

"Reimbursement of the Contractor for loss and/or expense under clauses 4.19 to 4.22 shall be deemed to be full compensation for the Contractor in respect of which the compensation is paid and the Employer shall have no further liability to the Contractor in respect of such matters arising under the Contract or generally at law."

SECTION 5 : CHANGES

GENERAL

Insert new clauses:

"ADDITIONAL OR SUBSTITUTED WORK

QUOTATIONS BEFORE CHANGES INSTRUCTIONS

5.8 Employer may issue preliminary notice of change

Before the Employer issues an instruction effecting a Change pursuant to clause 3.9 he may give to the Contractor a preliminary notice of Change which indicates that any proposed Change to which that preliminary notice relates is to be valued, and the length of any extension of time and the amount of any loss and/or expense to which the Contractor may become entitled in respect thereof shall then be determined in accordance with clauses 5.9 to 5.13.

5.9 Information to be provided by Contractor

Within such reasonable period as the Employer may specify (being not less than 10 Business Days after the receipt by the Contractor of any such preliminary notice of Change as is referred to in clause 5.8) the Contractor shall provide the Employer with:

- 5.9.1 an estimate of the valuation of the proposed Change in the form of a quotation or quotations from the Contractor; and
- 5.9.2 an estimate of the length of any extension of time and the amount of any loss and/or expense to which the Contractor might become entitled pursuant to clauses 2.23 to 2.26 and 4.20 to 4.22 in respect of the proposed Change.

5.10 Procedure following receipt of contractor information

- 5.10.1 Following receipt by him of the estimates referred to in clause 5.9 the Employer shall for a period of 5 Business Days, or such longer period as the Employer may specify, conduct negotiations with the Contractor with a view to agreeing the said estimates.
- 5.10.2 If agreement is reached as referred to in clause 5.10.1 the Employer shall issue an instruction to the Contractor pursuant to clause 3.9 confirming the Change (a "Confirmation Instruction" for the purposes of clauses 5.10 to 5.13) and the Employer shall then grant an extension of time pursuant to clauses 2.23 to 2.26 of the agreed length (if any) and effect shall be given to the agreed expense (if any) by making an addition to or deduction from the Contract Sum.

5.10.3 If no agreement can be reached in relation to the estimates referred to in clause 5.9 the Employer shall decide whether the proposed Change should be cancelled or whether a Confirmation Instruction should be issued, in which latter case the Valuation Rules shall apply.

5.11 Consequences of a Confirmation Instruction order not being issued

If the Employer does not issue a Confirmation Instruction pursuant to clauses 5.10.2 or 5.10.3, the Contractor shall have no claim arising out of or in connection with any proposed Change or any failure by the Employer to agree estimates.

5.12 Work not to be carried out until formal Change instruction issued

Whenever the Employer issues a preliminary notice of Change pursuant to clause 5.8, no work pursuant to the proposed Change to which the preliminary notice relates shall be commenced until such time as the Employer so instructs.

5.13 Instruction, comments etc not to be treated as a Change unless expressly stated to be a Change

No act omission comment or document prepared by or on behalf of the Employer shall, in the absence of an instruction confirming that it is to be treated as such, amount to a Change for this purposes of this clause 5."

SECTION 6 : INJURY, DAMAGE AND INSURANCE

PERSONAL INJURY AND PROPERTY DAMAGE

6.1 Contractor's liability – personal injury or death

In line 3 after "carrying out the Works" insert "including the performance of the Contractor's obligations under clause 2.35"

6.2 Contractor's liability – loss, injury or damage to property

In line 3 after "or personal" insert "(including any expense liability loss or claim arising from but not limited to obstruction trespass nuisance or interference with any rights of way light air or water)"

In line 4 after "the Works" insert "or of any obligation pursuant to clause 2.35"

INSURANCE AGAINST PERSONAL INJURY AND PROPERTY DAMAGE

6.4 Contractor's insurance of his liability

6.4.1.2 At the end of the clause before "." insert "but unlimited for the number of occurrences during the period of insurance"

Insert new clause:

6.4.1.3 "Such policies of insurance to be taken out by the Contractor pursuant to clause 6.4.1 shall be taken out in the office of a reputable insurance company in the United Kingdom to be approved by the Employer (such approval not to be unreasonably withheld or delayed). The Contractor shall have noted on the above policies the names of the Employer and any Funder, Purchaser and Tenant or MHCLG in like manner to the Contractor as if a separate policy had been issued to each of them. The insurance shall be maintained until the issue of the Notice of Completion of Making Good. The Contractor shall not permit any variation of insurance cover

without the prior written approval of the Employer and shall immediately notify the Employer of any endorsements or other amendments to the relevant policies received from the insurers."

6.4.3 Insert a new clause:

"Interest at the Interest Rate shall accrue on all and any sums expended by the Employer pursuant to this clause."

Insert new clause:

6.4.4 "The Contractor shall not do or permit or suffer to be done upon the Site or any part of the Site any act or thing which may vitiate any policy or policies of insurance effected by the Contractor or (insofar as they have been notified to the Contractor) any policy or policies of insurance effected by the Employer and/or Funder and/or Purchaser and/or any Tenant and/or MHCLG."

INSURANCE OF THE WORKS AND EXISTING STRUCTURES

6.8 Related definitions

Insert replacement definition:

"Joint Names Policy	a policy of insurance which includes the Employer the Contractor and any Funders Purchasers and Tenants and MHCLG and any other party the Employer may nominate as having an interest in the Site and/or the Works as composite insured and under which the insurers have no rights of recourse against any person named as an insured, or, pursuant to clause 6.9, recognised as an insured thereunder."
---------------------	---

6.14 Loss or damage to Existing Structures – right of termination

Delete this clause and insert:

"If there is material loss or damage to any of the Existing Structures, the Employer shall be under no obligation to reinstate those structures but may terminate the Contractor's employment under this Contract in accordance with clause 1.7.4 at any time during the period from the occurrence of the said loss or damage until the expiry of the period of time stated in the Contract Particulars against clause 8.11.1."

PROFESSIONAL INDEMNITY INSURANCE

SECTION 7 : ASSIGNMENT, PERFORMANCE BONDS AND GUARANTEES, THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

7.1 General

Delete clause 7.1 and insert:

7.1.1 "the Employer may without the consent of the Contractor assign the benefit of all or any of the Contractor's obligations under this Contract and/or any benefit arising under or out of this Contract on two occasions only.

7.1.2 The Contractor shall not assign any benefit arising under or out of this Contract."

7.3 Performance Bonds and Guarantees

Delete and insert "not used"

CLAUSES 7A-7E – PRELIMINARY

7.4 Rights Particulars

Delete and insert "not used"

7.6 Execution of collateral warranties

After "pursuant to" delete "clause 7C or 7D" and insert "this section 7"

THIRD PARTY RIGHTS FROM CONTRACTOR

7A Rights for Purchasers and Tenants

7A.1 In line 1 delete "Where the Rights Particulars state that the Contractor shall confer P&T Rights on a Purchaser or Tenant as third party rights, those rights" and insert "P&T Rights".

In line 2 delete "that" before "Purchaser" and insert "a".

In lines 2-3 delete "the Employer's notice to that effect," and insert "a Nominating Notice"

7A.2 In lines 3-4 delete "Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants)." and insert "the P&T Rights."

7B Rights for a Funder

7B.1 In line 1 delete "Where the Rights Particulars state that the Contractor shall confer Funder Rights on a Funder as third party rights, those rights" and insert "Funder Rights". In line 2 delete "that" before "Funder" and insert "a". In line 3 delete "notice" and insert "Nominating Notice".

7B.2.1 In line 2 delete "Part 2 of Schedule 5 (Third Party Rights for a Funder)" and insert "the Funder Rights" Delete "or to the relevant Rights Particulars".

7B.2.2 In line 3 delete "6 of Part 2 of Schedule 5" and replace with "7 of Annex 1". Delete "but, subject thereto ... that the Contractor obtain the consent of the Funder"

COLLATERAL WARRANTIES FROM CONTRACTOR

7C Contractor Warranties – Purchasers and Tenants

Delete clause 7C and existing heading and insert:

"Contractor Warranties

7C.1 Unless a Nominating Notice in favour of the relevant party has been served pursuant to clause 7A or 7B the Contractor shall execute as a deed and deliver to the Employer within 10 Business Days of a written request to do so from or on behalf of the Employer from time to time deeds of collateral warranty in favour of any:

(i) Purchaser; and /or

- (ii) Tenant; and /or
- (iii) Funder; and/or
- (iv) MHCLG.

Such deed or deeds of collateral warranty shall be in the appropriate form set out in Annex 4 to this Schedule of Amendments with only such changes as the Employer may approve. The step in provisions set out in clause 7 of the collateral warranty set out in Annex 4 Part A will only be required in collateral warranties in favour of Funders and/or Purchasers.

7C.2 Notwithstanding any other terms of this Contract the Contractor and the Employer agree that if a deed or deeds requested pursuant to this article has or have not been provided within 10 Business Days of being so requested the Employer shall (subject to clause 4.9.5) be entitled to withhold a sum equal to 2.5% of the contract sum under this contract for each deed which has/have not been provided from any sums specified in the Interim Payment or Final Statement as the case may be which would otherwise be due and payable at the time such deed or deeds is/are outstanding and thereafter a further a sum equal to 2.5% of the contract sum under this contract for each further deed requested that remains outstanding from any sums specified in each and every following Interim Payment or Final Statement as the case may be. Any amounts so retained shall become due for release to the Contractor only when the outstanding deed or deeds of warranty have been provided."

7D Contractor Warranties – Funder

Delete clause 7D and insert "Not used."

THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES FROM SUB-CONTRACTORS

7E Delete clause 7E and insert:

"Sub-Contractors' Warranties and Sub Contract documentation

7E.1 The Contractor shall procure that every Sub-Contractor shall execute as a deed and deliver to the Employer within 15 Business Days of a request to do so from or on behalf of the Employer from time to time a deed or deeds of collateral warranty in favour of:

- (i) the Employer; and /or
- (ii) any Purchaser; and /or
- (iii) any Tenant; and /or
- (iv) any Funder; and/or
- (v) MHCLG.

Such deed or deeds of collateral warranty to be in the appropriate form set out in Annex 5 to this Schedule of Amendments with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed). The step in provisions set out in clause 7 of the collateral warranty set out in Annex 5 will only be required in collateral warranties in favour of the Employer, Funders, Purchasers and/or MHCLG.

- 7E.2** If the Contractor fails to procure the execution and delivery to the Employer of such deed or deeds of warranty within 15 Business Days of the request to do so the Employer shall (subject to clause 4.9.5) be entitled to withhold a sum equal to 2.5% of the contract sum under this contract for each deed which has/have not been provided from any sums relating to the services or work of the relevant Sub-Contractor(s) then in default and which would otherwise be due and payable under the terms of this Contract and thereafter a further sum equal to 2.5% of the contract sum under this contract for each further deed requested that remains outstanding from any sums relating to the services or work of the relevant Sub-Contractor in each and every following Interim Payment or Final Statement as the case may be. Any amounts so retained shall become due for release to the Contractor only when the warranties from the relevant Sub-Contractor have been provided duly executed to the Employer.
- 7E.3** The Contractor shall provide to the Employer within 5 Business Days of completion of the same a certified copy of each sub contract between the Contractor and every Sub-Contractor PROVIDED THAT the Contractor shall be entitled to delete the sub contract sum and any commercially sensitive information from the certified copy of the sub contract documentation to be provided in accordance with this article."

Insert new clause:

- 7F "Sub-Consultant and Novated Consultant Warranties**
- 7F.1** The Contractor shall procure that each and every Sub-Consultant and Novated Consultant shall execute as a deed and deliver to the Employer within 15 Business Days of a request to do so from or on behalf of the Employer a deed or deeds of collateral warranty in favour of :
- (i) the Employer; and /or
 - (ii) any Purchaser; and /or
 - (iii) any Tenant; and /or
 - (iv) any Funder; and/or
 - (v) MHCLG.
- Such deed or deeds of collateral warranty shall be in the appropriate form set out in Annex 6 to this Schedule of Amendments with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed). The step in provisions set out in clause 7 of the collateral warranty set out in Annex 5 will only be required in collateral warranties in favour of the Employer, Funders, Purchasers and/or MHCLG.
- 7F.2** If the Contractor fails to procure the execution and delivery to the Employer of such deed or deeds of warranty within 15 Business Days of the request to do so the Employer shall be entitled (subject to clause 4.9.5) to withhold any sums relating to the services of the relevant Novated Consultant and / or Sub-Consultant then in default and which would otherwise be due and payable under the terms of this Contract in each and every following Interim Payment or Final Statement as the case may be. Any amounts so retained shall become due for release to the Contractor only when the deed or deeds of warranty have been provided duly executed to the Employer.

- 7F.3** The Contractor shall provide to the Employer within 5 Business Days of completion of the same a certified copy of the completed appointment between the Contractor and each Sub-Consultant"

SECTION 8 : TERMINATION

GENERAL

TERMINATION BY EMPLOYER

8.4 Default by Contractor

8.4.1.4 Delete "or 7.1"

8.4.4

8.6 Corruption and regulation 73(1)(b) of the PC Regulations

Delete clause 8.6 and insert:

8.6.1 "The Employer may forthwith determine the employment of the Contractor in writing and recover from the Contractor the amount of any loss resulting from such determination if the Contractor or any of its employees or agents or any person acting on his behalf (with or without the knowledge of their employer or principal) has at any time in relation to the Works:

8.6.1.1 made or offered to anyone any gift or consideration of any kind as an inducement or reward for doing or not doing something or favouring or not favouring someone in relation to the listing or selection of any tenderer or the award of any contract with the Employer; or

8.6.1.2 committed any offence under the Bribery Act 2010 or given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972."

Insert new clause 8.6A

"Termination – Contractor to vacate Site

8.6A Subject to the orderly compliance of the Contractor with any instruction of the Employer under clause 8.7.6, upon the termination of the Contractor's employment under this Contract (and any purported termination by notice given by the Employer) the Contractor shall forthwith vacate the Site"

8.7 Consequences of termination under clauses 8.4 to 8.6

8.7.2.2 Delete clause 8.7.2.2 and insert:

"provide the Employer (within 10 Business Days) with copies of all the Contractor's Design Documents then prepared whether or not previously provided including without limitation all such documents referred to in clause 2.37 which have been prepared before the date of determination (whether in the course of preparation or completed)"

8.7.4.3 Before ";" insert "but excluding any sums which may be or have been payable in accordance with clause 2.29.5"

Insert new clause:

"8.7.6 except where an insolvency event listed in clause 8.1 (other than the Contractor being a company making a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 2006 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof) has occurred the Contractor shall, if so required by the Employer within 14 days of the date of determination, assign to the Employer without payment the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract to the extent that the same is assignable."

TERMINATION BY CONTRACTOR

8.9 Default by Employer

8.9.1.2 Delete clause 8.9.1.2 and insert "Not used."

8.12 Hidden CONSEQUENCES OF TERMINATION UNDER CLAUSES 8.9 TO 8.11 ETC

Insert new clause:

HAND OVER OF SITE

8.13 Contractor to hand over possession

Notwithstanding clause 2.3 upon any determination of the Contractor's employment under this section 8 or if this Contract is determined repudiated or discharged in any other manner and notwithstanding that the validity of such determination repudiation or discharge may be disputed by the Contractor the Contractor shall immediately deliver to the Employer possession of the Site

SECTION 9 : SETTLEMENT OF DISPUTES

ARBITRATION

Delete clauses 9.3-9.8 and insert "Not used."

SECTION 10: ANTI-BRIBERY AND ANTI MONEY-LAUNDERING

Add as a new clause 10:

- 10.1 "The Contractor shall:
 - 10.1.1 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 ("Relevant Requirements");
 - 10.1.2 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;
 - 10.1.3 comply with the Employer's Ethics, Anti-bribery and Anti-corruption Policies (which are available on request) as the Employer may update from time to time ("Relevant Policies");
 - 10.1.4 have and shall maintain in place throughout the term of this contract 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 10.1.2, and will enforce them where appropriate;
 - 10.1.5 promptly report to the Employer any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this contract;
 - 10.1.6 immediately notify the Employer (in writing) if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this contract);
 - 10.1.7 on the date of this contract, and annually thereafter, certify to the Employer in writing signed by an officer of the Contractor, compliance with this clause 8 by the Contractor and all persons associated with it under clause 10.2. The Contractor shall provide such supporting evidence of compliance as the Employer may reasonably request.
- 10.2 The Contractor shall ensure that any person associated with the Contractor who is performing services or providing goods in connection with this contract 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 Contractor in this clause 10 ("Relevant Terms"). The Contractor 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.
 - 10.3 For the purpose of this clause 10, 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 10 a person associated with the Contractor includes but is not limited to any subcontractor of the Contractor."

SCHEDULES

SCHEDULE 1 : DESIGN SUBMISSION PROCEDURE

1. Hidden
2. In line 1 delete both references to "14 days" and replace with "10 Business Days"
7. In line 2 delete "7 days" and insert "5 Business Days"
In line 5 delete "7 days" and insert "5 Business Days"
Insert new paragraph:
9. "If the Contractor shall find errors in or require any alteration to the Contractor's Design Documents after they have been returned marked by the Employer with either 'A' or 'B' he shall notwithstanding that the errors have become part of the design of the Works resubmit such Contractor's Design Documents together with his corrections to the Employer for comment in accordance with paragraph 1."

SCHEDULE 5 : THIRD PARTY RIGHTS

Delete schedule 5 and insert "Not used."

SCHEDULE 7 : JCT FLUCTUATION OPTION

Delete schedule 7 and insert "Not used."

Annex 1
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 Building Contract :

"Building Contract"	the JCT Design and Build Contract 2016 incorporating bespoke amendments which this annex forms part of
"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 Works or any part of the Works
"Third Party"	a Funder and/or a Purchaser and/or a Tenant

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 Contractor warrants and undertakes to the Third Party that :

- 2.1 it has performed and will continue to perform its duties under the Building Contract;
- 2.2 the design of the Works has been and will be carried out using all the reasonable skill care and diligence to be expected of a professionally qualified designer of the relevant discipline to the design experienced in projects of the same size, scope, complexity, nature and time scale as the Works.

3. RESTRAINTS ON THE CONTRACTOR

The Contractor may not exercise any rights of set-off or counterclaim which may be permissible against his liability under the Building Contract against any claim or entitlement of the Third Party under this schedule.

4. NOT USED

5. COPYRIGHT

- 5.1 Copyright in the Contractor's Design Documents shall remain vested in the copyright owner.
- 5.2 The Contractor waives any Moral Rights that it may have as author in respect of the Contractor's Design Documents and/or the Works 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 Contractor's Design Documents and/or the Works.
- 5.3 The Contractor grants or shall procure the grant from third parties engaged by the Contractor (where copyright is vested in such parties) to the Third Party of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter

alia the Contractor's Design Documents for any purpose whatsoever connected with the Site and/or the Works 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 Works and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Contractor shall not be liable for the consequences of any use of the Contractor's Design Documents for any purpose other than that for which the same was prepared.

5.4 The Contractor 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 Works 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 Contractor's Design Documents as may be reasonably requested by the Third Party.

6. ASSIGNMENT

6.1 The Third Party may (without the consent of the Contractor) assign its rights under this annex 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 In this annex 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.

6.3 The Contractor undertakes with the Third Party not to contend that any person to whom the benefit of this annex may be assigned will be precluded from recovering under this annex any loss resulting from any breach of this annex either by reason that the person is an assignee and not the original party on whom the benefit of this annex was conferred or by reason that the Third Party to whom the benefit of this annex was originally conferred or any intermediate owner of the Third Party's interest in the Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.

7. STEP-IN RIGHTS

Provided that this clause 7 shall apply only where the Third Party is a Funder or a Purchaser and the agreement between the Employer and the Third Party provides for step-in rights to be granted to the Third Party:

7.1 The Contractor agrees that it will not without first giving the Third Party previous notice in writing exercise any right it may have to terminate or suspend the Building Contract or to treat the same as having been repudiated by the Employer. Such notice to the Third Party shall:

- 7.1.1 if the grounds are that a sum which is due has not been paid by the final date for payment and no effective notice to pay less has been given be given no less than 7 days before the Contractor exercises any such right; otherwise

- 7.1.2 be given no less than 15 Working Days before the Contractor exercises any such right.
- 7.2 The right of the Contractor to terminate or suspend the Building Contract with the Employer or treat the same as having been repudiated shall cease if within such period of notice and subject to clause 7.4 the Third Party shall give notice in writing to the Contractor requiring the Contractor to accept the instructions of the Third Party or its appointee to the exclusion of the Employer in respect of the carrying out and completion of the Works upon the terms and conditions of the Building Contract.
- 7.3 If so required by notice in writing given by the Third Party and subject to clause 7.4 the Contractor shall accept the instructions of the Third Party or its appointee to the exclusion of the Employer in respect of the carrying out and completion of the Works upon the terms and conditions of the Building Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Third Party under this clause as conclusive evidence for the purposes of this deed that the right to serve such notice has accrued to the Third Party pursuant to the terms of the agreement between the Employer and the Third Party.
- 7.4 Any notice given by the Third Party under clause 7.2 or 7.3 shall state that the Company or its appointee accepts liability for payment of fees payable to the Contractor under the Building Contract (including those due and owing under the Building Contract at the date of any notice served by the Third Party) and for performance of the Employer's obligations under the Building Contract and in the case of the Third Party nominating an appointee the Third Party guarantees all payments due to the Contractor from its appointee.
- 7.5 Compliance by the Contractor 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 Contractor from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.2.

8. LIMITATION AND MISCELLANEOUS

- 8.1 The liability of the Contractor under this schedule shall be limited to claims arising within twelve years after the date of practical completion of the Works under the Building Contract.
- 8.2 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.
- 8.3 Any consent approval comment or expression of satisfaction given by the Third Party with regard to any matter or thing relating to the Building Contract shall not in any way derogate from the Contractor's obligations under this schedule nor diminish any liability on its part under this annex.
- 8.4 The Contractor acknowledges that:
 - 8.4.1 the Third Party shall be deemed to have relied upon the Contractor's reasonable skill care and diligence in respect of those matters relating to the Works which lie within the scope of its responsibilities under the Building Contract or under this annex;
 - 8.4.2 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 Works shall abate or reduce the Contractor's liability under this annex to the Third Party and its respective successors in title and assigns.

- 8.5 Subject to clause 3:
- 8.5.1 the Contractor shall have no greater obligations to the Third Party by virtue of this schedule than it would have had if the Third Party had been named in the Building Contract jointly with the Employer; and
- 8.5.2 the Contractor shall be entitled in any action or proceedings by the Third Party to rely on any limitation or exclusion in the Building Contract and to raise equivalent rights of defence of liability as it would have against the Employer under the Building Contract.

9. NOTICES

- 9.1 Any notice to be served under this annex 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.
- 9.2 Notice may be served by:
- 9.2.1 personal delivery; or
- 9.2.2 pre-paid registered or recorded delivery mail; or
- 9.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.
- 9.3 Notices and communications shall be deemed to have been served or received as follows:
- 9.3.1 in the case of personal delivery on the date of delivery;
- 9.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
- 9.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

10. LAW

This annex shall be governed by English law and the Contractor and Third Party hereby submit to the non exclusive jurisdiction of the English courts.

Annex 2
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 a building contract with the Employer dated [] in respect of
the Project ("the Building Contract").

Annex 1 of the amendments to the Building Contract ("Annex 1") 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 Annex 1 in
accordance with the terms of the Building Contract 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] [The Third Party has agreed to provide finance in relation to the Project /
the acquisition of the property of which the Project forms part]

Yours faithfully

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

ANNEX 3
THIRD PARTY AGREEMENTS



DATED 23 February 2020)

(1) THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT

(2) HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)

(3) 20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED

**GRANT FUNDING AGREEMENT
in respect of 20:20 Block B Flats**

Unsafe Cladding Remediation



THIS AGREEMENT is made on the [23] day of [February] 2020.

BETWEEN:-

- (1) THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT(the "MHCLG");
- (2) HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND) ("Homes England"); and
- (3) 20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED (company number 06770847) whose registered office is at Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB (the "Applicant").

together the "Parties".

BACKGROUND:-

- (A) MHCLG issued the Prospectus in 2019 to invite applications for funding to assist the private sector to fund the removal and replacement of the Unsafe Cladding on residential buildings which are 18 metres or over, and which failed the large scale government commissioned tests in 2017 (the "Programme").
- (B) Homes England is responsible for the administration of the Programme and dispersal of funding made available under the Programme within England (other than Greater London) until the end of the Defects Liability Period at which point responsibility for the same will revert to MHCLG.
- (C) MHCLG has agreed to make the Funding available to the Applicant via Homes England on the terms of this Agreement.
- (D) MHCLG and Homes England have agreed to provide such Funding to the Applicant on the terms contained in this Agreement.

IT IS AGREED as follows.-

1. DEFINITIONS

- 1.1 In this Agreement (including in the Background and Schedules) the following words and expressions have the following meanings:-

"Accounting Standards" means the statements of standard accounting practice referred to in section 464 of the Companies Act 2006 issued by the Accounting Standards Board

"ACM" means aluminium composite material



	means Aluminium Composite Material (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 Remedies"	has the meaning given to such term in Clause 5.4.1
"Applicant's Auditor"	means the Applicant's external independent auditor
"Applicant's Representative"	means the Applicant's Development Director or such other person agreed by Homes England to act as the Applicant's representative from time to time for the purposes of this Agreement
"Approved Inspector"	means a private sector Building Control approved inspector who is appropriately qualified to assess compliance with the Building Regulations under The Approved Inspectors Regulations 2010 and act in compliance with the DCLG: Building Control Performance Standards (January 2017)
"Availability Period"	means the First Funding Date Availability Period and the Second Funding Date Availability Period
"Application"	means the application(s) for the Project submitted by the Applicant through the Portal
"Base Interest Rate"	means the base rate of Barclays Bank plc or such other rate as Homes England determines (acting reasonably)
"Best Practice"	means such information as Homes England may determine in accordance with Clause 11.4
"Budgeted Costs"	means the costs, fees and expenses (including, Contingencies) (including in each case such part thereof that represents VAT) incurred or to be incurred by or on behalf of the Applicant in connection with the Project, as anticipated in the Project Appraisal
"Building"	means all that leasehold land and buildings known as land and buildings on north side of Skinner Lane, Leeds being the land comprised within title number WYK829359 and "Buildings" shall mean all of them taken together
"Building Control Sign-Off"	means the issue of completion certificate by the relevant building control body confirming that the Works have been approved and that, in so far as it is reasonable to determine, the Works have been carried out in accordance with the Building Regulations 2010
"CDM Regulations"	means the Construction (Design and Management) Regulations 2015 S.I No 2015/51
"Certificate of Practical Completion"	means any certificate or statement to be issued in accordance with a Works Contract certifying that Practical Completion has taken place in respect of the relevant Works



**"Cladding System
Guidance"**

means components that are attached to the primary structure of a building to form a non-structural surface and includes the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashing, fixings, gaskets and sealants

**"Cladding System
Guidance"**

means the guidance note issued by MHCLG in February 2020 entitled 'Private Sector ACM Cladding Remediation Fund: Replacing your Building's Cladding System'

"Claim"

means a request for payment of the relevant Qualifying Expenditure in accordance with the terms of this Agreement

"Claim Date"

means the date on which a Claim is, or is to be, made

"Class A1"

means European Classification Class A1, classified in accordance with BS EN 13501-1:2007+A1:2009 entitled "Fire classification of construction products and building elements. Classification using test data from reaction to fire tests" (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30th March 2007 and amended in November 2009

"Class A2-s1,d0"

means European Classification A2-s1, d0 classified in accordance with BS EN 13501-1:2007+A1:2009 entitled "Fire classification of construction products and building elements. Classification using test data from reaction to fire tests" (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30th March 2007 and amended in November 2009

"Client"

means the individual defined as such under the CDM Regulations

"Collateral Warranty"

means a collateral warranty given by a Development Party in favour of MHCLG (and for the avoidance of doubt, including step-in rights in favour of MHCLG) in relation to the Project in form and substance satisfactory to Homes England

"Commercial Unit"

means any private unit of accommodation forming part of the Building which is used solely for commercial purposes

"Confidential Information"

means any and all information whether disclosed or otherwise made available by one Party to another (or otherwise obtained or received by a Party) whether before or after the date of this Agreement including but not limited to:-

- (a) know-how, confidential, commercial and financial information and all other information which should reasonably be treated as confidential (whether marked confidential or otherwise);
- (b) the existence or terms of any Project Document or other information relating to the Project;
- (c) Personal Data;
- (d) information relating to a Party's business and affairs, its customers, employees and suppliers;

in whatever form in each case (including but not limited to



information given orally or in writing or in any document electronic file or machine readable form or other means of recording or representing information whatsoever) and including any information (in whatever form) derived from such information

"Connected"

shall have the meaning set out in Section 839 of the Income and Corporation Taxes Act 1988 (as amended)

"Consents"

includes any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by or from any governmental or other authority, the local planning authority, landlords, funders, adjoining land owners or any other person in relation to the Project or otherwise required to enable delivery of the Project

"Considerate Constructors Scheme"

means the Code of Considerate Practice promoted by the construction industry a copy of which is to be found on the Considerate Constructors Scheme website from time to time

"Contingency"

means any sum described in the Project Appraisal submitted to Homes England prior to the first Funding Date as a contingency (all such sums being the "Contingencies")

"Contractor"

means a contractor (including a consultancy contractor) appointed by the Applicant for the delivery of Works

"Controller"

has the meaning given to that expression under the Data Protection Legislation

"Cost Consultant"

means Cardoe Martin, appointed by the Applicant or the Principal Contractor, being the person who is responsible for preparing the Final Account Document and being suitably qualified in accordance with Good Industry Practice

"Cost Overrun"

means the amount by which Homes England determines that the Projected Costs (excluding any amount of finance costs) exceed the Budgeted Costs (excluding any amount of finance costs) as set out in the Project Appraisal supplied to Homes England as a condition precedent under this Agreement on or before the first Funding Date

"Data Protection Legislation"

means all applicable Law relating to the Processing of Personal Data and privacy including without limitation (i) the General Data Protection Regulation (EU) 2016/679 (the GDPR); (ii) the Law Enforcement Directive (Directive (EU) 2016/680) (the LED) and any national implementing Laws; (iii) the Data Protection Act 2018; and (iv) the Privacy and Electronic Communications (EC Directive) Regulations 2003

"Date of Practical Completion"

means the later of:-

- (a) the date certified in the relevant Certificate of Practical Completion as the date when Practical Completion of all Works was achieved and if more than one such Certificate of Practical Completion is required the date on which the last required certificate is issued; and (if applicable)



	(b) in the case of any Works on which no Certificate of Practical Completion would be issued under the Works Contract, the date on which Homes England is satisfied that the last of those Works have been completed in accordance with this Agreement and the relevant Works Contract; and (in all cases
	(c) the date on which Building Control Sign-Off for all Works has been obtained , and if more than one Building Control Sign-Off is required the date on which the last required Building Control Sign-Off is obtained.
"Declaration"	means a declaration from a Leaseholder substantially in the form set out in part 1 of Schedule 5 and signed by a person authorised to bind that Leaseholder
"Default Interest Rate"	means interest at a rate per annum equal to two percentage points (2%) above the Base Interest Rate
"Defects Liability Period"	the period of 12 months following the issue of the Date of Practical Completion.
"Defects Liability Period Expiry Date"	means the date on which the Defects Liability Period expires
"De Minimis Regulation"	means Regulation (EU) No. 1407/2013
"Design Party"	means any professional consultant with material design responsibility for all or any material part of the Project
"Determining Authority"	means Leeds City Council or any statutory successor or Unitary Authority
"Development Party"	means the Contractor and any Design Party, in each case appointed by the Applicant
"Disposal"	means a disposal of the whole or any part of the Building, any Commercial Unit(s) or Residential Unit(s) whether by way of transfer of a freehold or leasehold interest or the grant of any legal or equitable estate or interest in such property (other than by way of grant of a legal charge or the grant of a licence not creating exclusive possession terminable on 3 months' notice or less).
"Domestic Successor"	means:
	(a) a body that takes over the functions of the EU Commission in the UK on the date of EU Exit
	(b) the relevant courts in England and Wales which take over the functions of the Court of Justice of the European Union in England and Wales of EU Exit
"Duty of Care Deed"	a duty of care deed for the benefit of MHCLG from the Cost Consultant



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"EIR Exception"

Issued

means any applicable exemption to disclosure of information under the EIRs

"EIRs"

means the Environmental Information Regulations 2004 and any guidance and/or codes of practice relating to them

"Environment"

means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water)

"Environmental Law"

means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste

"EU Exit"

the UK ceasing to be a member state of the European Union on 31 January 2020 and ceasing to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union (as such arrangements are extended from time to time)

"Event of Default"

means each event set out in Schedule 1



means costs for which the Applicant cannot make a Claim which shall include:

- (a) any internal works;
- (b) the replacement of any windows;
- (c) any interim fire safety measures;
- (d) any other non-Cladding related costs;
- (e) ongoing revenue costs, such as the costs of interim fire safety measures; and
- (f) any structural works which are not directly related to the remediation of Unsafe Cladding

means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions

means any of the following:

- (a) exceptionally adverse weather conditions;
- (b) delay in receipt of any necessary permission or approval of any statutory body or other person which the Applicant has taken all practicable steps to avoid or reduce;
- (c) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power which directly affects the execution of the Works necessary to the delivery of the Project by restricting the availability or use of labour which is essential to the proper carrying out of such Works or preventing the Applicant from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of such Works;
- (d) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (e) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus



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or pipes, ionising radiation,
earthquakes, riot and civil
commotion;

- (f) failure by any statutory undertaker, utility company or other like body to carry out works or provide services;
- (g) any accidental loss or damage to the development or any roads servicing it;
- (h) any failure or shortage of power, fuel or transport;
- (i) any blockade or embargo;
- (j) any:
 - (i) official or unofficial strike;
 - (ii) lockout;
 - (iii) go-slow; or
 - (iv) other dispute generally affecting the house building industry or a significant sector of it;
- (k) the appointment of the Principal Contractor under any Works Contract to which it is a party has been terminated or any such Works Contract has been terminated;
- (l) any material failure by the Principal Contractor under the terms of any Works Contract which has the direct result of delaying the Applicant's compliance with the Start on Site Date or the Required Completion Date and which did not result from the Applicant's failure effectively to manage the Works Contract; or
- (m) any impediment, prevention or default, whether by act or omission by Homes England except to the extent caused or contributed to by any



unless:

- (1) any of the events arise (directly or indirectly) as a result of any wilful or negligent default or wilful or negligent act of the Applicant; or
- (2) in respect of the event referred to in (f) above, such event arises as a result of any failure by the Applicant (whether wilful or otherwise) to notify the relevant statutory undertaker or utility company of the requirement for works or services to be completed by the date required to enable the Applicant to commence the Project by the Start on Site Date and/or complete the Project by the Required Completion Date

"FA"	means the Finance Act 2004
"FA Legislation"	means Chapter 3 of Part 3 of the FA and the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) each as amended from time to time
"Final Account Document"	means a final account document certified by the Cost Consultant confirming the actual costs of the completed Works, including the costs of any agreed variations to the Works
"First Claim"	means the Claim to be made on the First Funding Date
"First Funding Date"	means the date on which the First Claim is, or is to be made
"First Funding Availability Period"	Date means in respect of the First Claim, the period from and including the date of this Agreement to and including the date which falls six months after the date of this Agreement..
"FOIA Exemption"	means any applicable exemption to disclosure of information under the FOIA
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under it and any guidance and/or codes of practice issued relating to it



		means approval by the Determining Authority or an Approved Inspector of all plans relating to the Works for which approval is necessary under the Building Regulations 2010 as supplemented by detailed technical guidance contained in supplementary guidance published by MHCLG titled 'Approved Documents' Parts A – P.
"Funding"		means the amounts of funding paid or to be paid to the Applicant pursuant to the terms of this Agreement
"Funding Date"		means a date on which Funding is to be paid to the Applicant
"General Data Protection Regulation and GDPR"		means Regulation (EU) 2016/679
"Good Industry Practice"		means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person (engaged in the same type of undertaking as that of the Applicant and/or any Contractors (as applicable)) under the same or similar circumstances
"HMRC"		means Her Majesty's Revenue & Customs
"Homes Representative"	England	means such person or persons as Homes England may nominate to act as its representative from time to time for the purposes of this Agreement
"HS Act"		means the Health and Safety at Work etc. Act 1974
"Information"		means:- (a) in relation to FOIA the meaning given under section 84 of FOIA and (b) in relation to EIRs the meaning given under the definition of "environmental information" in section 2 of the EIRs
"Insolvent"		means unable to pay its debts as they fall due or being otherwise insolvent (within the meaning of s.123(1) of the Insolvency Act 1986 in the case of a company, or s.268 of the Insolvency Act 1986 in the case of an individual) or entering into any arrangement with creditors, or having a liquidator, trustee in bankruptcy, receiver, administrator, administrative receiver or similar appointed, or having a possession or enforcement or any other similar process taken against it or any of its assets and Insolvency shall be interpreted accordingly



"Interest"

shall include without limitation all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) whether registered or unregistered and all applications (or rights to apply) for, and for renewals and extensions of, such rights as may now or in the future exist anywhere in the world in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person

"Joint Controller"

means interest accruing on the relevant amount at the Base Interest Rate from the date of receipt of that amount by the Applicant up to and excluding the date of payment by the Applicant to Homes England or after the Defects Liability Period Expiry Date, to MHCLG

"Law"

means where two or more Controllers jointly determine the purposes and means of processing

mean any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation

"Lease Documents"

each lease of a Residential Unit or a Commercial Unit (a reference to a Lease Document is a reference to any of the lease documents)

"Leaseholder"

- (a) a person (other than the Applicant) that is a party to a Lease Document;
- (b) any person that controls any person (other than the Applicant) that is a party to a Lease Document;
- (c) any sub-lessees in respect of any Lease Document,

and "control" means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise

"Letter"

means a letter drafted by and in the name of the MHCLG to be sent by the Applicant on behalf of the MHCLG to a Leaseholder in substantially the form set out in part 1 or part 2 (whichever is appropriate) of Schedule 6.

"Material Adverse Effect"

means any present or future event or circumstances which could:

- (a) have a material adverse effect on the ability of the Applicant to perform and comply with its obligations under any Project Document; or
- (b) have a material adverse effect on the business, assets or financial condition of the Applicant;



"Maximum Sum"

(subject to Clauses 4 and 9) means £441,572.33

"MHCLG Data"

the Personal Data that is processed by Homes England on behalf of MHCLG in accordance with this Agreement

"MHCLG Representative"

means such person or persons as MHCLG may nominate to act as its representative from time to time for the purposes of this Agreement

"Milestone Failure"

means:

- (a) Start on Site does not occur before the Start on Site Date; or
- (b) Practical Completion does not occur before the Required Completion Date, or Homes England (acting reasonably) forms the opinion that Practical Completion will not occur before the Required Completion Date

"Minimum Standards"

means the minimum standards for Works Contracts, as more particularly described in Schedule 7

"Officer's Certificate"

means a certificate in the form set out in Schedule 4 (or in such other form as Homes England may prescribe from time to time) signed by the Applicant or such other person as may be agreed by Homes England from time to time

"Party"

means a party to this Agreement.

"Personal Data"

has the meaning given to that expression under the Data Protection Legislation

"Portal"

means, unless otherwise specified by Homes England, Homes England's on-line grant application and management system from time to time, currently OPS, or any replacement thereof

"Practical Completion"

means (i) completion of all Works in accordance with the definition of "practical completion" (or equivalent) in the relevant Works Contract(s) and if there is no such definition (or equivalent) means the date on which Homes England is satisfied that the relevant Works have been completed in accordance with this Agreement and the relevant Works Contract and (ii) the issue of Building Control Sign-Off

"Principal Contractor"

means the contractor defined as such under the CDM Regulations

"Processing"

has the meaning given to that expression under the Data Protection Legislation and "Process" and "Processed" will be construed accordingly

"Processor"

has the meaning given to that expression under the Data Protection Legislation

"Prohibited Act"

means any one or more of the following:-

- (a) offering, giving, agreeing to give or attempting to give to the MHCLG or Homes England, or any employee, agent, or other representative of MHCLG or Homes England any



gift or consideration of any kind as an inducement or reward:

(i) for himself or MHCLG or Homes England (as applicable) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of a Project Document; and/or

(ii) for himself or MHCLG or Homes England (as applicable) showing or not showing favour or disfavour to any person in relation to a Project Document;

(b) entering into a Project Document in connection with which commission (or equivalent) has been paid or has been agreed to be paid by the Applicant or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission (or equivalent) including but not limited to the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to MHCLG and Homes England and Homes England has approved the same in writing ; and/or

(c) committing any offence:

(i) under Statutory Requirements creating offences in respect of fraudulent acts including but not limited to the Bribery Act 2010;

(ii) at common law in respect of fraudulent acts in relation to any Project Document; and/or

(iii) defrauding or attempting to defraud or conspiring to defraud MHCLG or Homes England

"Project"

means the removal of the Unsafe Cladding on each of the Buildings and replacement with Cladding that is of Class A1 or Class A2-s1, d0 standard

"Project Appraisal"

means the project appraisal comprising the completion of the required templates and the provision of the required documentation and information relating to the Project including that referred to in Clause 5.1 (*Project Appraisal*) and to be supplied to Homes England in accordance with Schedule 3 (Conditions Precedent) (as the same may be updated or varied from time to time in accordance with Clause 5.1 (*Project Appraisal*) and Schedule 2 paragraph 1 (*Project Costs*))

"Project Document"

means this Agreement and the Works Contracts

"Project Know-how"

shall have the meaning set out in Clause 11.1

"Project Monitor"

means any chartered surveyor or project monitor appointed by Homes England in respect of the Project



means, at any time, the latest estimate by the Project Monitor of each of the items of costs and expenses and funding specified in the Budgeted Costs incurred and to be incurred

means the prospectus published by MHCLG on 18 July 2019.

means the reasonable costs which are capable of being capitalised and which relate to the removal and replacement of the Unsafe Cladding at each Building (including insulation) such as access (e.g. scaffolding or mast climber), removal and disposal of the Unsafe Cladding, replacement materials, labour and reasonable on-costs together with any VAT and as set out in the Project Appraisal which Homes England is satisfied have been or are likely to be reasonably and properly incurred by the Applicant for delivery of the Project and which do not include Excluded Expenditure

means (as appropriate) a local authority or a profit making and/or a non-profit organisation entered on the register maintained by the Regulator for Social Housing (or any similar future authority, including any statutory successor, carrying on substantially the same regulatory or supervisory functions) pursuant to Section 111 of the Housing and Regeneration Act 2008

means any UK or EU Government department or agency or any other regulatory body having jurisdiction whether regional, national or local, the Ministry of Housing, Communities and Local Government, the National Audit Office, UK central Government, the Regulator of Social Housing (as constituted by s80A Housing and Regeneration Act 2008) any local authority the European Commission or any successor such department, agency or regulatory body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of MHCLG or Homes England

has the meaning in the FOIA or the EIRs or any apparent request for information under the FOIA or the EIRs or the Freedom of Information Code of Practice

means 1 June 2021, subject to any amendment agreed by Homes England in accordance with Clause 5.5 from time to time

means any private residential unit of accommodation forming part of the Building which is used for residential purposes

means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as may be amended from time to time)

means the Claim to be made on the Second Funding Date

means the date on which the Second Claim is, or is to be made



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"Second Funding Date Availability Period"

means the period from and including the Date of Practical Completion to and including the date falling six months after the Date of Practical Completion.

"Senior Officers"

has the meaning given to that term in Clause 25.1

"SGEI Agreement"

means an agreement between Homes England and a Leaseholder that is a Registered Provider and signed by a person authorised to bind that Leaseholder

"Site"

means 20:20 Block B Flats registered at the Land Registry under title number WYK829359

"Specifications"

means the drawings, plans and specifications for the Project which have been supplied to Homes England via the Portal as a condition precedent under this Agreement before the First Funding Date, as they may be amended in accordance with this Agreement

"Start on Site"

means the date identified in the Portal on which:

(a) the Applicant and Contractor have entered into the Works Contract in respect of a Building for the installation of the replacement Cladding that is of Class A1 or Class A2-s1, d0 standard;

(b) the Contractor has taken possession of the relevant part of the Site; and

(c) the Works under the Works Contract for the installation of the replacement Cladding that is of Class A1 or Class A2-s1, d0 standard has commenced

"Start on Site Date"

means 16 November 2020, subject to any amendment agreed by Homes England in accordance with Clause 5.5 from time to time



	means
(a)	European Union State Aid laws (including without limitation under Article 107 and Article 108(3) of the Treaty on the Functioning of the European Union and/or any applicable judgment, court order, statute, statutory instrument, regulation, directive or decision (insofar as legally binding);
(b)	any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972 including those that are saved or incorporated into law as a result of the European Union (Withdrawal) Act 2018; and/or
(c)	any legislation which is in force and/or applies (in England) on or after EU Exit which regulates (i) any aid funding assets or services or (ii) advantage granted or directed by a public sector body to the extent that the same has the ability to threaten to or actually distort either competition or an economic market in the United Kingdom and/or in any part of the European Economic Area and/or in any other country or countries.
"Statutory Deduction"	means the deduction referred to in Section 61(1) FA or such other deduction as may be in force at the relevant time
"Statutory Requirements"	means all or any of the following:-
(a)	Acts of Parliament and any statutory instruments rules orders regulations notices directions bye-laws and permissions for the time being made under or deriving validity from an Act of Parliament
(b)	European directives or regulations and rules having the force of law in the United Kingdom and
(c)	regulations orders bye-laws or codes of practice of any local or statutory authority having jurisdiction over the Works
"Tax"	means any tax, levy, impost, duty or other charge or withholdings and any charges of a similar nature, together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and "Taxation" and "Taxes" shall be construed accordingly
"Termination Date"	means the 12 th anniversary of the date of Practical Completion.
"Undertaking"	means a person that is engaged in economic activity (as defined in accordance with Article 107(1) of the Treaty on the Functioning of the European Union) in relation to all or part of the Building.
"Unutilised Sum"	has the meaning given to such term in Clause 4.5.4



means any ACM Cladding 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>

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

means the building works to be undertaken pursuant to the Works Contracts

means the contracts for the design and delivery of the Project, between each Contractor and the Applicant, and/or each Design Party and the Applicant which meet the Minimum Standards and 'Works Contract' shall mean a reference to any one.

1.2 In this Agreement, save where the context requires otherwise, the following words, terms and expressions have the meanings given to them below:-

- 1.2.1 any reference to this "Agreement" includes any subsequent variations and any supplemental agreement made from time to time by agreement between the Parties;
- 1.2.2 any reference to the "MHCLG", "Homes England", and/or the "Applicant" includes reference to any statutory successors;
- 1.2.3 words importing any gender include any other gender;
- 1.2.4 words in the singular include the plural and words in the plural include the singular;
- 1.2.5 the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.6 the words "include", "including" and "in particular" will be construed so as not to limit the generality of any words or expressions in connection with which they are used;
- 1.2.7 headings and the contents table are inserted for convenience only and will have no legal effect;
- 1.2.8 references in this Agreement to any Clause or Schedule without further designation will be construed as a reference to the Clause or Schedule to this Agreement;
- 1.2.9 the Schedules to this Agreement are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules;
- 1.2.10 in the event of a conflict the Clauses set out in the main body of this Agreement will take priority over the Schedules;



- 1.2.11 references to any statute or statutory provision in this Agreement will be deemed to refer to those provisions as replaced, amended, extended or re-enacted from time to time whether by instruments, orders, bye-laws, statute or by directive or regulation (which is, in the case of a directive or regulation, intended to have direct application within the United Kingdom and has been adopted by the Council of the European Communities) and all statutory instruments or orders made pursuant to it;
- 1.2.12 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, re-enacted on or after EU Exit;
- 1.2.13 where consent or approval of any Party is required for any purpose under or in connection with this Agreement it will be given in writing and within a reasonable time following receipt of a written request for such consent or approval;
- 1.2.14 any decision, act or thing which either Party is required or authorised to take or do under the Agreement may be taken or done by any person authorised either generally or specifically by that Party to take or do that decision, act or thing, provided that both Parties will provide each other with the name of any person so authorised on receipt of a written request;
- 1.2.15 any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement;
- 1.2.16 a document in the agreed form is to be the form of the relevant document agreed between the Parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the Parties);
- 1.2.17 a deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the Parties or which were otherwise provided for in this Agreement;
- 1.2.18 in any case where the consent or approval of MHCLG or Homes England (or any officer of the MHCLG or Homes England) is required or a notice is to be given to the MHCLG or Homes England, such consent or approval or notice shall only be validly given if it is in writing;
- 1.2.19 an obligation to do anything includes an obligation to procure its being done;
- 1.2.20 any restriction includes an obligation not to permit infringement of the restriction;
- 1.2.21 unless a contrary intention is shown, any reference to the MHCLG and/or Homes England acting reasonably shall be interpreted as requiring the MHCLG and/or Homes England to act in a commercially reasonable manner;
- 1.2.22 reference to any statute or legislation shall include any statutory extension or modification, amendment or re-enactment of such statutes and include all instruments, orders, bye-laws and regulations for the time being made, issued or given thereunder or deriving validity therefrom, and all other legislation of the European Union that is directly applicable to the United Kingdom;
- 1.2.23 neither the giving of any approval, consent, examination, acknowledgement, knowledge of terms of any agreement or document nor the review of any document or course of action by or on behalf of MHCLG and/or Homes England shall, unless otherwise expressly stated



in this Agreement or agreed in writing by the MHCLG and/or Homes England, relieve the Applicant of any of its obligations under this Agreement or any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgment or knowledge or confer impose or imply any liability or responsibility on or on behalf of MHCLG and/or Homes England in respect of or in connection with the matter to or in relation to which approval, consent, examination or acknowledgment was given; and

- 1.2.24 any amount payable by Homes England to the Applicant may be discharged by Homes England making such payment to any managing agent of the Applicant in accordance with this Agreement, and the Applicant acknowledges that any such payment shall constitute good discharge by Homes England of its payment obligations under this Agreement.

2. PROVISION OF FUNDING

MHCLG will make the Funding available to Homes England and Homes England will provide the Funding to the Applicant on and subject to the terms of this Agreement.

3. THE APPLICANT'S REPRESENTATIONS AND WARRANTIES

- 3.1 As at the date of this Agreement and on the date of each Claim, and on each Funding Date (by reference to the facts and circumstances then pertaining) the Applicant makes the representations and warranties set out in **Clauses 3.2 to 3.6**.

3.2 Title

- 3.2.1 The Applicant warrants that:

- (a) it is entitled to receive the Funding which is the subject of this Agreement by virtue of (A) its ownership of either (i) a superior leasehold or (ii) a freehold interest in the Building or the Site (the "**Superior Interest**"), or (B) it being a person appointed to manage the Building pursuant to the terms of a management agreement (the "**Management Interest**");
- (b) it is legally entitled either as a matter of discretion (if the Applicant is providing services which are contractually approved in the Lease Documents) or legal compulsion/obligation (if the Works which are the subject of the Funding are required to be performed as a matter of legal obligation) contained within its Superior Interest documentation or Management Interest documentation to repair, maintain, renew, construct or replace the Building or any part of it; and
- (c) it is entitled to claim from Leaseholders sums of money by way of contribution towards the costs associated with the Works and that this is supported by a obligation on the Leaseholders in the Lease Documents or the Management Interest documentation to make payments towards costs incurred by the Applicant in either performing its obligations to repair, maintain, renew, construct or replace the Building or any part of it or in providing equivalent services.

3.3 Powers, vires and consents

- 3.3.1 The Applicant is duly incorporated or (where appropriate) otherwise validly exists under the law of England and Wales and has the power to own its assets and to carry on the business and activities which it conducts or proposes to conduct (including but not limited to the business and activities envisaged under this Agreement).
- 3.3.2 The Applicant has the power to enter into and to exercise its rights and perform its obligations under the Project Documents and the execution on behalf of the Applicant of



the Project Documents has been validly authorised (or, if the Works Contract is executed by it after the date hereof, such authority will be obtained before such execution) and the obligations expressed as being assumed by the Applicant under each Project Document constitutes valid legal and binding obligations of the Applicant enforceable against the Applicant.

- 3.3.3 All Consents, required by the Applicant in connection with the execution, delivery, issue, validity or enforceability of this Agreement have been obtained and have not been withdrawn.
- 3.3.4 Neither the execution of any Project Document by the Applicant nor the performance or observation of any of its obligations thereunder will:-
 - (a) conflict with or result in any breach of any Statutory Requirement (either in force or enacted but yet to be in force) or any deed, agreement or other instrument, obligation or duty (including any order or decree of any court or arbitrator) to which the Applicant is bound; or
 - (b) cause any limitation on any of the powers whatsoever of the Applicant or on the right or ability of the officers of the Applicant to exercise such powers to be exceeded or otherwise contravene or conflict with its pertaining constitutional documents.
- 3.3.5 The Applicant has not committed any Prohibited Act.
- 3.3.6 The Applicant is not subject to, and to the best of its knowledge, information and belief and will not become subject to any other obligation (whether resulting from a breach by it of any other agreement or otherwise) compliance with which will or is likely to have a Material Adverse Effect and/or affect adversely its ability to perform its obligations under this Agreement.

3.4 Project success

- 3.4.1 The Applicant is not in default under any law or enactment or under any deed, agreement or other instrument or obligation to an extent that may affect adversely its ability to perform its obligations under this Agreement.
- 3.4.2 No litigation or administrative or arbitration proceeding before any court, tribunal, Government authority or arbitrator is presently taking place, pending or (to the knowledge, information and belief of the Applicant) threatened against, or against any of the assets of, the Applicant which might have a Material Adverse Effect.
- 3.4.3 The Applicant has made diligent enquiries and to the best of its knowledge, information and belief no person having any charge, lien, encumbrance or other form of security over the Building or the Site has enforced or given notice of its intention to enforce such security and the Applicant has not done or omitted to do anything which would or might reasonably be expected to cause any person to enforce or exercise its rights to enforce such security to the extent that this would affect the Applicant's ability to perform its obligations under this Agreement or the Works Contracts respectively.
- 3.4.4 All Consents required for the Works to be commenced have been obtained and not withdrawn.
- 3.4.5 The Applicant is not aware, after due enquiry, of anything which materially threatens the success of the Project or the completion of this Agreement.



- 3.4.6 The Applicant has full legal control of the Building and has sufficient rights of access to the Site (if different) to carry out the Works and to enable Practical Completion of all Works.
- 3.4.7 The Site or Building is free from any conditions, restrictions or covenants which do or might affect the right to carry out the Works or achieve Practical Completion of all Works.
- 3.4.8 The Applicant shall (and shall procure that each Contractor shall) in carrying out Works comply with the provisions of the Considerate Constructors Scheme save that where there is any conflict between the provisions of this Agreement and the provisions of such scheme the provisions of this Agreement shall prevail.
- 3.4.9 The Applicant shall ensure (and shall take all reasonable steps to satisfy Homes England that) its employees and all Contractors employed or engaged in connection with the Project are suitable and competent in all respects to allow the proper performance of all necessary work or tasks in relation to the Works and Practical Completion of the Project in accordance with the Project Documents.

3.5 Operational issues

- 3.5.1 No Event of Default has occurred and is continuing or would result from the provision of any Funding.
- 3.5.2 No other event or circumstance is continuing which constitutes (or with the giving of notice, the lapse of time, the determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing), would or could reasonably be expected to constitute a default by the Applicant under any other document or arrangement which is binding on it or on any of its assets in any case to an extent or in a manner which has or could reasonably be expected to have a Material Adverse Effect.

3.6 Information

- 3.6.1 All information, documents and accounts of the Applicant submitted to Homes England for its appraisal of the Project for the purpose of this Agreement are true and accurate and (other than those it has notified Homes England of in writing and Homes England has approved) and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operations or prospects of the Applicant since such information documents and accounts were provided.
- 3.6.2 The Applicant has disclosed to MHCLG and Homes England all information which would or might reasonably be thought to influence MHCLG and Homes England in awarding the Funding to the Applicant or the amount of the Funding or otherwise contracting with the Applicant under the terms of this Agreement.
- 3.6.3 The Applicant will promptly provide to Homes England (and after the Defects Liability Period Expiry Date, to MHCLG) any information which Homes England or MHCLG or any Regulatory Body may request in order to satisfy itself that it has complied with the provisions of this Clause 3.
- 3.6.4 The Applicant must at the request of Homes England or MHCLG co-operate with all reasonable requests for information to assist in the monitoring of compliance with the terms of this Agreement.



4. PAYMENT OF FUNDING

4.1 Pre-Conditions of Funding

- 4.1.1 The Applicant will not make any Claim and Homes England will not be liable to make available any Funding unless Homes England has received all of the documents and other evidence listed in Schedule 3 (*Conditions Precedent*) in form and substance satisfactory to Homes England. Homes England shall notify the Applicant promptly upon being so satisfied.
- 4.1.2 Homes England will not be required to make available any Funding unless the Funding has been made available to it by MHCLG.

4.2 Mechanics and Payment of Funding

- 4.2.1 Each Claim for Funding will not be regarded as having been validly made by the Applicant unless:-
 - (a) it is submitted via the Portal;
 - (b) it relates to Qualifying Expenditure for which the Applicant has not submitted any other Claim or received any other funding;
 - (c) the proposed Claim Date is a Working Day within the relevant Availability Period;
 - (d) it is not for an amount which (if paid) would make the amount of Funding paid to the Applicant exceed the Maximum Sum; and
 - (e) where the Applicant is or has a managing agent and such Applicant or managing agent is responsible for delivering services under the relevant Lease Documents, it makes available to Homes England detail of such agent's accounts, together with confirmation that such accounts are registered with the Client Money Protection Scheme to enable Homes England to make the payment;
 - (f) the costs to be financed by the proposed Funding:
 - (i) are Qualifying Expenditure;
 - (ii) are included in the Project Appraisal;
 - (iii) are or will be properly incurred in accordance with the Project Documents (including without limitation, the payment schedule in the Works Contract);
 - (iv) include such amount that is to be paid in respect of VAT; and
 - (v) have not been the subject of a previous Claim under this Clause 4.2.1;
 - (g) there are no outstanding unfunded Cost Overruns;
 - (h) the timing, costs and completion of the Works are in all material respects in accordance with the Project Documents and the Project Appraisal;



- (i) the Applicant has sufficient funding available to it to enable it to complete the Works and to pay all Budgeted Costs envisaged in the Project Appraisal (including any Excluded Expenditure);
- (j) in respect of the first Claim for Funding only, the Applicant confirms that it has informed the Leaseholders of the proposed Start on Site Date at least two weeks prior to such date;
- (k) any Claim made on the First Funding Date shall be no more than £353,257.86 (or such other amount as may be agreed in writing by Homes England as being the amount that may be made available on the First Funding Date);
- (l) in respect of a Claim made on the Second Funding Date:
- (i) Home England has received evidence satisfactory to it that the Date of Practical Completion has occurred;
 - (ii) Homes England has received a copy of the Final Account Document;
 - (iii) Home England has received a copy of the payment certificate signed by the Applicant's contract administrator certifying the payment due to the Principal Contractor at Practical Completion; and
 - (iv) shall be in the amount of £88,314.47 (or such other amount as may be agreed in writing by Homes England as being the amount that may be made available on the Second Funding Date);
- (m) in respect of any other Claim made with the prior written consent of Homes England (such consent to be granted in Homes England's absolute discretion), such other documentation and information that Homes England may require.

- 4.2.2 Provided that no Event of Default has occurred and is continuing on the proposed Funding Date, and subject to Clause 4.1, Homes England will pay Funding to the Applicant in respect of that part of the Qualifying Expenditure within 10 Working Days of Homes England being satisfied that the Claim is valid and meets the requirements of Clause 4.2.1.
- 4.2.3 The Applicant may not submit more than two Claims without the prior written consent of Homes England (such consent to be granted in Homes England' absolute discretion).

4.3 Use of Funding

- 4.3.1 The Applicant undertakes and warrants to MHCLG and Homes England that:
- (a) the Funding will be used by the Applicant for Qualifying Expenditure only;
 - (b) in discharging its obligations under this Agreement the Applicant must act at all times with the utmost of good faith and co-operation with MHCLG and Homes England with the intent to deliver the Project and with proper regard to the need for propriety, value for money and efficiency in the use of public money;
 - (c) any Funding paid to the Applicant is agreed to take effect as a payment in lieu of service charge payments which would otherwise ordinarily be required to be paid by Leaseholders in respect of the Works, by virtue of payment obligations towards



service charge liabilities contained within Lease Documents held by Leaseholders;

- (d) the Applicant will record in its service charge accounts for each Leaseholder a credit in respect of the apportionment of Funding provided for the Works as applies to that same Leaseholder (and the Applicant shall notify each Leaseholder of the service charge contribution for the Works together with the amount Homes England has contributed). The Applicant shall only seek to raise a service charge payment from a Leaseholder in respect of the Works if and to the extent that the Leaseholder's service charge contribution exceeds Homes England's contribution (the apportionment of Funding provided for that Leaseholder). Without prejudice to Clause 6.5, if any Leaseholder has paid a service charge contribution to the Applicant that is subsequently refinanced (in whole or in part) by the Funding, the Applicant shall promptly on receipt of the Funding notify each Leaseholder and reimburse each Leaseholder (by way of payment into an account specified by the relevant Leaseholder) the amount of its refinanced service charge contribution. Each Leaseholder may enforce the terms of this Clause 4.3.1(d) against the Applicant in the event that the Applicant breaches the terms of this Clause 4.3.1(d);
- (e) it confirms that the Leaseholders and any of the residents at the Building (where different) have been informed and notified as to the proposed financial treatment of the Project, the scope of the Works and the timeframe for completion of the Works.

4.4 Overpayments

- 4.4.1 If Homes England determines at any time or becomes aware that any amount of Funding was not expended by the Applicant on Qualifying Expenditure ("Non-Qualifying Expenditure" the Applicant will immediately on Homes England's written demand pay to Homes England (or at the direction of Homes England, MHCLG) an amount equal to the Non-Qualifying Expenditure plus Interest thereon.
- 4.4.2 Homes England and MHCLG may vary or withhold any or all of the payments of Funding under this Agreement and/or require payment of an amount equal to any or all Funding already paid to the extent that:-
 - (a) repayment or recovery is required under or by virtue of any State Aid Law or any Statutory Requirement; and/or
 - (b) Homes England or MHCLG is otherwise required to repay or recover such Funding in whole or in part by or to the European Commission (or a Domestic Successor) or the Court of Justice of the European Union (or a Domestic Successor) or any domestic UK Court or any other central government body.

Any amount required to be paid in accordance with this Clause 4.4.2 shall be paid with interest thereon at such rate as required under or by virtue of State Aid Law or the relevant Statutory Requirement as applicable from the date of Homes England's notice requiring payment to the date of payment (both before and after judgement) or such other period as may be required under or by virtue of State Aid Law or relevant Statutory Requirement.

- 4.4.3 If a payment is required from the Applicant as a consequence of a breach of the requirements of the De Minimis Regulation in respect of a Leaseholder, the Applicant shall take all necessary action to recover the amount to be paid from the relevant Leaseholder.



4.5 **Maximum Sum**

4.5.1 Homes England may reduce the Maximum Sum by such amount as it determines appropriate:-

- (a) if the Applicant accepts an offer of any other funding and/or finance which relate to the Project which shall include without limitation:
 - (i) any other public sector finance; or
 - (ii) any amount recovered pursuant to any litigation and/or claim relating to the installation and/or manufacture of the Unsafe Cladding installed on the Building or any litigation and/or claim relating to the specification and installation of the Unsafe Cladding on the Building.
- (b) if the Qualifying Expenditure incurred by the Applicant is lower than the Maximum Sum; or
- (c) to ensure that the amount of finance to be provided under this Agreement complies with State Aid Law and any applicable Statutory Requirements.

4.5.2 In the event that the Applicant receives and/or accepts an offer of any other funding and/or finance which relates to the Project (which shall include without limitation the types of funding/finance referred to in clause 4.5.1 (a) (i) and/or (ii)), the Applicant shall advise Homes England as soon as reasonably practicable.

4.5.3 In the event that:

- (i) the Consents require a change in the Works or the Works on Site reveal that Unsafe Cladding on any Building is more extensive than that set out in the Project Appraisal; and
- (ii) value of Qualifying Expenditure exceeds the Maximum Sum,

the Applicant must apply to Homes England for an increase in the Maximum Sum. Homes England shall determine the application in accordance with this Clause. The Parties acknowledge and accept that if the proposed increase exceeds 20% of the Maximum Sum, Homes England is required to obtain MHCLG's approval in respect of and prior to any such determination. In all cases Homes England and, where relevant, MHCLG will approve any increase of the Maximum Sum purely at its sole discretion. Any additional Funding to be provided will be subject to the terms of this Agreement and confirmed in writing by a notice from Homes England.

4.5.4 In the event that the Final Account Document reveals that the total value of Qualifying Expenditure incurred by the Applicant in completing the Works is less than the amount of Funding actually paid to the Applicant in accordance with Clause 4.2.1 (the difference between such amounts being the **Unutilised Sum**) the Applicant will immediately pay to Homes England the Unutilised Sum together with Interest thereon.

5. THE APPLICANT'S DELIVERY OBLIGATIONS

5.1 Project Appraisal



- 5.1.1 The Applicant must provide to Homes England a Project Appraisal in relation to the Project in accordance with the terms of this Agreement, including the following information:
- (a) the Specifications, the Project Consents and any other information relating to the Development; and
 - (b) a construction programme, together with a budget and cashflow projection showing the anticipated costs and expenses (including any VAT in respect thereof) of the Project, a breakdown of how those costs will be incurred on a monthly basis and indicating the stage the Project should have reached on a monthly basis (where applicable), and any Contingencies.
- 5.1.2 Subject to Clause 5.1.3 below, the Applicant must not agree to any amendment or waiver of, or variation to, any Project Document, the Project Appraisal or the Specifications.
- 5.1.3 The Applicant is permitted to (provide that in each case, this is in consultation in advance with Homes England):
- (a) make variations to the Specifications and the Project Documents where required as a matter of Environmental Law, building or fire safety regulations; and
 - (b) make amendments to the Project Appraisal, the Specifications and the Project Documents provided that:
 - (i) such amendments are agreed by Homes England, acting reasonably;
 - (ii) such amendment will not result in a material adverse impact on the Works;
 - (iii) such amendment shall not (i) delay progress of the Project such that the Start on Site does not occur by the Start on Site Date; or (ii) delay Practical Completion beyond the Required Completion Date;
 - (iv) no Event of Default will be or is likely to be outstanding as a result of the amendment; and
 - (v) the amendment shall not breach any term of any Lease Document,
- 5.1.4 Homes England will only be liable to pay any Funding approved on the basis of the Budgeted Costs and shall not meet any Qualifying Expenditure incurred in excess of the Maximum Sum (save in the discretionary circumstances expressly set out in Clause 4.5.3).
- 5.1.5 The Applicant shall be responsible for meeting any amounts of the Budgeted Costs that are not Qualifying Expenditure, or which are Qualifying Expenditure in excess of the Maximum Sum, and shall procure that such sums are paid to the Development Parties or to the relevant sub-contractors promptly when due.
- 5.1.6 The Applicant shall promptly notify Homes England upon becoming aware that the Qualifying Expenditure to be incurred by the Applicant shall be lower than the Maximum Sum.



5.2 Project Delivery

- 5.2.1 The Applicant will procure that the Project is carried out and completed in a good, safe and workmanlike manner and in accordance with the Project Documents.
- 5.2.2 The Applicant will procure that the Start on Site will occur by the Start on Site Date and that Practical Completion will occur by the Required Completion Date.
- 5.2.3 The Applicant shall procure that the replacement Cladding is of Class A1 or Class A2-s1, d0 standard.
- 5.2.4 The Applicant shall procure that each Works Contract contains a retention provision which allows the Applicant to retain at least 5% of the contract price until the Date of Practical Completion and at least 2.5% of the contract price until the end of the Defects Liability Period to ensure that the Works have been completed in a good manner and that the Cladding meets the requisite standards.

5.3 Applicant's Contractors, sub-contractors and employees

- 5.3.1 The Applicant will procure that each Contractor complies with the relevant Works Contract(s) and the Applicant will enforce the terms of the Works Contracts at all times.
- 5.3.2 The Applicant must not:
 - (a) appoint a Development Party or any other adviser, contractor, sub-contractor or consultant with respect to the Project who was involved in any way with the installation of the Unsafe Cladding on the Building;
 - (b) terminate the appointment of a Development Party or any other adviser, contractor, sub-contractor or consultant with respect to the Project, or change the terms of its appointment,without first notifying Homes England of the same in writing.
- 5.3.3 The Applicant will procure that any Development Party appointed after the first Funding Date delivers a Collateral Warranty to Homes England in form and substance satisfactory to Homes England within 30 days of its appointment.
- 5.3.4 The Applicant must not waive any rights that it may have against any Development Party or any other adviser, contractor, sub-contractor or consultant with respect to the Project in the course of its entry into any contracts in respect of the Project.

5.4 Litigation and Insurance Claims

- 5.4.1 The Applicant shall use all reasonable endeavours to pursue reasonable remedies available to it in respect of the Unsafe Cladding on any Building (including, without limitation, any claims against insurers, any relevant contractors and/or manufacturers and/or warranty providers responsible for the manufacture and/ or installation of the Unsafe Cladding and/or with any liability in relation to the Building) ("ACM Remedies").
- 5.4.2 The Applicant will provide any information or evidence:
 - (a) requested by either MHCLG and/or Homes England prior to the Defects Liability Period Expiry Date; or
 - (b) requested by MHCLG after the Defects Liability Period Expiry Date.



(i) detailing any ACM Remedies identified and the pursuit of any ACM Remedies by the Applicant, or (ii) to allow MHCLG to form a view on whether it may wish to exercise its right to take an assignment of any such claims and/or litigation pursuant to Clause 5.4.4.

- 5.4.3 If the Applicant recovers any amount from the pursuit of ACM Remedies within 12 years of the date of this Agreement, it shall within 10 Working Days of receiving the same, notify the MHCLG (or at the direction of the MHCLG, Homes England) and provide MHCLG with all documentary evidence and/or information requested by MHCLG relating to the payment. The Applicant shall also promptly pay to MHCLG (or at the direction of the MHCLG or any successor body, Homes England) the lower of (i) the aggregate amount it has received in respect of the ACM Remedies and (ii) the amount which is referable to the Project and capped at the Maximum Sum net of an appropriate share of irrecoverable costs referable to the Project. Any balance shall be for the account of the Applicant.
- 5.4.4 The Applicant shall, on request and on terms acceptable to MHCLG, assign all of its rights title and interest to any ACM Remedies to MHCLG, but nothing in this Clause 5.4.4 shall prevent the Applicant from pursuing their own claims and/or litigation. In respect of any ACM Remedies assigned to MHCLG, the Applicant shall provide all necessary assistance to MHCLG on an ongoing basis in order to allow MHCLG to pursue such ACM Remedies.

5.5 Time extensions

- 5.5.1 Where a Milestone Failure occurs or is in the opinion of Homes England reasonably likely to occur (having regard to any information provided pursuant to any of Clause 7 and Schedule 2 (*Applicant notification obligations*)) and:
- (i) where such failure is directly caused by an Extension Event Homes England shall extend the Start on Site Date and associated Required Completion Date by such period as it (acting reasonably) considers appropriate to take account of the delay caused or likely to be caused by the Extension Event; or
 - (ii) where such failure is not directly caused by an Extension Event, Homes England shall notify the Applicant of the Milestone Failure and Homes England and Applicant shall within fifteen (15) Working Days of such notification seek to agree a revised Start on Site Date and/or Required Completion Date and:
 - (1) where revised Start on Site Date and/or Required Completion Date are agreed within such period the Applicant shall promptly amend the Start on Site Date and/or the Required Completion Date accordingly on the Portal and Homes England shall electronically confirm the amendments through the Portal; or
 - (2) where revised Start on Site Date and/or Required Completion Date are not agreed within such period the Milestone Failure shall be treated as an Event of Default under paragraph 1.13 and/or paragraph 1.14 of Schedule 1.
- 5.5.2 Homes England shall not be obliged to extend the Start on Site Date and/or the Required Completion Date:
- (i) unless an Extension Event exists; or
 - (ii) in circumstances where such extension would (when taken individually or together with other extensions in relation to the Applicant) in Homes



England's reasonable opinion materially and adversely affect the delivery of the Project or (when taken individually or together with other extensions allowed in relation to the Applicant or other applicants under the Programme) materially and adversely affect Homes England's projected expenditure profile in relation to any year of the Programme and in particular (but without limitation) such expenditure profile in relation to the last quarter of the relevant financial year.

- 5.5.3 Homes England shall not under any circumstances be required or obliged to extend the Start on Site Date beyond 16 November 2020 or the Required Completion Date beyond 1 June 2021 but may at its sole discretion elect to do so.

6. APPLICANT'S REGULATORY OBLIGATIONS

6.1 Consents

The Applicant will procure that no Works are commenced and/or continued without all necessary Consents being provided to Homes England via the Portal and the Applicant will provide such other documents or information as Homes England requires to demonstrate compliance with this Clause.

6.2 Legislation

The Applicant shall (and shall procure that all Development Parties will) comply in all material respects with all relevant Statutory Requirements applicable to the Project.

6.3 Insurance

- 6.3.1 The Applicant shall:-

- (a) procure that each and every Contractor shall at all times during the carrying out of the Works maintains full and proper insurance policies including but not limited to an "all risks" and public liability insurance policy covering the usual risks covered by this type of policy in respect of all buildings relating to the Project and all works undertaken on the Project and all unfixed goods and materials in connection with such works for (in each case) full reinstatement or replacement costs (including professional fees);
- (b) supply evidence (satisfactory to Homes England acting reasonably) of each such insurance policy referred to above within ten (10) Working Days of it being taken out;
- (c) subject to Clause 6.3.2, if any Building upon the Site or any works forming part of the Works or the Project or any materials or goods required to undertake such works are stolen, destroyed or damaged (other than as necessary as part of the carrying out of the Works), the Applicant shall procure the rebuilding, reinstatement or replacement of such building, work, goods or materials in accordance with the provisions of this Agreement as soon as reasonably practicable (for the avoidance of doubt if insurance proceeds shall be insufficient to cover the costs of such reinstatement, rebuilding or replacement the Applicant shall be responsible for the shortfall); and
- (d) not do or permit or suffer to be done anything which may render any policy or policies of insurance void or voidable.

- 6.3.2 Where the Applicant reasonably believes that it would not be appropriate to rebuild or reinstate any Building on the Site or any works forming part of the Works or Project, following any damage or destruction it shall serve notice on Homes England and MHCLG



to explain its proposal and apply for a waiver of Clause 6.3.1(c) above. Homes England shall act reasonably in considering such request and if such waiver is granted, the Applicant shall pay to Homes England an amount that is equal to the amount that would have otherwise been used to procure the rebuilding, reinstatement or replacement of such building, work, goods or materials.

6.4 State Aid

- 6.4.1 The Applicant agrees that it shall ring-fence the Project's income and costs on a separate not-for-profit coding on its accounts from its other commercial activities in order to prevent cross-subsidy to any of its economic activities.
- 6.4.2 In the event that a Leaseholder transfers its interest in a Lease Document to a transferee (a "New Leaseholder"), the Applicant shall promptly obtain a Declaration from the New Leaseholder and, in the event that the Applicant has at that time or after obtained an increase to the Maximum Sum in accordance with Clause 4.5.3, issue a Letter to each New Leaseholder and provide copies of such documents to Homes England.
- 6.4.3 The Applicant agrees to retain all Declarations for a period of 12 years from the date of this Agreement in order to establish that all the conditions laid down in the De Minimis Regulation have been complied with.

- 6.5 The Applicant shall not claim the cost of any Qualifying Expenditure funded by the Funding from any Leaseholder, and shall recompense Leaseholders for any expense they have incurred for paying for Works reimbursed by the Funding (including repaying any deductions from a sinking fund) with such recompense paid directly to the bank account of the relevant Leaseholder or such other appropriate payment method of the Leaseholder's choosing promptly following the first payment of Funding to the Applicant under this Agreement and by no later than the date of second payment of Funding under this Agreement. The Leaseholders may enforce the terms of this Clause 6.5 against the Applicant in the event that the Applicant breaches the terms of this Clause 6.5.

7. APPLICANT NOTIFICATION OBLIGATIONS

The Applicant will comply with its obligations set out in Schedule 2.

8. PROJECT MONITORING

8.1 Provision of information by the Applicant

- 8.1.1 From the date of this Agreement until the Date of Practical Completion the Applicant will promptly following request made by Homes England provide to Homes England via the Portal:-
 - (a) such evidence to satisfy Homes England that a Claim relates to Qualifying Expenditure and that Qualifying Expenditure has been incurred;
 - (b) all such information to Homes England as Homes England has requested in respect of the progress and content of the Works, the Budgeted Costs, Costs Overruns, the Project Appraisal and the Project Documents, and any other evidence satisfactory to Homes England demonstrating that the Applicant has sufficient funding available to it to enable it to complete the Works and to pay all Budgeted Costs envisaged in the Project Appraisal (including any Excluded Expenditure); and
 - (c) with such other information as Homes England may reasonably require in writing in connection with the Works.



- 8.1.2 The Applicant will procure that any officers of the Applicant as may reasonably be requested by Homes England will attend such meetings as Homes England may reasonably request with Homes England and/or the Project Monitor and any third parties invited by Homes England to review progress in relation to the Works;

8.2 Inspection and audit facilities

- 8.2.1 The Applicant will allow or procure access to its premises, the Building(s) and the Site for Homes England and MHCLG, their internal auditors or other duly authorised staff or agents or any Regulatory Body and will allow such persons to audit, inspect and take copies of documents relating to the Project. Homes England and the MHCLG will be entitled to interview employees of the Applicant to obtain oral and/or written explanations of documents, and Applicant shall ensure that such employees are made available for interview at reasonable times and on reasonable notice.
- 8.2.2 The Applicant will provide Homes England and MHCLG, in writing, with any such information about the Funding and/or the Project as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and / or compliance functions.
- 8.2.3 The Applicant will allow Homes England and MHCLG or persons authorised by either of them (including the Project Monitor) it to inspect the Building and to inspect, audit and take copies of all reports, books, accounting records and vouchers which relate to the Project provided that neither Homes England and MHCLG:-
- (a) does not impede or obstruct the progress of the Project;
 - (b) does not issue any instruction to a Contractor or any workman employed on the Site; and
 - (c) complies with any reasonable safety induction procedures of a Contractor on the Site.
- 8.2.4 The Applicant will retain documentary evidence to support each Claim and will maintain full and accurate accounts for the Project in accordance with all applicable law and accounting standards and (to the extent that no accounting standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force.

9. EVENTS OF DEFAULT

9.1 Where an Event of Default has occurred:-

- (a) prior to the Defects Liability Period Expiry Date, Homes England; or
- (b) on or after the Defects Liability Period Expiry Date,

MHCLG or Homes England may by notice in writing to the Applicant:

- 9.1.1 require the Applicant to provide Homes England or MHCLG with a plan to remediate and/or mitigate the effects of the Event of Default in which case the Applicant will submit the plan to Homes England or MHCLG (as applicable) for approval within 10 Working Days of the request. The Applicant shall satisfactorily respond to any requests to amend the plan by Homes England or MHCLG (as applicable) within 10 Working Days of any such request and such response must be in a form approved by the requesting organisation.
- 9.1.2 suspend or alter the timing of the payment of Funding for such period as Homes England or MHCLG (as applicable) will determine; and/or



- 9.1.3 vary the Maximum Sum; and/or
- 9.1.4 require the Applicant to pay to MHCLG an amount equal to all or part of the Funding previously paid to the Applicant in which case the Applicant will immediately pay the sums required together with Interest thereon; and/or
- 9.1.5 (where the Event of Default is one falling under paragraphs 1.10 to 1.13 (inclusive) of Schedule 1), exercise its step-in rights under the Collateral Warranties in respect of an Applicant insolvency related event only; and/or
- 9.1.6 (where the nature, type and extent of the Event of Default merits it or if Homes England or MHCLG (as applicable) is not satisfied with any plan provided under Clause 9.1 above) cancel the Funding made or to be made available under this Agreement in which case Homes England or MHCLG (as applicable) will have no obligation to provide any further Funding and will be entitled to require the Applicant to pay to MHCLG an amount equal to the Funding previously paid to the Applicant and the Applicant will immediately pay the sums required to be paid together with Interest thereon.
- 9.2 In relation to the exercise by either Homes England or MHCLG of its rights in this Clause 9:-
- 9.2.1 the exercise of those rights under Clause 9 will be without prejudice to any other right of action or remedy of such body (including any claim for damage) in respect of the Event of Default;
- 9.2.2 if Homes England suspends the payment of Funding which is, in the sole opinion of Homes England, due to an Event of Default capable of remedy and the Applicant has, after notice in writing from Homes England remedied the Event of Default to Homes England's satisfaction within such period as Homes England has determined Homes England will not continue such suspension; and
- 9.2.3 Homes England may exercise its rights under Clause 9 in respect of any Event of Default that arises prior to the date of the Defects Liability Period Expiry Date.
- 9.3 If the Applicant does not pay any sum it is obliged to pay under this Agreement when it is due, the Applicant shall pay interest at the Default Interest Rate on such outstanding amount from the due date until the date of actual payment (both before and after judgment).
10. **PUBLICITY**
- Marketing Material**
- The Applicant shall not make any communication to the press or any journalist or broadcaster regarding the Project or the Agreement (or the performance of it by any Party) without the prior written approval of Homes England and MHCLG (which consent shall not be valid unless it is coupled with the approval of the MHCLG's Press Office and Homes England's Communications Team) save where such disclosure is in the overwhelming public interest (in which case disclosure will not be made without first allowing Homes England and MHCLG to make representations on such proposed disclosure).
11. **INTELLECTUAL PROPERTY RIGHTS**
- 11.1 Subject to Clause 11.3, the Applicant hereby grants to Homes England or MHCLG (as applicable) a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) (the "Licence") to copy, use (from computer disk or otherwise) and to make publicly available all and any Intellectual Property Rights, drawings, reports, specifications, calculations and other documents and information which relate to the Project or which are derived from the Project (including the methods by which the Works were conducted) ("Project Know-how"), for any purpose either relating



to this Agreement or to the dissemination by Homes England or MHCLG (as applicable) of Best Practice and to enable Homes England or MHCLG (as applicable) to amend the Project Know-how or to combine with any other know-how as it thinks fit when compiling and publishing what it regards as Best Practice.

- 11.2 Subject to **Clause 11.3**, to the extent that any Project Know-how is generated by or maintained on a computer or in any other machine readable format, the Applicant shall, if requested by Homes England or MHCLG (as applicable), procure for the benefit of Homes England and/or MHCLG at the cost of the Applicant the grant of a licence or sub-licence for the term of this Agreement and supply any relevant software and/or database to ensure Homes England or MHCLG (as applicable) has the full benefit of the Licence.
- 11.3 If the Intellectual Property Rights in any Project Know-how are owned by a third party, the Applicant will use all reasonable endeavours to obtain a licence for Homes England or MHCLG (as applicable) to use such Project Know-how in accordance with the Licence. The Applicant will notify Homes England or MHCLG (as applicable) where it is unable to obtain such licence and will identify which parts of the Project Know-how Homes England or MHCLG (as applicable) are not licensed to use ("**Excluded Know-how**").
- 11.4 Homes England's decision as to what constitutes Best Practice shall be final (and each of Homes England and MHCLG acknowledges that it does not intend to use the Licence to make commercially sensitive information publicly available).
- 11.5 Subject to **Clause 11.3**, the Applicant will provide Homes England or MHCLG (as applicable) upon request with complete copies of and access to all Project Know-how. The Applicant will provide all assistance and explanation requested by Homes England or MHCLG (as applicable) to enable it to disseminate Best Practice.
- 11.6 The Applicant warrants that its use of the Project Know-how shall not infringe the Intellectual Property Rights of any third party. The Applicant warrants that use of the Project Know-how (excluding the Excluded Know-how) by Homes England or MHCLG (as applicable) in accordance with the terms of the Licence shall not infringe the Intellectual Property Rights of any third party.
- 11.7 The Applicant agrees to indemnify Homes England or MHCLG (as applicable) and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by Homes England or MHCLG (as applicable), or for which Homes England or MHCLG (as applicable) may become liable, in relation to:-
- 11.7.1 any intellectual property infringement claim or alleged infringement claim or other claim relating to Homes England's or MHCLG's use of the Project Know-How licensed (or purported to be licensed) under the Licence (including but not limited to all costs and damages of any kind which Homes England and/or MHCLG may incur in connection with any actual or threatened proceedings before any court or adjudication body);
 - 11.7.2 any breach by the Applicant of this **Clause 11**; and

Homes England may at its option satisfy such indemnity (in whole or in part) by reducing the Maximum Sum.

12. REPUTATION OF THE PARTIES

The Applicant will not, and will use all reasonable endeavours to procure that its suppliers and contractors will not, knowingly do or omit to anything in relation to this Agreement, the Project or in the course of their other activities that may bring the standing of Homes England or MHCLG into disrepute or attract adverse publicity for Homes England or MHCLG.



13. CONFIDENTIALITY AND FREEDOM OF INFORMATION

13.1 Confidentiality

- 13.1.1 Each Party recognises that under this Agreement it may receive Confidential Information belonging to another Party.
- 13.1.2 Each Party agrees to treat all Confidential Information belonging to the another Party as confidential and not to disclose such Confidential Information to any third party without the prior written consent of the other relevant Party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.
- 13.1.3 The obligations of confidence referred to in Clause 13.1.2 will not apply to any Confidential Information which:
- (a) is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information; or
 - (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
 - (c) is lawfully in the possession of another Party before the date of this Agreement and in respect of which that Party is not under an existing obligation of confidentiality; or
 - (d) is independently developed without access to the Confidential Information of the another Party.
- 13.1.4 Each Party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- (a) to enable the disclosing party to perform its obligations under this Agreement; or
 - (b) by any applicable Statutory Requirement or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIRs or the Freedom of Information Code of Practice and the Applicant acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England or MHCLG may nevertheless be obliged to disclose such information; or
 - (c) by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
 - (d) in order to give proper instructions to any professional adviser of that Party who also has an obligation to keep any such Confidential Information confidential.
- 13.1.5 The Applicant will ensure that all Confidential Information obtained from Homes England and/or MHCLG under or in connection with this Agreement:-
- (a) is given only to such of its employees, professional advisors, sub-contractors or consultants engaged in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;
 - (b) is treated as confidential and not disclosed (without either Homes England's or MHCLG's prior written approval, (as applicable)) or used by any such staff or



professional advisors, sub-contractors or consultants otherwise than for the purposes of this Agreement,

and where it is considered necessary in the opinion of Homes England and/or the MHCLG, the Applicant will ensure that such staff, professional advisors, sub-contractors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

13.1.6 Nothing in this **Clause 13.1** shall prevent Homes England and/or MHCLG:-

- (a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of Homes England's and/or MHCLG's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England and/or MHCLG has used respect its resources; or
- (b) disclosing any Confidential Information:-
 - (i) to Parliament or any Parliamentary Committee or any other department, office or agency of the Crown; or
 - (ii) to any person engaged in providing any services to Homes England and/or the MHCLG for any purpose relating to or ancillary to this Agreement or Crown Commercial Services.

provided that in disclosing information under **Clause 13.1.6(a) or 13.1.6(b)** Homes England and/or the MHCLG discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given by the recipient where appropriate.

13.1.7 Nothing in this **Clause 13.1** shall prevent any Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

13.1.8 The obligations in this **Clause 13.1** will survive the expiry or termination of this Agreement for a period of 6 years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.

13.2 Freedom of Information

13.2.1 Homes England and MHCLG are "FOIA Authorities" and:

- (a) are subject to legal duties which may require the release of information under FOIA and/or EIR; and
- (b) FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.

13.2.2 The FOIA Authority in receipt of or to receive the RFI (**Relevant FOIA Authority**) shall be responsible for determining in its absolute discretion whether:



- (a) any Information is Exempted Information or remains Exempted Information; and/or
- (b) any Information is to be disclosed in response to a Request for Information;

and in no event shall any Party, other than the Relevant FOIA Authority, respond directly to a RFI except to confirm receipt of the RFI and that the RFI has been passed to the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.

- 13.2.3 Subject to the provisions of this Clause 13, each Party acknowledges that the Relevant FOIA Authority may disclose Information following consultation with the other Parties and having taken (or not taken, as the case may be) its views into account.
- 13.2.4 In the event that the Relevant FOIA Authority receives a RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other Parties.
- 13.2.5 Each Party will assist and co-operate as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents contractors and sub-contractors will), at their own cost:
 - (a) transfer any RFI received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a RFI;
 - (b) provide all such assistance as may be required from time to time by the Relevant FOIA Authority and supply such data or information as may be requested by the Relevant FOIA Authority;
 - (c) provide the Relevant FOIA Authority with any data or information in its possession or power in the form that the Relevant FOIA Authority requires within five (5) Working Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that Information;
 - (d) permit the Relevant FOIA Authority to inspect any records as requested from time to time.
- 13.2.6 Nothing in this Agreement will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information.

14. DATA PROCESSING

- 14.1 The Parties acknowledge and agree that:

- 14.2.1 MHCLG and the Applicant are each an independent Controller in relation to the Personal Data they each Process under or in connection with this Agreement and nothing in this Agreement is intended to construe either such party as Joint Controllers with one another or a Processor of the other; and
- 14.2.2 Homes England act as the Processor of MHCLG in relation to Homes England's Processing of MHCLG Data and nothing in this Agreement is intended to construe either such party as Joint Controllers. The terms which shall govern the Processing by Homes England of MHCLG Data under this Agreement will be set out in a separate agreement between MHCLG and Homes England.



- 14.2 The Applicant shall comply with its obligations under Data Protection Legislation, including without limitation, ensuring that it is permitted to share the Personal Data of Leaseholders to MHCLG and Homes England for the purposes of this Agreement.

15. FURTHER ASSURANCE

On the written request of Homes England or MHCLG, the Applicant will promptly execute and deliver or procure the execution and delivery of any further documents necessary to obtain for Homes England or MHCLG the full benefit of this Agreement.

16. GOOD FAITH

The Applicant will at all times act with the utmost good faith when dealing with Homes England, MHCLG, the Contractors and any other person or entity involved on the Project.

17. INDEMNITY

The Applicant will be liable for and will indemnify Homes England and MHCLG in full for any expense, liability, loss, claim or proceedings arising under statute, tort (including negligence), contract and/or at common law in respect of personal injury to or death of any person or loss of or damage to property (whether belonging to Homes England or MHCLG, or otherwise) or any claim by any third party arising directly or indirectly out of or caused or contributed to by the Project and/or the performance or non-performance or delay in performance by the Applicant of any of its obligations under this Agreement except to the extent that the same is due to any act or neglect of Homes England or MHCLG (other than any act or omission permitted to either such body under this Agreement).

18. AUTHORITY OF PARTIES' REPRESENTATIVES

18.1 Authority of Homes England Representative and MHCLG's Representative

Each of the Homes England Representative and the MHCLG Representative has full authority to act on behalf of Homes England or MHCLG (as applicable) for the purposes of this Agreement. The Applicant is entitled to treat any act of the Homes England Representative or the MHCLG Representative in connection with this Agreement as being expressly authorised by Homes England or MHCLG (as applicable) (save where Homes England or MHCLG has notified the Applicant in writing that such authority has been revoked) and the Applicant will not be required to determine whether any express authority has in fact been given.

18.2 Authority of the Applicant's Representative

The Applicant's Representative is authorised to act on behalf of the Applicant for all purposes connected with this Agreement.

19. STATUS OF APPLICANT

The Applicant will not say or do anything which may pledge the credit of or otherwise bind Homes England or MHCLG or that may lead any other person to believe that the Applicant is acting as or on behalf of Homes England or MHCLG.

20. ASSIGNMENT AND SUB-CONTRACTING

- 20.1 Homes England and MHCLG may assign or novate its respective rights and/or obligations under this Agreement to a statutory successor body or where a Statutory Requirement dictates this and in such circumstances the affected Party will give the other Parties notice of the anticipated statutory assignment or novation (as applicable) as soon as possible after the affected Party has become aware of it and will also notify the other Party within 5 Working Days of the completion of the statutory assignment/novation.



- 20.2 The Applicant shall not sell or transfer its interest in the Building without first procuring that the proposed transferee accedes to this Agreement and undertakes to perform the obligations of the Applicant under this Agreement, and shall enter into such documentation to give effect to such accession in form and substance satisfactory to Homes England and MHCLG.
- 20.3 Except as expressly permitted in this Agreement, no Party will, without the prior written consent of the other Parties, novate, assign, sub-license, sub-contract, transfer or charge this Agreement or any part of it.

21. VALUE ADDED TAX

- 21.1 The Parties understand and agree that the Funding by MHCLG or Homes England under this Agreement is not consideration for any supply for Value Added Tax ("VAT") purposes whether by the Applicant or otherwise.
- 21.2 If, notwithstanding the agreement and understanding of the Parties as set out in Clause 21.1 above, it is determined that the Funding is consideration for a supply for VAT purposes, the Funding shall be treated as inclusive of any VAT.
- 21.3 All sums or other consideration payable to or provided by the Applicant to Homes England or MHCLG at any time will be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided the Applicant will pay to Homes England or MHCLG (as applicable) all the VAT payable upon the receipt of a valid VAT invoice.

22. CONSTRUCTION INDUSTRY TAX DEDUCTION SCHEME

- 22.1 Not later than 21 Working Days before:-

- 22.1.1 the date on which the first payment of Funding is due; or
22.1.2 where Regulation 6(4) of the Income Tax (Construction Industry Scheme) Regulations 2005 does not apply, the date on which any further payment of Funding is due;

the Applicant will provide Homes England with its unique taxpayer reference and any other information which Homes England may be required to give to HMRC in order to verify the Applicant's tax status.

- 22.2 Homes England will verify the Applicant's tax status with HMRC in accordance with the FA Legislation and shall notify the Applicant in writing at least 10 Working Days before the date on which the first payment of Funding is due to be made if it intends to make any Statutory Deduction and at what rate.
- 22.3 Homes England shall be entitled to make such Statutory Deductions from any payment of Funding as it is required to make in accordance with the FA Legislation, at such rate as may be in force from time to time.
- 22.4 Where any error or omission has occurred in calculating or making the Statutory Deduction then:-
- 22.4.1 in the case of an over deduction, Homes England will correct that error by repayment of the sum over deducted to the Applicant; and
- 22.4.2 in the case of an under deduction, the Applicant shall correct that error or omission by repayment of the sum under deducted to Homes England (or at the direction of Homes England, MHCLG).
- 22.5 If compliance with the provisions of this Clause involves any Party in not complying with any other term of this Agreement then the provisions of this Clause will take precedence.



23. NO FETTERING OF DISCRETION/STATUTORY POWERS

Nothing contained in or carried out pursuant to this Agreement and no consents given by Homes England, MHCLG or the Applicant will unlawfully prejudice Homes England's, MHCLG's or the Applicant's (as appropriate) rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, byelaws, instruments, orders or regulations.

24. NOTICES

24.1 Any written notice required to be served under this Agreement will be served on the relevant Party specified by the Agreement and in the case of :-

- 24.1.1** MHCLG, by personal delivery or by sending it by recorded postal delivery and marked for the attention of the Director of the Building Safety Programme or to such other address as notified in writing by MHCLG to the other Parties;
- 24.1.2** Homes England, by personal delivery or by sending it by recorded postal delivery to the address specified in this Agreement and marked for the attention of the Programme Manager, Private Sector Cladding Remediation Fund or such other addresses as notified in writing by Homes England to the other Parties
- 24.1.3** on the Applicant by personal delivery or by sending it by recorded postal delivery to the address specified in this Agreement and marked for the attention of Nick Massingham or such other addresses as notified in writing by the Applicant to the other Parties.

24.2 Any written notice sent by post will be deemed served and received on the second business day following the day of posting and where delivered personally will be deemed to have been served when delivered.

25. DISPUTE RESOLUTION

25.1 Use of Senior Officers

If any dispute arises between any of the Parties relating to or arising out of this Agreement, the Parties involved shall notify each of the other Parties that the dispute is to be referred to senior officers of the relevant Parties (**Senior Officers**) in order to seek a resolution to the dispute. The Senior Officer Homes England will be the Programme Manager, Private Sector Cladding Remediation Fund (or such other person notified to the Applicant by Homes England), of MHCLG will be the Director of Building Safety and of the Applicant will be Nick Massingham. The Parties may change the details of such Senior Officers by written notice to the others. The Senior Officers shall consult with each other in good faith for at least 30 days following such referral to the Senior Officers before any alternative dispute resolution process is commenced.

25.2 Mediation

If there has been no resolution of the dispute within 30 days of the referral to Senior Officers any affected Party may give to the other written notice referring the dispute to mediation for resolution in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. The mediator will be an appropriately qualified barrister or solicitor of 10 years or more standing recommended by CEDR and appointed by CEDR in the event that the Parties cannot agree on a suitable person within 14 days of the notice of the dispute.

26. RIGHTS OF THIRD PARTIES

Save as specified in **Clause 4.3.1(d)** and **Clause 6.5**, nothing in this Agreement will confer any rights or obligations on any person who has not executed this Agreement nor will the consent of any person who has not so executed this Agreement be needed to make any modification, amendment, variation



or release of its terms. The Parties agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that, save as specified in Clause 4.3.1(d) and Clause 6.5, they do not intend any person other than a Party to be able to enforce any term of this Agreement.

27. ENTIRE AGREEMENT

27.1 This Agreement and the documents referred to in it constitute the entire agreement between the Parties and supersede and replace any previous agreement, understanding, representation or arrangement of any nature between the Parties relating to the subject matter of this Agreement including, for the avoidance of doubt, the Prospectus.

27.2 The Applicant hereby acknowledges that save as set out or referred to in this Agreement there are and have been no representations made by or on behalf of Homes England or MHCLG or whatsoever nature on the faith of which the Applicant is entering into this Agreement.

28. COUNTERPARTS

This Agreement may be executed in any number of counterparts and each counterpart will when executed be an original of this Agreement and all counterparts together will constitute one instrument.

29. SEVERANCE

If at any time any of the provisions of this Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement will be in any way affected or impaired as a result.

30. NO WAIVER

No failure or delay on the part of Homes England and/or MHCLG in exercising any right or power (or part of any right or power) and no course of dealing between the Parties will operate as a waiver of any right or power of Homes England and/or MHCLG. The rights and remedies of Homes England and/or MHCLG are cumulative and not exclusive of any rights or remedies which Homes England and/or MHCLG would otherwise have.

31. DISCLAIMER

Homes England and MHCLG will not be liable to the Applicant for any advice given by a representative of Homes England and MHCLG. In addition, Homes England and MHCLG give no assurance as to the suitability or viability of the Project and no endorsement of the same.

32. GOVERNING LAW

32.1 This Agreement will be governed by and construed in accordance with the laws of England and Wales.

32.2 Subject to Clause 25 (*Dispute Resolution*) the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (*Dispute*).

32.3 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

33. MISCELLANEOUS

33.1 Any approval by Homes England and/or MHCLG or any person on behalf of Homes England or MHCLG pursuant to this Agreement of any matter submitted by the Applicant for approval will not be



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deemed to be an acceptance by Homes England and/or MHCLG of the correctness or suitability of the contents of the subject of the approval or consent.

- 33.2 Any approval by Homes England and/or MHCLG in respect of the provision of the Funding in principle shall not be construed as giving consent and/or approval to any other matter or document to be submitted by the Applicant in accordance with this Agreement.
- 33.3 Homes England and MHCLG will act reasonably in deciding whether to give any consent, agreement determination or approval or express their satisfaction and whether to give any such consent agreement determination or approval or express their satisfaction subject to restrictions, terms or conditions unless in each case to do so would fetter their statutory powers, rights or obligations.
- 33.4 The Parties will and will ensure that their respective officers and employees will act at all times in a way which is compatible with the Convention Rights within the meaning of the Human Rights Act 1998.
- 33.5 A certificate by Homes England and/or MHCLG as to any sum payable hereunder by the Applicant will be conclusive save in the case of manifest error.
- 33.6 Except expressly stated otherwise the terms of this Agreement may only be amended by a deed duly executed by the Parties.
- 33.7 The obligations of the Parties under this Agreement shall continue until the Termination Date.

IN WITNESS of which this Agreement has been duly executed as a deed on the date written at the beginning of this Agreement.



SCHEDULE 1

EVENTS OF DEFAULT

1. An Event of Default occurs where:-
 - 1.1 any pre-conditions listed in Clause 4.1 are not met (or waived by Homes England);
 - 1.2 the Applicant does not comply with any undertaking given by it under this Agreement, which if capable of remedy, is not remedied within 30 days after the earlier of:
 - 1.2.1 Homes England and/or MHCLG (as applicable) giving notice to the Applicant; and
 - 1.2.2 the Applicant becoming aware of the failure to comply;
 - 1.3 the Works and/or the Project have not been carried out:-
 - 1.3.1 in accordance with the Consents;
 - 1.3.2 in compliance with all relevant Statutory Requirements; and/or
 - 1.3.3 in accordance with Good Industry Practice.
 - 1.4 the Applicant and/or any Principal Contractor does not have sufficient funds or resources available to complete the Project or the Works (in respect of the Applicant) or the relevant Works (in respect of a Contractor) in accordance with this Agreement and/or the relevant Works Contract;
 - 1.5 any enforcement action is taken or other right is enforced by any Regulatory Body in relation to the Applicant, any Contractor, any Works and/or the Project; or
 - 1.6 there is a material breach of any Project Document which, if capable of remedy, has not been remedied within 30 days of Homes England or MHCLG notifying the Applicant of the breach and requesting remedy and/or such further negotiable period as Homes England, or MHCLG (in its sole discretion) agrees.
 - 1.7 the Applicant has committed any default (however described) or any other event entitling Homes England or MHCLG to terminate or demand payment of an amount equal to all or any amounts advanced to the Applicant under any other agreement.
 - 1.8 Any undertaking, declaration, representation or statement made or deemed to be made by the Applicant in this Agreement, or the Application or any other document delivered by or on behalf of the Applicant under or in connection with this Agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to be made. No Event of Default under paragraph 1.8 will occur if the event or circumstance causing the representation or statement to be incorrect or misleading is capable of remedy and is remedied within 30 day after the earlier of:
 - 1.8.1 The Applicant becoming aware of such incorrect or misleading undertaking, declaration, representation or statement; and
 - 1.8.2 receipt by the Applicant of written notice from Homes England and/or MHCLG to the Applicant requiring the event or circumstance to be remedied.
 - 1.9 The Applicant or the Principal Contractor:
 - 1.9.1 is unable or admits inability to pay its debts as they fall due;
 - 1.9.2 is deemed to, or is declared to, be unable to pay its debts under applicable law;



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- 1.9.3 suspends or threatens to suspend making payments on any of its debts;
- 1.9.4 by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness'; and
- 1.9.5 fails to pay any of its direct appointees, comprising a Development Party by the expiry of the period when the applicable invoices are due and payable.

in respect of a Principal Contractor only no Event of Default will be deemed to have occurred provided the Applicant begins the process of appointing a new Contractor within 2 weeks of the occurrence of any Event of Default specified in paragraphs 1.4 or 1.10 of this Schedule 1 and the Applicant appoints a new Principal Contractor within 2 months of the occurrence of any Event of Default or such further period as Homes England deems reasonable specified in paragraphs 1.4 or 1.10 of this Schedule 1.

- 1.10 A moratorium is declared in respect of any indebtedness of the Applicant or the Principal Contractor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.
- 1.11 Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - 1.11.1 the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Applicant or the Principal Contractor;
 - 1.11.2 a composition, compromise, assignment or arrangement with any creditor of the Applicant or the Principal Contractor;
 - 1.11.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Applicant or the Principal Contractor or any of its assets; or
 - 1.11.4 enforcement of any Security over any assets of the Applicant or the Principal Contractor, or any analogous procedure or step is taken in any jurisdiction.
- 1.12 Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Applicant, or any materials for the Works and is not discharged within 21 days.
- 1.13 Subject to Clause 5.5, Start on Site does not occur before the Start on Site Date.
- 1.14 Subject to Clause 5.5, Practical Completion does not occur before the Required Completion Date, or Homes England (acting reasonably) forms the opinion that Practical Completion will not occur before the Required Completion Date.
- 1.15 The Funding is used by the Applicant for any purpose other than the funding of Qualifying Expenditure or the Applicant charges or attempts to charge Leaseholders a service charge in respect of the Works financed by the Funding or fails to reimburse Leaseholders in respect of costs of Works previously charged to Leaseholders as service charge.
- 1.16 Any of the events listed in paragraphs 1.10 to 1.12 inclusive occurs in relation to any Cost Consultant.
- 1.17 There is a material breach of the Duty of Care Deed which, if capable of remedy, has not been remedied within 30 days of Homes England or MHCLG notifying the Cost Consultant.



SCHEDULE 2

NOTIFIABLE EVENTS

1. PROJECT COSTS

- 1.1 The Applicant will promptly notify Homes England in writing:-
- 1.1.1 on receipt by it or any Contractor of any public sector finance or guarantee (or the offer of same) for the Works;
 - 1.1.2 on an increase in the anticipated or actual costs of the Works and/or Project. The Applicant will be required to provide an explanation for the increase and Homes England and/or MHCLG will decide whether to increase the Maximum Sum;
 - 1.1.3 on becoming aware of any event or circumstance which might have any Material Adverse Effect;
 - 1.1.4 on becoming aware of any proposed changes to the dates specified in Clause 5.2.2;
 - 1.1.5 on becoming aware of any event or circumstance which may attract adverse publicity to the Project and/or Homes England or MHCLG;
 - 1.1.6 on becoming aware of any claim brought against the Applicant and/or any Contractor relating to the Works and/or the Funding;
 - 1.1.7 of any intention to sell its interest in the Building and/or Site before completion of the Project. In the event of any such sale the Applicant must ensure the purchaser of its interest in the Site enters into a deed of accession in respect of this Agreement in a form and content approved by Homes England and/or MHCLG and separately covenants with Homes England and MHCLG that any Funding that has previously been provided to the Applicant is on the basis set out in Clause 4.3.1 of the Agreement and may not be used by the purchaser for any other purpose.

2. EVENTS OF DEFAULT AND STATUTORY REQUIREMENTS

- 2.1 The Applicant will notify Homes England immediately in writing:-

- 2.1.1 on becoming aware of any breach of any health and safety law or regulation including, but not limited to:-
 - (a) a fatal accident to any worker or a member of the public;
 - (b) any injury to a member of the public requiring reporting under RIDDOR;
 - (c) any dangerous occurrence, as defined by RIDDOR;
 - (d) the service of any improvement or prohibition notice under the HS Act;
 - (e) any incident having health & safety implications which attracts the attention of the police and/or the media;
 - (f) the commencement of any criminal prosecution under the HS Act;
 - (g) or any other breach of the HS Act and/or CDM Regulations

by the Applicant and/or any Contractor directly or indirectly related to the Works;



- 2.1.2 on becoming aware of any investigations undertaken or sanctions imposed by the Environment Agency or any local authority relating to environmental incidents and/or any environmental incident occurring directly or indirectly relating to the Works (or any part of them) which may be a breach of any environmental law or regulation in force at the time of the incident whether the Applicant and/or any contractor and/or any other third party is responsible for the incident or is the subject of such investigations and/or sanctions (as appropriate) the notification to be in such form as Homes England may provide from time to time;
- 2.1.3 on becoming aware of investigations into or findings of any breach of any equality or anti-discrimination legislation or regulations directly or indirectly related to the Works (or any part of them) whether the Applicant and/or any Contractor and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate); and
- 2.1.4 on the occurrence of an Event of Default.

3. **RESOLUTION**

In the event of notification by the Applicant under this **Schedule**, if applicable and if requested by Homes England, the Applicant will provide, together with such notification, a proposal for resolution or mitigation of the event and will take into account all representations of Homes England and/or MHCLG on such proposals.



SCHEDULE 3

CONDITIONS PRECEDENT

1. The Applicant

- (a) A copy of the constitutional documents of the Applicant.
- (b) A copy of a resolution of the board of directors / the members of the Applicant:
 - (i) approving the terms of, and the transactions contemplated by, the Agreement and resolving that it execute, deliver and perform its obligations under the Agreement;
 - (ii) authorising a specified person or persons to execute the Agreement; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Claim) to be signed and/or despatched by it under or in connection with this Agreement.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate of the Applicant (signed by a director / member) confirming that its entry into the Agreement and the receipt of funds pursuant to the Agreement would not cause any funding or similar limit binding on it to be exceeded.
- (e) A certificate of an authorised signatory of the Applicant certifying that each copy document relating to it specified in this Schedule is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (f) A structure chart setting out the ownership of the Applicant.
- (g) A schedule detailing the Leaseholders in the Building and the amount of each Leaseholder's responsibility for service charge.

2. Inspection and survey

A survey of the Cladding installed on the Building.

3. Insurance

- (a) Evidence that the insurance cover in force in respect of the Works complies with the terms of this Agreement.
- (b) Evidence of the extent and level of the professional indemnity insurance of each Development Party, including (without limitation), Cardoe Martin, Bell Safety Services, Ballymore Services and Gowling WLG.

4. Building

- (a) A report on the Building incorporating details of the Leaseholders prepared by Homes England's solicitors and addressed to Homes England and MHCLG.



- (b) A completed cost recovery questionnaire detailing (among other things) all litigation and insurance claims currently being progressed by the Applicant in respect of the Unsafe Cladding on each Building.

5. Development Documents

- (a) The Budgeted Costs.
- (b) A copy of each Works Contract and any appointment of a Development Party, including (without limitation) Cardoe Martin, Wintech, International Fire Consultants Group, Ballymore Services and Gowling WLG.
- (c) A copy of the Specifications.
- (d) A Collateral Warranty from each Development Party.
- (e) Copies of the Consents.
- (f) A copy of the Full Plans Approval for the Project, including a copy of the Building Regulations Full Plans Certificate and evidence that the local authority have confirmed that planning approval is not required.
- (g) A report on the Project, the Contracts and ancillary documents (including the Development Parties, all plans, the Specifications, the Budgeted Costs and the development programme) prepared by the Project Monitor and addressed to Homes England and MHCLG. This report must include confirmation that all Consents have been obtained and any applicable judicial review period has passed.
- (h) A report on the Contracts and the Collateral Warranties prepared by the Project Monitor (with input from the legal advisers to Homes England in England) and addressed to Homes England and MHCLG.
- (i) Written confirmation from the Applicant and/or the fire engineer that the design of the Works meets the Cladding System Guidance, including that the materials and products meet the specifications of the Private Sector Cladding Remediation Fund specifically their fire classification in accordance with BS EN13501-1:2007+A1:2009. The confirmation given by the Applicant and/or the fire engineer may be checked by the Project Monitor.
- (j) The Project Appraisal.

6. State Aid

- (a) A Declaration from each Leaseholder.
- (b) A copy of each Letter sent by the Applicant to each Leaseholder.
- (c) Where the Applicant is a RP or a RP is a Leaseholder of the Applicant, a SGEI Agreement between MHCLG and Homes England and the RP.

7. Other documents and evidence

- (a) The Duty of Care Deed.
- (b) A copy of any other document, opinion, authorisation, consent or assurance which Homes England considers to be necessary or desirable (if it has notified the Applicant accordingly) in connection with



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the entry into and performance by the Applicant of the transactions contemplated by this Agreement
or for the validity and enforceability of this Agreement.



SCHEDULE 4

OFFICER'S CERTIFICATE

To: The Secretary of State for Housing, Communities and Local Government (the "MHCLG") and the Homes and Communities Agency (trading as Homes England) ("Homes England")

In this Officer's Certificate (Certificate), words and expressions shall have the same meanings as in the Agreement except where otherwise defined.

I [] , the undersigned, being a [director/member] of the Applicant, hereby certify on behalf of the Applicant that:

1. INCORPORATION AND CAPACITY

The Applicant is [a company limited by shares/ other] and is validly existing under the laws of [England and Wales] and has full corporate capacity and power to enter into the Agreement and to exercise its rights and perform its obligations thereunder.

2. CONSTITUTIONAL DOCUMENTS

The constitutional documents of the Applicant (a certified copy of which are annexed at Schedule 1 to this Certificate) are in full force and effect at the date of this Certificate.

3. AUTHORISATION AND EXECUTION

All corporate and other action required by the Applicant's constitutional documents or by law to authorise the execution of the Agreement by the Applicant and the performance of its obligations thereunder has been duly taken and the Agreement has been duly executed and delivered on the Applicant's behalf.

The resolutions annexed at Schedule 2:

- 3.1 were passed at a properly convened, constituted and conducted meeting of [board of directors/ the members of the Applicant] at which all constitutional, statutory and other formalities were observed and such resolutions have not been amended or rescinded and are in full force and effect;
- 3.2 approve the terms of, and the transactions contemplated by, the Agreement and resolve that the Applicant execute, deliver and perform its obligations under the Agreement;
- 3.3 authorise a specified person or persons to execute the Agreement; and
- 3.4 authorise a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Claim) to be signed and/or despatched by it under or in connection with the Agreement.

4. NO CONFLICT

To the best of the Applicant's knowledge, information and belief, the execution, delivery and performance of the Agreement on behalf of the Applicant will not:

- 4.1 breach, or constitute an event of default under, any agreement, deed or instrument binding on the Applicant; or
- 4.2 breach any borrowing or other limit binding on or applicable to the Applicant pursuant to any statute, regulation, trust deed, contract or other agreement of whatsoever nature.



5. AUTHORISED SIGNATORIES

The signatures (annexed at Schedule 3 to this Certificate) are the specimen signatures of each person authorised on behalf of the Applicant to execute Agreement or to sign or send any document or notice under or in connection with the Agreement.

6. CERTIFIED COPIES

All copies annexed to this Certificate are correct, complete and up to date copies of the document to which they relate and are in full force and effect as at a date no later than the date of the Agreement.

CERTIFICATION

7. As an authorised signatory of the Applicant, I hereby certify that as the date hereof (save as disclosed in Schedule 4 to this Certificate):

- (a) all data or other information submitted on the Portal or each Claim and in each is accurate and the Applicant is not aware (having made reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate; and
- (b) all data or other information supplied to Homes England and MHCLG in connection with or related to the Project is accurate.

Signed:

Name:



SCHEDULE 5

FORM OF STATE AID DECLARATION

Declaration for Leaseholders

<https://www.gov.uk/government/publications/private-sector-acm-cladding-fund-state-aid-guidance-and-declaration>



SCHEDULE 6

FORM OF STATE AID FOLLOW-UP LETTER
Part 1

Letter for Leaseholders who are Undertakings

[To be on headed notepaper of [the MHCLG]/[Homes England]]

Dear [xxx],

Private Sector ACM Cladding Remediation Fund – De Minimis Aid offer letter

On 9 May 2019 and 26 May 2020, the Government announced that it would pay for the replacement of, respectively, unsafe Aluminium Composite Material (ACM) cladding and unsafe non-Aluminium Composite Material (ACM) cladding on private sector high-rise residential buildings (**Unsafe Cladding**).

Your landlord has successfully applied on behalf of the leaseholders for government funding to pay for the replacement of the Unsafe Cladding on [X building].

In order for the Government to provide funding for replacing the cladding on your building we need to send you this letter to comply with rules on government providing state aid to private businesses. This is because, based on the State Aid Declaration you have provided and/or information provided by your landlord, you are an 'undertaking' for the purposes of the state aid rules. An undertaking in this context means anybody (including an individual, corporation, a partnership, a family trust, etc.) who either owns and lets out properties to others or uses the property in this building solely for the purposes of operating a business.

The grant funding to be provided by the Government to your landlord on your behalf is an award of de minimis State Aid under EC Regulation No 1407/2013 (de minimis aid regulation). The value of the de minimis aid made by way of the grant funding is £[XXXX]. This funding is being provided to meet your service charge obligations for the remediation of the Unsafe Cladding.

The amount of grant funding may change if the cost of the work necessary to remediate the cladding changes. If that happens we will need to recalculate the amount of grant we can pay on your behalf and we will write to you again to confirm any revised amount.

This de minimis aid funding awarded to you under this offer letter will be relevant if you wish to apply, or have applied, for any other de minimis aid. You must declare this amount of de minimis aid to any other aid awarding body who asks in the future for information from you on how much de minimis aid you have received. This includes any other buildings in which you are a leaseholder for which an application is being made to the Private Sector ACM Cladding Remediation Fund, in which case you should include the information in this letter in any state aid declaration you are asked to sign.

You do not need to respond to this letter. For the purposes of the de minimis aid regulation, you should keep this letter for 12 years and produce it on any request by the UK public authorities or the European Commission.

Your landlord will contact you to let you know when the works to replace cladding on the building are due to start and complete. Your landlord will be able to answer any questions about the works to replace the cladding measures to keep the building safe while the works are ongoing, or your landlord's application to the Private Sector ACM Cladding Remediation Fund.

Yours sincerely,

¹ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352 24.12.13, p1.



Part 2

Letter for Leaseholders who are not Undertakings

[To be on headed notepaper of [the MHCLG]/[Homes England]]

Dear [xxx],

Private Sector ACM Cladding Remediation Fund – Provision of funding

On 9 May 2019 and 26 May 2020, the Government announced that it would pay for the replacement of, respectively, unsafe Aluminium Composite Material (ACM) cladding and unsafe non-Aluminium Composite Material (ACM) cladding on private sector high-rise residential buildings (**Unsafe Cladding**).

Your landlord has successfully applied on behalf of the leaseholders for government funding to pay for the replacement of the Unsafe Cladding on [X building]. The value of the funding which is being provided for your benefit is [£xxx]. This funding is being provided to meet your service charge obligations for the remediation of the U nsafe Cladding.

The amount of grant funding may change if the cost of the work necessary to remediate the cladding changes. If that happens we will need to recalculate the amount of grant we can pay on your behalf and we will write to you again to confirm any revised amount.

You do not need to take any further action following receipt of this letter.

Your landlord will contact you to let you know when the works to replace cladding on the building are due to start and complete. They will also be able to answer any questions about the works to replace the cladding, measures to keep the building safe while the works are ongoing, or your landlord's application to the Private Sector ACM Cladding Remediation Fund.

Yours sincerely,

The Building Safety Programme
Ministry of Housing, Communities and Local Government



SCHEDULE 7

MINIMUM STANDARDS

REQUIREMENT	NOTES
A Principal Designer for the purposes on the Construction Design and Management Regulations 2015 (CDM Regs) must be named in the works contract and must meet the level of competence required by the regulations.	Evidence will need to be provided that the Principal Designer meets the required competency standards.
A Contract Administrator (CA), Employer's Agent (EA) or Architect must be named in the works contract and be responsible for administering the contract for the duration for the works. The CA, EA or Architect must be a member of a chartered professional body (i.e. RICS, RIBA, CIOB etc.) and have appropriate experience for the scale of the proposed works.	Evidence will need to be provided that the CA, EA or Architect meets the required competency standards.
The main contractor named within the works contract must be appointed as the Principal Contractor under the Construction Design and Management Regulations 2015 (CDM Regs). The Principal Contractor must meet the level of competence required by the regulations.	Evidence will need to be provided that the Principal Contractor meets the required competency standards.
For works contract values over £200,000 a Quantity Surveyor must be named within the contract and be responsible for contract valuations and cost monitoring. The Quantity Surveyor must be a member of a relevant chartered professional body (i.e. RICS).	Evidence will need to be provided that the Quantity Surveyor meets the required competency standards.
A defects rectification period of a minimum of 12 months must be included in the contract and a minimum of 2.5% of the overall works contract value must be held as retention for this period.	
A provision must be included in the works contract for a minimum of 5% of the overall works contract value to be held as retention from commencement to Practical Completion of the works.	
Adequate professional indemnity insurance must be stipulated in the works contract where the contractor has a responsibility for any design work.	The level of insurance sought will need to be provided and must reflect the scale of the works.
There must be an arbitration and / or adjudication procedure for dispute resolution included within the contract.	
The works contract must be executed as a deed.	



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EXECUTION PAGE

**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: _____

the common seal of the
HOMES AND COMMUNITIES AGENCY
was hereunto affixed in the presence of:

Authorised Signatory



THE APPLICANT

EXECUTED as a DEED by
20:20 HOUSE (RESIDENTIAL
MANAGEMENT) LIMITED
acting by NICK MASSINGHAM
a Director, in the presence of:

)
Director
)
)

Witness Signature

.....
P.M.

Witness Name

.....
PHILIP MASSINGHAM

Witness Address

.....
52, CHURCHWOOD RD.

.....
LS6 3NS

.....
.....

Witness Occupation

.....
50% CR

ANNEX 4 – PART A
CONTRACTOR'S FORM OF WARRANTY IN FAVOUR OF PURCHASER/FUNDER/TENANT

DATED _____ 20[]

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

CONTRACTOR'S WARRANTY
in favour of
[Purchaser] [Funder] [Tenant]
in respect of a development at

[]



THIS DEED is made

20[]

BETWEEN

- (1) [] (company registration number []) whose registered office is at [] ("the Contractor")
- (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 being granted

IN CONSIDERATION of the sum of one pound (£1.00) paid by the Company to the Contractor (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 :

"Building Contract" the JCT Design and Build Contract 2016 as amended by a bespoke schedule of amendments and entered into or to be entered into by the Employer and the Contractor for the carrying out and completion of the Works and includes any subsequent agreement varying or supplementing such contract

"Contractor's Design Documents" all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed by or on behalf of the Contractor (including by any of the Novated Consultants Sub-Consultants and Sub-Contractors (as defined in the Building Contract)) in the course of or as a result of carrying out the Works whether in existence or to be made or produced and including all amendments additions and all designs ideas concepts and inventions contained in them

["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 Works or any part of the Works
"Practical Completion"	practical completion of the Works under the Building Contract
"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday
"Site"	[]
"Working Day"	any day which is not a Saturday, Sunday or Public Holiday
"Works"	the works performed and/or to be performed by the Contractor under the Building Contract

1.1 Interpretation

- 1.2 The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.
- 1.3 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.4 Words of one gender include both other genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.5 References to "liability" include where the context so allows claims demands proceedings losses costs and expenses.
- 1.6 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

1.7 Circumstances

- 1.7.1 By the Building Contract the Employer employed the Contractor to carry out the Works.
- 1.7.2 The Company [insert details of Company's interest in the Works]
- 1.7.3 It is a term of the agreement between the Company and the Employer that the Employer procures that the Contractor enters into this deed for the benefit of the Company.

2. DUTY OF CARE

The Contractor warrants and undertakes to the Company that:

- 2.1 it has performed and will continue to perform its duties under the Building Contract;

2.2 the design of the Works has been and will be carried out using all the reasonable skill care and diligence to be expected of a professionally qualified designer of the relevant discipline to the design experienced in projects of the same size, scope, complexity, nature and time scale as the Works.

3. PROHIBITED MATERIALS

3.1 The Contractor has not and shall not specify nor use nor authorise cause or allow to be used within or in relation to the Works 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 persons involved in the installation construction or maintenance of the Works or the completed Works or to the eventual occupants of the Works; or

3.1.2 not in conformity with any relevant British or European Standards or Codes of Practice; or

3.1.3 which at the time the Works are being carried out are generally accepted as (or are reasonably suspected 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 any 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 Works or any part the Works

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

3.3 The Contractor warrants that it shall comply with and have regard to the guide entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices or such other version of such publication current at the time of use in assessing whether or not an intended material is deleterious in the terms set out in clause 3.

3.4 The Contractor will as soon as reasonably practicable notify the Company if it becomes aware of any proposed or actual use in the Works of any materials not compliant with clause 3.1.

4. RESTRAINTS ON THE CONTRACTOR

The Contractor may not exercise any rights of set-off or counterclaim which may be permissible against his liability under the Building Contract 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 Contractor in relation to performance of the Contractor's duties under the Building Contract [unless and until the Company has given notice under clause 7.2 or clause 7.3].

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

6. LIABILITY FOR PAYMENT

The Company has no liability to the Contractor in respect of fees and expenses under the Building Contract [unless and until the Company has given notice under clause 7.2 or clause 7.3].

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

7. [STEP-IN RIGHTS]

- 7.1 The Contractor agrees that it will not without first giving the Company previous notice in writing exercise any right it may have to terminate or suspend the Building Contract or to treat the same as having been repudiated by the Employer. Such notice to the Company shall:
 - 7.1.1 if the grounds are that a sum which is due has not been paid by the final date for payment and no effective notice to pay less has been given, be given no less than 7 days before the Contractor exercises any such right; otherwise
 - 7.1.2 be given no less than 15 Working Days before the Contractor exercises any such right.
- 7.2 The right of the Contractor to terminate or suspend the Building Contract with the Employer or treat the same as having been repudiated shall cease if within such period of notice and subject to clause 7.4 the Company shall give notice in writing to the Contractor requiring the Contractor 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 Works upon the terms and conditions of the Building Contract [PROVIDED THAT the rights of [] under clause 7 of the warranty given or to be given by the Contractor to [] shall have priority over the rights of the Company under this clause whether such rights are exercised by [] before or after the exercise by the Company of its rights under this clause].
- 7.3 If so required by notice in writing given by the Company and subject to clause 7.4 the Contractor shall 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 Works upon the terms and conditions of the Building Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor 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 clause 7.2 or 7.3 shall state that the Company or its appointee accepts liability for payment of fees payable to the Contractor under the Building Contract (including those due and owing under the Building Contract at the date of any notice served by the Company) and for performance of the Employer's obligations under the Building Contract and in the case of the Company nominating an appointee the Company guarantees all payments due to the Contractor from its appointee.
- 7.5 Compliance by the Contractor 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 Contractor 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 in warranty where step in rights are being granted

8. NOT USED

9. COPYRIGHT

- 9.1 Copyright in the Contractor's Design Documents shall remain vested in the copyright owner.
- 9.2 The Contractor waives any Moral Rights that it may have as author in respect of the Contractor's Design Documents and/or the Works 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 Contractor's Design Documents and/or the Works.
- 9.3 The Contractor grants or shall procure the grant from third parties engaged by the Contractor (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Contractor's Design Documents for any purpose whatsoever connected with the Site and/or the Works 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 Works and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Contractor shall not be liable for the consequences of any use of the Contractor's Design Documents for any purpose other than that for which the same was prepared.

- 9.4 The Contractor 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 Works 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 Contractor's Design Documents as may be reasonably requested by the Company.

10. ASSIGNMENT

- 10.1 The Company may (without the consent of the Contractor) assign its rights under this deed to:
- 10.1.1 any Mortgagee and by way of re-assignment on redemption;

- 10.1.2 any Group Company;
- 10.1.3 any other party on two occasions only.
- 10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.3.
- 10.3 The Contractor 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 Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.

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 compliance with clause 7 the Contractor shall not incur any liability to the Employer.]

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

13. LIMITATION AND MISCELLANEOUS

- 13.1 The liability of the Contractor under this deed shall be limited to claims arising within twelve years after the date of Practical Completion.
- 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 Building Contract shall not in any way derogate from the Contractor's obligations hereunder nor diminish any liability on its part under this deed.
- 13.4 The Contractor acknowledges that:
 - 13.4.1 the Company shall be deemed to have relied upon the Contractor's reasonable skill care and diligence in respect of those matters relating to the Works which lie within the scope of its responsibilities under the Building Contract 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 Works shall abate or reduce the Contractor's liability under this deed to the Company and its respective successors in title and assigns.

- 13.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend any terms of this deed to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been entitled to enforce such terms.
- 13.6 Subject to clause 4:
- 13.7 the Contractor shall have no greater obligations to the Company by virtue of this deed than it would have had if the Company had been named in the Building Contract jointly with the Employer; and
- 13.8 the Contractor shall be entitled in any action or proceedings by the Company to rely on any limitation or exclusion in the Building Contract and to raise equivalent rights of defence of liability as it would have against the Employer under the Building Contract.

14. [ADDITIONAL WARRANTIES]

Within 10 Working Days of a request to do so from the Company the Contractor 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 Funder (as those terms are defined in the Building Contract) 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).]

DRAFTING NOTE: clause 14 is only to be included in warranty where step in rights are being granted

15. NOTICES

- 15.1 Any notice to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered office for the time being or in any other case to any address for the time being of the person to be served.
- 15.2 Notice may be served by:
 - 15.2.1 personal delivery; or
 - 15.2.2 pre-paid registered or recorded delivery mail; or
 - 15.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.
- 15.3 Notices and communications shall be deemed to have been served or received as follows:
 - 15.3.1 in the case of personal delivery on the date of delivery;
 - 15.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
 - 15.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

16. LAW

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

EXECUTED AND DELIVERED as a deed on the date at the head of this deed

**ANNEX 4 – PART B
CONTRACTOR'S FORM OF WARRANTY IN FAVOUR OF MHCLG**

Date..... *insert date*

**Collateral Warranty
from Contractor to the MHCLG
relating to unsafe cladding remedial works at [20:20 Block
B Flats, Skinner Lane, Leeds LS7 1BE]**

[**Ballymore Services Limited**] ⁽¹⁾
The Ministry of Housing, Communities & Local Government ⁽²⁾ and
[**20:20 House (Residential Management) Limited**] ⁽³⁾

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DATE..... insert date

PARTIES

- (1) **[BALLYMORE SERVICES LIMITED]** [(No.[NI622883] / trading together in partnership under the style [●] / a limited liability partnership)] [whose registered office is [●] / whose principal place of business is [●20 Armagh Road, Portadown, Craigavon, Northern Ireland, BT62 3DP]] **(Contractor)**.

(CONTRACTOR)

- (1) **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)**.
- (2) **[● 20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED]** [(No. [● 06770847] / trading together in partnership under the style [●] / a limited liability partnership)] [whose registered office is [●] / whose principal place of business is [Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB ●]] **(Employer)**.

BACKGROUND

- (A) By the Contract, the Employer has employed the Contractor to design, carry out and complete Remedial Works at the Site on the terms and subject to the conditions set out in the Contract.
- (B) The MHCLG has established the Private Sector Remediation Fund and the Building Safety Fund **(ACM Funds)**. The ACM Funds provide funding for the replacement of unsafe ACM Cladding and Non-ACM Cladding systems on private residential buildings. The Employer is an applicant of the ACM Funds.
- (C) Pursuant to a funding agreement dated on or around the date of this Agreement 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 Contractor has agreed to enter into this Agreement 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 Contractor (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 Agreement 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 Funds has the definition ascribed to it in recital (B).

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

Cladding components that are attached to the primary structure of a building to form a non-structural surface and includes the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashing, fixings, gaskets and sealants.

Class A1 European Classification Class A1, classified in accordance with BS EN 13501-1:2007+A1:2009 entitled “Fire classification of construction products and building elements. Classification using test data from reaction to fire tests” (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30th March 2007 and amended in November 2009.

Class A2-s1, d0 European Classification A2-s1, d0 classified in accordance with BS EN 13501-1:2007+A1:2009 entitled “Fire classification of construction products and building elements. Classification using test data from reaction to fire tests” (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30th March 2007 and amended in November 2009.

Construction Products 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 between the Employer and the Contractor dated [●] for the design, carrying out and completion of Remedial Works including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.

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 Contractor 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.

Non-ACM Cladding

means (i) Cladding systems (other than Cladding systems which include ACM Cladding) which incorporate panels achieving European Class C-s1,d0 or worse in combination with any class of insulation, or Cladding systems with panels achieving Class B-s1,d0 or lower, unless the system has achieved a BR135 certificate pursuant to a BS8414 test, and/or (ii) any building with insulation or filler achieving Class B-s1,d0 or lower that is not installed in line with a Cladding system that has a BR135 certificate pursuant to a BS8414 test and both (i) and (ii) 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.

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.

Remedial Works

the building works under and/or in accordance with the Contract for the removal of the Unsafe Cladding on each of the buildings at the Site and replacement with Cladding that is of Class A1 or Class A2-s1, d0 standard.

Site

building(s) known as [●] upon which the Remedial Works are to be performed.

Unsafe Cladding

any ACM Cladding and Non-ACM Cladding that has been identified as containing combustible materials 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 Agreement unless the context requires otherwise:
- 1.2.1 references to a Clause or Schedule are to a clause of, or schedule to this Agreement, references to this Agreement include its schedules, and references in a Schedule to a paragraph are to a paragraph of that Schedule;
 - 1.2.2 references to this Agreement or any other document are to this Agreement 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 Agreement do not affect its interpretation;
 - 1.2.6 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;
 - 1.2.7 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives;
 - 1.2.8 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 Agreement) and to any subordinate legislation made under it except to the extent that it would increase the liability of any party under this Agreement;
 - 1.2.9 if the Contractor is a partnership each partner shall be jointly and severally liable under this Agreement. Where the context so requires and where the Contractor is a partnership, the term **Contractor** shall be deemed to include any additional partner(s) who may be admitted into the partnership of the Contractor during the currency of this Agreement. This Agreement shall not automatically terminate upon the death, retirement or resignation of one or more members of such partnership; and
 - 1.2.10 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 Contractor warrants and undertakes to the MHCLG that it has observed and performed and shall continue to observe and perform each and all of its duties and obligations contained in or implied by the Contract. Save as expressly provided for in this Agreement¹ the liability of the Contractor is to be treated as being no greater or longer than it would have been if the MHCLG had been a party to the Contract instead of this Agreement and ²the Contractor shall be entitled in defence of any action or proceedings by the MHCLG under this Agreement to raise equivalent rights of defence of liability as it would have against the Employer under the Contract but neither this provision nor any other provision in this Agreement shall entitle the Contractor to raise any defence based on set-off or counterclaim and/or prevent the MHCLG from recovering loss and/or damage from the Contractor as a result of the Contractor's breach of any provisions of this Agreement on the basis that the Employer has not suffered any loss and/or damage and/or the same loss and/or damage and the Contractor hereby irrevocably agrees and undertakes not to

¹ No greater liability clause included to satisfy insurers

² Equivalent rights of defence provision to satisfy insurers.

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 Contractor further warrants and undertakes to the MHCLG that:

- 2.2.1 it has exercised and shall continue to exercise all reasonable skill, care and diligence in the performance of the Remedial Works to be expected of a properly qualified and competent building contractor experienced in performing similar services, duties and obligations in relation to developments of a similar nature, value, scope, character, complexity and timescale to the Remedial Works in:
 - (a) the design of the Remedial Works and of any part or parts of the Remedial Works to the extent that the Contractor has been or shall be responsible for such design; and
 - (b) the selection of goods and materials for the Remedial Works or any part or parts of the Remedial Works to the extent that such goods and materials have been or shall be selected by or on behalf of the Contractor;
- 2.2.2 the Remedial Works shall on completion satisfy all performance specifications and other requirements contained or referred to in the Contract;
- 2.2.3 the Remedial Works and all materials and goods comprised in them shall correspond as to description, quality and condition with the requirements of the Contract and shall be of sound manufacture and workmanship; and that
- 2.2.4 the Contractor in carrying out the Remedial Works, and the Remedial Works on completion shall comply with all applicable statutory and regulatory requirements.

For the avoidance of doubt, under the provisions of Clauses 2.2.2 and/or 2.2.3, the Contractor does not warrant that the Works when complete shall be fit for purpose.

- 2.3 The Contractor acknowledges that the MHCLG has relied and shall rely on the warranties under this Clause 2 and the other terms of this Agreement 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 Agreement.
- 2.4 The obligations of the Contractor under this Agreement 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 CONTRACT

- 3.1 The Contractor warrants and undertakes to the MHCLG that it shall not exercise or seek to exercise any right of termination of the Contract and/or to discontinue the performance of any of its duties and/or obligations thereunder for any reason whatsoever (including any 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 Contract for the exercise by the Contractor of a right of termination of the Contract and/or to discontinue the performance of any of its 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 Contractor with the provisions of Clause 3 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 Contract and/or to discontinue the performance of any of the Contractor's duties and/or obligations in relation to the Remedial Works, nor otherwise prevent the Contractor 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 CONTRACTOR TO THE MHCLG

4.1 The right of the Contractor to terminate the Contract and/or to discontinue the performance of any of its 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 Contractor:

- 4.1.1 requiring the Contractor to continue performing its duties and obligations under the Contract in relation to the Remedial Works;
- 4.1.2 acknowledging that the MHCLG is assuming all the duties and obligations of the Employer under the Contract;
- 4.1.3 undertaking unconditionally to the Contractor to discharge all payments which may subsequently become due to the Contractor under the terms of the Contract, subject to the same right to deduct retentions as would have applied to the Employer under the Contract;

and shall pay to the Contractor any sums which have become due and payable to it under the Contract but which were then unpaid, subject to the same right to deduct retentions as would have applied to the Employer under the Contract.

4.2 Upon compliance by the MHCLG with the requirements of Clause 4.1 the Contract shall continue in full force and effect as if the right of termination and/or discontinuance on the part of the Contractor had not arisen and in all respects as if the Contract had been made between the Contractor and the MHCLG to the exclusion of the Employer.

4.3 Notwithstanding that as between the Employer and the Contractor the Contractor's rights of termination of the Contract and/or discontinuance may not have arisen, the provisions of Clause 4.2 shall nevertheless apply if the MHCLG gives notice to the Contractor and the Employer to that effect and the MHCLG complies with the requirements on its part under Clause 4.1.

4.4 The Contractor 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 Contractor 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 Contractor but, subject to the Contractor having been paid all sums due and payable under the Contract, 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 Contractor'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 Contractor 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 Contractor warrants to the MHCLG that:

- 6.1.1 Not used.
- 6.1.2 it has at all relevant times maintained an all risks insurance policy and a public liability insurance policy covering the usual risks covered by these types of policies in respect of the Remedial Works.

- 6.2 As and when reasonably required by the MHCLG the Contractor shall provide satisfactory documentary evidence of the terms of insurance referred to in Clause 6.1 and that it has at all times maintained and shall continue to maintain at all times the insurance referred to in Clause 6.1, and shall confirm that payment has been made in respect of the last preceding premium due under such insurance.
- 6.3 The Contractor 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 Contract.
- 6.4 Not used.

7. HEALTH AND SAFETY

- 7.1 The Contractor 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.
- 7.2 The Contractor warrants that, in relation to the Remedial Works, it has complied and shall comply with the Health and Safety at Work etc. Act 1974 and all regulations made thereunder.

8. EXCLUDED MATERIALS

- 8.1 The Contractor 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 Contractor's trade and/or the construction industry:
 - 8.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
 - 8.1.2 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;
 - 8.1.3 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
 - 8.1.4 to be supplied or placed on the market in breach of the Construction Products Regulations.

9. COMMUNICATIONS

- 9.1 Except as otherwise provided for in this agreement, all notices or other communications under or in respect of this agreement to either party shall be in writing and, unless otherwise stated, may be made by letter or by electronic mail and in the case of:
 - 9.1.1 MHCLG by letter, by personal delivery or by sending it by recorded postal delivery to the address specified at the head of this agreement and marked for the attention of the Director of Building Remediation & Grenfell or to such other address as notified in writing by MHCLG to the other parties;
 - 9.1.2 the Contractor, by letter, by personal delivery or by sending it by recorded postal delivery to the address specified at the head of this agreement and marked for the attention of a board level director or member of the Contractor or such other address as notified in writing by the Contractor to the other parties;

- 9.1.3 the Employer, by letter, by personal delivery or by sending it by recorded postal delivery to the address specified at the head of this agreement and marked for the attention of a board level director or member of the Employer or such other addresses as notified in writing by the Employer to the other parties;
 - 9.1.4 any notice or other communication to be made between the parties by electronic mail shall be made to the email address as may be supplied by them to the other parties from time to time by not less than five Business Days' notice.
- 9.2 Any written notice or other communication sent by post will be deemed served and received on the second Business Day following the day of posting and where delivered personally will be deemed to have been served when delivered.
- 9.3 Any such electronic notice as specified in clause 9.1.4 above made between the parties will be effective only when actually received in readable form.
- 9.4 Any electronic notice or other communication which becomes effective, in accordance with clause 9.1.4 above, after 5:00pm in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this agreement shall be deemed only to become effective on the following Business Day.
- 9.5 With respect to service by email, only a response or communication issued by a member of issuing party's legal team or senior management shall constitute a formal response to legal proceedings.

10. CONCURRENT LIABILITIES

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

11. ASSIGNMENT

- 11.1 The MHCLG may without the consent of the Contractor from time to time assign transfer and/or charge the benefit of all or any of the Contractor's obligations under this Agreement and/or any benefit arising under or out of this Agreement by absolute assignment on three occasions only. In this Agreement references to the MHCLG include where the context admits its assignees.
- 11.2 The Contractor shall not be entitled to contend that any person to whom this Agreement is assigned in accordance with Clause 11.1 is precluded from recovering under this Agreement any loss incurred by such assignee resulting from any breach of this Agreement (whenever happening), by reason that such person is an assignee and not a named party under this Agreement.
- 11.3 The Contractor shall not be entitled to assign, transfer and/or charge the benefit of any (if any) of the MHCLG's obligations under this Agreement and/or any benefit (if any) arising to the Contractor out of this Agreement.

12. LIMITATION PERIOD

The liability of the Contractor under this Agreement shall cease 6 years following Practical Completion save in relation to any claims made by the MHCLG against the Contractor and/or notified by the MHCLG to the Contractor in writing prior thereto.

13. EMPLOYER

The Employer agrees that it shall not take any steps which would prevent or hinder the MHCLG from exercising its rights under this Agreement and confirms that the rights of the MHCLG in Clauses 3 and 4 override any obligations of the Contractor to the Employer under the Contract.

14. GOVERNING LAW AND JURISDICTION

- 14.1 This Agreement 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.
- 14.2 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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

15. 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 Agreement 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 Agreement pursuant to Clause 11 or successors in title to the MHCLG from enforcing the provisions of this Agreement.

16. ELECTRONIC EXECUTION

The parties acknowledge and agree that this Agreement may be executed by electronic signature (whatever form the electronic signature takes) and that this method of signature is conclusive of the parties intention to be bound by this Agreement as if signed by the parties manuscript signature.

17. COUNTERPARTS

This Agreement may be executed in any number of counterparts, but will not take effect until each Party has executed at least one counterpart. Each counterpart will constitute an original, but all the counterparts together will constitute a single agreement.

Signed for and on behalf of [**Contractor**]

.....
Director's signature

.....
Director's name

Signed for and on behalf of **THE SECRETARY OF
STATE FOR HOUSING, COMMUNITIES AND
LOCAL GOVERNMENT**

Authorised Signatory's signature

.....
Authorised Signatory's name

Signed for and on behalf of [**Employer**]

.....
Director's signature

.....
Director's name

ANNEX 5
SUB-CONTRACTOR'S FORM OF WARRANTY

DATED _____ 20[]

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

SUB-CONTRACTOR'S WARRANTY
in favour of [Employer] [Funder] [Purchaser] [Tenant] [MHCLG]
in respect of a development at
[]



THIS DEED is made

20[]

BETWEEN

- (1) [] (company registration number []) whose registered office is at [] ("the Sub-Contractor")
- (2) [] (company registration number []) whose registered office is at [] ("the Company")
- (3) [[]] (company registration number []) whose registered office is at [] ("the Contractor")]

DRAFTING NOTE: Contractor only to be a party where step in rights are being granted

IN CONSIDERATION of the sum of one pound (£1.00) paid by the Company to the Sub-Contractor (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 :

"Building Contract" the JCT Design and Build Contract 2016 as amended by a bespoke schedule of amendments and entered into or to be entered into by the Company and the Contractor for the carrying out and completion of the Works and includes any subsequent agreement varying or supplementing such contract

["Contractor" [] (company registration number []) whose registered office is at []]

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

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

DRAFTING NOTE: to be deleted where the Employer is the beneficiary

"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

"Practical Completion" practical completion of the Works under the Building Contract

"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday
"Site"	[]
"Sub-Contract"	the sub-contract for the Sub-Contract Works entered into or to be entered into between the Contractor and the Sub-Contractor
"Sub-Contract Works"	the works of [] carried out and/or to be carried out by the Sub-Contractor under the Sub-Contract
"Sub-Contractor's Design Documents"	all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed by or on behalf of the Sub-Contractor in the course of or as a result of carrying out the Sub-Contract Works whether in existence or to be made or produced and including all amendments additions and all designs ideas concepts and inventions contained in them
"Working Day"	any day which is not a Saturday, Sunday or Public Holiday
"Works"	the works performed and/or to be performed by the Contractor under the Building Contract

1.2 Interpretation

- 1.2.1 The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.
- 1.2.2 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.2.3 Words of one gender include both other genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.2.4 References to "liability" include where the context so allows claims demands proceedings losses costs and expenses.
- 1.2.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

1.3 Circumstances

- 1.3.1 By the Building Contract [the Company] [the Employer] employed the Contractor to carry out the Works.
- 1.3.2 By the Sub-Contract the Contractor employed the Sub-Contractor to carry out the Sub-Contract Works.
- 1.3.3

1.3.4 [The Company [insert details of the Company's interest in the Works]]

DRAFTING NOTE: delete where the Employer is the beneficiary

1.3.5 It is a term of the Building Contract that the Contractor procures that the Sub-Contractor enters into this deed for the benefit of the Company and its permitted assigns.

2. DUTY OF CARE

The Sub-Contractor warrants and undertakes to the Company that:

2.1 it has performed and will continue to perform its duties to the Contractor under the Sub-Contract;

2.2 the design of the Sub-Contract Works has been and will be carried out using all the reasonable skill care and diligence to be expected of a design sub-contractor acting in the capacity of the Sub-Contractor and experienced in the provision of the Sub-Contract Works for developments and projects of the same size scope complexity, nature and timescale as the Works.

3. PROHIBITED MATERIALS

3.1 The Sub-Contractor has not and shall not specify nor use nor authorise cause or allow to be used within or in relation to the Works 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 persons involved in the installation construction or maintenance of the Works or the completed Works or to the eventual occupants of the Works; or

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 Works are being carried out are generally accepted as (or are reasonably suspected 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 any 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 Works or any part the Works
- to a period less than that specified or which would normally be expected.
- 3.3 The Sub-Contractor warrants that it shall comply with and have regard to the guide entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices or such other version of such publication current at the time of use in assessing whether or not an intended material is deleterious in the terms set out in clause 3.
 - 3.4 The Sub-Contractor will as soon as reasonably practicable notify the Company if it becomes aware of any proposed or actual use in the Works of any materials not compliant with clause 3.1.

4. RESTRAINTS ON THE SUB-CONTRACTOR

The Sub-Contractor may not exercise any rights of set-off or counterclaim which may be permissible against his liability under the Sub-Contract 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 Sub-Contractor in relation to performance of the Sub-Contractor's duties under the Sub-Contract [unless and until the Company has given notice under clause 7.2 or clause 7.3].

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

6. LIABILITY FOR PAYMENT

The Company has no liability to the Sub-Contractor in respect of fees and expenses under the Sub-Contract [unless and until the Company has given notice under clause 7.1 or clause 7.3].

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

7. [STEP-IN RIGHTS]

- 7.1 The Sub-Contractor agrees that it will not without first giving the Company previous notice in writing exercise any right it may have to terminate or suspend the Sub-Contract or to treat the same as having been repudiated by the Contractor. Such notice to the Company shall:
 - 7.1.1 if the grounds are that a sum which is due has not been paid by the final date for payment and no effective notice to pay less has been given be given no less than 7 days before the Sub-Contractor exercises any such right; otherwise
 - 7.1.2 be given no less than 15 Working Days before the Sub-Contractor exercises any such right.
- 7.2 The right of the Sub-Contractor to terminate or suspend the Sub-Contract with the Contractor or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice and subject to clause 7.4 the Company shall

give notice in writing to the Sub-Contractor requiring the Sub-Contractor to accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract [PROVIDED THAT the rights of the [] under clause 7 of the warranty given or to be given by the Sub-Contractor to [] shall have priority over the rights of the Company under this clause whether such rights are exercised by [] before or after the exercise by the Company of its rights under this clause].

- 7.3 If so required by notice in writing given by the Company and subject to clause 7.4 the Sub-Contractor shall accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor 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 Building Contract.
- 7.4 Any notice given by the Company under clause 7.2 shall state that the Company or its appointee accepts liability for payment of fees payable to the Sub-Contractor under the Sub-Contract and for performance of the Contractor's obligations under the Sub-Contract and in the case of the Company nominating an appointee the Company guarantees all payments due to the Sub-Contractor from its appointee.
- 7.5 Compliance by the Sub-Contractor with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination nor otherwise prevent the Sub-Contractor 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 only to be included in warranty where step in rights are being granted

8. [PROFESSIONAL INDEMNITY]/[PRODUCT LIABILITY] INSURANCE

- 8.1 The Sub-Contractor warrants that, without prejudice to its liability under this deed, it shall effect and will maintain at all relevant times during the Works 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] [product liability] insurance cover of at least [] pounds (£[]) on an each and every claim basis PROVIDED ALWAYS such insurance continues to be available in the United Kingdom market upon reasonable terms and conditions and at commercially reasonable premium rates.
- 8.2 The Sub-Contractor shall throughout the period referred to in clause 8.1 provide to the Company, when reasonably requested by him to do so, evidence that the insurance required by clause 8.1 is being maintained in accordance with clause 8.1.
- 8.3 The Sub-Contractor 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 Sub-Contractor 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 Sub Contractor's Design Documents shall remain vested in the copyright owner.

- 9.2 The Sub-Contractor waives any Moral Rights that it may have as author in respect of the Sub Contractor's Design Documents and/or the Sub-Contract Works 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 Sub Contractor's Design Documents and/or the Sub-Contract Works.
- 9.3 The Sub-Contractor grants or shall procure the grant from third parties engaged by the Sub-Contractor (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Sub Contractor's Design Documents for any purpose whatsoever connected with the Site and/or the Works 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 Works and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Sub-Contractor shall not be liable for the consequences of any use of the Sub Contractor's Design Documents for any purpose other than that for which the same was prepared.

9.4 The Sub-Contractor 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 Works 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 Sub Contractor's Design Documents as may be reasonably requested by the Company.

10. ASSIGNMENT

- 10.1 The Company may (without the consent of the Sub-Contractor) assign its rights under this deed to :
- 10.1.1 any Group Company;
- 10.1.2 any other party on two occasions only.
- 10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.2.
- 10.3 The Sub-Contractor 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 Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.

11. [CONTRACTOR ACKNOWLEDGEMENT]

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

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

13. LIMITATION AND MISCELLANEOUS

- 13.1 The liability of the Sub-Contractor under this deed shall be limited to claims arising within twelve years after the date of Practical Completion.
- 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 Sub-Contract shall not in any way derogate from the Sub-Contractor's obligations hereunder nor diminish any liability on its part under this deed.
- 13.4 The Sub-Contractor acknowledges that:
 - 13.4.1 the Company shall be deemed to have relied upon the Sub-Contractor's reasonable skill care and diligence in respect of those matters relating to the Works which lie within the scope of its responsibilities under the Sub-Contract 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 Works shall abate or reduce the Sub-Contractor'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 Sub-Contractor 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 funder 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).]

DRAFTING NOTE: clause 14 is only to be included in warranty where step in rights are being granted

15. NOTICES

- 15.1 Any notice to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered

office for the time being or in any other case to any address for the time being of the person to be served.

- 15.2 Notice may be served by:
 - 15.2.1 personal delivery; or
 - 15.2.2 pre-paid registered or recorded delivery mail; or
 - 15.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.
- 15.3 Notices and communications shall be deemed to have been served or received as follows:
 - 15.3.1 in the case of personal delivery on the date of delivery;
 - 15.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
 - 15.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

16. LAW

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

EXECUTED AND DELIVERED as a deed on the date at the head of this deed

**ANNEX 6
DESIGN CONSULTANT'S FORM OF WARRANTY**

DATED _____ 20[]

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

DESIGN CONSULTANT'S WARRANTY
in favour of [Employer] [Funder] [Purchaser] [Tenant] [MHCLG]
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

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

(3) [] (company registration number []) whose registered office is at [] ("the Contractor")

DRAFTING NOTE: Contractor only to be a party where step in rights are being 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 Company dated [] 20[]

["Contractor" [] (company registration number []) whose registered office is at []]

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

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

DRAFTING NOTE: to be deleted where the Employer is the beneficiary

"Group Company" means 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

"Practical Completion"	shall have the same meaning as in the Appointment
"Project"	[] at the Site
"Project Material"	all drawings plans models specifications reports calculations charts diagrams sketches (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 and all designs ideas concepts and inventions contained in them
"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday
"Services"	the services which the Consultant has been retained to carry out under the Appointment
"Site"	[]
"Working Day"	any day which is not a Saturday, Sunday or Public Holiday

1.2 Interpretation

- 1.2.1 The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.
- 1.2.2 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.2.3 Words of one gender include both other genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.2.4 References to "liability" include where the context so allows claims demands proceedings losses costs and expenses.
- 1.2.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

1.3 Circumstances

- 1.3.1 By the Appointment the [Employer] [Company] [Contractor] employed the Consultant to act as [] in relation to the Project.
- 1.3.2 [The Appointment has been novated from the [Employer] [Company] and the Consultant to the Contractor and the Consultant.]
- 1.3.3 [The Company [insert details of Company's interest in the Project]]

DRAFTING NOTE: delete where the Employer is the beneficiary

- 1.3.4 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 [] 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 personnel involved in the construction or maintenance of the Project or the completed 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 within the building industry of:
- 3.1.3.1 being deleterious in themselves; or
 - 3.1.3.2 becoming deleterious when used 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 the type under construction; 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 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 any 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 that it shall comply with and have regard to the guide entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices or such other version of such publication current at the time of use in assessing whether or not an intended material is deleterious in the terms set out in clause 3.
- 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 or 7.3].

DRAFTING NOTE: wording in brackets only to be included in warranty where step in rights are 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 or 7.3].

DRAFTING NOTE: wording in brackets only to be included in warranty where step in rights are 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 or suspend the Appointment or to treat the same as having been repudiated by the Contractor. Such notice to the Company shall:
 - 1.1.1 if the grounds are that a sum which is due has not been paid by the final date for payment and no effective notice to pay less has been given be given no less than 7 days before the Consultant exercises any such right; otherwise
 - 1.1.2 be given no less than 15 Working Days before the Consultant exercises any such right.
- 7.2 The right of the Consultant to terminate or suspend the Appointment with the Contractor or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice and subject to clause 7.4 the Company shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment [PROVIDED THAT the rights of [] under clause 7 of the warranty given or to be given by the Consultant [] shall have priority over the rights of the Company under this clause whether such are exercised by

[] before or after the exercise by the Company of its rights under this clause].

- 7.3 If so required by notice in writing given by the Company and subject to clause 7.4 the Consultant shall accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment. The Contractor acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Company under this clause as conclusive evidence for the purposes of this deed that the right to serve such notice has accrued to the Company pursuant to the terms of the agreement between the Contractor and the Company.
- 7.4 Any notice given by the Company under clause 7.2 shall state that the Company or its appointee accepts liability for payment of fees payable to the Consultant under the Appointment (including those due and owing under the Appointment at the date of any notice served by the Company) and for performance of the Contractor's obligations under the Appointment and in the case of the Company appointing a nominee the Company guarantees all payments due to the Consultant from its appointee.
- 7.5 Compliance by the Consultant with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.2.]

DRAFTING NOTE: clause 7 is only to be included in warranty where step in rights are being granted

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 at least [] pounds (£[]) on an each and every claim basis 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 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 there author may have in respect of the Project Material and/or the Project.

9.3 The Consultant grants or shall procure the grant from third parties engaged by the Consultant (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Project Material for any purpose whatsoever connected with the 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.

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 Group Company;
 - 10.1.2 any other party on two occasions only.
- 10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.2.
- 10.3 The Consultant undertakes with the Company not to contend that any person to whom this deed may be assigned will be precluded from recovering under this deed any loss resulting from any breach of this deed either by reason that the person is an assignee and not the original party to this deed or by reason that the Company named in this deed or any intermediate owner of the Company's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

11. [CONTRACTOR ACKNOWLEDGEMENT]

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

DRAFTING NOTE: clause 11 is only to be included in warranty where step in rights are being 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 being 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.
- 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 related to the Appointment shall not in any way derogate from the Consultant's obligations under this deed nor diminish any liability on its part under this deed.
- 13.4 The Consultant acknowledges that:
 - 13.4.1 the Company shall be deemed to have relied upon the Consultant's reasonable skill care and diligence in respect of those matters relating to the Project which lie within the scope of its responsibilities under the Appointment or under this deed;
 - 13.4.2 no negligent or other act omission or delay by or on behalf of the Company and their respective successors in title and assigns in inspecting approving or informing itself about anything relating to the Project shall abate or reduce the Consultant's liability under this deed to the Company and its respective successors in title and assigns.
- 13.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend any terms of this deed to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been entitled to enforce such terms.

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 funder 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).]

DRAFTING NOTE: clause 14 is only to be included in warranty where step in rights are being granted

15. NOTICES

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

- 15.2.1 personal delivery; or
 - 15.2.2 pre-paid registered or recorded delivery mail; or
 - 15.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.
- 15.3 Notices and communications shall be deemed to have been served or received as follows:
- 15.3.1 in the case of personal delivery on the date of delivery;
 - 15.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
 - 15.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

16. LAW

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

EXECUTED AND DELIVERED as a deed on the date at the head of this deed

**ANNEX 7
DEED OF NOVATION**

DATED _____ 20[]

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

**DEED OF NOVATION
in respect of a development at**

[]



GOWLING WLG

THIS DEED is made

20[]

BETWEEN

- (1) [registration number [is at [] (company]) whose registered office] ("the Client")
 - (2) [registration number [is at [] (company]) whose registered office] ("the Contractor")
 - (3) [registration number [is at [] (company]) whose registered office] ("the Consultant")
- OR**
- (3) [] [] [] [] [] [] [] who together [and with] ("the Consultant")
- [] and [others] are carrying on business in partnership as [at []

NOW 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 appointment entered into between the Consultant and the Client dated []
"Project"	[] at the Site
"Site"	[]

1.2 Circumstances

- 1.2.1 By the Appointment the Client appointed the Consultant to act as [] in relation to the Project.
- 1.2.2 It has been agreed between the Client and the Contractor that the Contractor shall (subject to obtaining the consent of the Consultant) assume the obligations of the Client under the Appointment.
- 1.2.3 The Consultant consents to the substitution of the Contractor for the Client under the Appointment.
- 1.2.4 This deed is supplemental to the Appointment.

2. RELEASE BY CLIENT

The Client releases and discharges the Consultant from further performance of the Consultant's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed.

3. RELEASE BY CONSULTANT

The Consultant releases and discharges the Client from further performance of the Client's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed.

4. ACCEPTANCE OF LIABILITY BY CONTRACTOR

- 4.1 The Contractor accepts the liabilities of the Client under the Appointment and agrees to perform all the duties and to discharge all the obligations of the Client under it and to be bound by all its terms and conditions in every way as if he were named in the Appointment as a party ab initio in place of the Client.
- 4.2 Without limiting the generality of clause 4.1 the Contractor acknowledges and agrees that he will receive and accept responsibility for negotiating and settling all claims and demands whatsoever against the Client arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed.

5. ACCEPTANCE OF LIABILITY BY CONSULTANT

- 5.1 The Consultant agrees to perform all his duties and to discharge all his obligations under the Appointment and to be bound by all its terms and conditions in favour of the Contractor in every way as if the Contractor were named in the Appointment as a party ab initio in place of the Client.
- 5.2 Without limiting the generality of the foregoing:
 - 5.2.1 the Consultant acknowledges and agrees that the Contractor shall have the right to enforce the Appointment and pursue all claims and demands (future or existing) by the Client whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed;
 - 5.2.2 it is agreed and acknowledged that any dispute between the Consultant and Contractor which arises from or in connection with a breach or alleged breach of the Appointment which occurred or is alleged to have occurred prior to the date of this deed shall be dealt with in all respects and for all purposes as though at the date of the said breach or alleged breach the party defined as "the Client" in the Appointment had been the Contractor.
- 5.3 The Consultant acknowledges that the Contractor is entitled to rely and may rely upon the performance by the Consultant of all of its obligations and the services required to be carried out by the Consultant under the Appointment and that the Contractor may suffer loss consequent upon the failure by the Consultant to perform such obligations and/or services to the standard of care required under the Appointment and whether or not the obligations and/or services were originally performed for the Contractor or the Client before or after the date of this deed.

- 5.4 The Consultant agrees that in defence of any claim brought by the Contractor in respect of breach by the Consultant of its duties and/or obligations under the Appointment prior to the date of this deed it shall not assert that the Contractor is precluded from recovering any loss resulting from such breach of the Appointment on the grounds that the Client for whom such duties and/or obligations were originally performed has suffered no loss or a loss different from the Contractor by reason of any breach by the Consultant.

6. ACKNOWLEDGEMENT OF PAYMENT

The Consultant acknowledges that up to the date of this deed he has been paid the sum of [] POUNDS (£[]) exclusive of value added tax by the Client.

7. CONSULTANCY AGREEMENT IN FORCE

The terms and conditions of this deed represent the entire agreement between the parties relating to the novation of the Appointment and except as specifically amended by this deed all the terms and conditions of the Appointment remain in full force and effect.

8. NO DISCHARGE OF CONSULTANT'S LIABILITY

Nothing in this deed shall operate to discharge the Consultant from any liability in respect of duties performed prior to the execution of this deed.

9. COLLATERAL WARRANTIES AND THIRD PARTY RIGHTS

- 9.1 The Consultant shall contemporaneously with the execution of this deed execute a collateral warranty in favour of the Client in the form set out the Appointment.
- 9.2 Nothing in this deed shall affect or derogate from any collateral warranty given or to be given by the Consultant to the Client.
- 9.3 The Consultant shall at the request of the Client enter into a collateral warranty with any Tenant and/or Purchaser and/or Funder (as those terms are defined in the Appointment) in the form set out in the Appointment within fourteen days of such request.
- 9.4 The Client shall be entitled to issue Nominating Notices conferring P&T Rights and/or Funder Rights pursuant to the Appointment (as those terms are defined in the Appointment).

10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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.

IN WITNESS whereof the parties hereto have executed this deed as a deed and delivered the same the day and year first before written

3.0 EMPLOYERS REQUIREMENTS REPORT

 17/11/21

Nick Massingham

20:20 Base (Rendition Magnet)
Ginted.

MD. Anthony Morley 17/11/2021
Ballymore Civils Ltd.



EMPLOYERS REQUIREMENTS REPORT

UNDERTAKEN UPON:

20:20 HOUSE, SKINNER LANE, LEEDS LS7 1BE

ON BEHALF OF:

**20:20 HOUSE (RESIDENTIAL MANAGEMENT) LTD,
2020 BUILDING, SKINNER LANE, LEEDS LS7 1BB**

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APPENDIX I PRE-CONSTRUCTION HEALTH AND SAFETY PACK

APPENDIX II WINTECH INVESTIGATION REPORT AND SPECIFICATION

APPENDIX III PROJECT DIRECTORY

APPENDIX IV FORM OF TENDER

APPENDIX V SCHEDULE OF AMENDMENTS TO THE JCT DESIGN AND BUILD CONTRACT 2016

Prepared By:	Lee Rhodes MRICS
	For and on Behalf of Cardoe Martin Limited
Approved By:	
	For and on Behalf of Cardoe Martin Limited
Date of Issue: September 2020	File Name: 20:20 Building Employers Requirements Report

1.0 CONTRACT PRELIMINARIES

SECTION 1 – CONTRACT PRELIMINARIES

Tender Cost (£)

1.1 INTRODUCTION

1.1.1 20:20 (Residential Management) Ltd have selected you on their tender list for this Project having decided you have the necessary skills and resources to design and build the required façade remedial works.

1.1.2 Cardoe Martin Limited will be the Employer's Agent for the works.

1.1.3 Cardoe Martin Limited and other specialist consultants will be involved throughout the design and construction process and are expecting you to deliver a compliant façade system at practical completion.

1.2 PROJECT PARTICULARS

Employer:

20:20 (Residential Management) Ltd, 2020 Building, Skinner Lane, Leeds LS7 1BB

Tel: 07808 158351

Email: nick@2020leeds.co.uk

Contact: Nick Massingham

Employers Agent (EA):

Cardoe Martin Limited, Aizlewood Business Centre, Aizlewood's Mill, Nursery Street, Sheffield S3 8GG

Tel: 0755 1286996

Email: l.rhodes@cardoemartin.co.uk

Contact: Lee Rhodes

CDM Co-ordinator:

Bell Group (Safety Services), Offices 7 & 8 Tayson House, Methley Road, Castleford WF10 1PA

Tel: 01977 808557

Email: m.lake@bellgroup.co.uk

Contact: Marcia Lake

Site/Property Location:

2020 Building, Skinner Lane, Leeds, LS7 1BB

1.2.5 **Nature of Works:**

The works comprise aluminium composite material (ACM) cladding remediation works to satisfy and meet MHCLG guidance.

The works will be funded by MHCLG and Homes, England

1.2.6 This Employers Requirements document describes the requirements for the works and all work implied thereby or necessary for the full and proper completion of the Contract is to be performed by the Contractor in the best and most substantial manner although not particularly referred to herein.

1.2.7 The Contractor should note that all items of work contained within this document have been described in reasonable detail, but the Contractor shall consider them in conjunction with manufacturers recommendations and actual work on site and shall include in his price for everything necessary to allow him to carry out the works in the best manner, whether specifically mentioned or not.

1.2.8 If and where approximate quantities are stated, these are for guidance only and the Contractor is to make his own assessment of the actual quantities required by visiting site prior to submitting tender.

1.2.9 The works are to be strategically programmed and undertaken over several operations to minimise disruption to both the building, building users and adjacent users.

1.2.10 **Acceptance of Tender:**

The Employer does not warrant himself to accept your tender.

1.2.11 **Interpretation:**

The Contractor is to include for all necessary work to complete the works, whether or not the same is specifically stated or implied provided that it may be reasonably inferred.

1.2.12 Please review the following appendices prior to pricing this document:

A - CDM Pre-Construction Health and Safety Pack

B - Wintech Investigation report and Performance Specification

1.2.13 FORM OF CONTRACT

The Form of Contract will be the JCT Design and Build Contract 2016 and include all amendments detailed at appendix VII.

Attestation

Contract to be executed by Deed

Conditions – Applies and as amended

Schedules – Applies and as amended

1.3 HEALTH AND SAFETY

- 1.3.1 The Contractor will be responsible for all aspects of health and safety on the site and the immediate surrounding areas.
- 1.3.2 The Contractor shall take all necessary precautions to ensure that the works are carried out in a safe manner in accordance with their obligations under the Health and Safety at Work Act and any subsequent Regulations and Rules enacted under this Act.
- 1.3.3 The Contractor shall take all necessary steps to secure the site, or plant, machinery and tools against misuse by unauthorised persons particularly out of working hours.
- 1.3.4 The Contractor is to check the fire evacuation procedures to the existing site/building and ensure all fire escape routes are clear at all times.
- 1.3.5 The Contractor is to allow for the provision of all necessary safety equipment to comply with all relevant Health and Safety Regulations. Correct PPE is to be worn at all times.
- 1.3.6 The Construction (Design & Management) Regulations 2007 apply to this Project and tenderers must familiarise themselves with the requirements of the Regulations and include fully for them within their tendered prices.
- 1.3.7 The Contractor appointed to carry out the works will be appointed as the Principal Contractor. The Principal Contractor shall prepare the Construction Phase Health and Safety Plan.

- 1.3.8 The Construction Phase will not commence until the successful Contractor has developed the Construction Phase Health and Safety Plan, presented this for approval to the CDM Co-ordinator and approval has been obtained in writing from the Employer.
- 1.3.9 For this Project it will be the Principal Contractor's responsibility to prepare the Health and Safety File in accordance with the requirements of the Health and Safety Pack so this can be issued at Practical Completion. All costs associated with the preparation of the Health and Safety File must be fully included within the tendered price. The required format and contents of the Health & Safety File is set out in the Pre-Construction Health and Safety Pack.
- 1.3.10 The contractor will be required to submit a Developed Construction Phase Health and Safety Plan.
- 1.3.11 The Principal Contractor will ensure that all other Contractors employed on the site either directly or indirectly by him or the Employer are made aware of the requirements of the Construction Phase Health and Safety Plan and that they are able to demonstrate compliance with it.
- 1.3.12 All Designers employed by the Contractor will be required to comply with the Designers duties under the Regulations and the Contractor will be responsible for their compliance and for providing evidence of their competence to act in this manner.

1.4 WORKING HOURS

- 1.4.1 The works are to be undertaken during normal working hours from 8.00am until 5.30pm Monday to Friday. Working outside of these hours will be allowed subject to EA approval. The Contractor will be responsible for all costs for provision of additional security required for working outside of normal working hours and for securing the site during normal working hours.

1.5 OCCUPANCY

- 1.5.1 Due to the residential nature of the site particular areas such as externally around balconies will be occupied throughout the duration of the Contract. The contractor should pay particular attention to this and consider the inclusion of privacy measures and keep personnel to a minimum within these areas.

- 1.5.2 Once appointed, the Contractor must contact all building users/neighbours to make them aware of the proposed works. The Contractor must be aware of all adjacent buildings, surrounding areas and car park facilities all of which could be in use or occupied.
- 1.5.3 The Contractor should ensure a clean working environment is maintained at all times throughout the works.
- 1.5.4 Access to the premises will be from the main entrance in the position indicated on the Location Plan contained within Appendix B.
- 1.5.5 The Contractor shall carry out the works without undue inconvenience and nuisance and without danger to building occupants and users.
- 1.5.6 The Contractor is to liaise with the Building Manager and ensure all operatives on site understand and know the procedures in the event of an emergency.

1.6 SUPERVISION

- 1.6.1 The Contractor is to provide a working foreman and clerk of works on site at all times for the duration of the Contract. The name of the appointed person must be provided at the Pre-Start Meeting and the Contractor must ensure, as far as is reasonably practicable, that this position remains unchanged throughout the Contract period.

1.7 PROGRAMME/PROGRESS

- 1.7.1 As part of the tender submission, the Contractor is to provide a full programme of works, highlighting the duration of the works from instruction through to completion, including site set up and clearance at the end of the works. Once agreed, this will be reviewed at each interim meeting to check progress of the works against programme.
- 1.7.2 The contractor to provide a project programme for EA review.
- 1.7.3 The Contractor is to arrange and attend the following meetings prior to, during and after the works:-
- Pre-Construction Project Team meeting
 - Pre-Start Project Team meeting
 - Interim Project Team meetings
 - Practical completion and snagging meetings

- 1.7.4 Project Team meetings are to be held weekly and the Contractor must provide adequate facilities in which meetings are to be held. A Contractors Report must be provided at each meeting together with suitable progress photographs. A minimum 5 No. progress photographs taken with a digital camera must be provided via e-mail to the EA each week.
- 1.7.5 Although the meetings will be chaired by the EA, the Contractor shall be responsible for taking and distributing minutes to all parties. These minutes must be provided to all parties no later than 5 working days after the site meeting. Additional Design Team meetings, Sub-Contractor meetings and H&S meetings will be arranged and chaired by the Contractor, minutes of which will be distributed to the EA.

1.8 TEMPORARY WORKS

- 1.8.1 The Contractor is to maintain, alter, adapt and move temporary works and services as necessary and clear away when no longer required, making good any affected surfaces.
- 1.8.2 The Contractor is to provide all necessary protection, including but without limitation to, temporary screens, scaffolding, planked footways, guard rails, gantries and the like as may be necessary for protecting the public and others, for the proper execution of the works and for meeting the requirements of any local or other authority.
- 1.8.3 The Contractor will allow for a site board of suitable dimensions to be erected in a prominent position for the fixing of contractors and consultants signboards as may be required

1.9 TEMPORARY SERVICES

- 1.9.1 The Employer will provide power and water for the Contractor during the Contract. The Employer may seek to re-charge the Contractor at completion of the works for the costs of these services. The Contractor must include for these costs within the tender.
- 1.9.2 The Contractor must indemnify the Employer against damage and misuse of the power and water supplies.

1.10 CLEARANCE

- 1.10.1 Rubbish should not be permitted to accumulate during the works and should be cleared away on a daily basis using covered skips. No storage of debris at any time within the premises will be allowed.
- 1.10.2 Covered skips can be located in the position indicated on the Location Plan contained within Appendix B.
- 1.10.3 The Contractor is to ensure site is left clean, tidy and safe at the end of each day. Following the completion of all works allow for a thorough clean throughout to leave all affected areas clean. The Site and Compound Areas should be fully cleaned and reinstated at completion of the works.
- 1.10.4 Where applicable, the Contractor is to prepare a Waste Management Plan for the site to comply with the relevant legislation in this respect, submit all details to the relevant authorities and submit a copy to the EA.

1.11 STATUTORY APPROVALS

- 1.11.1 It is not clear if the project will require Planning Permission. If planning is required the application will be dealt with by the Employer and the Contractor will be expected to design and construct in accordance with the consent and discharge all conditions, in consultation with the EA.

The Project will require Building Regulations Approval and this will be dealt with by the Contractor, although appointments and fee will be completed by the employer.

1.12 SECURITY

- 1.12.1 The premises must remain secure at all times during the works. The Contractor will be responsible for any repair/ replacement/ rebuild costs associated with any damage from unauthorised access as a result of their negligence or inability to secure where required to do so.

1.13 SITE RULES

- 1.13.1 Site rules are primarily to be developed by the Contractor. The Contractor is to ensure that all site operatives are fully aware of the site rules.
- 1.13.2 No fires whatsoever for the burning of rubbish or other waste will be permitted on the site.

- 1.13.3 The Contractor is to ensure that general rubbish does not accumulate on the site and shall make arrangements for its proper disposal off-site.
- 1.13.4 Smoking is not allowed on the site.
- 1.13.5 The Contractor's attention is drawn to the security arrangements that currently exist within and around the buildings and must, therefore, familiarise himself with those arrangements.
- 1.13.6 Access points are to be secured at all times.
- 1.13.7 Only electrical equipment, including temporary lighting, of 110 volts or less will be used on the site.
- 1.13.8 Radios and other such equipment are not permitted on the site.
- 1.13.9 The Employers supply of power and water may/may not be used during the works.
- 1.13.10 The Contractor should take all necessary precautions to prevent nuisance from noise, smoke, dust, rubbish and any other causes.
- 1.13.11 All Contractors employees must be signed in and out on a daily basis as part of the Contract requirements.
- 1.13.12 The Contractor is to ensure that the works are carried out within the designated areas only.

1.14 SITE INSPECTION

- 1.14.1 The Contractor must, before tendering, examine the Employers Requirements Document, assess the full extent and nature of the works, visit the site to ascertain the nature of the site, accessibility, and all local conditions and restrictions likely to affect the execution of the works, and assess elements likely to affect labour and the execution of the Contract. No claim for any extra that arose out of the Contractor's omission or neglect in this respect will be admitted.
- 1.14.2 Access to view the works area is by prior appointment with the EA.

1.15 APPROVAL

- 1.15.1 The whole of the work and materials are to be to the approval of the EA and to the satisfaction of all relevant British Standards, European Standards and other similar technical standards, all Trade Associations and all relevant manufacturer's instruction, Building Regulations, Planning Regulations and all other similar standards.
- 1.15.2 Where the Contractor discovers any discrepancies or ambiguities, or should there be any item of work which the Contractor is unclear as to what is required, the Contractor must obtain clarification or instructions from the EA before proceeding.
- 1.15.3 No qualifications or alterations of any kind are to be made by the Contractor to this schedule of works without the written agreement of the EA.
- 1.15.4 The Contractor is to provide a cost for each element of the works.

1.16 TOOLS AND INDEMNIFICATIONS

- 1.16.1 The Contractor is required to provide all tools, scaffolding, tackle, transport, equipment and labour for the proper execution of the work. He shall indemnify the Employer against any claim from whatever cause arising in respect of the work and workmen.
- 1.16.2 The Contractor is to include for all temporary supports and works necessary to ensure safe conduct of the work.

1.17 EXTRAS

- 1.17.1 No extras will be paid for unless ordered as such in writing by the EA.

1.18 MATERIALS AND WORKMANSHIP

- 1.18.1 Materials and workmanship are to be fit for purpose, of the type and quality described herein and of the best quality of their respective kinds. Those for which there is a British Standard are to conform thereto.
- 1.18.2 Description of materials and workmanship given in any one trade is to apply throughout this Employers Requirements document unless otherwise described.

1.18.3 The Contractor shall employ only fully qualified, competent and experienced tradesmen through the Contract period.

1.19 ATTENDANCE

1.19.1 The Contractor is to allow for the general attendance of one trade upon another.

1.20 SETTING OUT WORKS

1.20.1 The Contractor is to set out the work and will be responsible for the accuracy of same.

1.21 CARE OF THE WORKS

1.21.1 The Contractor is to keep all persons (including those employed by sub-contractors) under his control and within the boundaries of the site.

1.21.2 The Contractor will be held responsible for the care of the works generally until their completion, including all work executed and materials deposited on the site by himself or sub-contractors and suppliers, together with all risks arising from the weather, carelessness of operatives, damage or loss by theft or any other such cause; and he is to make good all such damage or loss.

1.22 COVERING AND PROTECTION

1.22.1 The Contractor is to cover up and protect the works from any persons on the site and will be responsible for the costs of replacing any elements which become damaged due to inadequate covering and protection. The Contractor is also responsible for covering up to prevent dust and damage.

1.23 CLEARING AWAY

1.23.1 The Contractor is to take down and clear away all plant and temporary works etc. and make good and remove all rubbish and surplus materials from site and leave in a clean and tidy state.

1.24 PERIOD OF VALIDITY

1.24.1 Tenders must remain open for consideration for a period of 13 weeks from the date fixed for submission of tenders.

1.25 WELFARE FACILITIES

1.25.1 The existing toilet and welfare facilities may not be used by the Contractor's workforce or subcontractors. Toilet and welfare facilities will need to be provided by the Contractor and the cost for doing so included in the tender.

1.25.2 All toilet and welfare facilities must be kept clean at all times.

1.26 COMPLETION

1.26.1 The EA shall be given 5 working days' notice in writing of the Contractor's intention to offer the works as being Practically Complete.

1.26.2 At Practical Completion (PC) the following PC information shall be provided. PC will not be accepted by the EA unless ALL of the following are presented:-

- Test Report(s) and Test Certificate(s) or notices of satisfactory completion of commissioning for the services, plant and equipment included in the works. Commissioning must be witnessed and approved by the Employer.
- Building Regulations Approval Notice.
- Building Regulations Completion Notice.
- Planning Approvals including discharge and resolution of planning conditions and written confirmation from the Planning Officer that all outstanding matters and conditions have been satisfied.
- Warranties (completed) from the Contractor, Design Team and relevant Sub-contractors.

1.26.3 Other PC information shall be provided within 20 working days of PC including:-

- Operating and Maintenance Manuals (O&M) Manuals.
- As Built Drawings and other similar As Built information.
- Health & Safety File.
- Material and workmanship guarantees.

1.26.4 All operational, maintenance and testing procedures must be notified by the Contractor to the EA and/or the Employer during the final completion meeting.

1.27 HEALTH & SAFETY FILE CONTENTS

1.27.1 The Principal Contractor will provide the Health and Safety File in the following form:

2 paper copies of the Health and Safety File in lever arch files and 2 CD Rom copies, including any operation and maintenance manuals and as-built drawings, are to be provided at practical completion of the works to the CDM Co-ordinator, along with a list of any outstanding information and programmed dates when the information will be available.

Issue of the Health and Safety File will be a condition of achieving practical completion.

The paper copies of the Health and Safety Files and any accompanying operation and maintenance manuals and as-built drawings (the documents) will consist of Blue A4 ring binders with inserts to front and spine of files. Documents will be fully indexed. All drawings will be neatly folded and inserted into numbered plastic sleeves within the documents.

The documents provided will consist of a minimum of the following:-

Description of Works

a) A brief description of the works and the parties involved.

Residual Hazard

b) A statement (of a level of detail proportionate to risks involved) detailing residual hazards and how they have been and are to be dealt with.

Key Structural Principles

c) A statement detailing key structural principles incorporated into the design of the structure.

Hazardous Materials on Site

d) A statement detailing any hazards associated with materials on site.

Method of Removal and Dismantling of Plant or Equipment on Site

e) A statement detailing the removal or dismantling of installed plant or equipment.

Method of Cleaning and Maintaining

f) A statement detailing health and safety information about equipment provided for cleaning and maintaining. A statement detailing the frequency of maintenance required.

Location of Significant Services

g) A statement detailing the nature, location and markings of significant services including fire fighting services, electricity, gas, water, data, etc.

Safe Access

h) A statement detailing how safe access can be obtained to or from service voids.

Fire Compartmentation

i) A statement detailing fire compartmentation, fire doors, protected shafts, escape routes.

Information, As Built Drawings, Operation and Maintenance Manuals

j) This information can support statements within Items (a) to (i) above.

All 'as built' drawings to be provided as scale paper copies within the documents and on a CD ROM or DVD in an AutoCAD format.

- Full information to operate the building and manage it correctly, including all access codes, passwords and software backup copies.
- Copies of deeds of warranty.
- Certificates and guarantees for plant and machinery.
- Commissioning records.
- Schedules of subcontractors and suppliers.
- Full technical manufacturer's information on all equipment and fittings installed, including fitting and users guides.

- Manufacturers brochures with equipment used identified.
- Spares listing.
- Electrical emergency lighting, air tightness, and other test certificates.
- Statutory approval notices.

1.28 TENDERING INSTRUCTIONS

1.28.1 The Contractor's Tender to satisfy this Employer's Requirements shall include:-

- Contractors Proposals comprising Outline Specification, General Arrangement and Section Drawings and any Brochures showing any proprietary fittings and finishes.
- Contract Sum Analysis in accordance with the summary within Part 5 of this document on CD ROM in Microsoft Excel format.
- Properly completed and signed Form of Tender (see Appendix 6)
- Programme including sequencing of works prior to, during and after construction.
- Other information as the Contractor deems necessary.

Two copies of the above are to be provided.

1.28.2 The Employers Requirements and Drawings shall describe the materials and workmanship allowed for within the Contract Sum Analysis. The Contractor shall clearly identify any chosen materials and components i.e. provide brochures.

1.28.3 The Contractor should importantly clearly identify any assumptions or variations from the standards required by the Employer's Requirements.

1.29 PAYMENT TERMS

1.29.1 Valuation of works will be undertaken on a monthly basis by way of submission by the Contractor of a full cost breakdown in respect of the claimed sums. Payment requests with any invoices for stage or periodic payments for non-construction costs i.e. professional fees, statutory regulations fees etc. shall be supported by receipted invoices showing payment has been made.

1.29.2 On site materials shall only be included within any payment requests with the prior approval of the EA. If on site materials are to be accepted they

shall be supported by delivery notes/receipted invoices. No off site materials shall be accepted.

- 1.29.3 Contractors invoices shall be paid by the Employer within 28 days of submission of the relevant Payment Certificate by the EA.

SECTION 1 - TOTAL £

2.0 CONTRACT PREAMBLES

SECTION 2 – CONTRACT PREAMBLES

Tender Cost (£)

2.1 Generally

- 2.1.1 All work shall be undertaken in a good and workmanlike manner, to the current relevant British Standard, Code of Practice, legislation and regulations where applicable, and to any recommendations of Trade Organisations with skill and care to produce work fit for its intended purpose and of good quality. The Contractor is to comply in full with the following legislation, codes, rules and regulations as a minimum:-
- The Building Regulations
 - All relevant health and safety legislation including Health and Safety at Work Etc. Act, COSHH Regulations and the Construction (Design and Management) Regulations 2007
 - Local Acts of Parliament and Local Authority Bye-laws and/or regulations
 - Fire Precautions Act
 - All relevant disability guidance from the Centre for Accessible Environments, BS8300 and the Disability Discrimination Act
 - All relevant environmental legislation including the Environmental Protection Act
 - All relevant services legislation and codes relating to water, gas, electrical and telecoms supplies
 - All relevant asbestos regulations including The Control of Asbestos at Work Regulations
- 2.1.2 All materials, components and systems shall be used strictly in accordance with the manufacturer's recommendations and instructions.
- 2.1.3 The term "and equal approved by the EA" is deemed to be implied where all proprietary products are specifically mentioned by name. The EAs prior written approval should be obtained before alternatives to materials and components to those specified are used.

- 2.1.4 The information regarding the site and buildings illustrated in the documents is provided for the Contractor. However, the Contractor should satisfy himself to verify the accuracy of information given and the Employer will not accept any financial variations as a result of negligence in this respect by the Contractor.
- 2.1.5 All directions within the Employers Requirements Documents are taken as if facing the front elevation of the building and with the front being the main elevation containing the main entrance doors. Front, left, right and rear are referred to accordingly.
- 2.1.6 Prior to finalising any colour schedules, all paintwork, wall finishes etc. are to be agreed by the EA.

SECTION 2 - TOTAL £

3.0 EMPLOYERS REQUIREMENTS

SECTION 3 – EMPLOYERS REQUIREMENTS

Tender Cost (£)

3.1 DESCRIPTION OF WORKS

- 3.1.1 The works comprise removal of aluminium composite material (ACM) cladding system and remediation works including replacement with A1 / A2 cladding system to satisfy and meet MHCLG guidance and in accordance with the performance specification produced by Wintech dated 13th August 2020 (Appendix 4).

Contractor to provide full breakdown schedule of all associated works.

SECTION 3 - TOTAL £

4.0 PROVISIONAL AND CONTINGENCY SUMS

SECTION 4 – PROVISIONAL AND CONTINGENCY SUMS Tender Cost (£)

Allow the following provisional sums for items that cannot be fully specified or quantified at Tender Stage:-

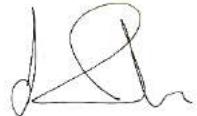
4.1	£
4.2	£
4.3	£
4.4	£
4.5	£
4.6	£
4.7	£
4.8 Contingency Sum	£

SECTION 4 - TOTAL £

5.0 TENDER SUMMARY PAGE

<u>SECTION 5 – TENDER SUMMARY PAGE</u>		Tender Cost (£)
1.0	Contract Preliminaries (Provide separate breakdown of preliminaries)	£
2.0	Contract Preambles	£
3.0	Employers Requirements (ACM Remediation Works)	£
Sub Total		£
4.0	Provisional and Contingency Sums	£
<u>Contract Sum Total</u>		<hr/> £

Prepared by Lee Rhodes MRICS



Signed

Dated 11th September 2020

FOR AND ON BEHALF OF CARDOE MARTIN LIMITED
CHARTERED BUILDING SURVEYORS

APPENDIX I

PRE-CONSTRUCTION HEALTH AND SAFETY PACK

PRE-CONSTRUCTION INFORMATION

for

Cladding Replacement

At

**20:20 House
Skinner Lane
Leeds LS6 1BE**

For

20:20 House (Residential Management) Ltd

Ref :

Rev: P1

Prepared by: P Baker

Reviewed by:

Date: 23.09.20

Date:

GUIDANCE NOTES

Unless otherwise stated, the **Regulations** referred to hereunder are the **Construction (Design and Management) Regulations 2015**, effective from 6th April 2015.

Regulation 11 General duties of the Principal Designer requires that –

- (6) *The Principal Designer must -*
- (a) *assist the Client in the provision of the pre-construction information required by Regulation 4(4) and*
 - (b) *So far as it is within the Principal Designers control, provide Pre-Construction Information, promptly and in a convenient form, to every Designer and Contractor appointed, or being considered for appointment, to the project”*

Regulation 12 The principal contractor's duty in relation to the Construction Phase Plan and the Health and Safety File requires that the Principal Contractor shall

- (1) *“During the Pre Construction Phase and before setting up the Construction Site, the Principal Contractor must draw up a Construction Phase Plan....”*
- (2) *“The Construction Phase Plan must set out the health and safety arrangements and site rules taking account, where necessary, of the industrial activities taking place on the Construction Site and, where applicable, must include specific measures concerning work which falls within one or more of the categories set out in schedule 3 ‘Particular Risks’.”*

This Pre-construction Information document has been developed to assist those working on the project to understand the risks so that they can be eliminated, mitigated or managed. This includes providing information to allow the Principal Contractor to prepare the Construction Phase Plan.

At the conclusion of the project, the Principal Designer must ensure that a Health and Safety File is delivered to the Client. The Principal Contractor and his Sub-Contractors, are required under regulations **12(7)** to provide the Principal Designer with information to enable the Principal Designer to prepare the Health and Safety File. This information shall be forwarded by the Principal Contractor to the Principal Designer, prior to the issue of the Certificate of Practical Completion.

Under **Regulation 9(4) Duties of Designers**, the designer is required to “*take all reasonable steps to provide with his design sufficient information about aspects of the design of the structure or its construction or maintenance as will adequately assist – (a) clients; (b) other designers; and (c) contractors, to comply with their duties under these Regulations.*” In assessing what would be “*sufficient information*”, the guidance refers to ‘significant risks’. The absence of a reference in this Pre-construction Information document to a specific hazard does not mean that such hazard does not exist or may not arise.

Any Method of Working described in this Pre-construction Information Document, may be adopted by the Principal Contractor at their own risk.

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6.1 CDM Hazard Management Register	

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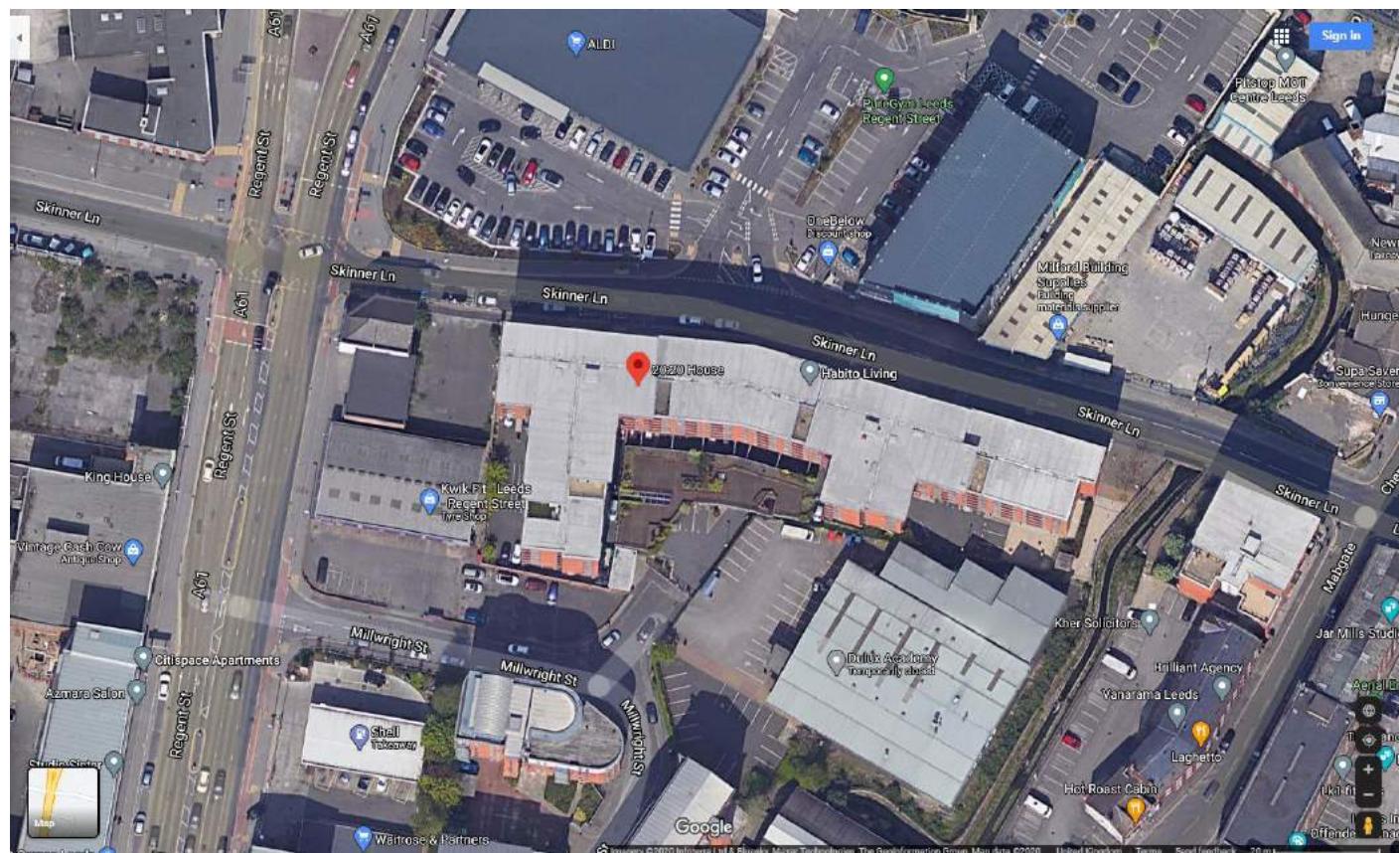
Rev	Description	Date	Amended By
P1	Initial issue	23 September 2020	Philip Baker

1. DESCRIPTION OF PROJECT

(a) Project description and programme details

The project comprises the replacement of external cladding to the multi storey residential block that forms 20:20 House Leeds whilst the properties remain occupied. The scope of the works is defined in ACOA Report "Scope of Remedial Works" Rev 01.pdf 19-UK-1001 dated 7/11/2019. Aluminium composite cladding is to be replaced to all four elevations of both of the parts of the building that are at sixth floor level. Some of these elevations are set back from the façade so that they are over the fifth floor roof but some are on the line of the general building façade and will need to be accessed from ground level. Timber cladding is to be replaced to panels between the windows at first to fifth floors on the south and west elevations

Location: 20:20 House
Skinner Lane
Leeds
LS6 1BE



Key dates:

Works are planned to start in October 2020

Mobilisation time:

The Principal Contractor will have at least 4 weeks between being appointed and start on site

(b) CDM Duty Holders

Client:

20:20 House (Residential Management) Ltd
2020 Building
Skinner Lane
Leeds
LS7 1BB

Contact: Nick Massingham
Tel: 078 0815 8351
e-mail: nick@2020leeds.co.uk

Employers Agent:

Cardoe Martin
Aizlewood Business Centre
Aizlewood's Mill
Nursery Street
Sheffield
S3 8GG

Contact: Lee Rhodes
Tel: 075 5128 6996
e-mail: l.rhodes@cardoemartin.co.uk

Principal Designer:

Bell Safety
Tayson House
Methley Road
Castleford
WF10 1PA

Contact: Philip Baker
Tel: 078 3141 4464
e-mail: p.baker@bellgroup.co.uk

Designers:

Wintech
Quartz House
Pendeford Business Park
Wolverhampton
WV9 5HA

Contact: Jasmine Young
Tel: 079 5029 7628
e-mail: j.young@wintech-group.com

IFC

Park Street Business Centre
20 Park Street
Princes Risborough
HP27 9AH

Contact: Vincent Rafferty
Tel: 077 0225 4330
e-mail: Vincent.rafferty@ifcgroup.com

Principal Contractor:

Ballymore Services
3 Gortrush Business Centre
27 Gortrush Industrial Estate
Great northern Road
Omagh
BT78 5EJ

Contact: Rory McCallan
Tel: 079 9069 0924
e-mail: rory@ballymoreservices.com

(c) Use as a workplace:

The structure will be used as a workplace and therefore will be subject to the requirements of the Workplace (Health, Safety and Welfare) Regulations 1992

(d) Existing records:

Historical documents are available from Lee Rhodes

2. CLIENT'S CONSIDERATIONS AND MANAGEMENT REQUIREMENTS

(a) Arrangements for:

(i) Planning and managing construction work, including any health and safety goals for the project:

The client's goal is for zero reportable accidents

(ii) Communication and liaison between client and others:

Communication with the client should be to Lee Rhodes and for design matters should include Philip Baker

(iii) Security of the site:

The site is bounded to the north and east by public land. To the west is the car park to a disused building. To the south is the Kwik Fit car park at the west end and a site awaiting development at the east end. The courtyard is notionally secure. The Principal Contractor shall secure their site and any scaffolding they might erect

(iv) Welfare provision:

The client has identified a water, drainage and electricity connection to space that has been allocated in the courtyard for welfare and offices. Welfare facilities are to comply with Schedule 2 of the Construction (Design and Management) Regulations 2015.

These proposals are to be agreed with the Employer's Agent. The welfare facilities, as identified, are to be described in the Principal Contractor's Construction Phase Plan

(b) Requirements relating to the health and safety of the client's employees or customers or those involved in the project such as:

(i) Hoarding requirements:

The segregation of the works from, 20:20 House staff, residents and the public is the responsibility of the Principal Contractor. This includes preventing residents climbing out onto any scaffolding

(ii) Site Transport arrangements or vehicle movement restrictions:

Access for vehicles into the courtyard is to be agreed with the Employer's Agent. There is a 2 metre height restriction under the elevated courtyard deck

(iii) Client permit to-work systems:

Everyone on site will need to have ID so that they can be identified as legitimate people to access the works

(iv) Fire precautions:

The timber cladding, especially to the south elevation will be very dry and easily ignited. There may need to be hot works carried out near the timber cladding. If the contractor wishes to place any accommodation under the elevated deck permission must be received from the client in advance

(v) Emergency procedures and means of escape:

The site is generally open and the works are to the external envelope of the building. The contractor will need to establish their own escape routes and assembly point. If any scaffolding is erected it should include 2 means of escape. No works by the contractor are to obstruct the client's fire emergency arrangements including escape routes and access for fire fighting appliances

(vi) 'No-Go' areas or other authorisation requirements for those involved in the project:

Contractors' staff should not enter the residential apartments

(vii) Smoking and parking restrictions:

The buildings and their roofs and the courtyard are all no smoking areas. The Principal Contractor is to establish a smoking area and ensure that all workers who smoke use it or smoke off site. Parking for contractors vehicles is to be arranged with the Building Manager

3. ENVIRONMENTAL RESTRICTIONS AND EXISTING ON-SITE RISKS

(a) Safety hazards, including:

(i) Boundaries and access:

The north and east elevations of the buildings are on public highways. Skinner Lane to the north of the building is a relatively narrow busy two lane road. The south and west elevations are inside the secure perimeter of the development but are not secure from building occupiers/visitors

(ii) Restrictions on deliveries or waste collection or storage:

Generally there are no restrictions but these need to be coordinated with the Building Manager

(iii) Adjacent land uses:

To the north of the building are retail buildings and a gymnasium. To the east of the building is more residential buildings. To the west of the building is office buildings and retail buildings. To the south of the building is a petrol filling station and more residential property

(iv) Existing storage of hazardous materials:

There are no hazardous materials stored inside the building compound

(v) Location of existing services:

There are the normal range of services in the road to the north of the building, Skinner Lane, and in the footway. There are services that supply the building in the courtyard to the south of the building. There are two enclosed electrical substations to the west of the southern entrance gate and a further enclosed substation adjacent to the south east corner of the site

(vi) Ground conditions:

There are access chambers to buried services around the site. Along Skinner Lane these include BT chambers, some of which have double lids which are notorious for not being particularly strong. The contractor is to make a detailed assessment of the existing ground bearing capacity for any height access equipment or scaffolding that he is proposing to use to access the works at high level

(vii) Information about existing structures:

The existing structures are steel framed with concrete floors. Facades are a combination of brick and block, glazing, timber and aluminium composite material. Some of the timber has been replaced. At the east end of the building there is a small stream about 3 metres below the ground level. The ground is retained by stone walls that are about 3 metres from the building. Whilst the strength of these walls is not known it is not envisaged that there are any works to this elevation. Along the centre of the south elevation is an elevated podium deck at first floor level which nearly abuts the building and it has probably only been designed for pedestrian loadings

(viii) Previous structural modifications:

None known

(ix) Difficulties in relation to existing plant and equipment:

Not generally relevant to this project

(x) Health and safety information contained in earlier design, construction or 'as-built' drawings:

As built drawings are in the client's possession

(b) Health hazards, including:

(i) Asbestos:

The building was built after 2000

(ii) Existing storage of hazardous materials:

There are no hazardous materials stored in the buildings

(iii) Contaminated land, including results of surveys:

There is no contaminated relevant to this project

(iv) Existing structures containing hazardous materials:

There are no known materials hazardous to health in the structure. It has been identified that there has been water ingress to the structure behind the cladding and care should be taken to identify if this has led to fungal growth or the presence of aspergillus

(v) Health risks from the Client's activities:

There are no health risks from the client's activities

4. SIGNIFICANT DESIGN AND CONSTRUCTION HAZARDS

(a) Design assumptions and control measures:

The gap between the north end of the west elevation and the site boundary wall is very narrow, circa 700mm

(b) Arrangements for co-ordination of ongoing design work and handling design changes:

Ongoing communication about design matters is to be through the Principal Designer, Philip Baker

(c) Information on significant risks identified during design:

The designers have not identified any significant risks arising from their design

(d) Materials requiring particular precautions:

There is mineral wool behind the existing cladding that is to be removed and new mineral wool to be installed

(e) Presence of the Specified Risks (Schedule 3)

Specified Risk	Present	Details
1. Work which puts workers at risk of burial under earthfalls, engulfment in swampland or falling from a height, where the risk is particularly aggravated by the nature of the work or processes used or by the environment at the place of work or site.	Y	Some of the aluminium composite material has to be removed from sixth floor elevations where access from ground level might be challenging. Some of the timber cladding has to be removed from first to fifth floor levels where access from ground level might be challenging
2. Work which puts workers at risk from chemical or biological substances constituting a particular danger to the safety or health of workers or involving a legal requirement for health monitoring.	Y	Potential for aspergillus in areas where water has penetrated through the cladding
3. Work with ionizing radiation requiring the designation of controlled or	N	

*supervised areas under regulation 16 of
the Ionising Radiations Regulations 1999.*

- 4. *Work near high voltage power lines.* N
- 5. *Work exposing workers to the risk of drowning.* N
- 6. *Work on wells, underground earthworks and tunnels.* N
- 7. *Work carried out by divers having a system of air supply.* N
- 8. *Work carried out by workers in caissons with a compressed air atmosphere.* N
- 9. *Work involving the use of explosives.* N
- 10. *Work involving the assembly or dismantling of heavy prefabricated components.* N

5. THE HEALTH AND SAFETY FILE

(a) Format and content:

The Principal Contractor shall implement an effective management system to provide the requisite information for updating the existing Health and Safety File. This is to include the appropriate information from the following list which is provided by the Health and Safety Executive in their Guidance:

A brief description of the work carried out

Residual hazards and how they have been managed (for example surveys or other information concerning asbestos, contaminated land, water bearing strata, buried services)

Key structural principles incorporated in the design of the structure (e.g. bracing, sources of substantial stored energy-including pre-or post-tensioned members) and safe working loads for floors and roofs, particularly where these may preclude placing scaffolding or heavy machinery there

Any hazards associated with the materials used (for example hazardous substances, lead paint, special coatings which are not to be burned off)

Information regarding the removal or dismantling of installed plant and equipment (for example lifting arrangements)

Health and safety information about equipment provided for cleaning or maintaining the structures

The nature, location and markings of significant services, including fire fighting services

Information and as-built drawings of the structure, its plant and equipment

The exact information required will be agreed with the Principal Designer early in the contract

6. APPENDICES

6.1 CDM Hazard Management Register

The designers have provided the following information about residual design risks

APPENDIX II

WINTECH INVESTIGATION REPORT AND SPECIFICATION



20:20 Building, Skinner Lane, Leeds

Intrusive Survey of ACM Cladding Report

Prepared on behalf of:

Cardoe Martin
Aizlewood Business Centre,
Aizlewood's Mill,
Nursery Street,
Sheffield,
S3 8GG

Date of visit: 3rd August 2020

Document reference: 05218/JY/XX/50316/WL/01



This report applies only to the façade construction observed on the day of the visit. No responsibility or liability whatsoever is accepted for defects or defective work covered up by prior works which were unobservable on the day of the visit or for areas of the facade not made available for observation.

The extent of this report is limited to the observations of the façade which may reasonably be made from the access provided by the Client or otherwise agreed to be provided by Wintech under the Client's instruction. No responsibility or liability whatsoever is accepted for defects in façade areas which could not be reasonably observed due to the limitations of access and/or the access equipment provided or agreed to be supplied.

Please note that this report is confidential, personal and non-assignable. The report has been produced by the writer on behalf of Wintech, specifically for the Client referenced on the title page of this document, for their sole use alone. The contents must not be disclosed to any other party without the express permission of Wintech Limited, which must be obtained in writing. In the event that such permission is sought and agreed and the report is copied; then it must be copied in its entirety.

Wintech shall have no duty of care beyond that owing to the Client. Under no circumstances shall Wintech be liable for any reliance by any party, other than the Client, on the information contained within this report.

Nothing in this report confers or purports to confer on any third party any benefit or the acceptance of any third party liability by virtue of the Contracts (Rights of Third Parties) Act 1999.

This report is provided strictly subject to Wintech's standard terms and conditions.

The report is not a guarantee or warranty, but a professional opinion on the condition of the subject property façade.

Issue No.	Report Issue Date	Contributors	Issue Notes
01	14/09/2020	JY/JS	First Issue

Report prepared by: Jasmine Young BA(Hons) MSc
Façade Engineer **Checked by:** James Smith MSc FSFE
Technical Director



Certificate No. FS 564908

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1.0 Introduction

- 1.1 This report has been prepared by Jasmine Young of Wintech Limited, following instruction from Lee Rhodes on behalf of Cardoe Martin.
- 1.2 The report has been prepared following a visit to the property on 3rd August 2020. The weather conditions were sunny with intermittent cloudy periods.
- 1.3 The purpose of the visit was to witness an intrusive survey to the rainscreen cladding constructions which comprised of aluminium composite material (ACM) panels, to confirm previous survey findings by others and to determine the façades compliance in relation to fire with Approved Document B Part 2 2006 relevant at the time of construction.
- 1.4 It is our understanding that this document will support the claim for funding from the government's cladding remediation fund to replace the ACM panels on the building which are known to be combustible.
- 1.5 The property has an occupied storey above 18m in height and shall be considered accordingly in this report.



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2.0 The Property

- 2.1 The 20:20 Building is situated on Skinner Lane, Leeds, LS7 1BB and is bordered by Regent Street, Millwright Street and Mabgate.
- 2.2 The building is seven storeys tall (ground floor plus six upper storeys) with two raised blocks forming the seventh floor. The building is largely rectangular in plan but follows the road resulting in an angle in the front elevation to the building.
- 2.3 The building was completed circa 2008. We have been advised that the property was bought through an administration deal which has resulted in a loss of original building information.
- 2.4 The ground floor level of façade is comprised of aluminium curtain wall. The first floor level is a render system with aluminium windows. From the second floor to sixth floor, the façade is comprised of brickwork with aluminium windows and timber cladding. The seventh floor façade is comprised of a rainscreen system with ACM panels.
- 2.5 The façade elements are original with the exception of the North elevation to Skinner Lane and East elevation where the timber cladding has been replaced with Trespa. We have been advised that this took place approximately five years ago.
- 2.6 Refer to Photographs No. 1 to 5 for views of the property.



Photograph No. 1 - Front elevation to Skinner Lane



Photograph No. 2 - Section of elevation at the corner of Skinner Lane



Photograph No. 3 - Rear elevation (right) facing Millwright Street



Photograph No. 4 - Rear elevation (left) facing Millwright Street



Photograph No. 5 - Elevation facing Regent Street



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3.0 Description of the External Façades

The following descriptions have been determined through visual and intrusive survey and are applicable to each elevation of the building.

3.1 ACM (Aluminium Composite Material) rainscreen

The ACM (aluminium composite material) rainscreen is located on all four elevations of the seventh floor blocks at the top of the building.

The ACM is comprised of 0.5mm aluminium internal and external facing with a 3mm thick black polyethylene core and formed into cassette panels to create the rainscreen. These have 20mm joints vertically across the façade and 8-10mm horizontally, depending on the panel position.

Behind this, there is a cavity fully filled with mineral wool insulation secured by fasteners adhered to the face of an externally fastened trapezoidal corrugated sheet which varies the depth of the cavity from 70mm to 90mm. The panels are secured to a secondary support structure of vertical aluminium top hat rails and horizontal galvanised steel 'z' rails. This is secured against the trapezoidal corrugated sheet to the primary structure of wet painted steel.

Behind the trapezoidal corrugated sheet, there is a further 150mm of mineral wool insulation within a 200mm cavity between the structural elements and then the internal wallboard has been observed.



Photograph No. 6 - One of two ACM clad blocks on the seventh floor



Photograph No. 7 - ACM panels of Area 1 on tenant's balcony

3.2 Brickwork

Brickwork is located on all four elevations of the second to sixth floors of the building as the predominant façade type.

The main wall construction is understood to be masonry cavity wall construction with an internal leaf of concrete blockwork, mineral wool insulation in the cavity and an outer leaf of red brick.

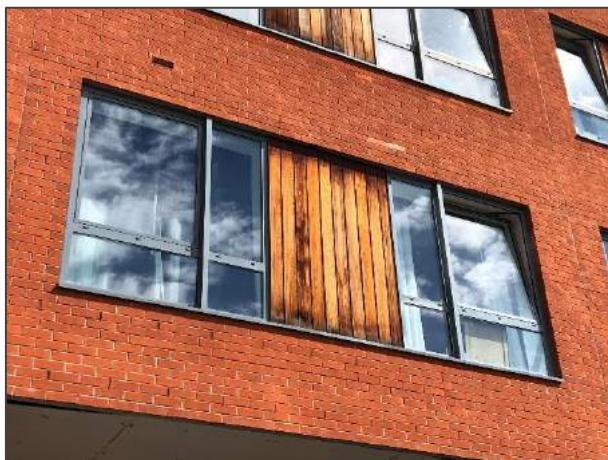
3.3 Timber cladding

The punched openings for the windows within the brickwork are separated with timber cladding to various extents across the façade.

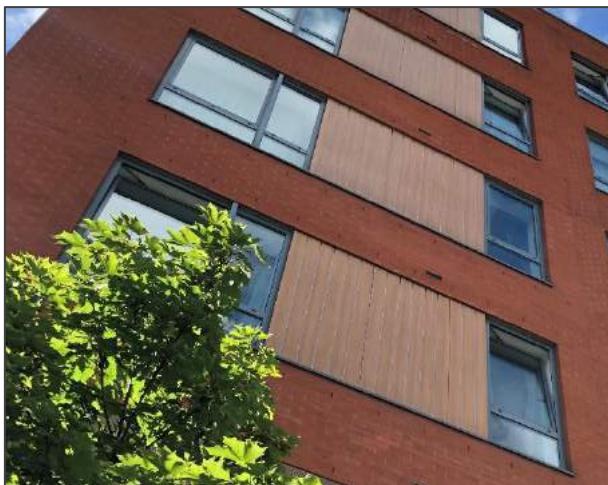
The façade comprises of an internal leaf of concrete blockwork (coated), vertical timber battens fixed to the face of the blockwork with horizontal timber battens on top. This is fully filled with mineral wool and then covered by a breather membrane. The timber slats are secured to the horizontal timber battens. On the Skinner Lane and Mabgate facing elevations, this timber cladding has been replaced with a high pressure laminate (HPL) cladding.



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Photograph No. 8 - Surrounding brickwork, aluminium windows, and timber infill



Photograph No. 9 - Surrounding brickwork, aluminium windows and Trespa panel

3.4 Render wall system & soffit

A white render wall system with grey aluminium curtain walling and windows is located on the ground and first floors of all elevations. This interfaces with a soffit faced with a sheathing board that is supported by a secondary structure. Internally, the brick support can be observed with mineral wool insulation and a type of rigid insulation between the mineral wool and internal leaf of concrete blockwork. Above the rigid insulation appears to be a continuous tray.

4.0 Areas observed and Limitations of Survey

Two ACM areas were observed in two separate areas of the building. In one area, on the balcony of a tenant's demise was examined adjacent to a smoke vent to observe the interface detail at the opening. Examination of a replica detail in a second area was not possible at the second location due to access so this was used to verify the wall construction observed in the first area.

This survey is to verify the findings of a previous survey conducted by AOCA Engineers.

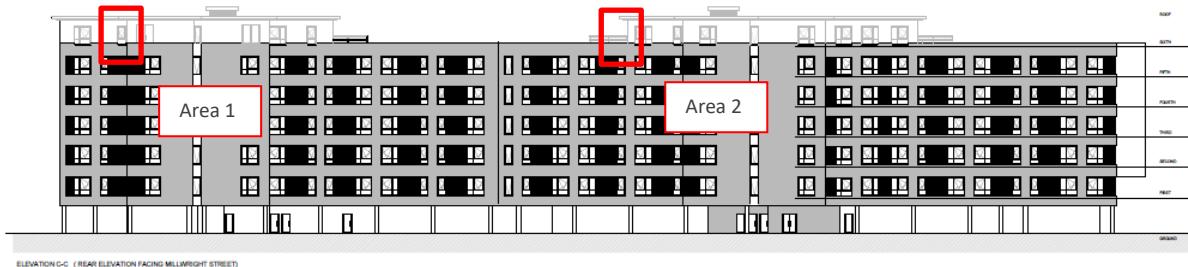


Figure 1- Elevation facing Millwright Street with surveyed areas

5.0 Observations

5.1 ACM cladding

- 5.1.1 The ACM cladding was observed to comprise of 0.5mm thick front and rear aluminium facing with a 3mm black polyethylene core and formed into a cassette panel 30mm deep. The vertical sides are supported by a 38mm 'U' channel. Horizontally, aluminium profiles are secured to the top and bottom of the cassette panel to allow it to hook onto the support structure and be secured in place.



Photograph No. 10 - ACM panels of Area 1



Photograph No. 11 - Edge of ACM panel

- 5.1.2 Based on the panels observed and markings to the rear face, these are understood to be Alucobond panels.



Photograph No. 12 - Soffit ACM panel showing markings and where cavity barriers were sat prior to removal

- 5.1.3 Vertically, there is a nominal 20mm joint between panels; horizontally, this is 8-10mm.



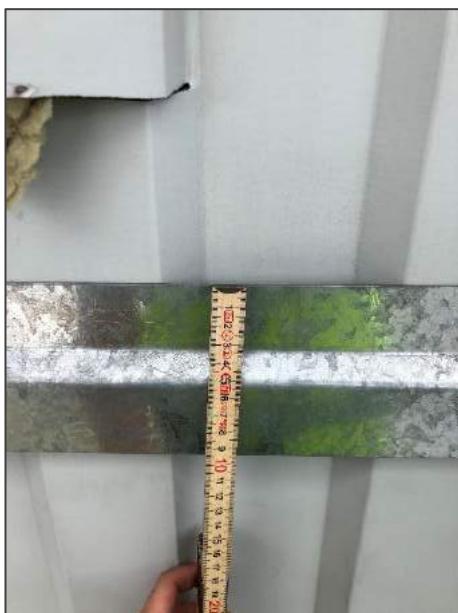
Photograph No. 13 - Horizontal joint - 8-10mm, depending on where measurement was taken

5.2 Supporting substructure

The supporting structure is comprised of vertical aluminium 'top hat' rails that are 90mm wide and 60mm deep (overall) and positioned to support each panel. These are secured to galvanised steel 'z' angles which are fixed, in turn, to the corrugated trapezoidal sheet beginning 110mm up from the base aluminium flashing and spaced 960mm-1000mm apart approximately.



Photograph No. 14 - Supporting structure,
vertical top hat rail



Photograph No. 15 - Supporting structure –
galvanised steel rail

5.3 Mineral wool insulation (external cavity)

Mineral wool insulation has been observed fully filling the cavity between the rear of the panel and the galvanised sheet. The cavity is 70mm-90mm depending on the plane of the sheet that is being measured from.



Photograph No. 16 - Insulation installation observed during removal of exterior ACM panels to Area 2



Photograph No. 17 - Mineral wool insulation removed from Area 1 in advance of façade review



Photograph No. 18 - Insulation fixing

5.4 Trapezoidal corrugated sheet

A trapezoidal corrugated sheet (thought to be galvanised steel) provides an element of rigid support for the insulation with fixings adhered to the face periodically. The width of each segment is circa 80mm.



Photograph No. 19 - Corrugated trapezoidal sheet

5.5 Mineral wool insulation (wall construction)

Behind the sheet, mineral wool insulation was observed. This appeared to be 150mm in depth within a 200mm cavity.



Photograph No. 20 - Mineral wool insulation observed to the interior cavity - Area 2



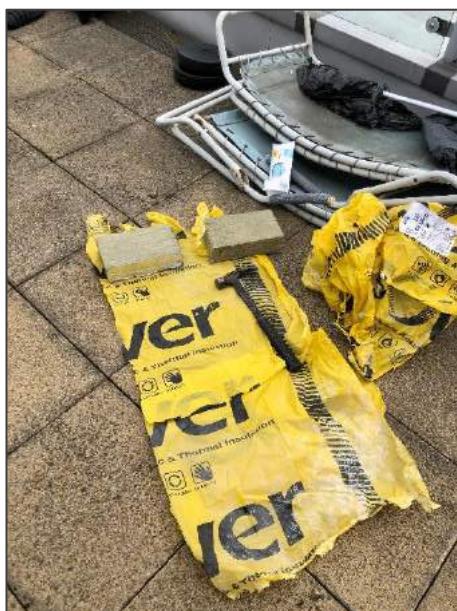
Photograph No. 21 - Overall internal cavity dimension – 200mm



Photograph No. 22 - 150mm of mineral wool insulation to the interior cavity

5.6 Cavity barriers

Cavity barriers were not observed at the edge of the cavity or at the jamb of the smoke vent opening/window. At the top of the smoke vent opening/window, the aluminium soffit panel was pulled away to reveal cavity barriers had been placed in the cavity above and were sat on the soffit panel, subsequently, these fell to the ground as they were not mechanically fixed as required by Approved Document B. These were observed to be a sleeved Isover product; however the sleeving was damaged and torn which may affect its performance and durability.



Photograph No. 23 - Fallen cavity barriers from soffit above smoke vent/window



Photograph No. 24 - Individual cavity barrier
- 230mm wide



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6.0 Building Regulations Approved Document B Guidance

- 6.1 The Building Regulations Approved Document B has been through a number of revisions in the last 25+ years. The earliest version Wintech have on record is ADB 1992. This was then followed with a revised version in 2000, 2002, 2006, 2010 and 2013. The document was split into two volumes from 2006 onwards, with volume 2 for buildings other than dwelling houses.
- 6.2 The main fire safety requirements for cladding in ADB2 2006 relate to:
- Surface spread of flame.
 - External wall combustibility; this is designated as class A1, A2, B, C, D and E.
 - Provision of cavity barriers and fire stops.
- 6.3 Minor changes to the wording of the guidance in terms of surface spread of flame were made between the 1992, 2000 and 2006 versions as shown in Figure 2 below.

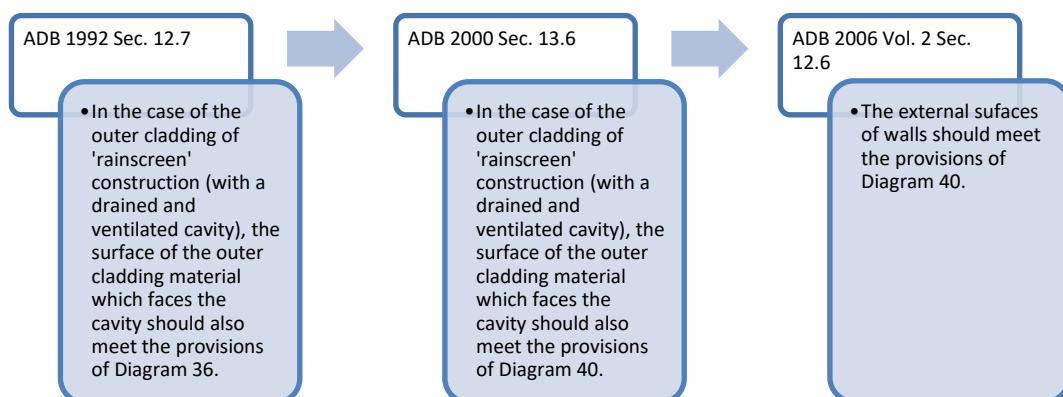


Figure 3 – Surface spread of flame requirements

- 6.4 Minor changes were also made in the guidance regarding the cladding combustibility requirements between the 1992, 2000 and 2006 versions as shown in Figure 4 below.

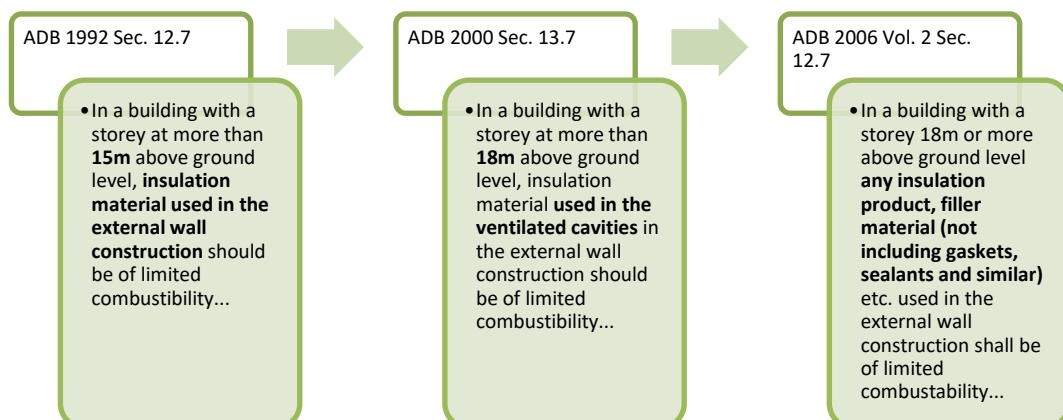


Figure 4 - Changes to cladding combustibility requirements in ADB

- 6.5 The version for which the building is to comply to, is the current version at the time of the planning application. As such, we believe that the building should be considered against the guidance contained in the 2006 version of the Approved Document B.



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6.6 Surface Spread of Flame

- 6.6.1 The different classifications of surface spread of flame are class 0, 1, 2, 3 and 4. Note that class 0 is not referenced in a British Standard, but achieved by being of limited combustibility throughout, or a Class 1 material which has a fire propagation index of not more than 12 and sub-index of not more than 6 according to BS 476-6.
- 6.6.2 The guidance in ADB 2006 stipulates that the external surfaces of walls should meet the requirements of Diagram 40. The requirement depends upon the proximity to other buildings and the height and so a number of different scenarios are provided in Diagram 40 ADB 2006. The 20:20 Building is seven storeys tall with a storey above 18m and more than 1000mm from the site boundaries, therefore in accordance with Diagram 40 of ADB 2006, the materials used on the building up to 18m should have a surface spread of flame rating of Index (I) not more than 20 up to 18m and a Class 0 rating over 18m.

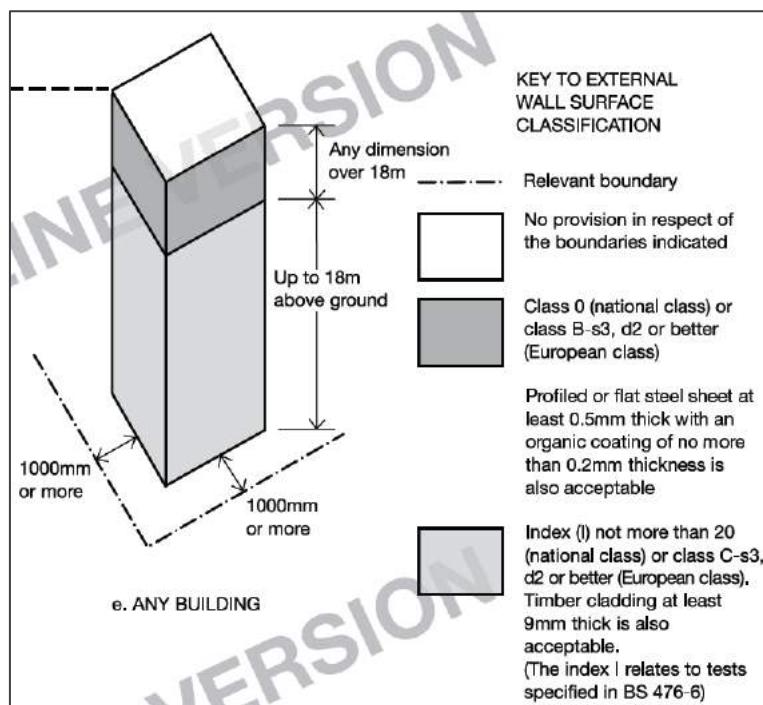


Figure 5 – Excerpt of Diagram 40 from ADB 2006 showing requirement for Class 0 above 18 m

6.7 Materials of Limited Combustibility

- 6.7.1 For tall buildings, ADB 2006 recognises the risk of the external cladding system contributing to fire propagation and making firefighting more difficult. It therefore includes an additional requirement for buildings over 18 m as provided in Figure 4 previously.
- 6.7.2 In terms of combustibility, from Wintech's understanding of ADB in effect at the time of construction, to demonstrate compliance where a building exceeds 18m above the ground level, Approved Document Part B provided two options:

Option 1 ADB, Vol 2, Clause 12.7: Year 2006 (post April 2007):

'In a building with a storey 18m or more above ground level any insulation product, filler material (not including gaskets, sealants and similar) etc. used in the external wall construction should be of limited combustibility (See Appendix A). This restriction does not apply to masonry cavity wall which complies with Diagram 34 in Section 9.'

Option 2 An acceptable alternative approach would be to submit evidence that the complete proposed external cladding system has been assessed according to the acceptance criteria in BR135 - Fire Performance of External Thermal Insulation for Walls of Multi-storey Buildings as referred to in clause 12.5 of ADB. The preferred method of demonstrating compliance is via a fire test carried out in accordance with BS 8414:1 Fire performance of external cladding systems – Part 1: Test method for non-loadbearing external cladding systems. The test should be carried out by a UKAS accredited testing body.

6.8 Provision of Cavity Barriers and Fire Stops

- 6.8.1 To prevent unseen fire spread through cavities in the external wall, ADB 2006 includes provisions in Section 9 for cavity barriers around window openings, junctions between the external cavity wall and every compartment floor and compartment wall and edge of cavity. The cavity barriers around openings may be formed by the window or door frame subject to certain material requirements in terms of integrity and insulation. Clause 9.13 states that every cavity barrier should be constructed to provide at least 30 minutes fire resistance.



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7.0 Summary of Measurements & Ratings

Façade element	Measurement during survey (w x h x d)	Surface Spread of Flame rating	Compliance with ADB 2006, Clause 12.6	Combustibility rating in accordance with BS EN 13501-1	Compliance with ADB 2006, Clause 12.7
ACM cladding panel	1995mm x 990mm 0.5mm alu, 3mm core, 0.5mm alu	Class 0	Yes	Not better than Class B	No
Vertical support rails - aluminium	90mm, internal recess 44mm x 15mm	Class 0	Yes	A1	Yes
Horizontal support rails – galvanised steel	1mm thick*	Class 0	Yes	A1	Yes
Mineral wool insulation – external cavity	70mm-90mm, dependent on position	Class 0	Yes	A1	Yes
Corrugated trapezoidal sheet	0.5mm thick*	Unconfirmed	Unconfirmed	Unconfirmed	Unconfirmed
Mineral wool insulation – internal cavity	150mm	Class 0		A1	Yes



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8.0 Commentary

8.1 Surface Spread of Flame

In accordance with Diagram 40 of ADB 2006 which would be in effect at the time of construction, the surface spread of flame rating of a building with a storey or more above 18m is required to be Class 0 or the material to be Class B-s2, d0. As such, we believe that the external surfaces of the external wall are compliant with ADB2 2006.

8.2 Materials of Limited Combustibility

The external façade of the 20:20 Building is comprised of ACM cladding. There are forms of ACM cladding which meet the combustibility criteria set out by ADB which have a mineral core. The ACM cladding with a combustible core is readily identified by its colour which is dark grey/black and this is the core material that has been observed on the building, in agreement with previous findings and surveys. This is not compliant with the requirements of ADB 2006.

The other materials observed within the façade construction have an A1 combustibility rating and therefore are compliant.

8.3 Provision of Cavity Barriers and Fire Stops

Survey areas were selected for the opportunity to observe the presence of cavity barriers at the edges of cavities (top, bottom and interfaces with components or openings).

Due to the cavity in the wall construction being fully filled with mineral wool insulation, no cavity barriers were present at the top, bottom or vertical edges of the cavity. When the cavity is fully filled with a non-combustible material, there is no requirement for there to be a cavity barrier as the passage for flame is already limited.

Where the soffit met the smoke vent/window that was observed during the survey, cavity barriers were observed and fell out of the cavity upon soffit removal. Based on the imprint on the back of the soffit panel, were thought to just be sat in the cavity rather than mechanically fixed which would have secured them in place and prevent their displacement over time. This is not installed in accordance with ADB requirements or manufacturer recommendations to be considered compliant.

The junction at the top where the horizontal and vertical trapezoidal corrugated sheets meet was not sealed, creating an open path. This junction will need addressing to allow secure fixing of cavity barriers in this location. Additionally, this area is problematic in relation to thermal performance and acoustic requirements and this will also need addressing.

8.4 Comparison to AOCA Findings

The findings observed during the survey with regards to materials and dimensions are in accordance with the findings of AOCA shown in their drawing package of information provided to us prior to the survey however we have been unable to verify the presence of a secondary weather membrane at the lower perimeter of the trapezoidal corrugated sheet, behind the flashing.



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9.0 Other observations

While outside the scope of our appointment and this report, the following observations were made during the survey.

9.1 Overall construction & watertightness

In our experience, the wall build-up is relatively unique and as such, we have not undertaken sufficient investigations to opine on the likely weathertightness of the construction.

9.2 Secondary weather membranes

- 9.2.1 Within the AOCA documentation provided, there is a secondary weather membrane shown within the construction detail for the existing wall construction. While we are aware that they have completed a survey prior, we have not seen their report and cannot confirm whether this is has been informed through observation or documentation.
- 9.2.2 In the areas observed during the Wintech survey, there was no membrane at the top of the corrugated trapezoidal sheet at the junction where this interfaces with the roof. Another of the same type sheet runs horizontally across.
- 9.2.3 At the corner junction where the façade creates a reveal to the smoke vent/window in area 1, where two sheets meet can be observed. These are attached directly to the primary structure and no membrane was observed in this location at the bottom. Here the flashings extend up behind the galvanised sheet.
- 9.2.4 The absence of perimeter sealing membranes could allow water into the construction, along with uncontrolled air movements and should be investigated further.

9.3 Primary structure

- 9.3.1 The primary structure has not been fully investigated beyond the corrugated trapezoidal sheet however portions of it were exposed during the survey. The portions seen were observed to be painted steel and in all instances observed, the paint coating was observed to be degrading and the surface of the structural elements was corroding.
- 9.3.2 This is likely due to the lack of membranes or sealed interface detail at the top of the construction allowing moisture into areas which are usually face sealed and therefore dry.
- 9.3.3 The primary structure should be assessed and evaluated by an independent and suitably qualified structural engineer. This will likely result in the requirement for the corrugated trapezoidal sheet coming off and the inner façade construction being open to the elements.





Photograph No. 25 - Section of primary structure observed



Photograph No. 26 - Section of primary structure observed



Photograph No. 27 - Section of primary structure observed

9.4 Trapezoidal corrugated sheet

Usually, these sheets are designed to be fitted with a dry, warm environment behind, so with consideration to the exposure of the façade elements to moisture, the front and rear faces of the corrugated trapezoidal sheet should be examined for a coating/coating thickness to allow assessment of the design life of the sheet.



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10.0 Document Review

- 10.1 We have been advised that the building was acquired some years ago through an administration deal resulting in a loss of building information. As a result, an O&M manual was unavailable for review.
- 10.2 Previous work has been conducted by AOCA Engineering Consultants and documents in relation to this have been provided for review. These are:
- 20:20 House Leeds – Bill of Quantities
 - AOCA Scope of Remedial Works Rev 1 – Ref 19-UK-1001
 - Appendix A – specification clauses
 - Appendix B – AOCA drawings
 - Appendix C – H92 Rainscreen Cladding (Genius Ltd)
 - Appendix D – Cavity Barrier – Siderise
- 10.3 Appendix B contains a number of elevations, a section showing the existing construction surveyed and a section showing the proposed remedial works from AOCA. This shows the replacement of the supporting substructure and ACM panels with a new supporting structure and Genius Prime aluminium cladding panels.

10.4 Points for consideration on the existing proposed detail include:

- 10.4.1 The drawing do not clearly define the primary and secondary wall construction; therefore, the elements which fasten to the sheet is not clear. This needs to be identified in order to determine the suitability of the existing construction.
- 10.4.2 It appears that the previous cladding system is completely supported onto the trapezoidal corrugated sheet. The newly proposed system will increase the weight of the façade system and should be verified by calculation.
- 10.4.3 The corrugated trapezoidal sheet stops short at the top of the detail where it interfaces with the roof and at the bottom which means this may not perform a number of functions relating to acoustic performance, thermal/condensation performance and fire performance. A strategy for sealing these areas to meet the necessary performance should be devised if the sheet is to remain part of the construction.
- 10.4.4 A cavity barrier is shown at the top of the proposed detail. Whilst a cavity barrier should be provided at edges of compartments, further cavity barriers may be required above and below the window and at the edge of the cavity. Vertically, full fill cavity barriers should be used; horizontally, open state cavity barriers with an intumescent face that will expand to the rear face of the aluminium panel when activated should be used or a sleeved, full fill cavity barrier whose durability has been proven to not be compromised by the presence of water. Given the shape of the trapezoidal corrugated sheet, assistance from the manufacturer in relation to the installation of the barriers with this form of sheet should be sought. Refer to Figure 1 below.



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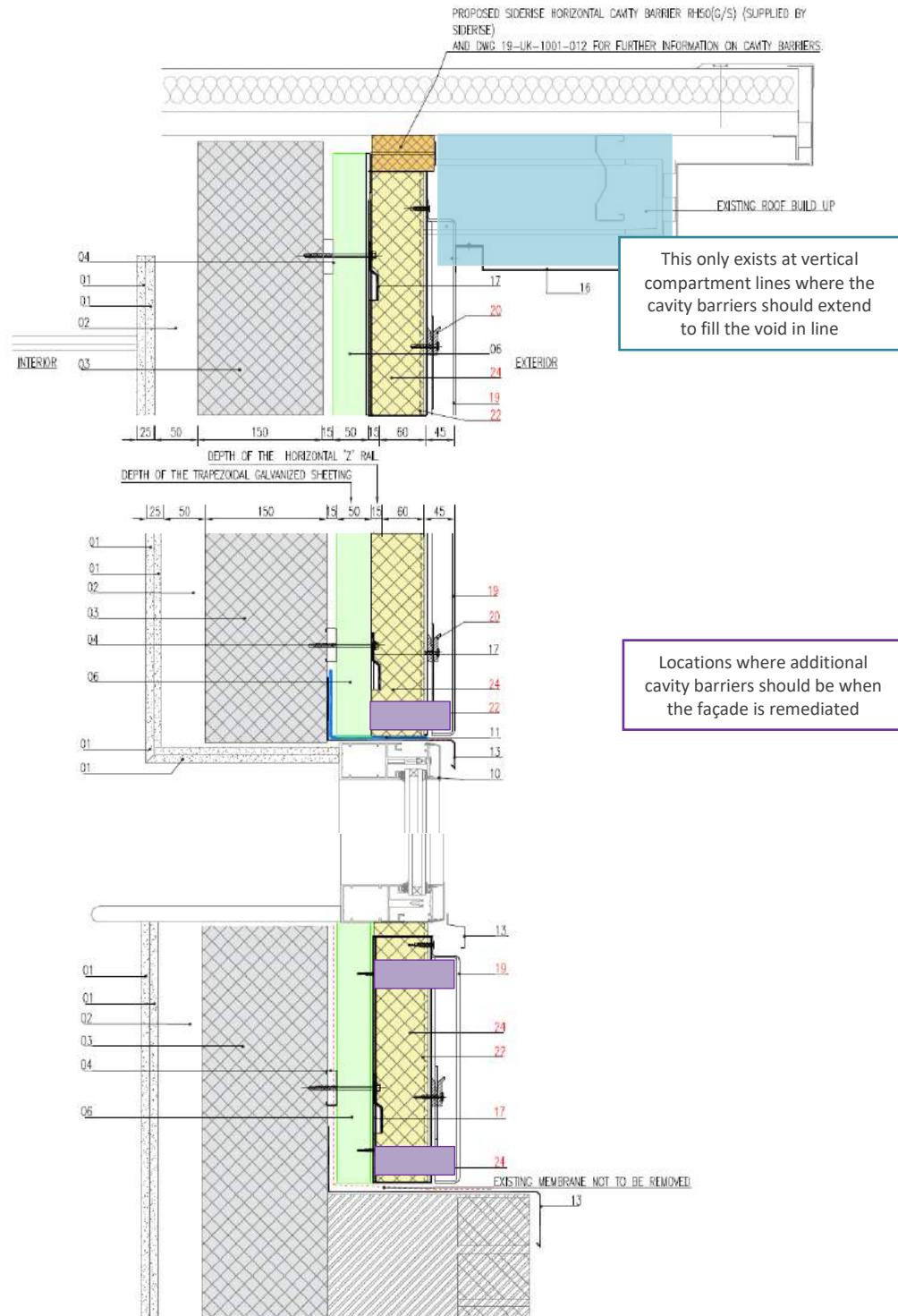


Figure 2- AOCA proposed detail

10.5 Points for consideration on the Genius Prime panels:

- 10.5.1 Based on available literature for the system, the panels are cassettes and dead fixed at the top. Although there are vertical slotted holes, it is unclear how the panels will accommodate lateral thermal expansion.
- 10.5.2 The panels are retained through the system specific clips secured to vertical rails. There are rectangular flanges to the vertical edges of the cassette which slot into the clips. It should be clarified what minimum edge cover is required for the panel to remain engaged after tolerance and movement is and how these accommodate tolerance and movement.

10.6 Specification differences

It has been requested that Wintech produce a performance specification alongside the existing specification. The specification currently provided by AOCA for the replacement façade on the seventh-floor blocks of the 20:20 Building consists of a number of NBS specification clauses.

The below points identify the key differences between the specification documents.

10.6.1 Air Permeability:

The performance of the Genius Prime façade system is tested in accordance with CWCT Sequence B for rainscreens which does not include the backing wall air permeability performance. As such, this will need to be assessed separately. Following the survey, there is some concern for the weathertightness of the backing wall and condition of the primary structure. It is likely additional remedial work extending to the backing wall may be required.

10.6.2 Aluminium flashings

- Applies to H72 Aluminium flashings
- The thickness specified in Appendix A/H72 specification is 2mm for aluminium flashings. The Wintech specification specifies 3mm unless thinner is agreed with the architect/client.

10.6.3 Fasteners and Fixing systems

- Applies to : H72 Aluminium flashings; H92/730X Mechanical Fixings – Material Requirements; Z20 Fixings and Adhesive
- Stainless steel fixings to be grade A2 unless they are visible, in which case they should be grade A4.

10.6.4 Rainscreen secondary support structure

- Applies to H92/110 Flat Aluminium Cladding System
- If the backing wall is determined to be unsuitable following a survey, including that of the primary structure; a new secondary support structure for the new rainscreen panels may be required.

10.6.5 Rainscreen backing wall

- Applies to H92/110 Flat Aluminium Cladding System
- Following the survey, it has been observed that the primary structure is wet painted steel showing signs of surface corrosion faced with a trapezoidal corrugated sheet that is potentially plastisol coated.



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This type of sheet is designed to be dry from behind, however the top and bottom of the sheet are not weathertight.

- There is the concern that the back of the sheet may not be in good enough condition for this to continue in service and that its structural integrity has been affected. If this is determined to be unsuitable, a new backing wall will be required.

10.6.6 Site hose testing

- Applies to H92/685 Site Hose Test
- The current AOCA specification lists the joints to be tested as 'to be agreed' but an allowance for 2 full days. Wintech specify that 5% of all joints to the façade should be tested which could affect the time required, either requiring less or additional time.

10.6.7 Aluminium alloy components

- Applies to H92/710 Aluminium Alloy Framing Sections
- The Wintech specification allows other alloys such as AW-6060 and AW-6082 depending on the aluminium extrusion

10.6.8 Insulation

- Applies to H92/776X Thermal Insulation
- The existing façade has an external cavity fully filled with insulation. The remedial façade solution will be required to maintain the current level of thermal performance as a minimum. The current insulation was compressed to the trapezoidal corrugated sheet which is 90mm thick at points so it is likely that more than the 75mm thick specified in the current AOCA specification will be required

10.6.9 Pre-treatment of aluminium and application of powder coating

- Applies to Z31 Powder coating
- The Wintech specification requires that the aluminium is to be pre-anodised to 5-8 microns thick as its pre-treatment. The AOCA specification lists either chromate pre-treatment or chromate free pre-treatment.
- Following completion of the pre-anodising process, the aluminium must be powder coated within 16 hrs and in the same facility.



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11.0 Recommendations

- 11.1 The following is required for the façade to be compliant with regards to fire requirements:
- Monolithic aluminium cladding panels in keeping with the building's original appearance
 - Cavity barriers to the edges of cavities (top, bottom, interfaces with windows/doors/openings/penetrations)
- 11.2 It is believed that the façade construction may not be weathertight, and it is not apparent whether moisture within the façade construction is the result of interstitial condensation or water ingress from the exterior. Any remedial works should also rectify the issue of moisture within the construction and at least match the existing thermal performance of the façade.
- 11.3 In relation to the other observations, the following is recommended:
- An independent and suitably qualified structural engineer should assess the primary structure to determine how the corrosion observed will affect the structure's service life and any remedial works to rectify the coating and corrosion.
 - The corrugated trapezoidal sheet should be assessed for its condition (particularly to the rear face), load bearing capacity and service life.
 - The junction where the roof meets the vertical is specifically addressed for watertightness, thermal performance and acoustic performance.
- 11.4 Options for remediation include:
- Replacement of the external panels and secondary support structure in front of the trapezoidal corrugated sheet. This would be following surveys of both the primary structure and the front and rear faces of the trapezoidal corrugated sheet. This would include the re-use of the existing external mineral wool insulation and installation of cavity barriers at compartment lines, floors, edges of cavities and the perimeter of windows, doors, and openings.
 - Replacement of the external panels, secondary support structure, insulation and trapezoidal corrugated sheet, if necessary. Also following surveys of both the primary structure and the front and rear faces of the trapezoidal corrugated sheet and installation of cavity barriers at compartment lines, floors, edges of cavities and the perimeter of windows, doors, and openings. This would require new insulation and the introduction of a cavity for appropriate ventilation and drainage. This option would be required to meet Part L refurbishment criteria and would likely increase the wall depth.



APPENDIX III

PROJECT DIRECTORY

Project Directory

Project: 20:20 Building, Skinner Lane, Leeds
 Date: 08.09.2020
 Revision:



Role	Company	Address	Main contact	Tel no.	Email
Managing agent	20:20 House (Residential Management) Ltd, 2020 Building Skinner Lane, Leeds, LS7 1BB	2020 Building Skinner Lane, Leeds, LS7 1BB	Nick Massingham	07808 158351	nick@2020leeds.co.uk
Employers Agent / CA	Cardoe Martin	Aizlewood Business Centre Aizlewood's Mill, Nursery St, Sheffield S3 8GG	Lee Rhodes	07551 286996	l.rhodes@cardoemartin.co.uk
Principal Designer	Bell Group	Offices 7 & 8, Tayson House, Methley Road,Castleford,WF10 1PA	Marcia Lake	01977 808657	m.lake@bellgroup.co.uk
Fire Engineer	IFC	Park Street Business Centre, 20 Park Street, Princes Risborough, Buckinghamshire, HP27 9AH	Vincent Rafferty	07702 254330	vincent.rafferty@ifcgroup.com
Façade Engineer	Wintech	Quartz House,Pendeford Business Park, Wolverhampton,WV9 5HA	Jasmine Young	07950 297628	j.young@wintech-group.com
Building Control	Leeds Building Control	Merrion House 110 Merrion Centre, Leeds LS2 8BB	Rodger Oldfield		roger.j.oldfield@leeds.gov.uk
Lawyers	Gowling WLG	Gowling WLG (UK) LLP 4 More London Riverside, London, SE1 2AU, United Kingdom	Tarfa Ahmad	07795 305420	Tarfa.Ahmad@gowlingwlg.com
Principal Contractor	Ballymore Services	3 Gortrush Business Centre, 27 Gortrush Industrial Estate, Great Northern Rd, Omagh BT78 5EJ	Rory McCallan	07990 690924	rory@ballymoreservices.com

APPENDIX IV

FORM OF TENDER

Form of Tender for Fixed Price Tender

Cladding Remediation Works, Metis, Scotland Street, Sheffield for Rendall and Ritter as Manager of Metis Apartments, 340 Deansgate, Manchester M3 4LY

No. 11742

After careful consideration of the documents referred to in the letter of invitation to tender, we confirm we have the capability to undertake the required works and hereby offer to enter into the prescribed Form of Contract and carry out the whole of the above works to your satisfaction for the sum of:-

£	_____	(Figures)
	_____	(Words)
Exclusive of VAT		

- Our fixed tender price remains open for acceptance within 12 weeks from the date hereof.
- We are in a position to commence the works within working days of an instruction to proceed.
- We can undertake the works within the provisional requirement of weeks but would prefer to have a Contract Period of weeks to complete the works.
- Our suggested Contract Period will result in a £..... reduction in our above Tender Sum.
- Our insurance details are as follows:

Insurance Type	Cover up to (£)	Renewal Date
Employers Liability Insurance		
Public Liability Insurance		
Products Liability Insurance		
Professional Indemnity Insurance		

- We enclose a copy of our Contractors Proposals and Tender Summary.
- We understand the Employer is not bound to accept the lowest, or any tender.

Signed

Name

.....

Position

.....

Address

.....

Tel

.....

Date

Please ensure all spaces on this Form of Tender are completed and return the Form with all required documentation to Cardoe Martin Limited. Failure to do so could render your tender return invalid.

APPENDIX V

SCHEDULE OF AMENDMENTS TO THE JCT DESIGN AND BUILD CONTRACT 2016

DATED

2021

(1) **20:20 HOUSE (RESIDENTIAL
MANAGEMENT) LIMITED**

(2) **BALLYMORE CIVILS LIMITED**

**SCHEDULE OF AMENDMENTS TO THE JCT DESIGN AND BUILD CONTRACT 2016
(DB 2016)**

**relating to a cladding remediation works at
20:20 Building, Skinner Lane, Leeds, LS7 1BB**

These are the Schedule of Amendments referred to in Article 10 of the above-mentioned building contract

Signed for and on behalf of
THE EMPLOYER

Signed for and on behalf of
THE CONTRACTOR

This Contract shall incorporate all the provisions of the JCT Design and Build Contract 2016 subject to the following amendments:

AGREEMENT

RECITALS

Third Recital

Delete Third Recital and insert:

"The Contractor has checked the Employer's Requirements and confirms that the Contractor's Proposals meet with the Employer's Requirements and there is no discrepancy within and /or between the two documents and (other than for the Fire Engineering Design) the Contractor shall be fully responsible in all respects for the design of the Works (whether contained in the Employer's Requirements or the Contractor's Proposals) and design development, selection of goods and materials and satisfaction of performance specifications."

ARTICLES

Article 1:Contractor's obligations

In line 1 insert "carry out and" after "shall"

Article 3:Employer's Agent

Insert new paragraph at end of Article 3:

"Provided that despite the appointment of the Employer's Agent the Employer shall retain authority to issue comments instructions requests and notices from time to time for the purposes of this Contract."

Article 4:Employer's Requirements and Contractor's Proposals

In line 2 before "." insert "(except to the extent that the Contractor's Proposals are developed and completed after the date of this Contract)"

Article 6:Principal Contractor

Insert at end of final paragraph:

"The Contractor warrants to the Employer that he has the necessary expertise to undertake the role of Principal Contractor as defined in the CDM Regulations and has sufficient resources and will allocate those resources to the fulfilment of his duties as Principal Contractor. The Contractor shall carry out all those obligations imposed on him as Principal Contractor under the CDM Regulations fully and faithfully and to this end shall co-operate and liaise with the Principal Designer appointed by the Employer and any designer appointed in connection with the Works."

Article 8:Arbitration

Delete Article 8 and insert "Not used."

Article 9:Legal Proceedings

In line 1 delete "and (where it applies) to Article 8"

Article 10:Incorporation of Schedule of Amendments

"The Recitals, Articles, Contract Particulars, Conditions and Schedules include and shall be subject to the Schedule of Amendments attached to this contract and signed on the cover sheet on behalf of the Employer and the Contractor. If there is any discrepancy between the Recitals, Articles, Contract Particulars, Conditions and Schedules and the Schedule of Amendments the wording contained in the Schedule of Amendments shall prevail."

Insert new article:

Article 11:Professional Team

"The Employer reserves the right to appoint at any time any independent consultants to advise and assist the Employer and details of such consultants shall be notified to the Contractor by the Employer or the Employer's Agent from time to time. The Contractor shall co-operate with such consultants in the performance of their duties and shall liaise with them as necessary (or as the Employer or Employer's Agent on his behalf may direct) in connection with the Works."

Insert new article:

Article 12:Retrospective effect of contract

"Notwithstanding the date of this Contract it shall have effect as if it had been executed upon the date the Contractor first performed any work (including design enabling temporary or other preliminary demolition or permanent works) or activities in relation to the Works and accordingly the duties and obligations contained in this Contract shall be deemed to have applied to the carrying out of any of those works and / or the Works prior to the date of this Contract."

CONTRACT PARTICULARS

The following entries (and any associated text) shall be deemed deleted:

Article 8	Arbitration
Clause 4.2, 4.12 and 4.13	Fluctuations Options
Clause 6.15	Professional Indemnity Insurance
Clause 7.3.1	Performance bond or guarantee from bank or other approved surety
Clause 7.3.2	Guarantee from the Contractor's parent company
Clause 7.4	Third Party Rights and Collateral Warranties
Clause 9.4.1	Arbitration – appointor of Arbitrator (and of any replacement)

ATTESTATION CLAUSE

This Contract is a deed and references to the document being executed under hand will be deemed deleted.

CONDITIONS

SECTION 1 : DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

1.1

Delete the reference to and the definition of "Arbitrator"

Between the definitions of "Confirmed Acceptance" and "Construction Industry Scheme (or 'CIS')" insert:

Consents	the planning permissions referred to in the Employer's Requirements or any other planning permissions relating to the Works, approval of reserved matters and all details pursuant thereto, building regulation approval, fire officer approval and any other permissions, approvals, certificates and licences that may be necessary pursuant to the Statutory Requirements or otherwise (including for the avoidance of doubt any consents obtained in accordance with clause 2.54) to the carrying out of the Works and if they are destroyed or damaged, the reinstatement of the Works
----------	---

Delete the definition of "Consultants"

Delete existing definition of "Contractor's Design Documents" and insert:

Contractor's Design Documents	all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed by or on behalf of the Contractor (including by any of the Novated Consultants, Sub-Consultants and Sub-Contractors) in the course of or as a result of carrying out the Works whether in existence or to be made or produced and including all amendments additions and all designs ideas concepts and inventions contained in them
-------------------------------	--

Between the definitions of "Contractor's Proposals" and "Date for Completion" insert:

Contractor's Report	<p>report prepared by the Contractor which shall include (without limitation)</p> <ul style="list-style-type: none"> (a) a list of information outstanding from the Employer; (b) an estimate of the final cost of the Works (which shall take account of any monies which are due or may become due to the Contractor in accordance with the Conditions); (c) design consultants' reports in accordance with clause 2.47; and
---------------------	--

(d) comparison of progress of design and execution of the Works with the then current programme and in the event of any delay or disruption a summary of the measures the Contractor is taking or proposes to take to minimise or make good such delay or disruption.

Copyright Act	Copyright Designs and Patents Act 1988
Data Controller	has the meaning set out in the General Data Protection Regulation ("GDPR")
Data Protection Laws	the Data Protection Act 2018, the GDPR and all supplemental legislation enacted from time to time which relate to privacy and data protection

Personal Data	has the meaning set out in the GDPR
Between the definitions of "Date of Possession" and "Development Control Requirements" insert:	

Deed of Novation	the deed or deeds of novation in the form set out in Annex 7 to this Schedule of Amendments
------------------	---

Delete the definition of "Employer" and insert:

Employer	the person named as Employer in the Agreement and their successors in title and assigns
----------	---

Delete the definition of "Employer's Rights"

Between the definitions of "Existing Structures" and "Final Payment Notice" insert:

Fire Engineering Design	the fire engineering design to be carried out by International Fire Consultants Limited pursuant to the appointment entered into or to be entered into between (1) the Employer and (2) International Fire Consultants Limited in respect of the Works
-------------------------	--

Delete the definition of "Finance Agreement"

Delete the definition of "Fluctuations Provision"

Delete the definition of "Funder" and insert:

Funder	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 for the carrying out of the Works itself and / or for the acquisition of the Site
--------	--

Delete the definitions of "Funder Rights" and insert :

Funder Rights	the rights and benefits in favour of a Funder set out in Annex 1 to this Schedule of Amendments
---------------	---

Between the definitions of "Funder" and "Gross Valuation" insert:

Funder's Surveyor such employee of any Funder or such surveyor or firm of surveyors appointed by any Funder as may be notified from time to time to the Contractor and "Funders' Surveyors" shall be construed accordingly

Gross Internal Area the gross internal area of the building or buildings to be constructed as part of the Works as measured in accordance with the Code of Measuring Practice issued by the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers current at the Base Date

Group Company any subsidiary 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

Delete the definition of "Named Sub-Contractor"

Between the definitions of "Local or Public Authority" and "Non-Completion Notice" insert:

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 **Annex 2 to this Schedule of Amendments**

Between the definitions of "Notice of Completion of Making Good" and "P&T Rights" insert:

Novated Consultants each of the following:
 (a) International Fire Consultants Limited (Fire Engineer)

Delete the definition of "P&T Rights" and insert:

P&T Rights the rights and benefits in favour of a Purchaser and Tenant set out in **Annex 1 to this Schedule of Amendments**

Delete the definition of "Purchaser" and insert:

Purchaser a person who has acquired or has agreed to acquire or may later acquire or agree to acquire a freehold or long leasehold (at a premium) interest in the whole or any part of the Site (and/or any premises constructed or to be constructed on the Site) and "Purchasers" shall be construed accordingly

Between the definitions of "Purchaser" and "Recitals" insert:

Purchaser's Surveyor such employee of any Purchaser or such surveyor or firm of surveyors appointed by any Purchaser, as may be notified from time to time to the Contractor and "Purchasers' Surveyors" shall be construed accordingly

At the beginning of the definition of "Retention" after "clauses" insert "2.37.1, "

Delete the definition of "Rights Particulars"

Between the definitions of "Section Sum" and "Site Materials" insert:

Site the site at 20:20 Building, Skinner Lane, Leeds LS7 1BB

and all references to "site" in the Contract shall be deemed to read "Site"

Between the definitions of "Specified Perils" and "Statutory Requirements" insert:

Statutory Agreements an agreement pursuant to section 38 and/or 278 of the Highways Act 1980 and/or an agreement pursuant to section 104 of the Water Industry Act 1991 and/or an agreement pursuant to section 106 of the Town and Country Planning Act 1990 and/or section III of the Local Government Act 1972

Delete the definition of "Statutory Requirements" and insert:

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 Works and/or the buildings and structures the subject of the Works once built) and any rules regulations building regulations orders bye-laws or codes of practice of any local or other competent authority or of any statutory undertaker which has jurisdiction with regard to the Works or with whose systems the same are or will be connected including Development Control Requirements

Between the definitions of "Statutory Undertaker" and "Tenant" insert:

Sub-Consultants (1) BGP Consulting Limited

(2) ADP Architects

and any consultants engaged or to be engaged by the Contractor in relation to the Works to provide design or other professional services in addition to the Novated Consultants

Sub-Contractors any sub-contractor engaged or to be engaged to carry out any elements of the Works including but not limited to cladding and reference to a "Sub-Contractor" means any one of them

Delete the definition of "Tenant" and insert:

Tenant	a 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) and "Tenants" shall be construed accordingly
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Between the definitions of "Tenant" and "Terrorism Cover" insert:

Tenant's Surveyor	such employee of any Tenant or such surveyor or firm of surveyors appointed by any Tenant as may be notified from time to time to the Contractor and "Tenants' Surveyors" shall be construed accordingly
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Between the definitions of "Terrorism Cover" and "Valuation" insert:

Third Party Agreements	any agreement set out in Annex 3 to this Schedule of Amendments and any and all agreements relating to or affecting the Works or the completed Works (including the execution of the Works and their design) or any part of the Works which have been entered into or may be entered into by the Employer and/or any Group Company from time to time and disclosed to the Contractor (whether on or before the date of this Contract or after the date of this Contract once the Employer and/or the Group Company has entered into the same) including the agreements referred to as such in the Employer's Requirements and any agreements for lease
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Delete the definition of "Works" and insert:

Works	comprises the design and construction of the removal and replacement of aluminium composite material (ACM) cladding systems and associated remediation works in accordance with the employer's requirements document and Ballymore Services tender document – Skinner Lane Rev 1 13.10.20 including all pre construction work, works for the provision of and diversion of services and all ancillary works carried out on or about the Site and briefly described in the First Recital and referred to in the Employer's Requirements and the Contractor's Proposals and including any changes made to those works in accordance with this Contract
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INTERPRETATION

1.3 Agreement etc. to be read as a whole

Delete clause 1.3 and insert:

"The Agreement and these Conditions are to be read as a whole. Subject to clause 2.14 in the event of any inconsistency occurring between the contents of respectively and in that order this Schedule of Amendments, the Articles of Agreement, Conditions, Annexes, Schedules, the Employer's Requirements, Contractor's Proposals, Contract Sum Analysis, Novated Consultants appointments and the Sub-Consultants

appointments the contents of the document earlier in the order shall prevail over any document later in the order."

1.8 Effect of Final Statement

1.8.1.1 Delete clause 1.8.1.1 and insert "Not used."

Delete clauses 1.8.2 – 1.8.4 and insert:

1.8.2 "The Final Statement or the Employer's Final Statement shall not have effect as provided in clause 1.8.1:

1.8.2.1 in any legal proceedings or adjudication commenced before on or within 28 days after the issue of the relevant statement if commenced for the purpose of contesting any such issue as is mentioned in clause 1.8.1; or

1.8.2.2 in any legal proceedings begun before on or within 28 days of an adjudicator's decision in any adjudication commenced in accordance with clause 1.8.2.1 if the purpose of such legal proceedings is to contest such decision or the dispute or difference to which such decision relates.

1.8.3 After the final conclusion of such adjudication and/or legal proceedings referred to in clause 1.8.2 the relevant statement shall be subject to the final outcome of such adjudication and / or legal proceedings.

1.8.4 The powers of the court or adjudicator to open up and review any certificate shall not extend to the Final Statement or the Employer's Final Statement to the extent that such statement is given conclusive effect pursuant to clause 1.8 and section 9 shall be construed accordingly."

1.9 Effect of payments other than payment of Final Statement

In line 1 delete "Save as stated in clause 1.8 no" and insert "No"

1.10 Consents and approvals

In line 3 after "case of" delete the remainder of the clause and insert "the Employer's consent under clause 7.1.1 the giving of which shall be at the sole discretion of the Employer".

Insert new clause as follows:

"1.12 GDPR

1.12 Each party to the Contract 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 the Contract. Each party undertakes to the other that in processing such Personal Data it will comply with all Data Protection Laws."

Insert new clause as follows:

1.13 Neither party shall commence any action or proceedings against the other under this Contract after 12 years from the date of practical completion of the Works and any adjudicator's decision under clause 9.2, other than a decision that has already become finally binding under clause 1.8, shall be finally binding on them unless either party has referred that dispute for final determination by legal proceedings, or has commenced any action or proceedings to recover any overpayment to which the decision has led, before that date."

SECTION 2 : CARRYING OUT THE WORKS

CONTRACTOR'S OBLIGATIONS

2.1 General obligations

2.1.1 In line 1 after "workmanlike manner" insert ", in accordance with good building practice"

Insert new clauses:

2.1.5 "The Contractor shall not specify nor use nor authorise cause or allow to be used within or in relation to the Works any materials:

2.1.5.1 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 persons involved in the installation construction or maintenance of the Works or to the eventual occupants of the Works;

2.1.5.2 not in conformity with any relevant British or European Standards or Codes of Practice;

2.1.5.3 which at the time the Works are being carried out are generally accepted as (or are reasonably suspected of):

2.1.5.3.1 being deleterious in themselves; or

2.1.5.3.2 becoming deleterious in a particular situation or in combination with other materials; or

2.1.5.3.3 being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.

2.1.6 For the purposes of clause 2.1.5 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:

2.1.6.1 the material itself; or

2.1.6.2 any material to which it is affixed; or

2.1.6.3 the structure in which it is incorporated or to which it is affixed; or

2.1.6.4 the Works or any part of the Works

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

2.1.7 The Contractor warrants that it shall comply with and have regard to the guide entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices or such other version of such publication current at the time of use) in assessing whether or not an intended material is deleterious in the terms set out in clauses 2.1.5 and 2.1.6.

2.1.8 The Contractor agrees that it 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 2.1.5 and 2.1.6.

- 2.1.9 In performing its obligations under this Contract, the Contractor shall and shall ensure where relevant that each of its sub-contractors shall comply with the Modern Slavery Act 2015.
- 2.1.10 The Contractor represents and warrants to the Employer that neither the Contractor nor any of his officers, employees or other persons associated with him:
- 2.1.10.1 has been convicted of any offence involving slavery and human trafficking; and
 - 2.1.10.2 having made reasonable enquiries, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 2.1.11 The Contractor shall implement due diligence procedures for any person he engages, to ensure that there is no slavery or human trafficking by such persons and notify the Employer as soon as it becomes aware of any actual or suspected slavery or human trafficking by any person engaged by the Contractor in connection with this Contract."

2.2 Materials, goods and workmanship

- 2.2.1 Delete clause 2.2.1 and insert:

"All materials, goods and workmanship used in the execution of the Works shall be of such kinds and of such quality as are necessary to enable the Contractor to comply with his obligations under this Contract."

- 2.2.2 Delete clause 2.2.2 and insert:

"The Contractor shall not make any substitution for any materials goods or workmanship specified or described in the Employer's Requirements or (if not specified or described in the Employer's Requirements) as set out in the Contractor's Proposals or in the specifications revised and returned to the Contractor by the Employer in accordance with the Contractor's Design Submission Procedure without the consent (not to be unreasonably withheld or delayed) in writing of the Employer."

POSSESSION

2.3 Date of Possession – progress

- Delete clause 2.3 and insert:

"On the Date of Possession, the Contractor shall be given a non-exclusive licence to access and occupy such part or parts of the Site at such times and for such periods as may be reasonably necessary to enable the Contractor to execute and complete the Works and any Section thereof in accordance with the Contract. Access to and occupation of the Site shall be subject to any third party rights, restrictions and/or constraints which are or maybe identified and/or referred to in the Employer's Requirements and/or the Development Agreements. Upon access to and occupation of the Site being given, the Contractor shall commence the construction of the Works and Sections and shall regularly and diligently proceed with and complete the same on or before the relevant Completion Date."

2.5 Hidden Early use by Employer

2.6 Work not forming part of the Contract

At the end of the first paragraph, after "or by any Employer's Persons" insert "or by any persons (including but not limited to any Tenant or Purchaser) authorised by the Employer"

Delete clauses 2.6.1 and insert:

- 2.6.1 "where the Employer's Requirements provide the information necessary to enable the Contractor to co-ordinate the carrying out and completion of the Works with the works which the Employer requires to be carried out by the Employer or by any Employer's Persons, the Contractor shall permit the execution of such work and shall co-ordinate the carrying out and completion of the Works with such work;"
- 2.6.2 At the end of clause 2.6.2 delete "that work" and insert "such work, such consent not to be unreasonably withheld or delayed".

SUPPLY OF DOCUMENTS, SETTING OUT ETC

2.7 Contract Documents

- 2.7.1 Delete clause 2.7.1 and insert:

"The Contract Documents shall be prepared in duplicate and once completed one set shall remain in the custody of the Employer and the other set shall be returned to the Contractor"

- 2.7.2 Delete "one copy, certified on behalf of the Employer, of the Contract Documents together with"
- 2.7.3 In line 1 after "Employer's Agent" insert "any Funder's Surveyor and/or any Tenant's Surveyor and/or any Purchaser's Surveyor"

2.8 Construction information

Delete "Save for any Contractor's Design Documents contained in the Contractor's Proposals" and change "the" to "The".

After "Design Submission Procedure", insert "or as otherwise stated in the Contract Particulars".

DISCREPANCIES AND DIVERGENCES

2.11 Preparation of Employer's Requirements

Delete clause 2.11 and insert:

"The Contractor shall be responsible for the contents of the Employer's Requirements (save for the Fire Engineering Design) and for verifying the adequacy of any design contained within them"

In line 2 delete "or" and insert "and"

2.12 Employer's Requirements – inadequacy

Delete clause 2.12 and insert:

"Any correction, alteration or modification of the Fire Engineering Design shall be treated as a Change".

2.14 Discrepancies in documents

Delete clause 2.14 and insert:

- 2.14.1 "Where there is a discrepancy within the Contractor's Proposals or within the Employer's Requirements or between the Employer's Requirements and the Contractor's Proposals the Contractor shall inform the Employer in writing of his proposed amendment to remove the discrepancy; and (subject always to compliance with Statutory Requirements) the Employer shall decide between the discrepant items or otherwise may accept the Contractor's proposed amendment and the Contractor shall be obliged to comply with the decision or acceptance by the Employer without cost to the Employer.
- 2.14.2 The Contractor accepts entire responsibility for the Contractor's Proposals and for any mistake inaccuracy or omission in the Contractor's Proposals whether or not the whole or any part of the Contractor's Proposals has been prepared by or on behalf of the Employer. Any mistake, inaccuracy or omission in the Contractor's Proposals or in any drawings details documents or information referred to in clause 2.8 and schedule 1 shall be corrected by the Contractor without cost to the Employer.
- 2.14.3 The Contractor shall not have or make any claim for an extension of time under clauses 2.25 and 2.26 or for loss and/or expense under clauses 4.19 to 4.21 and clause 8.9 shall not have effect where and to the extent that the cause of the progress of the Works having been delayed affected or suspended is any such discrepancy mistake inaccuracy or omission as is referred to in clauses 2.14.1 or 2.14.2 or any failure by the Contractor to provide necessary drawings or documents in due time."

2.15 Divergences from Statutory Requirements

- 2.15.1 Delete clause 2.15.1 and insert:

"The Contractor shall comply with and give all notices required by Statutory Requirements and the Contractor shall pass to the Employer all approvals received by the Contractor in connection therewith and when requested to do so by the Employer the Contractor shall provide the Employer with evidence that he has complied with all such requirements and given all such notices."

- 2.15.2 At the end of the clause before ":" insert "PROVIDED ALWAYS that any amendment to the Contractor's Proposals necessary for conformity with Building Regulations or for conformity with any requirement or decision of a building control officer and/or fire officer shall not be treated as a Change"

Insert new clause:

- 2.15.3 "The provisions of clause 2.15.2.1 and clause 2.15.2.2 in respect of a change in the Statutory Requirements shall only apply if the change could not reasonably have been foreseen by the Contractor prior to the Base Date"

DESIGN WORK – LIABILITIES AND LIMITATION

- 2.17 Delete clause 2.17.1 and 2.17.2 and insert:

- 2.17.1 "Other than the Fire Engineering Design, the Contractor shall (to the extent set out in clause 2.17.2 below) be fully responsible in all respects for the design of the Works including:

- 2.17.1.1 any design contained in the Employer's Requirements and for any discrepancy in or divergence between the Employer's Requirements and

/ or the Contractor's Proposals and / or any drawings, details, documents and other information submitted by him in accordance with clause 2.8;

- 2.17.1.2 but not limited to co-ordination and integration of all design and the interface between design elements for the Works whether carried out by the Contractor or by any other party engaged on the Works and shall adopt and take responsibility for any design work in relation to the Works which may be carried out or which may have been carried out by professional consultants or specialist sub-contractors or by any other person at the request of the Employer. Without prejudice to the generality of this clause, the Contractor shall be fully responsible and liable to the Employer for all aspects of design and design development, selection of goods and materials and the satisfaction of performance specifications included or referred to in the Employer's Requirements, the Contractor's Proposals, this Contract or any Change.

- 2.17.2 Without prejudice to any expressed or implied warranties or conditions or to the generality of the foregoing, the Contractor warrants to the Employer that:

 - 2.17.2.1 the design of the Works (including any design carried out by any design consultant or any sub contractor with design responsibility or by any other person whether or not employed or engaged by the Contractor) has been and will be carried out using all the reasonable skill care and diligence to be expected of a professionally qualified designer of the relevant discipline to the design experienced in works of the same size scope complexity nature and timescale as the Works;
 - 2.17.2.2 the Works will when completed comply with any performance specification or requirements included or referred to in the Employer's Requirements or the Contractor's Proposals, this Contract or in any Change;
 - 2.17.2.3 the Works will comprise only materials and goods which are of sound and merchantable quality and all workmanship manufacture and fabrication, will be of a standard appropriate to works of a similar size, scope, complexity and nature as the Works;
 - 2.17.2.4 the Contractor shall design and construct the Works in compliance with all Consents (including the discharge of any reserved matters in planning consents relating to the Works), Statutory Agreements, Statutory Requirements, relevant codes of practice British Standards or EU equivalents and manufacturers recommendations and the requirements of the insurers of the Employer (insofar as details have been provided to the Contractor at the date of this Contract).

PROVIDED THAT nothing in this Contract or in any other warranty (whether express or implied) shall impose any fitness for purpose obligation upon the Contractor in respect of the Works."

ADJUSTMENT OF COMPLETION DATE

2.25 Fixing Completion Date

Insert new clause:

- 2.25.1.3 "and PROVIDED THAT the Contractor has complied with clause 2.25.6;"

2.26 Relevant Events

In line 1, first paragraph, before ":" insert "(but only to the extent that such events are not in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor, his servants or agents or any sub-contractor or supplier or their respective servants or agents)."

- 2.26.2.3 In line 2 after "or test" insert "or series of inspections or tests"
- 2.26.10 Delete clause 2.26.10 and insert "Not used."
- 2.26.11 In line 3 after "materials required for them" insert "save where such events arise only upon the Site or concern only the Contractor's employees and do not arise out of or in connection with a regional or national labour dispute"
- 2.26.12 In line 2 before ";" insert "which the Contractor could not have reasonably foreseen at the Base Date"

PRACTICAL COMPLETION, LATENESS AND LIQUIDATED DAMAGES

2.27 Practical completion

In line 1 delete "When" and insert "The Contractor shall notify the Employer in writing when he considers that practical completion of the Works or a Section has been reached and PROVIDED THAT"

Insert new paragraph at end of clause 2.27:

"The Employer at his discretion may issue the Practical Completion Statement or Section Completion Statement notwithstanding that minor items of work and / or final commissioning and adjustment of mechanical and electrical service installations remain to be completed, in which event the Contractor shall be obliged to complete such incomplete work and/or commissioning and adjustment within one month of the date of the Practical Completion Statement or Section Completion Statement or within such other period as the Employer may reasonably stipulate"

2.29 Payment or allowance of liquidated damages

- 2.29.3 In line 3 before "." insert "PROVIDED ALWAYS that the fixing of such later Completion Date shall not invalidate the Employer's notice or the notification in writing from the Employer as to deduction of liquidated and ascertained damages and the payment or repayment of the amounts under this clause shall be limited to the net difference between the amounts deducted and the amounts properly due after the fixing by the Employer of the later completion date. Interest shall not be payable by the Employer on any amounts payable or repayable hereunder."

PARTIAL POSSESSION BY EMPLOYER

DEFECTS

2.35 Schedules of defects and instructions

- 2.35.2 In line 1, delete "prior to the issue of that schedule". In line 4 delete "after delivery of that schedule or more" and insert "later".

In line 1 of the final paragraph delete "Within a reasonable time after receipt of" and insert "Within the period specified in".

In line 3 of the final paragraph before "." insert:

"PROVIDED THAT where the Employer states in his instruction that, in his opinion, any such defect shrinkage or other fault is likely to cause unreasonable inconvenience to any such person lawfully in occupation of or using the whole or any part of the Works or that such defect shrinkage or other fault is likely directly or indirectly to cause any further damage to the Works the Contractor shall comply with the Employer's instruction forthwith and in any event within 48 hours from its receipt"

Insert new paragraph at end of clause:

"The provisions of this clause 2.35 are without prejudice to any other rights and remedies the Employer may have."

CONTRACTOR'S DESIGN DOCUMENTS

2.37 As-built Drawings

Delete clause 2.37 and insert:

2.37.1 "On or before practical completion or in the case of a Section, the relevant Completion Date relating to that Section the Contractor shall without further charge to the Employer supply for the retention and use of the Employer:

- 2.37.1.1 two complete copies of the as built drawings, plans, sections and specifications;
- 2.37.1.2 one draft of every maintenance and operating manual (including copies of all test and commissioning certificates and / or statements);
- 2.37.1.3 originals of all warranties, guarantees and certificates or other documents in respect of plant and machinery installed in the Works;
- 2.37.1.4 a schedule listing the names and addresses of all sub-contractors, sub-consultants and suppliers who have been involved in or concerned with the Works;
- 2.37.1.5 one copy of all maintenance and operating agreements;
- 2.37.1.6 the original notice of passing of plans under the Building Regulations and confirmation from the relevant authority that all conditions under the Building Regulations have been complied with; and
- 2.37.1.7 the original and two copies of the health and safety file.

Notwithstanding any provision to the contrary in this Contract the Contractor shall not be entitled to any payment of Retention that would (but for this provision) become due and payable under this Contract until the provisions of clause 2.37.1 have been complied with PROVIDED THAT the provisions of this clause shall not apply to any retention payable to the Contractor prior to practical completion by virtue of clauses 2.31 and 4.18.3.

2.37.2 Within three weeks of the date of practical completion the Contractor shall without further charge to the Employer supply to the Employer (to the extent they have not been provided in accordance with clause 2.37.1) :

- 2.37.2.1 6 (six) complete reproducible sets of the as built drawings (together with negatives);

- 2.37.2.2 5 (five) copies of all maintenance and operating manuals, test and commissioning certificates and statements and any service or other agreements available for all heating, air conditioning and other equipment, plant and machinery installed in the Works;
 - 2.37.2.3 all correspondence and documentation relating to obtaining of the Consents together with the originals of the Consents and copies of all associated drawings and plans and copies of all applications relative thereto;
 - 2.37.2.4 evidence that all Consents have been obtained and complied with in full in relation to the Works;
 - 2.37.2.5 one copy of the Construction Phase Plan; and
 - 2.37.2.6 the original completion certificate issued by the relevant authority under the Building Regulations.
- 2.37.3 If during the course of the Rectification Period errors are discovered in the drawings and information supplied by the Contractor in accordance with clauses 2.37.1 and 2.37.2 or if as the result of any adjustment or remedial work carried out during the course of the Rectification Period the said drawings and information no longer show or describe the Works as required by clause 2.37.1 or clause 2.37.2 then the Contractor as soon as reasonably practicable shall amend the said drawings and information so that they comply with the requirements of clause 2.37.1 or clause 2.37.2."
- 2.38 Copyright and use**
- 2.38.2 Delete clause 2.38.2 and insert:
- "The Contractor grants or shall procure the grant from third parties engaged by the Contractor (where copyright is vested in such parties) to the Employer of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Contractor's Design Documents for any purpose whatsoever connected with the Works 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 Works and/or the Site and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Contractor shall not be liable for the consequences of any use of the Contractor's Design Documents for any purpose other than that for which the same was prepared."
- 2.38.3 Delete clause 2.38.3 and insert "The Contractor agrees that the Employer may assign the licence referred to in clause 2.38.2 or grant a sub-licence or sub-licences from such licence to any person with an interest in the Works and/or the Site and/or any premises constructed or to be constructed on the Site";
- 2.38.4 Delete clause 2.38.4 and insert "The Contractor agrees that it will provide the Employer with such information and copies of the Contractor's Design Documents as may be reasonably requested by the Employer".
- Insert new clauses:
- 2.39 "Moral rights**

The Contractor waives any Moral Rights that it might have as author in respect of the Contractor's Design Documents and/or the Works 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 Contractor's Design Documents and/or the Works.

2.40 Confidentiality

- 2.40.1 The Contractor shall not (and shall procure that none of the Sub-Consultants Sub-Contractors and/or Novated Consultants shall) disclose to any person or publish or make any statement concerning this Contract or the Works or any matters arising from or relating to the Contract or the Works directly or indirectly without the prior written authority of the Employer during the Works or at any time thereafter (except as may be required by law or in order to properly perform its obligations under this Contract).
- 2.40.2 Both the Employer and the Contractor shall keep confidential and shall not without the other's written consent disclose to any third party any trade or business secrets or similar confidential information supplied by the other party except as shall be absolutely necessary for the proper performance of this Contract.

2.41 Restriction on use of Contractor's Design Documents

The Contractor shall not without the Employer's consent use the Contractor's Design Documents to design any other project or development which is of similar design appearance or concept to the Works and the Contractor shall not likewise use the Contractor's Design Documents for any purpose whatsoever connected with the Site other than in the carrying out of the Works under this Contract.

2.42 Continuing effect of clauses 2.38 – 2.41

The provisions of clauses 2.38 to 2.41 including without limitation the licence granted to the Employer pursuant to clause 2.38.2 shall continue in full force and effect notwithstanding any suspension or determination of the employment of the Contractor and/or the determination of this Contract.

PROGRAMME AND PROGRESS

2.43 Preparation and provision of programme

Prior to the Date of Possession the Contractor shall produce to the Employer a programme for the design and execution of the Works consistent with the orderly and efficient production of the design of the Works and with the completion of the Works by or before the Date for Completion. Thereafter the Contractor shall from time to time revise the programme as appropriate to minimise or avoid any or any anticipated delay or disruption to the carrying out of the Works.

2.44 Provision of revised programme

Forthwith after the production of the programme or any revised programme the Contractor shall supply a copy to the Employer.

THIRD PARTY DOCUMENTS

2.45 Provision of and compliance with Third Party Documents

The Employer has provided the Contractor with copies of the Third Party Agreements and the Contractor shall be deemed to have full knowledge of the requirements of the Third Party Agreements and shall perform the Works so as to ensure that the

Employer and/or any Group Company are not put in breach of their obligations in the Third Party Agreements and/or rendered liable to pay compensation under any of the Third Party Agreements provided always that if any Third Party Agreement received by the Contractor after the date of the Contract has an effect which adds, omits, alters or substitutes the Works then such addition, omission, alteration or substitution of the Works or the programme of Works shall be treated as a Change.

CONTRACTOR'S REPORTING

2.46 Provision of Contractor's Report

Each month, on a date to be determined by the Employer's Agent, the Contractor shall provide to the Employer the Contractor's Report for the preceding month.

2.47 Inclusion of information from Sub-Consultants and Novated Consultants in Contractor's Report

The Contractor shall procure from each of the Sub-Consultants and the Novated Consultants reports on the quality of the Contractor's work and the compliance of the Works (or otherwise) with the Employer's Requirements. The reports, in their original and unedited form, shall be incorporated into the Contractor's Report.

GROUND CONDITIONS AND REPORTS

2.48 Contractor to inspect the site

2.48.1 Subject to clause 2.48.2, the Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before the date of this Contract as to the nature of the sub-surface conditions, the form and nature of the Site, the extent, nature and difficulty of the work and materials necessary for the completion of the Works, the means of communication with and restrictions of access to the Site, the accommodation he may require, and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the Works. Save as provided in clause 2.48.2, the Contractor shall not be entitled to any extension of time or to any additional payment on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Contractor be released from any of the risks accepted or obligations undertaken by him under this Contract on the ground that he did not or could not have foreseen any matter which might affect for have affected the execution of the Works.

2.48.2 The Contractor shall only be deemed to be satisfied as to the form and nature of the Site of the sub-surface conditions and the existing structure to the extent the form and nature of the sub-surface conditions and the existing structure could have been discovered or foreseen by a competent design and build contractor experienced in developments of this nature having completed the same level of inspections and having access to the same level of information as the Contractor as at the date of this Contract, (including any reports included within the Employer's Requirements or provided to the Contractor by or on behalf of the Employer) and exercising the standard of care required under clause 2.17.2 (**Foreseeable Site Conditions**). If the Contractor encounters conditions in respect of the sub-surface or the existing structure which is not a Foreseeable Site Condition (a condition which is not a Foreseeable Site Condition shall be an "**Unforeseeable Site Condition**"), the Contractor shall, as soon as reasonably practical following the discovery of the condition the Contractor considers to be an Unforeseeable Site Condition, provide the Employer with full particulars of the condition and the Contractor's assessment of impact of the condition (including the options and methodology available for dealing with the condition and the time and cost impact of each). The Contractor shall be

entitled to treat additional work required as a result of a condition agreed or determined under this Contract to be an Unforeseeable Site Condition as a Change.

2.49 Determination of location of obstructions, services and drainage etc

Without limitation to clause 2.48 in the inspection of the Site the Contractor will be deemed to have determined the position of any obstructions and all underground and over-ground services and drainage which could have been discovered or foreseen by a competent design and build contractor experienced in developments of this nature having completed the same level of inspections and having access to the same level of information as the Contractor as at the date of this Contract (including any reports included within the Employer's Requirements or provided to the Contractor by or on behalf of the Employer) and exercising the standard of care required under clause 2.17.2 (**Foreseeable Services / Drainage**) and the Contract Sum shall be deemed to be inclusive of all costs which may be incurred in carrying out any diversions Foreseeable Services / Drainage and the costs of the Contractor's operations in the vicinity of any Foreseeable Services / Drainage (unless otherwise provided for in the Employer's Requirements). Liaison with and obtaining the agreement of any public or Statutory Authority in this respect is the sole responsibility of the Contractor (unless otherwise provided for in the Employer's Requirements).

- 2.49.1 If the Contractor encounters any obstructions and all underground and over-ground services and drainage which is not Foreseeable Services / Drainage (any obstructions and all underground and over-ground services and drainage which is not Foreseeable Services / Drainage shall be **Unforeseeable Services / Drainage**), the Contractor shall, as soon as reasonably practical following the discovery of the condition the Contractor considers to be Unforeseeable Services / Drainage, provide the Employer with full particulars of the condition and the Contractor's assessment of impact of the condition (including the options and methodology available for dealing with the condition and the time and cost impact of each). The Contractor shall be entitled to treat additional work required as a result of a condition agreed or determined under this Contract to be Unforeseeable Services / Drainage as a Change.

2.50 Reports provided for information only

So far as the Employer's Requirements contain any ground report or reports these are included for information purposes only and the Employer shall have no responsibility for and gives no warranty as to the accuracy of information contained within such report or reports and the Contractor shall remain fully responsible for ascertaining the ground conditions in accordance with clause 2.48 and 2.49.

2.51 No claim for misrepresentation etc

The Contractor shall not have or make any claim whether in contract or by way of negligent or innocent misrepresentation or otherwise, in respect of information provided or statements made by or on behalf of the Employer in respect of such risks contingencies or circumstances relating to the Site.

STATUTORY REQUIREMENTS

2.52 Contractor to obtain Consents

The Contractor shall be responsible for obtaining all Consents to enable the Works to be completed in accordance with the Employer's Requirements and should any Consent be refused the Contractor shall take such reasonable steps including any appeal to enable the Works to progress.

2.53 Provision of documentation relating to Statutory Requirements to Employer

Where the Employer's authorisation or completion of documentation in respect of the Statutory Requirements is required the Contractor shall furnish the relevant documentation to the Employer and permit the Employer a period of 10 Business Days to authorise or complete it.

NUISANCE

2.54 Contractor to take all reasonable steps to avoid nuisance

Without prejudice to the generality of clause 6.2 the Contractor shall at all times take all reasonable steps to prevent any nuisance (including, but without limitation, any noisy working operations noxious fumes or the deposit on public highways of any material or debris) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works or of any obligation pursuant to clause 2.35 and shall defend or, at the Employer's option, assist the Employer in defending any action or proceeding which may be instituted in relation thereto. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing his obligations under this clause 2.54 save only where such nuisance or interference is the consequence of a Change or other instruction of the Employer (which is not itself the result of any negligence default or breach of contract by or on behalf of the Contractor) and which could not have been avoided by the Contractor using all reasonable and practical means.

2.55 Licence

Without prejudice to the Contractor's obligations under clause 2.54 if the carrying out of the Works is likely to necessitate any interference with the rights of adjoining or neighbouring landowners tenants or occupiers then the Contractor shall without cost to the Employer provide assistance to the Employer in obtaining the prior written agreement of such landowner tenants and / or occupiers and such agreement shall be subject to the approval of the Employer before execution. The Contractor shall comply in every respect with any conditions contained in such agreement.

2.56 No trespass

Without prejudice to the obligations of the Contractor under clauses 2.54 and 2.55 the Contractor shall at all times ensure that there is no trespass by the Contractor, its servants, agents, sub-contractors, design consultants or suppliers (including without limitation the over sailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by the carrying out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons (including but without limitation) the occupiers of adjoining or neighbouring property and members of the public."

SECTION 3 : CONTROL OF THE WORKS

ACCESS AND REPRESENTATIVES

3.1 Access for Employer's Agent

In line 1 after "Employer" insert "(including for the avoidance of doubt the Purchaser's Surveyor and/or Tenant's Surveyor and/or Funder's Surveyor and/or MHCLG)"

SUB-CONTRACTING

3.4 Conditions of sub-contracting

- In line 1, delete the first sentence.
- 3.4.1 In line 1 before "the Sub-Contractor's employment" insert "subject to clause 8.7.2.3"
- 3.4.2 In line 1, after "sub-contract shall" insert "be executed as a deed pursuant to a form of sub-contract which has been previously approved by the Employer in writing and shall"
- 3.4.2.5 Delete clause 3.4.2.5 and insert:
 "that the Sub-Contractor execute and deliver within 10 Business Days of a written request deeds of collateral warranty in respective forms contained in Annex 5 to this Schedule of Amendments in favour of the Employer and/or Purchaser and/or Tenant and/or Funder and/or MHCLG coupled with a provision to the effect that the Contractor shall not be obliged to make any payment or further payment to the Sub-Contractor concerned in circumstances where such a collateral warranty has been requested but not executed and delivered within the 10 Business Day period;"
- Insert new clause:
- 3.4.2.6 "that to the extent that any Sub-Contractor is carrying out any design or other professional services that the Sub-Contractor maintains professional indemnity insurance cover at a level reasonably acceptable to the Employer with a reputable insurer for a period of twelve years from practical completion of the Works and that it shall provide sufficient evidence of such insurance."

EMPLOYER'S INSTRUCTIONS

3.5 Compliance with instructions

Delete the remainder of the clause from and including ", save that" up to and including "the instruction"

3.6 Non-compliance with instructions

In line 1, delete "Subject to clauses 3.5 and 3.9, if" and insert "If"

3.8 Provisions empowering instructions

Delete second sentence and insert:

"Notwithstanding such request the Contractor shall comply with the said instruction and unless it is subsequently decided in any adjudication or legal proceedings that the provision specified by the Employer in answer to the Contractor's request does not empower the issue of the said instruction, then the issue of the same shall be deemed for all the purposes of this Contract to have been empowered by the provision of the Conditions specified by the Employer."

3.9 Instructions requiring Changes

3.9.1 Delete clause 3.9.1 and insert:

"Subject to clause 3.9.4 the Employer may issue instructions effecting a change in the Employer's Requirements."

3.9.2 Delete clause 3.9.2 and insert "Not used."

3.12 Inspections – tests

In line 1 after "to" insert "provide samples of materials or"

3.16 CDM Regulations

3.16.1 Delete and insert "Not used"

3.16.6 Insert a new clause 3.16.6 as follows:

"the Contractor warrants and undertakes to the Employer that:

- 3.16.6.1 he is competent and possesses the requisite degree of skill knowledge experience competence and level of resources and organisational capability to perform all duties imposed on him by the CDM Regulations;
- 3.16.6.2 he has allocated and will continue to allocate both sufficient time and adequate resources to ensure that he performs and fulfils his duties under the CDM Regulations; and
- 3.16.6.3 he has advised and supported and will continue to advise and provide support to the Employer to assist the Employer in performing the duties imposed by the CDM Regulations on a "client" (as defined by the CDM Regulations)."

Insert new clauses:

"SUB-CONSULTANTS AND NOVATED CONSULTANTS

3.17 Novation

The Contractor shall (to the extent that it has not already done so) forthwith execute and complete Deeds of Novation with the Novated Consultants.

3.18 Conditions of appointing Sub-Consultants

3.18.1 The Contractor shall obtain the Employer's approval to the form of the appointment of any Sub-Consultant (in addition to the approval required by clause 3.3.2) which appointment (without limitation) shall:

- 3.18.1.1 be executed as a deed;
- 3.18.1.2 include an obligation on the Sub-Consultant to execute and deliver as a deed within 10 Business Days of a request to do so a deed or deeds of collateral warranty in favour of the Employer and/or Purchaser and/or Tenant and/or Funder and/or MHCLG in the form set out at Annex 6 to this Schedule of Amendments;
- 3.18.1.3 include a provision to the effect that the Contractor shall not be obliged to make any payment or further payment to the Sub-Consultant concerned in circumstances where such a collateral warranty has been requested but not executed and delivered within the 10 Business Day period referred to in clause 3.18.1.2;
- 3.18.1.4 to the extent that any Sub-Consultant is carrying out any design or other professional services include an obligation to maintain professional indemnity insurance cover at a level reasonably acceptable to the Employer for a period of twelve years from practical completion of the Works with a reputable insurer and to provide sufficient evidence of such insurance.

3.19 Compliance by Contractor with appointments of Novated Consultants and Sub-Consultants

- 3.19.1 In relation to the appointments of the Novated Consultants and any Sub-Consultants the Contractor shall:
- 3.19.1.1 properly enforce the obligations of such consultants under their appointments and shall not determine or vary the terms of any such appointments or release such consultants from their obligations under their respective appointments without the prior consent of the Employer;
 - 3.19.1.2 (without limitation to clause 3.19.1.1) procure that such consultants comply with their obligations in relation to the provision of collateral warranties under the terms of their appointments;
 - 3.19.1.3 duly perform and observe all the obligations and duties on the part of the Contractor under the appointments of any Sub-Consultants and Novated Consultants;
 - 3.19.1.4 ensure that the Novated Consultants and Sub-Consultants are fully and properly instructed in connection with the Works;
 - 3.19.1.5 diligently take all steps necessary effectually to procure due performance and observance of the obligations and duties of the Novated Consultants and the Sub-Consultants;
 - 3.19.1.6 not waive, release, vary or estop itself from enforcing or seeking redress for any such obligation or duty without the consent of the Employer;
 - 3.19.1.7 not to do or omit to do any act or thing which would entitle any of the Novated Consultants and / or the Sub-Consultants to treat as terminated by breach their appointment in connection with the Works.

APPROVAL

3.20 Effect of approval, consent etc by Employer

Notwithstanding any other provision of this Contract no direction, admission, approach, consent, approval, confirmation, comment, sanction, acknowledgement or advice made or given by or on behalf of the Employer or the Employer's Agent shall in any way relieve the Contractor from his liabilities or obligations under this Contract, nor shall such liabilities or obligations be restricted or qualified in any way.

3.21 Contractor to notify Employer if instruction may relieve Contractor of liability

Should the Employer issue an instruction pursuant to this Contract which could in any way be deemed, but for the provisions of clause 3.20, to relieve the Contractor from his liabilities or obligations or be against statute or good building practice, then the Contractor shall notify the Employer in writing of the effect of such instruction and the Employer shall then confirm whether or not the instruction remains effective within 5 Business Days.

3.22 No release

The Contractor also acknowledges that the Contractor's liability under this Contract shall not be released, diminished or in any other way affected by:

- 3.22.1 any negligent or other act omission or delay by or on behalf of the Employer in inspecting approving or informing itself about anything relating to the Works;
- 3.22.2 any enquiry or inspection into any relevant matter which may be made or carried out by or on behalf of the Employer or the Employer's Agent;
- 3.22.3 the appointment or failure to appoint any clerk of works or other person to inspect or otherwise report in respect of the Works or by any act or omission of any clerk of works or other person whether or not such act or omission might give rise to an independent liability to such clerk of works or another person to the Employer the Employer's Agent and / or any third party."

SECTION 4 : PAYMENT

4.2 Items included in adjustments

- 4.2.3 Delete clause and insert "not used"

PAYMENTS AND NOTICES – GENERAL PROVISIONS

4.9 Interim and final payments – final date and amount

- 4.9.1 Delete "14 days" and insert "30 days"

Insert new clause 4.9.8:

- 4.9.8 "Where the Employer has given notice or notices complying with clauses 4.9.2 or 4.9.5 and either Party refers a dispute concerning such notice or notices and/or the withholding, paying less or deduction of any payment under that notice to adjudication under clause 9.2 and the Adjudicator finds that any further amount over and above that set out in the notice should be paid then payment of such amount should be made not later than 5 days from the Adjudicator's decision or the final date for payment of that instalment whichever is the later date"

4.10 Pay Less Notices and other general provisions

- 4.10.4 In line 1 delete "The Employer's fiduciary interest in the Retention as referred to in clause 4.16, shall not prevent him from exercising" and insert "The Employer is entitled to exercise"

4.11 Contractor's right of suspension

- 4.11.1 In line 5 after "performance of" insert "any or all of"

- 4.11.3 In line 2 delete "or on request"

At the end of the clause after "." insert:

"The Contractor shall, on request, submit such further details as are reasonably required by or on behalf of the Employer"

RETENTION

4.16 Rules on treatment of Retention

Delete clause 4.16 and insert:

"The Employer shall have the full and unencumbered beneficial interest in the Retention. The Contractor shall have no proprietary right or other interest (whether at law or in equity) in or over the Retention except as unsecured creditor and the Employer shall owe no fiduciary obligations to the Contractor in relation to the Retention."

4.18 Retention – amounts and periods

- 4.18.1 At the end of the clause insert "and for which the drawings and other information referred to in clause 2.37 have not been provided to the Employer"
- 4.18.2.1 After "practical completion" insert "and for which the drawings and other information referred to in clause 2.37 have not been provided to the Employer"

At the end of clause 4.18 insert as a new paragraph:

"PROVIDED ALWAYS where the Employer has exercised its discretion under clause 2.27 and notwithstanding any other provisions of this Contract, the Employer shall not be obliged to pay to the Contractor any part of the Retention deducted prior to and upon practical completion, unless and until the Contractor has carried out and completed to the reasonable satisfaction of the Employer, all work and / or remedied all defects in the Works as may be notified to the Contractor as outstanding and to be carried out or remedied (as the case may be) as a condition of practical completion, or as may be detailed in any list annexed to the Practical Completion Statement, provided that if the Employer has been unable for any reason to provide access to the Contractor to remedy or complete defects or outstanding work within three months of the date of practical completion, the Employer shall pay to the Contractor the half of Retention otherwise due when the work has reached practical completion."

LOSS AND EXPENSE

4.19 Matters materially affecting regular progress

Insert new clauses 4.19.3 – 4.19.4:

- 4.19.3 "The Contractor shall have no entitlement under clauses 4.19 and 4.20 unless it shall have made reasonable and proper efforts to avoid or reduce such loss and expense;
- 4.19.4 The following shall apply in relation to any claim under clauses 4.19 and 4.20:
 - 4.19.4.1 any direct loss and/or expense resulting from any delay in the regular progress of the Works or any part of the Works where such delay is caused by a matter or matters referred to in clause 4.21 which is concurrent with another delay for which the Contractor is responsible shall not be taken into account.
 - 4.19.4.2 notwithstanding any other provision the Contractor shall not be entitled to any claim for loss and expense on account of any circumstances arising by reason of any error omission negligence or default of the Contractor or of any sub-contractor or supplier or of any of his or their employees or agents.
 - 4.19.4.3 notwithstanding any other provision of this clause 4.19 and clauses 4.20 to 4.22, the Contractor shall not become entitled to the addition of any amount to the Contract Sum or to any other payment (other than any amount which is recovered by the Employer under any policy of insurance maintained in accordance with this Contract) in respect of any costs, loss or expense incurred by reason of any error, omission, negligence or

default of the Contractor, his employees or agents or of any sub-contractor or supplier or any of their employees or agents."

4.21 Relevant matters

4.23 Reservation of Contractor's rights and remedies

Delete clause 4.23 and insert:

"Reimbursement of the Contractor for loss and/or expense under clauses 4.19 to 4.22 shall be deemed to be full compensation for the Contractor in respect of which the compensation is paid and the Employer shall have no further liability to the Contractor in respect of such matters arising under the Contract or generally at law."

SECTION 5 : CHANGES

GENERAL

Insert new clauses:

"ADDITIONAL OR SUBSTITUTED WORK

QUOTATIONS BEFORE CHANGES INSTRUCTIONS

5.8 Employer may issue preliminary notice of change

Before the Employer issues an instruction effecting a Change pursuant to clause 3.9 he may give to the Contractor a preliminary notice of Change which indicates that any proposed Change to which that preliminary notice relates is to be valued, and the length of any extension of time and the amount of any loss and/or expense to which the Contractor may become entitled in respect thereof shall then be determined in accordance with clauses 5.9 to 5.13.

5.9 Information to be provided by Contractor

Within such reasonable period as the Employer may specify (being not less than 10 Business Days after the receipt by the Contractor of any such preliminary notice of Change as is referred to in clause 5.8) the Contractor shall provide the Employer with:

- 5.9.1 an estimate of the valuation of the proposed Change in the form of a quotation or quotations from the Contractor; and
- 5.9.2 an estimate of the length of any extension of time and the amount of any loss and/or expense to which the Contractor might become entitled pursuant to clauses 2.23 to 2.26 and 4.20 to 4.22 in respect of the proposed Change.

5.10 Procedure following receipt of contractor information

- 5.10.1 Following receipt by him of the estimates referred to in clause 5.9 the Employer shall for a period of 5 Business Days, or such longer period as the Employer may specify, conduct negotiations with the Contractor with a view to agreeing the said estimates.
- 5.10.2 If agreement is reached as referred to in clause 5.10.1 the Employer shall issue an instruction to the Contractor pursuant to clause 3.9 confirming the Change (a "Confirmation Instruction" for the purposes of clauses 5.10 to 5.13) and the Employer shall then grant an extension of time pursuant to clauses 2.23 to 2.26 of the agreed length (if any) and effect shall be given to the agreed expense (if any) by making an addition to or deduction from the Contract Sum.

5.10.3 If no agreement can be reached in relation to the estimates referred to in clause 5.9 the Employer shall decide whether the proposed Change should be cancelled or whether a Confirmation Instruction should be issued, in which latter case the Valuation Rules shall apply.

5.11 Consequences of a Confirmation Instruction order not being issued

If the Employer does not issue a Confirmation Instruction pursuant to clauses 5.10.2 or 5.10.3, the Contractor shall have no claim arising out of or in connection with any proposed Change or any failure by the Employer to agree estimates.

5.12 Work not to be carried out until formal Change instruction issued

Whenever the Employer issues a preliminary notice of Change pursuant to clause 5.8, no work pursuant to the proposed Change to which the preliminary notice relates shall be commenced until such time as the Employer so instructs.

5.13 Instruction, comments etc not to be treated as a Change unless expressly stated to be a Change

No act omission comment or document prepared by or on behalf of the Employer shall, in the absence of an instruction confirming that it is to be treated as such, amount to a Change for this purposes of this clause 5."

SECTION 6 : INJURY, DAMAGE AND INSURANCE

PERSONAL INJURY AND PROPERTY DAMAGE

6.1 Contractor's liability – personal injury or death

In line 3 after "carrying out the Works" insert "including the performance of the Contractor's obligations under clause 2.35"

6.2 Contractor's liability – loss, injury or damage to property

In line 3 after "or personal" insert "(including any expense liability loss or claim arising from but not limited to obstruction trespass nuisance or interference with any rights of way light air or water)"

In line 4 after "the Works" insert "or of any obligation pursuant to clause 2.35"

INSURANCE AGAINST PERSONAL INJURY AND PROPERTY DAMAGE

6.4 Contractor's insurance of his liability

6.4.1.2 At the end of the clause before "." insert "but unlimited for the number of occurrences during the period of insurance"

Insert new clause:

6.4.1.3 "Such policies of insurance to be taken out by the Contractor pursuant to clause 6.4.1 shall be taken out in the office of a reputable insurance company in the United Kingdom to be approved by the Employer (such approval not to be unreasonably withheld or delayed). The Contractor shall have noted on the above policies the names of the Employer and any Funder, Purchaser and Tenant or MHCLG in like manner to the Contractor as if a separate policy had been issued to each of them. The insurance shall be maintained until the issue of the Notice of Completion of Making Good. The Contractor shall not permit any variation of insurance cover

without the prior written approval of the Employer and shall immediately notify the Employer of any endorsements or other amendments to the relevant policies received from the insurers."

6.4.3 Insert a new clause:

"Interest at the Interest Rate shall accrue on all and any sums expended by the Employer pursuant to this clause."

Insert new clause:

6.4.4 "The Contractor shall not do or permit or suffer to be done upon the Site or any part of the Site any act or thing which may vitiate any policy or policies of insurance effected by the Contractor or (insofar as they have been notified to the Contractor) any policy or policies of insurance effected by the Employer and/or Funder and/or Purchaser and/or any Tenant and/or MHCLG."

INSURANCE OF THE WORKS AND EXISTING STRUCTURES

6.8 Related definitions

Insert replacement definition:

"Joint Names Policy	a policy of insurance which includes the Employer the Contractor and any Funders Purchasers and Tenants and MHCLG and any other party the Employer may nominate as having an interest in the Site and/or the Works as composite insured and under which the insurers have no rights of recourse against any person named as an insured, or, pursuant to clause 6.9, recognised as an insured thereunder."
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6.14 Loss or damage to Existing Structures – right of termination

Delete this clause and insert:

"If there is material loss or damage to any of the Existing Structures, the Employer shall be under no obligation to reinstate those structures but may terminate the Contractor's employment under this Contract in accordance with clause 1.7.4 at any time during the period from the occurrence of the said loss or damage until the expiry of the period of time stated in the Contract Particulars against clause 8.11.1."

PROFESSIONAL INDEMNITY INSURANCE

SECTION 7 : ASSIGNMENT, PERFORMANCE BONDS AND GUARANTEES, THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

7.1 General

Delete clause 7.1 and insert:

7.1.1 "the Employer may without the consent of the Contractor assign the benefit of all or any of the Contractor's obligations under this Contract and/or any benefit arising under or out of this Contract on two occasions only.

7.1.2 The Contractor shall not assign any benefit arising under or out of this Contract."

7.3 Performance Bonds and Guarantees

Delete and insert "not used"

CLAUSES 7A-7E – PRELIMINARY

7.4 Rights Particulars

Delete and insert "not used"

7.6 Execution of collateral warranties

After "pursuant to" delete "clause 7C or 7D" and insert "this section 7"

THIRD PARTY RIGHTS FROM CONTRACTOR

7A Rights for Purchasers and Tenants

7A.1 In line 1 delete "Where the Rights Particulars state that the Contractor shall confer P&T Rights on a Purchaser or Tenant as third party rights, those rights" and insert "P&T Rights".

In line 2 delete "that" before "Purchaser" and insert "a".

In lines 2-3 delete "the Employer's notice to that effect," and insert "a Nominating Notice"

7A.2 In lines 3-4 delete "Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants)." and insert "the P&T Rights."

7B Rights for a Funder

7B.1 In line 1 delete "Where the Rights Particulars state that the Contractor shall confer Funder Rights on a Funder as third party rights, those rights" and insert "Funder Rights". In line 2 delete "that" before "Funder" and insert "a". In line 3 delete "notice" and insert "Nominating Notice".

7B.2.1 In line 2 delete "Part 2 of Schedule 5 (Third Party Rights for a Funder)" and insert "the Funder Rights" Delete "or to the relevant Rights Particulars".

7B.2.2 In line 3 delete "6 of Part 2 of Schedule 5" and replace with "7 of Annex 1". Delete "but, subject thereto ... that the Contractor obtain the consent of the Funder"

COLLATERAL WARRANTIES FROM CONTRACTOR

7C Contractor Warranties – Purchasers and Tenants

Delete clause 7C and existing heading and insert:

"Contractor Warranties

7C.1 Unless a Nominating Notice in favour of the relevant party has been served pursuant to clause 7A or 7B the Contractor shall execute as a deed and deliver to the Employer within 10 Business Days of a written request to do so from or on behalf of the Employer from time to time deeds of collateral warranty in favour of any:

(i) Purchaser; and /or

- (ii) Tenant; and /or
- (iii) Funder; and/or
- (iv) MHCLG.

Such deed or deeds of collateral warranty shall be in the appropriate form set out in Annex 4 to this Schedule of Amendments with only such changes as the Employer may approve. The step in provisions set out in clause 7 of the collateral warranty set out in Annex 4 Part A will only be required in collateral warranties in favour of Funders and/or Purchasers.

7C.2 Notwithstanding any other terms of this Contract the Contractor and the Employer agree that if a deed or deeds requested pursuant to this article has or have not been provided within 10 Business Days of being so requested the Employer shall (subject to clause 4.9.5) be entitled to withhold a sum equal to 2.5% of the contract sum under this contract for each deed which has/have not been provided from any sums specified in the Interim Payment or Final Statement as the case may be which would otherwise be due and payable at the time such deed or deeds is/are outstanding and thereafter a further a sum equal to 2.5% of the contract sum under this contract for each further deed requested that remains outstanding from any sums specified in each and every following Interim Payment or Final Statement as the case may be. Any amounts so retained shall become due for release to the Contractor only when the outstanding deed or deeds of warranty have been provided."

7D Contractor Warranties – Funder

Delete clause 7D and insert "Not used."

THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES FROM SUB-CONTRACTORS

7E Delete clause 7E and insert:

"Sub-Contractors' Warranties and Sub Contract documentation

7E.1 The Contractor shall procure that every Sub-Contractor shall execute as a deed and deliver to the Employer within 15 Business Days of a request to do so from or on behalf of the Employer from time to time a deed or deeds of collateral warranty in favour of:

- (i) the Employer; and /or
- (ii) any Purchaser; and /or
- (iii) any Tenant; and /or
- (iv) any Funder; and/or
- (v) MHCLG.

Such deed or deeds of collateral warranty to be in the appropriate form set out in Annex 5 to this Schedule of Amendments with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed). The step in provisions set out in clause 7 of the collateral warranty set out in Annex 5 will only be required in collateral warranties in favour of the Employer, Funders, Purchasers and/or MHCLG.

- 7E.2** If the Contractor fails to procure the execution and delivery to the Employer of such deed or deeds of warranty within 15 Business Days of the request to do so the Employer shall (subject to clause 4.9.5) be entitled to withhold a sum equal to 2.5% of the contract sum under this contract for each deed which has/have not been provided from any sums relating to the services or work of the relevant Sub-Contractor(s) then in default and which would otherwise be due and payable under the terms of this Contract and thereafter a further sum equal to 2.5% of the contract sum under this contract for each further deed requested that remains outstanding from any sums relating to the services or work of the relevant Sub-Contractor in each and every following Interim Payment or Final Statement as the case may be. Any amounts so retained shall become due for release to the Contractor only when the warranties from the relevant Sub-Contractor have been provided duly executed to the Employer.
- 7E.3** The Contractor shall provide to the Employer within 5 Business Days of completion of the same a certified copy of each sub contract between the Contractor and every Sub-Contractor PROVIDED THAT the Contractor shall be entitled to delete the sub contract sum and any commercially sensitive information from the certified copy of the sub contract documentation to be provided in accordance with this article."

Insert new clause:

7F "Sub-Consultant and Novated Consultant Warranties

- 7F.1** The Contractor shall procure that each and every Sub-Consultant and Novated Consultant shall execute as a deed and deliver to the Employer within 15 Business Days of a request to do so from or on behalf of the Employer a deed or deeds of collateral warranty in favour of :
- (i) the Employer; and /or
 - (ii) any Purchaser; and /or
 - (iii) any Tenant; and /or
 - (iv) any Funder; and/or
 - (v) MHCLG.

Such deed or deeds of collateral warranty shall be in the appropriate form set out in Annex 6 to this Schedule of Amendments with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed). The step in provisions set out in clause 7 of the collateral warranty set out in Annex 5 will only be required in collateral warranties in favour of the Employer, Funders, Purchasers and/or MHCLG.

- 7F.2** If the Contractor fails to procure the execution and delivery to the Employer of such deed or deeds of warranty within 15 Business Days of the request to do so the Employer shall be entitled (subject to clause 4.9.5) to withhold any sums relating to the services of the relevant Novated Consultant and / or Sub-Consultant then in default and which would otherwise be due and payable under the terms of this Contract in each and every following Interim Payment or Final Statement as the case may be. Any amounts so retained shall become due for release to the Contractor only when the deed or deeds of warranty have been provided duly executed to the Employer.

- 7F.3** The Contractor shall provide to the Employer within 5 Business Days of completion of the same a certified copy of the completed appointment between the Contractor and each Sub-Consultant"

SECTION 8 : TERMINATION

GENERAL

TERMINATION BY EMPLOYER

8.4 Default by Contractor

8.4.1.4 Delete "or 7.1"

8.4.4

8.6 Corruption and regulation 73(1)(b) of the PC Regulations

Delete clause 8.6 and insert:

8.6.1 "The Employer may forthwith determine the employment of the Contractor in writing and recover from the Contractor the amount of any loss resulting from such determination if the Contractor or any of its employees or agents or any person acting on his behalf (with or without the knowledge of their employer or principal) has at any time in relation to the Works:

8.6.1.1 made or offered to anyone any gift or consideration of any kind as an inducement or reward for doing or not doing something or favouring or not favouring someone in relation to the listing or selection of any tenderer or the award of any contract with the Employer; or

8.6.1.2 committed any offence under the Bribery Act 2010 or given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972."

Insert new clause 8.6A

"Termination – Contractor to vacate Site

8.6A Subject to the orderly compliance of the Contractor with any instruction of the Employer under clause 8.7.6, upon the termination of the Contractor's employment under this Contract (and any purported termination by notice given by the Employer) the Contractor shall forthwith vacate the Site"

8.7 Consequences of termination under clauses 8.4 to 8.6

8.7.2.2 Delete clause 8.7.2.2 and insert:

"provide the Employer (within 10 Business Days) with copies of all the Contractor's Design Documents then prepared whether or not previously provided including without limitation all such documents referred to in clause 2.37 which have been prepared before the date of determination (whether in the course of preparation or completed)"

8.7.4.3 Before ";" insert "but excluding any sums which may be or have been payable in accordance with clause 2.29.5"

Insert new clause:

"8.7.6 except where an insolvency event listed in clause 8.1 (other than the Contractor being a company making a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 2006 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof) has occurred the Contractor shall, if so required by the Employer within 14 days of the date of determination, assign to the Employer without payment the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract to the extent that the same is assignable."

TERMINATION BY CONTRACTOR

8.9 Default by Employer

8.9.1.2 Delete clause 8.9.1.2 and insert "Not used."

8.12 Hidden CONSEQUENCES OF TERMINATION UNDER CLAUSES 8.9 TO 8.11 ETC

Insert new clause:

HAND OVER OF SITE

8.13 Contractor to hand over possession

Notwithstanding clause 2.3 upon any determination of the Contractor's employment under this section 8 or if this Contract is determined repudiated or discharged in any other manner and notwithstanding that the validity of such determination repudiation or discharge may be disputed by the Contractor the Contractor shall immediately deliver to the Employer possession of the Site

SECTION 9 : SETTLEMENT OF DISPUTES

ARBITRATION

Delete clauses 9.3-9.8 and insert "Not used."

SECTION 10: ANTI-BRIBERY AND ANTI MONEY-LAUNDERING

Add as a new clause 10:

- 10.1 "The Contractor shall:
 - 10.1.1 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 ("Relevant Requirements");
 - 10.1.2 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;
 - 10.1.3 comply with the Employer's Ethics, Anti-bribery and Anti-corruption Policies (which are available on request) as the Employer may update from time to time ("Relevant Policies");
 - 10.1.4 have and shall maintain in place throughout the term of this contract 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 10.1.2, and will enforce them where appropriate;
 - 10.1.5 promptly report to the Employer any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this contract;
 - 10.1.6 immediately notify the Employer (in writing) if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this contract);
 - 10.1.7 on the date of this contract, and annually thereafter, certify to the Employer in writing signed by an officer of the Contractor, compliance with this clause 8 by the Contractor and all persons associated with it under clause 10.2. The Contractor shall provide such supporting evidence of compliance as the Employer may reasonably request.
- 10.2 The Contractor shall ensure that any person associated with the Contractor who is performing services or providing goods in connection with this contract 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 Contractor in this clause 10 ("Relevant Terms"). The Contractor 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.
 - 10.3 For the purpose of this clause 10, 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 10 a person associated with the Contractor includes but is not limited to any subcontractor of the Contractor."

SCHEDULES

SCHEDULE 1 : DESIGN SUBMISSION PROCEDURE

1. Hidden
2. In line 1 delete both references to "14 days" and replace with "10 Business Days"
7. In line 2 delete "7 days" and insert "5 Business Days"
In line 5 delete "7 days" and insert "5 Business Days"
Insert new paragraph:
9. "If the Contractor shall find errors in or require any alteration to the Contractor's Design Documents after they have been returned marked by the Employer with either 'A' or 'B' he shall notwithstanding that the errors have become part of the design of the Works resubmit such Contractor's Design Documents together with his corrections to the Employer for comment in accordance with paragraph 1."

SCHEDULE 5 : THIRD PARTY RIGHTS

Delete schedule 5 and insert "Not used."

SCHEDULE 7 : JCT FLUCTUATION OPTION

Delete schedule 7 and insert "Not used."

Annex 1
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 Building Contract :

"Building Contract"	the JCT Design and Build Contract 2016 incorporating bespoke amendments which this annex forms part of
"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 Works or any part of the Works
"Third Party"	a Funder and/or a Purchaser and/or a Tenant

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 Contractor warrants and undertakes to the Third Party that :

- 2.1 it has performed and will continue to perform its duties under the Building Contract;
- 2.2 the design of the Works has been and will be carried out using all the reasonable skill care and diligence to be expected of a professionally qualified designer of the relevant discipline to the design experienced in projects of the same size, scope, complexity, nature and time scale as the Works.

3. RESTRAINTS ON THE CONTRACTOR

The Contractor may not exercise any rights of set-off or counterclaim which may be permissible against his liability under the Building Contract against any claim or entitlement of the Third Party under this schedule.

4. NOT USED

5. COPYRIGHT

- 5.1 Copyright in the Contractor's Design Documents shall remain vested in the copyright owner.
- 5.2 The Contractor waives any Moral Rights that it may have as author in respect of the Contractor's Design Documents and/or the Works 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 Contractor's Design Documents and/or the Works.
- 5.3 The Contractor grants or shall procure the grant from third parties engaged by the Contractor (where copyright is vested in such parties) to the Third Party of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter

alia the Contractor's Design Documents for any purpose whatsoever connected with the Site and/or the Works 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 Works and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Contractor shall not be liable for the consequences of any use of the Contractor's Design Documents for any purpose other than that for which the same was prepared.

- 5.4 The Contractor 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 Works 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 Contractor's Design Documents as may be reasonably requested by the Third Party.

6. ASSIGNMENT

- 6.1 The Third Party may (without the consent of the Contractor) assign its rights under this annex 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 In this annex 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.

- 6.3 The Contractor undertakes with the Third Party not to contend that any person to whom the benefit of this annex may be assigned will be precluded from recovering under this annex any loss resulting from any breach of this annex either by reason that the person is an assignee and not the original party on whom the benefit of this annex was conferred or by reason that the Third Party to whom the benefit of this annex was originally conferred or any intermediate owner of the Third Party's interest in the Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.

7. STEP-IN RIGHTS

Provided that this clause 7 shall apply only where the Third Party is a Funder or a Purchaser and the agreement between the Employer and the Third Party provides for step-in rights to be granted to the Third Party:

- 7.1 The Contractor agrees that it will not without first giving the Third Party previous notice in writing exercise any right it may have to terminate or suspend the Building Contract or to treat the same as having been repudiated by the Employer. Such notice to the Third Party shall:

- 7.1.1 if the grounds are that a sum which is due has not been paid by the final date for payment and no effective notice to pay less has been given be given no less than 7 days before the Contractor exercises any such right; otherwise

- 7.1.2 be given no less than 15 Working Days before the Contractor exercises any such right.
- 7.2 The right of the Contractor to terminate or suspend the Building Contract with the Employer or treat the same as having been repudiated shall cease if within such period of notice and subject to clause 7.4 the Third Party shall give notice in writing to the Contractor requiring the Contractor to accept the instructions of the Third Party or its appointee to the exclusion of the Employer in respect of the carrying out and completion of the Works upon the terms and conditions of the Building Contract.
- 7.3 If so required by notice in writing given by the Third Party and subject to clause 7.4 the Contractor shall accept the instructions of the Third Party or its appointee to the exclusion of the Employer in respect of the carrying out and completion of the Works upon the terms and conditions of the Building Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Third Party under this clause as conclusive evidence for the purposes of this deed that the right to serve such notice has accrued to the Third Party pursuant to the terms of the agreement between the Employer and the Third Party.
- 7.4 Any notice given by the Third Party under clause 7.2 or 7.3 shall state that the Company or its appointee accepts liability for payment of fees payable to the Contractor under the Building Contract (including those due and owing under the Building Contract at the date of any notice served by the Third Party) and for performance of the Employer's obligations under the Building Contract and in the case of the Third Party nominating an appointee the Third Party guarantees all payments due to the Contractor from its appointee.
- 7.5 Compliance by the Contractor 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 Contractor from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.2.

8. LIMITATION AND MISCELLANEOUS

- 8.1 The liability of the Contractor under this schedule shall be limited to claims arising within twelve years after the date of practical completion of the Works under the Building Contract.
- 8.2 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.
- 8.3 Any consent approval comment or expression of satisfaction given by the Third Party with regard to any matter or thing relating to the Building Contract shall not in any way derogate from the Contractor's obligations under this schedule nor diminish any liability on its part under this annex.
- 8.4 The Contractor acknowledges that:
 - 8.4.1 the Third Party shall be deemed to have relied upon the Contractor's reasonable skill care and diligence in respect of those matters relating to the Works which lie within the scope of its responsibilities under the Building Contract or under this annex;
 - 8.4.2 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 Works shall abate or reduce the Contractor's liability under this annex to the Third Party and its respective successors in title and assigns.

- 8.5 Subject to clause 3:
- 8.5.1 the Contractor shall have no greater obligations to the Third Party by virtue of this schedule than it would have had if the Third Party had been named in the Building Contract jointly with the Employer; and
- 8.5.2 the Contractor shall be entitled in any action or proceedings by the Third Party to rely on any limitation or exclusion in the Building Contract and to raise equivalent rights of defence of liability as it would have against the Employer under the Building Contract.

9. NOTICES

- 9.1 Any notice to be served under this annex 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.
- 9.2 Notice may be served by:
- 9.2.1 personal delivery; or
- 9.2.2 pre-paid registered or recorded delivery mail; or
- 9.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.
- 9.3 Notices and communications shall be deemed to have been served or received as follows:
- 9.3.1 in the case of personal delivery on the date of delivery;
- 9.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
- 9.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

10. LAW

This annex shall be governed by English law and the Contractor and Third Party hereby submit to the non exclusive jurisdiction of the English courts.

Annex 2
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 a building contract with the Employer dated [] in respect of
the Project ("the Building Contract").

Annex 1 of the amendments to the Building Contract ("Annex 1") 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 Annex 1 in
accordance with the terms of the Building Contract 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] [The Third Party has agreed to provide finance in relation to the Project /
the acquisition of the property of which the Project forms part]

Yours faithfully

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

ANNEX 3
THIRD PARTY AGREEMENTS

ANNEX 4 – PART A
CONTRACTOR'S FORM OF WARRANTY IN FAVOUR OF PURCHASER/FUNDER/TENANT

DATED _____ 20[]

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

CONTRACTOR'S WARRANTY
in favour of
[Purchaser] [Funder] [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 Contractor")
- (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 being granted

IN CONSIDERATION of the sum of one pound (£1.00) paid by the Company to the Contractor (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 :

"Building Contract" the JCT Design and Build Contract 2016 as amended by a bespoke schedule of amendments and entered into or to be entered into by the Employer and the Contractor for the carrying out and completion of the Works and includes any subsequent agreement varying or supplementing such contract

"Contractor's Design Documents" all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed by or on behalf of the Contractor (including by any of the Novated Consultants Sub-Consultants and Sub-Contractors (as defined in the Building Contract)) in the course of or as a result of carrying out the Works whether in existence or to be made or produced and including all amendments additions and all designs ideas concepts and inventions contained in them

["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 Works or any part of the Works
"Practical Completion"	practical completion of the Works under the Building Contract
"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday
"Site"	[]
"Working Day"	any day which is not a Saturday, Sunday or Public Holiday
"Works"	the works performed and/or to be performed by the Contractor under the Building Contract

1.1 Interpretation

- 1.2 The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.
- 1.3 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.4 Words of one gender include both other genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.5 References to "liability" include where the context so allows claims demands proceedings losses costs and expenses.
- 1.6 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

1.7 Circumstances

- 1.7.1 By the Building Contract the Employer employed the Contractor to carry out the Works.
- 1.7.2 The Company [insert details of Company's interest in the Works]
- 1.7.3 It is a term of the agreement between the Company and the Employer that the Employer procures that the Contractor enters into this deed for the benefit of the Company.

2. DUTY OF CARE

The Contractor warrants and undertakes to the Company that:

- 2.1 it has performed and will continue to perform its duties under the Building Contract;

2.2 the design of the Works has been and will be carried out using all the reasonable skill care and diligence to be expected of a professionally qualified designer of the relevant discipline to the design experienced in projects of the same size, scope, complexity, nature and time scale as the Works.

3. PROHIBITED MATERIALS

3.1 The Contractor has not and shall not specify nor use nor authorise cause or allow to be used within or in relation to the Works 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 persons involved in the installation construction or maintenance of the Works or the completed Works or to the eventual occupants of the Works; or

3.1.2 not in conformity with any relevant British or European Standards or Codes of Practice; or

3.1.3 which at the time the Works are being carried out are generally accepted as (or are reasonably suspected 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 any 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 Works or any part the Works

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

3.3 The Contractor warrants that it shall comply with and have regard to the guide entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices or such other version of such publication current at the time of use in assessing whether or not an intended material is deleterious in the terms set out in clause 3.

3.4 The Contractor will as soon as reasonably practicable notify the Company if it becomes aware of any proposed or actual use in the Works of any materials not compliant with clause 3.1.

4. RESTRAINTS ON THE CONTRACTOR

The Contractor may not exercise any rights of set-off or counterclaim which may be permissible against his liability under the Building Contract 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 Contractor in relation to performance of the Contractor's duties under the Building Contract [unless and until the Company has given notice under clause 7.2 or clause 7.3].

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

6. LIABILITY FOR PAYMENT

The Company has no liability to the Contractor in respect of fees and expenses under the Building Contract [unless and until the Company has given notice under clause 7.2 or clause 7.3].

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

7. [STEP-IN RIGHTS]

- 7.1 The Contractor agrees that it will not without first giving the Company previous notice in writing exercise any right it may have to terminate or suspend the Building Contract or to treat the same as having been repudiated by the Employer. Such notice to the Company shall:
 - 7.1.1 if the grounds are that a sum which is due has not been paid by the final date for payment and no effective notice to pay less has been given, be given no less than 7 days before the Contractor exercises any such right; otherwise
 - 7.1.2 be given no less than 15 Working Days before the Contractor exercises any such right.
- 7.2 The right of the Contractor to terminate or suspend the Building Contract with the Employer or treat the same as having been repudiated shall cease if within such period of notice and subject to clause 7.4 the Company shall give notice in writing to the Contractor requiring the Contractor 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 Works upon the terms and conditions of the Building Contract [PROVIDED THAT the rights of [] under clause 7 of the warranty given or to be given by the Contractor to [] shall have priority over the rights of the Company under this clause whether such rights are exercised by [] before or after the exercise by the Company of its rights under this clause].
- 7.3 If so required by notice in writing given by the Company and subject to clause 7.4 the Contractor shall 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 Works upon the terms and conditions of the Building Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor 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 clause 7.2 or 7.3 shall state that the Company or its appointee accepts liability for payment of fees payable to the Contractor under the Building Contract (including those due and owing under the Building Contract at the date of any notice served by the Company) and for performance of the Employer's obligations under the Building Contract and in the case of the Company nominating an appointee the Company guarantees all payments due to the Contractor from its appointee.
- 7.5 Compliance by the Contractor 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 Contractor 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 in warranty where step in rights are being granted

8. NOT USED

9. COPYRIGHT

- 9.1 Copyright in the Contractor's Design Documents shall remain vested in the copyright owner.
- 9.2 The Contractor waives any Moral Rights that it may have as author in respect of the Contractor's Design Documents and/or the Works 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 Contractor's Design Documents and/or the Works.
- 9.3 The Contractor grants or shall procure the grant from third parties engaged by the Contractor (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Contractor's Design Documents for any purpose whatsoever connected with the Site and/or the Works 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 Works and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Contractor shall not be liable for the consequences of any use of the Contractor's Design Documents for any purpose other than that for which the same was prepared.

- 9.4 The Contractor 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 Works 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 Contractor's Design Documents as may be reasonably requested by the Company.

10. ASSIGNMENT

- 10.1 The Company may (without the consent of the Contractor) assign its rights under this deed to:
- 10.1.1 any Mortgagee and by way of re-assignment on redemption;

- 10.1.2 any Group Company;
- 10.1.3 any other party on two occasions only.
- 10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.3.
- 10.3 The Contractor 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 Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.

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 compliance with clause 7 the Contractor shall not incur any liability to the Employer.]

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

13. LIMITATION AND MISCELLANEOUS

- 13.1 The liability of the Contractor under this deed shall be limited to claims arising within twelve years after the date of Practical Completion.
- 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 Building Contract shall not in any way derogate from the Contractor's obligations hereunder nor diminish any liability on its part under this deed.
- 13.4 The Contractor acknowledges that:
 - 13.4.1 the Company shall be deemed to have relied upon the Contractor's reasonable skill care and diligence in respect of those matters relating to the Works which lie within the scope of its responsibilities under the Building Contract 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 Works shall abate or reduce the Contractor's liability under this deed to the Company and its respective successors in title and assigns.

- 13.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend any terms of this deed to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been entitled to enforce such terms.
- 13.6 Subject to clause 4:
- 13.7 the Contractor shall have no greater obligations to the Company by virtue of this deed than it would have had if the Company had been named in the Building Contract jointly with the Employer; and
- 13.8 the Contractor shall be entitled in any action or proceedings by the Company to rely on any limitation or exclusion in the Building Contract and to raise equivalent rights of defence of liability as it would have against the Employer under the Building Contract.

14. [ADDITIONAL WARRANTIES]

Within 10 Working Days of a request to do so from the Company the Contractor 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 Funder (as those terms are defined in the Building Contract) 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).]

DRAFTING NOTE: clause 14 is only to be included in warranty where step in rights are being granted

15. NOTICES

- 15.1 Any notice to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered office for the time being or in any other case to any address for the time being of the person to be served.
- 15.2 Notice may be served by:
 - 15.2.1 personal delivery; or
 - 15.2.2 pre-paid registered or recorded delivery mail; or
 - 15.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.
- 15.3 Notices and communications shall be deemed to have been served or received as follows:
 - 15.3.1 in the case of personal delivery on the date of delivery;
 - 15.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
 - 15.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

16. LAW

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

EXECUTED AND DELIVERED as a deed on the date at the head of this deed

**ANNEX 4 – PART B
CONTRACTOR'S FORM OF WARRANTY IN FAVOUR OF MHCLG**

Date..... *insert date*

**Collateral Warranty
from Contractor to the MHCLG
relating to unsafe cladding remedial works at [20:20 Block
B Flats, Skinner Lane, Leeds LS7 1BE]**

[**Ballymore Services Limited**] ⁽¹⁾
The Ministry of Housing, Communities & Local Government ⁽²⁾ and
[**20:20 House (Residential Management) Limited**] ⁽³⁾

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DATE..... insert date

PARTIES

- (1) **[BALLYMORE SERVICES LIMITED]** [(No.[NI622883] / trading together in partnership under the style [●] / a limited liability partnership)] [whose registered office is [●] / whose principal place of business is [●20 Armagh Road, Portadown, Craigavon, Northern Ireland, BT62 3DP]] **(Contractor)**.

(CONTRACTOR)

- (1) **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)**.
- (2) **[● 20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED]** [(No. [● 06770847] / trading together in partnership under the style [●] / a limited liability partnership)] [whose registered office is [●] / whose principal place of business is [Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB ●]] **(Employer)**.

BACKGROUND

- (A) By the Contract, the Employer has employed the Contractor to design, carry out and complete Remedial Works at the Site on the terms and subject to the conditions set out in the Contract.
- (B) The MHCLG has established the Private Sector Remediation Fund and the Building Safety Fund **(ACM Funds)**. The ACM Funds provide funding for the replacement of unsafe ACM Cladding and Non-ACM Cladding systems on private residential buildings. The Employer is an applicant of the ACM Funds.
- (C) Pursuant to a funding agreement dated on or around the date of this Agreement 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 Contractor has agreed to enter into this Agreement 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 Contractor (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 Agreement 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 Funds has the definition ascribed to it in recital (B).

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

Cladding components that are attached to the primary structure of a building to form a non-structural surface and includes the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashing, fixings, gaskets and sealants.

Class A1 European Classification Class A1, classified in accordance with BS EN 13501-1:2007+A1:2009 entitled “Fire classification of construction products and building elements. Classification using test data from reaction to fire tests” (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30th March 2007 and amended in November 2009.

Class A2-s1, d0 European Classification A2-s1, d0 classified in accordance with BS EN 13501-1:2007+A1:2009 entitled “Fire classification of construction products and building elements. Classification using test data from reaction to fire tests” (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30th March 2007 and amended in November 2009.

Construction Products 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 between the Employer and the Contractor dated [●] for the design, carrying out and completion of Remedial Works including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.

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 Contractor 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.

Non-ACM Cladding

means (i) Cladding systems (other than Cladding systems which include ACM Cladding) which incorporate panels achieving European Class C-s1,d0 or worse in combination with any class of insulation, or Cladding systems with panels achieving Class B-s1,d0 or lower, unless the system has achieved a BR135 certificate pursuant to a BS8414 test, and/or (ii) any building with insulation or filler achieving Class B-s1,d0 or lower that is not installed in line with a Cladding system that has a BR135 certificate pursuant to a BS8414 test and both (i) and (ii) 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.

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.

Remedial Works

the building works under and/or in accordance with the Contract for the removal of the Unsafe Cladding on each of the buildings at the Site and replacement with Cladding that is of Class A1 or Class A2-s1, d0 standard.

Site

building(s) known as [●] upon which the Remedial Works are to be performed.

Unsafe Cladding

any ACM Cladding and Non-ACM Cladding that has been identified as containing combustible materials 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 Agreement unless the context requires otherwise:
- 1.2.1 references to a Clause or Schedule are to a clause of, or schedule to this Agreement, references to this Agreement include its schedules, and references in a Schedule to a paragraph are to a paragraph of that Schedule;
 - 1.2.2 references to this Agreement or any other document are to this Agreement 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 Agreement do not affect its interpretation;
 - 1.2.6 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;
 - 1.2.7 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives;
 - 1.2.8 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 Agreement) and to any subordinate legislation made under it except to the extent that it would increase the liability of any party under this Agreement;
 - 1.2.9 if the Contractor is a partnership each partner shall be jointly and severally liable under this Agreement. Where the context so requires and where the Contractor is a partnership, the term **Contractor** shall be deemed to include any additional partner(s) who may be admitted into the partnership of the Contractor during the currency of this Agreement. This Agreement shall not automatically terminate upon the death, retirement or resignation of one or more members of such partnership; and
 - 1.2.10 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 Contractor warrants and undertakes to the MHCLG that it has observed and performed and shall continue to observe and perform each and all of its duties and obligations contained in or implied by the Contract. Save as expressly provided for in this Agreement¹ the liability of the Contractor is to be treated as being no greater or longer than it would have been if the MHCLG had been a party to the Contract instead of this Agreement and ²the Contractor shall be entitled in defence of any action or proceedings by the MHCLG under this Agreement to raise equivalent rights of defence of liability as it would have against the Employer under the Contract but neither this provision nor any other provision in this Agreement shall entitle the Contractor to raise any defence based on set-off or counterclaim and/or prevent the MHCLG from recovering loss and/or damage from the Contractor as a result of the Contractor's breach of any provisions of this Agreement on the basis that the Employer has not suffered any loss and/or damage and/or the same loss and/or damage and the Contractor hereby irrevocably agrees and undertakes not to

¹ No greater liability clause included to satisfy insurers

² Equivalent rights of defence provision to satisfy insurers.

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 Contractor further warrants and undertakes to the MHCLG that:

- 2.2.1 it has exercised and shall continue to exercise all reasonable skill, care and diligence in the performance of the Remedial Works to be expected of a properly qualified and competent building contractor experienced in performing similar services, duties and obligations in relation to developments of a similar nature, value, scope, character, complexity and timescale to the Remedial Works in:
 - (a) the design of the Remedial Works and of any part or parts of the Remedial Works to the extent that the Contractor has been or shall be responsible for such design; and
 - (b) the selection of goods and materials for the Remedial Works or any part or parts of the Remedial Works to the extent that such goods and materials have been or shall be selected by or on behalf of the Contractor;
- 2.2.2 the Remedial Works shall on completion satisfy all performance specifications and other requirements contained or referred to in the Contract;
- 2.2.3 the Remedial Works and all materials and goods comprised in them shall correspond as to description, quality and condition with the requirements of the Contract and shall be of sound manufacture and workmanship; and that
- 2.2.4 the Contractor in carrying out the Remedial Works, and the Remedial Works on completion shall comply with all applicable statutory and regulatory requirements.

For the avoidance of doubt, under the provisions of Clauses 2.2.2 and/or 2.2.3, the Contractor does not warrant that the Works when complete shall be fit for purpose.

- 2.3 The Contractor acknowledges that the MHCLG has relied and shall rely on the warranties under this Clause 2 and the other terms of this Agreement 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 Agreement.
- 2.4 The obligations of the Contractor under this Agreement 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 CONTRACT

- 3.1 The Contractor warrants and undertakes to the MHCLG that it shall not exercise or seek to exercise any right of termination of the Contract and/or to discontinue the performance of any of its duties and/or obligations thereunder for any reason whatsoever (including any 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 Contract for the exercise by the Contractor of a right of termination of the Contract and/or to discontinue the performance of any of its 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 Contractor with the provisions of Clause 3 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 Contract and/or to discontinue the performance of any of the Contractor's duties and/or obligations in relation to the Remedial Works, nor otherwise prevent the Contractor 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 CONTRACTOR TO THE MHCLG

4.1 The right of the Contractor to terminate the Contract and/or to discontinue the performance of any of its 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 Contractor:

- 4.1.1 requiring the Contractor to continue performing its duties and obligations under the Contract in relation to the Remedial Works;
- 4.1.2 acknowledging that the MHCLG is assuming all the duties and obligations of the Employer under the Contract;
- 4.1.3 undertaking unconditionally to the Contractor to discharge all payments which may subsequently become due to the Contractor under the terms of the Contract, subject to the same right to deduct retentions as would have applied to the Employer under the Contract;

and shall pay to the Contractor any sums which have become due and payable to it under the Contract but which were then unpaid, subject to the same right to deduct retentions as would have applied to the Employer under the Contract.

4.2 Upon compliance by the MHCLG with the requirements of Clause 4.1 the Contract shall continue in full force and effect as if the right of termination and/or discontinuance on the part of the Contractor had not arisen and in all respects as if the Contract had been made between the Contractor and the MHCLG to the exclusion of the Employer.

4.3 Notwithstanding that as between the Employer and the Contractor the Contractor's rights of termination of the Contract and/or discontinuance may not have arisen, the provisions of Clause 4.2 shall nevertheless apply if the MHCLG gives notice to the Contractor and the Employer to that effect and the MHCLG complies with the requirements on its part under Clause 4.1.

4.4 The Contractor 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 Contractor 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 Contractor but, subject to the Contractor having been paid all sums due and payable under the Contract, 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 Contractor'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 Contractor 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 Contractor warrants to the MHCLG that:

- 6.1.1 Not used.
- 6.1.2 it has at all relevant times maintained an all risks insurance policy and a public liability insurance policy covering the usual risks covered by these types of policies in respect of the Remedial Works.

- 6.2 As and when reasonably required by the MHCLG the Contractor shall provide satisfactory documentary evidence of the terms of insurance referred to in Clause 6.1 and that it has at all times maintained and shall continue to maintain at all times the insurance referred to in Clause 6.1, and shall confirm that payment has been made in respect of the last preceding premium due under such insurance.
- 6.3 The Contractor 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 Contract.
- 6.4 Not used.

7. HEALTH AND SAFETY

- 7.1 The Contractor 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.
- 7.2 The Contractor warrants that, in relation to the Remedial Works, it has complied and shall comply with the Health and Safety at Work etc. Act 1974 and all regulations made thereunder.

8. EXCLUDED MATERIALS

- 8.1 The Contractor 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 Contractor's trade and/or the construction industry:
 - 8.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
 - 8.1.2 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;
 - 8.1.3 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
 - 8.1.4 to be supplied or placed on the market in breach of the Construction Products Regulations.

9. COMMUNICATIONS

- 9.1 Except as otherwise provided for in this agreement, all notices or other communications under or in respect of this agreement to either party shall be in writing and, unless otherwise stated, may be made by letter or by electronic mail and in the case of:
 - 9.1.1 MHCLG by letter, by personal delivery or by sending it by recorded postal delivery to the address specified at the head of this agreement and marked for the attention of the Director of Building Remediation & Grenfell or to such other address as notified in writing by MHCLG to the other parties;
 - 9.1.2 the Contractor, by letter, by personal delivery or by sending it by recorded postal delivery to the address specified at the head of this agreement and marked for the attention of a board level director or member of the Contractor or such other address as notified in writing by the Contractor to the other parties;

- 9.1.3 the Employer, by letter, by personal delivery or by sending it by recorded postal delivery to the address specified at the head of this agreement and marked for the attention of a board level director or member of the Employer or such other addresses as notified in writing by the Employer to the other parties;
 - 9.1.4 any notice or other communication to be made between the parties by electronic mail shall be made to the email address as may be supplied by them to the other parties from time to time by not less than five Business Days' notice.
- 9.2 Any written notice or other communication sent by post will be deemed served and received on the second Business Day following the day of posting and where delivered personally will be deemed to have been served when delivered.
- 9.3 Any such electronic notice as specified in clause 9.1.4 above made between the parties will be effective only when actually received in readable form.
- 9.4 Any electronic notice or other communication which becomes effective, in accordance with clause 9.1.4 above, after 5:00pm in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this agreement shall be deemed only to become effective on the following Business Day.
- 9.5 With respect to service by email, only a response or communication issued by a member of issuing party's legal team or senior management shall constitute a formal response to legal proceedings.

10. CONCURRENT LIABILITIES

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

11. ASSIGNMENT

- 11.1 The MHCLG may without the consent of the Contractor from time to time assign transfer and/or charge the benefit of all or any of the Contractor's obligations under this Agreement and/or any benefit arising under or out of this Agreement by absolute assignment on three occasions only. In this Agreement references to the MHCLG include where the context admits its assignees.
- 11.2 The Contractor shall not be entitled to contend that any person to whom this Agreement is assigned in accordance with Clause 11.1 is precluded from recovering under this Agreement any loss incurred by such assignee resulting from any breach of this Agreement (whenever happening), by reason that such person is an assignee and not a named party under this Agreement.
- 11.3 The Contractor shall not be entitled to assign, transfer and/or charge the benefit of any (if any) of the MHCLG's obligations under this Agreement and/or any benefit (if any) arising to the Contractor out of this Agreement.

12. LIMITATION PERIOD

The liability of the Contractor under this Agreement shall cease 6 years following Practical Completion save in relation to any claims made by the MHCLG against the Contractor and/or notified by the MHCLG to the Contractor in writing prior thereto.

13. EMPLOYER

The Employer agrees that it shall not take any steps which would prevent or hinder the MHCLG from exercising its rights under this Agreement and confirms that the rights of the MHCLG in Clauses 3 and 4 override any obligations of the Contractor to the Employer under the Contract.

14. GOVERNING LAW AND JURISDICTION

- 14.1 This Agreement 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.
- 14.2 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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

15. 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 Agreement 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 Agreement pursuant to Clause 11 or successors in title to the MHCLG from enforcing the provisions of this Agreement.

16. ELECTRONIC EXECUTION

The parties acknowledge and agree that this Agreement may be executed by electronic signature (whatever form the electronic signature takes) and that this method of signature is conclusive of the parties intention to be bound by this Agreement as if signed by the parties manuscript signature.

17. COUNTERPARTS

This Agreement may be executed in any number of counterparts, but will not take effect until each Party has executed at least one counterpart. Each counterpart will constitute an original, but all the counterparts together will constitute a single agreement.

Signed for and on behalf of [**Contractor**]

.....
Director's signature

.....
Director's name

Signed for and on behalf of **THE SECRETARY OF
STATE FOR HOUSING, COMMUNITIES AND
LOCAL GOVERNMENT**

Authorised Signatory's signature

.....
Authorised Signatory's name

Signed for and on behalf of [**Employer**]

.....
Director's signature

.....
Director's name

ANNEX 5
SUB-CONTRACTOR'S FORM OF WARRANTY

DATED _____ 20[]

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

SUB-CONTRACTOR'S WARRANTY
in favour of [Employer] [Funder] [Purchaser] [Tenant] [MHCLG]
in respect of a development at
[]



GOWLING WLG

THIS DEED is made

20[]

BETWEEN

- (1) [] (company registration number []) whose registered office is at [] ("the Sub-Contractor")
- (2) [] (company registration number []) whose registered office is at [] ("the Company")
- (3) [[]] (company registration number []) whose registered office is at [] ("the Contractor")]

DRAFTING NOTE: Contractor only to be a party where step in rights are being granted

IN CONSIDERATION of the sum of one pound (£1.00) paid by the Company to the Sub-Contractor (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 :

"Building Contract" the JCT Design and Build Contract 2016 as amended by a bespoke schedule of amendments and entered into or to be entered into by the Company and the Contractor for the carrying out and completion of the Works and includes any subsequent agreement varying or supplementing such contract

["Contractor" [] (company registration number []) whose registered office is at []]

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

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

DRAFTING NOTE: to be deleted where the Employer is the beneficiary

"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

"Practical Completion" practical completion of the Works under the Building Contract

"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday
"Site"	[]
"Sub-Contract"	the sub-contract for the Sub-Contract Works entered into or to be entered into between the Contractor and the Sub-Contractor
"Sub-Contract Works"	the works of [] carried out and/or to be carried out by the Sub-Contractor under the Sub-Contract
"Sub-Contractor's Design Documents"	all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed by or on behalf of the Sub-Contractor in the course of or as a result of carrying out the Sub-Contract Works whether in existence or to be made or produced and including all amendments additions and all designs ideas concepts and inventions contained in them
"Working Day"	any day which is not a Saturday, Sunday or Public Holiday
"Works"	the works performed and/or to be performed by the Contractor under the Building Contract

1.2 Interpretation

- 1.2.1 The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.
- 1.2.2 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.2.3 Words of one gender include both other genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.2.4 References to "liability" include where the context so allows claims demands proceedings losses costs and expenses.
- 1.2.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

1.3 Circumstances

- 1.3.1 By the Building Contract [the Company] [the Employer] employed the Contractor to carry out the Works.
- 1.3.2 By the Sub-Contract the Contractor employed the Sub-Contractor to carry out the Sub-Contract Works.
- 1.3.3

1.3.4 [The Company [insert details of the Company's interest in the Works]]

DRAFTING NOTE: delete where the Employer is the beneficiary

1.3.5 It is a term of the Building Contract that the Contractor procures that the Sub-Contractor enters into this deed for the benefit of the Company and its permitted assigns.

2. DUTY OF CARE

The Sub-Contractor warrants and undertakes to the Company that:

2.1 it has performed and will continue to perform its duties to the Contractor under the Sub-Contract;

2.2 the design of the Sub-Contract Works has been and will be carried out using all the reasonable skill care and diligence to be expected of a design sub-contractor acting in the capacity of the Sub-Contractor and experienced in the provision of the Sub-Contract Works for developments and projects of the same size scope complexity, nature and timescale as the Works.

3. PROHIBITED MATERIALS

3.1 The Sub-Contractor has not and shall not specify nor use nor authorise cause or allow to be used within or in relation to the Works 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 persons involved in the installation construction or maintenance of the Works or the completed Works or to the eventual occupants of the Works; or

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 Works are being carried out are generally accepted as (or are reasonably suspected 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 any 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 Works or any part the Works
- to a period less than that specified or which would normally be expected.
- 3.3 The Sub-Contractor warrants that it shall comply with and have regard to the guide entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices or such other version of such publication current at the time of use in assessing whether or not an intended material is deleterious in the terms set out in clause 3.
 - 3.4 The Sub-Contractor will as soon as reasonably practicable notify the Company if it becomes aware of any proposed or actual use in the Works of any materials not compliant with clause 3.1.

4. RESTRAINTS ON THE SUB-CONTRACTOR

The Sub-Contractor may not exercise any rights of set-off or counterclaim which may be permissible against his liability under the Sub-Contract 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 Sub-Contractor in relation to performance of the Sub-Contractor's duties under the Sub-Contract [unless and until the Company has given notice under clause 7.2 or clause 7.3].

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

6. LIABILITY FOR PAYMENT

The Company has no liability to the Sub-Contractor in respect of fees and expenses under the Sub-Contract [unless and until the Company has given notice under clause 7.1 or clause 7.3].

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

7. [STEP-IN RIGHTS]

- 7.1 The Sub-Contractor agrees that it will not without first giving the Company previous notice in writing exercise any right it may have to terminate or suspend the Sub-Contract or to treat the same as having been repudiated by the Contractor. Such notice to the Company shall:
 - 7.1.1 if the grounds are that a sum which is due has not been paid by the final date for payment and no effective notice to pay less has been given be given no less than 7 days before the Sub-Contractor exercises any such right; otherwise
 - 7.1.2 be given no less than 15 Working Days before the Sub-Contractor exercises any such right.
- 7.2 The right of the Sub-Contractor to terminate or suspend the Sub-Contract with the Contractor or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice and subject to clause 7.4 the Company shall

give notice in writing to the Sub-Contractor requiring the Sub-Contractor to accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract [PROVIDED THAT the rights of the [] under clause 7 of the warranty given or to be given by the Sub-Contractor to [] shall have priority over the rights of the Company under this clause whether such rights are exercised by [] before or after the exercise by the Company of its rights under this clause].

- 7.3 If so required by notice in writing given by the Company and subject to clause 7.4 the Sub-Contractor shall accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor 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 Building Contract.
- 7.4 Any notice given by the Company under clause 7.2 shall state that the Company or its appointee accepts liability for payment of fees payable to the Sub-Contractor under the Sub-Contract and for performance of the Contractor's obligations under the Sub-Contract and in the case of the Company nominating an appointee the Company guarantees all payments due to the Sub-Contractor from its appointee.
- 7.5 Compliance by the Sub-Contractor with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination nor otherwise prevent the Sub-Contractor 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 only to be included in warranty where step in rights are being granted

8. [PROFESSIONAL INDEMNITY]/[PRODUCT LIABILITY] INSURANCE

- 8.1 The Sub-Contractor warrants that, without prejudice to its liability under this deed, it shall effect and will maintain at all relevant times during the Works 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] [product liability] insurance cover of at least [] pounds (£[]) on an each and every claim basis PROVIDED ALWAYS such insurance continues to be available in the United Kingdom market upon reasonable terms and conditions and at commercially reasonable premium rates.
- 8.2 The Sub-Contractor shall throughout the period referred to in clause 8.1 provide to the Company, when reasonably requested by him to do so, evidence that the insurance required by clause 8.1 is being maintained in accordance with clause 8.1.
- 8.3 The Sub-Contractor 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 Sub-Contractor 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 Sub Contractor's Design Documents shall remain vested in the copyright owner.

- 9.2 The Sub-Contractor waives any Moral Rights that it may have as author in respect of the Sub Contractor's Design Documents and/or the Sub-Contract Works 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 Sub Contractor's Design Documents and/or the Sub-Contract Works.
- 9.3 The Sub-Contractor grants or shall procure the grant from third parties engaged by the Sub-Contractor (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Sub Contractor's Design Documents for any purpose whatsoever connected with the Site and/or the Works 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 Works and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Sub-Contractor shall not be liable for the consequences of any use of the Sub Contractor's Design Documents for any purpose other than that for which the same was prepared.

9.4 The Sub-Contractor 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 Works 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 Sub Contractor's Design Documents as may be reasonably requested by the Company.

10. ASSIGNMENT

- 10.1 The Company may (without the consent of the Sub-Contractor) assign its rights under this deed to :
- 10.1.1 any Group Company;
- 10.1.2 any other party on two occasions only.
- 10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.2.
- 10.3 The Sub-Contractor 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 Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.

11. [CONTRACTOR ACKNOWLEDGEMENT]

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

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

13. LIMITATION AND MISCELLANEOUS

- 13.1 The liability of the Sub-Contractor under this deed shall be limited to claims arising within twelve years after the date of Practical Completion.
- 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 Sub-Contract shall not in any way derogate from the Sub-Contractor's obligations hereunder nor diminish any liability on its part under this deed.
- 13.4 The Sub-Contractor acknowledges that:
 - 13.4.1 the Company shall be deemed to have relied upon the Sub-Contractor's reasonable skill care and diligence in respect of those matters relating to the Works which lie within the scope of its responsibilities under the Sub-Contract 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 Works shall abate or reduce the Sub-Contractor'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 Sub-Contractor 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 funder 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).]

DRAFTING NOTE: clause 14 is only to be included in warranty where step in rights are being granted

15. NOTICES

- 15.1 Any notice to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered

office for the time being or in any other case to any address for the time being of the person to be served.

- 15.2 Notice may be served by:
 - 15.2.1 personal delivery; or
 - 15.2.2 pre-paid registered or recorded delivery mail; or
 - 15.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.
- 15.3 Notices and communications shall be deemed to have been served or received as follows:
 - 15.3.1 in the case of personal delivery on the date of delivery;
 - 15.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
 - 15.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

16. LAW

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

EXECUTED AND DELIVERED as a deed on the date at the head of this deed

ANNEX 6
DESIGN CONSULTANT'S FORM OF WARRANTY

DATED _____ 20[]

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

DESIGN CONSULTANT'S WARRANTY
in favour of [Employer] [Funder] [Purchaser] [Tenant] [MHCLG]
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

(1) [] [] [] [] [] []
 [] [] [] [] [] []
 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 Contractor")

DRAFTING NOTE: Contractor only to be a party where step in rights are being 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 Company dated [] 20[]

["Contractor"] [] (company registration number []) whose registered office is at []

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

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

DRAFTING NOTE: to be deleted where the Employer is the beneficiary

"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

"Practical Completion"	shall have the same meaning as in the Appointment
"Project"	[] at the Site
"Project Material"	all drawings plans models specifications reports calculations charts diagrams sketches (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 and all designs ideas concepts and inventions contained in them
"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday
"Services"	the services which the Consultant has been retained to carry out under the Appointment
"Site"	[]
"Working Day"	any day which is not a Saturday, Sunday or Public Holiday

1.2 Interpretation

- 1.2.1 The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.
- 1.2.2 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.2.3 Words of one gender include both other genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.2.4 References to "liability" include where the context so allows claims demands proceedings losses costs and expenses.
- 1.2.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

1.3 Circumstances

- 1.3.1 By the Appointment the [Employer] [Company] [Contractor] employed the Consultant to act as [] in relation to the Project.
- 1.3.2 [The Appointment has been novated from the [Employer] [Company] and the Consultant to the Contractor and the Consultant.]
- 1.3.3 [The Company [insert details of Company's interest in the Project]]

DRAFTING NOTE: delete where the Employer is the beneficiary

- 1.3.4 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 [] 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 personnel involved in the construction or maintenance of the Project or the completed 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 within the building industry of:
- 3.1.3.1 being deleterious in themselves; or
 - 3.1.3.2 becoming deleterious when used 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 the type under construction; 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 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 any 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 that it shall comply with and have regard to the guide entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices or such other version of such publication current at the time of use in assessing whether or not an intended material is deleterious in the terms set out in clause 3.
- 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 or 7.3].

DRAFTING NOTE: wording in brackets only to be included in warranty where step in rights are 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 or 7.3].

DRAFTING NOTE: wording in brackets only to be included in warranty where step in rights are 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 or suspend the Appointment or to treat the same as having been repudiated by the Contractor. Such notice to the Company shall:
 - 1.1.1 if the grounds are that a sum which is due has not been paid by the final date for payment and no effective notice to pay less has been given be given no less than 7 days before the Consultant exercises any such right; otherwise
 - 1.1.2 be given no less than 15 Working Days before the Consultant exercises any such right.
- 7.2 The right of the Consultant to terminate or suspend the Appointment with the Contractor or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice and subject to clause 7.4 the Company shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment [PROVIDED THAT the rights of [] under clause 7 of the warranty given or to be given by the Consultant [] shall have priority over the rights of the Company under this clause whether such are exercised by

[] before or after the exercise by the Company of its rights under this clause].

- 7.3 If so required by notice in writing given by the Company and subject to clause 7.4 the Consultant shall accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment. The Contractor acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Company under this clause as conclusive evidence for the purposes of this deed that the right to serve such notice has accrued to the Company pursuant to the terms of the agreement between the Contractor and the Company.
- 7.4 Any notice given by the Company under clause 7.2 shall state that the Company or its appointee accepts liability for payment of fees payable to the Consultant under the Appointment (including those due and owing under the Appointment at the date of any notice served by the Company) and for performance of the Contractor's obligations under the Appointment and in the case of the Company appointing a nominee the Company guarantees all payments due to the Consultant from its appointee.
- 7.5 Compliance by the Consultant with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.2.]

DRAFTING NOTE: clause 7 is only to be included in warranty where step in rights are being granted

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 at least [] pounds (£[]) on an each and every claim basis 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 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 there author may have in respect of the Project Material and/or the Project.

9.3 The Consultant grants or shall procure the grant from third parties engaged by the Consultant (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Project Material for any purpose whatsoever connected with the 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.

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 Group Company;
 - 10.1.2 any other party on two occasions only.
- 10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.2.
- 10.3 The Consultant undertakes with the Company not to contend that any person to whom this deed may be assigned will be precluded from recovering under this deed any loss resulting from any breach of this deed either by reason that the person is an assignee and not the original party to this deed or by reason that the Company named in this deed or any intermediate owner of the Company's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

11. [CONTRACTOR ACKNOWLEDGEMENT]

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

DRAFTING NOTE: clause 11 is only to be included in warranty where step in rights are being 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 being 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.
- 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 related to the Appointment shall not in any way derogate from the Consultant's obligations under this deed nor diminish any liability on its part under this deed.
- 13.4 The Consultant acknowledges that:
 - 13.4.1 the Company shall be deemed to have relied upon the Consultant's reasonable skill care and diligence in respect of those matters relating to the Project which lie within the scope of its responsibilities under the Appointment or under this deed;
 - 13.4.2 no negligent or other act omission or delay by or on behalf of the Company and their respective successors in title and assigns in inspecting approving or informing itself about anything relating to the Project shall abate or reduce the Consultant's liability under this deed to the Company and its respective successors in title and assigns.
- 13.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend any terms of this deed to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been entitled to enforce such terms.

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 funder 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).]

DRAFTING NOTE: clause 14 is only to be included in warranty where step in rights are being granted

15. NOTICES

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

- 15.2.1 personal delivery; or
 - 15.2.2 pre-paid registered or recorded delivery mail; or
 - 15.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.
- 15.3 Notices and communications shall be deemed to have been served or received as follows:
- 15.3.1 in the case of personal delivery on the date of delivery;
 - 15.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
 - 15.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

16. LAW

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

EXECUTED AND DELIVERED as a deed on the date at the head of this deed

**ANNEX 7
DEED OF NOVATION**

DATED _____ 20[]

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

**DEED OF NOVATION
in respect of a development at**

[]



GOWLING WLG

THIS DEED is made

20[]

BETWEEN

- (1) [registration number [is at [] (company]) whose registered office] ("the Client")
 - (2) [registration number [is at [] (company]) whose registered office] ("the Contractor")
 - (3) [registration number [is at [] (company]) whose registered office] ("the Consultant")
- OR**
- (3) [] [] [] [] [] [] [] who together [and with] ("the Consultant")
- [] and [others] are carrying on business in partnership as [at []

NOW 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 appointment entered into between the Consultant and the Client dated []
"Project"	[] at the Site
"Site"	[]

1.2 Circumstances

- 1.2.1 By the Appointment the Client appointed the Consultant to act as [] in relation to the Project.
- 1.2.2 It has been agreed between the Client and the Contractor that the Contractor shall (subject to obtaining the consent of the Consultant) assume the obligations of the Client under the Appointment.
- 1.2.3 The Consultant consents to the substitution of the Contractor for the Client under the Appointment.
- 1.2.4 This deed is supplemental to the Appointment.

2. RELEASE BY CLIENT

The Client releases and discharges the Consultant from further performance of the Consultant's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed.

3. RELEASE BY CONSULTANT

The Consultant releases and discharges the Client from further performance of the Client's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed.

4. ACCEPTANCE OF LIABILITY BY CONTRACTOR

- 4.1 The Contractor accepts the liabilities of the Client under the Appointment and agrees to perform all the duties and to discharge all the obligations of the Client under it and to be bound by all its terms and conditions in every way as if he were named in the Appointment as a party ab initio in place of the Client.
- 4.2 Without limiting the generality of clause 4.1 the Contractor acknowledges and agrees that he will receive and accept responsibility for negotiating and settling all claims and demands whatsoever against the Client arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed.

5. ACCEPTANCE OF LIABILITY BY CONSULTANT

- 5.1 The Consultant agrees to perform all his duties and to discharge all his obligations under the Appointment and to be bound by all its terms and conditions in favour of the Contractor in every way as if the Contractor were named in the Appointment as a party ab initio in place of the Client.
- 5.2 Without limiting the generality of the foregoing:
 - 5.2.1 the Consultant acknowledges and agrees that the Contractor shall have the right to enforce the Appointment and pursue all claims and demands (future or existing) by the Client whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed;
 - 5.2.2 it is agreed and acknowledged that any dispute between the Consultant and Contractor which arises from or in connection with a breach or alleged breach of the Appointment which occurred or is alleged to have occurred prior to the date of this deed shall be dealt with in all respects and for all purposes as though at the date of the said breach or alleged breach the party defined as "the Client" in the Appointment had been the Contractor.
- 5.3 The Consultant acknowledges that the Contractor is entitled to rely and may rely upon the performance by the Consultant of all of its obligations and the services required to be carried out by the Consultant under the Appointment and that the Contractor may suffer loss consequent upon the failure by the Consultant to perform such obligations and/or services to the standard of care required under the Appointment and whether or not the obligations and/or services were originally performed for the Contractor or the Client before or after the date of this deed.

- 5.4 The Consultant agrees that in defence of any claim brought by the Contractor in respect of breach by the Consultant of its duties and/or obligations under the Appointment prior to the date of this deed it shall not assert that the Contractor is precluded from recovering any loss resulting from such breach of the Appointment on the grounds that the Client for whom such duties and/or obligations were originally performed has suffered no loss or a loss different from the Contractor by reason of any breach by the Consultant.

6. ACKNOWLEDGEMENT OF PAYMENT

The Consultant acknowledges that up to the date of this deed he has been paid the sum of [] POUNDS (£[]) exclusive of value added tax by the Client.

7. CONSULTANCY AGREEMENT IN FORCE

The terms and conditions of this deed represent the entire agreement between the parties relating to the novation of the Appointment and except as specifically amended by this deed all the terms and conditions of the Appointment remain in full force and effect.

8. NO DISCHARGE OF CONSULTANT'S LIABILITY

Nothing in this deed shall operate to discharge the Consultant from any liability in respect of duties performed prior to the execution of this deed.

9. COLLATERAL WARRANTIES AND THIRD PARTY RIGHTS

- 9.1 The Consultant shall contemporaneously with the execution of this deed execute a collateral warranty in favour of the Client in the form set out the Appointment.
- 9.2 Nothing in this deed shall affect or derogate from any collateral warranty given or to be given by the Consultant to the Client.
- 9.3 The Consultant shall at the request of the Client enter into a collateral warranty with any Tenant and/or Purchaser and/or Funder (as those terms are defined in the Appointment) in the form set out in the Appointment within fourteen days of such request.
- 9.4 The Client shall be entitled to issue Nominating Notices conferring P&T Rights and/or Funder Rights pursuant to the Appointment (as those terms are defined in the Appointment).

10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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.

IN WITNESS whereof the parties hereto have executed this deed as a deed and delivered the same the day and year first before written

4.0 CONTRACTORS PROPOSALS

M.D

Anthony Marky

Ballymore Civils Ltd

17/11/2021



Nick Massingham

20:20 House (Residential Management)
Limited 17/11/21

Item	Description	Quantity	Unit	Rate	Amount
	Cladding Works as described in Option 1 Wintech Report				
	REMOVALS AS OPTION 2				
	Preambles Now includes extra over cost for scaffolding to areas which is inaccessible to MEWP's	1	Item	£ 153,960.00	£ 153,960.00
	Preliminaries Includes an additional 5 weeks	1	Item	£ 79,964.00	£ 79,964.00
BQ/34	Strip out and dispose off site existing 4mm ACM Rainscreen Panels on and including the removal of vertical U fixing box-rails as framework for cladding secured to horizontal Aluminium U rail and trapezoidal cladding				
A	4mm ACM cladding on and including U fixing rails: on 6th Floor - remove and dispose	449	m2	£ 58.00	£ 26,042.00
B	Ditto in Isolated cladding and fixing rails; in pillars between windows; second to fifth floor of Nort Elevation 300mm face returned each side of window; removed and disposed; refer drawing 06	20	m2	£ 58.00	£ 1,160.00
C	ditto in isolated cladding and tixing rails in pillars 1 to 6 on ground and first floor of North Elevation 300mm wide on face return each side to window; removed and disposed; refer drawing 05	28	m2	£ 58.00	£ 1,624.00
D	ditto in ceiling panels to recessed balconies	12	m2	£ 58.00	£ 696.00
	NOTE: Remove horizontal Aluminium U rail, Z supports and Trapezoidal sheet and take to skip	449	m2	£ 8.05	£ 3,614.45
E	Strip out and DISPOSE FROM SITE existing 80mm tk rollbatt insulation within Insulation behind Cladding	449	m2	£ 3.45	£ 1,549.05
F	Insulation behind pillers between windows	20	m2	£ 3.45	£ 69.00
G	Insulation behind pillers 1 to 6	28	m2	£ 3.45	£ 96.60
H	Insulation to ceiling panels	12	m2	£ 3.45	£ 41.40
J	Remove and take to skips	333	m	£ 5.75	£ 1,914.75
K	Carefully remove existing Aluminium L rail (item 15 on Drg) and store for re-use; fixed to ACM cladding/ and soffit	249	m	£ 5.75	£ 1,431.75
BQ/35	Carefully remove existing powder coated Aluminium soffit to eaves level; store for re-use				
A	300mm girth in stepped profile; stored for re-use	249	m	£ 5.75	£ 1,431.75

	Remove and place in skips powder coated Aluminium flashing to base of wall						
B	450mm girth in stepped profile; stored for re-use Carefully remove existing boiler flue cowls and cover trims etc; refix temporarily to allow heating to be used during currency of works, protect and insulate existing sleeves behind cladding when removed	249	m	£	5.75	£	1,431.75
C	Boiler flues and cowls removed, temporarily refixed for later re-use Carefully remove existing CCTV installation; store for re-use	17	nr	£	23.00	£	391.00
D	<u>Cameras, security lighting etc. including adapting existing system to remove elements from network whilst remaining active</u>	1	Item	£	1,000.00	£	1,000.00
						£	276,417.50

Item	Description	Quantity	Unit	Rate	Amount
BQ/35	<u>Cladding Works as described in Option 1 Wintech Report</u>				
	Remove existing fire barriers; dispose off site (Provisional)				
E	Horizontal at Eaves level	249	m	£ 5.75	£ 1,431.75
F	Vertically; apartment abutments Carefully remove existing louvre vent grill; retain sleeve in position; store for re-use	30	m	£ 5.75	£ 172.50
G	Wall mounted louvre vent grill; fixed to ACM panels Carefully remove existing external wall mounted light fitting, disconnect and make safe power supply; store for re-use	14	nr	£ 57.50	£ 805.00
H	Wall mounted light fitting; fixed to ACM panels	6	nr	£ 150.00	£ 900.00
	<u>NEW WORKS AS OPTION 2 REVISED</u>				
	Supply & Install new vertical support structure with cement particle board and EPDM seals to perimeters. Inclusive of 200mm thick RWA45 insulation between CP Board and rear of dry linings	449	m2	£ 160.30	£ 71,974.70
	<u>Supply and install 50mm Rockwool Rainscreen Duo Slab insulation TO ALLOW FOR VENTILATED AIR GAP</u>				
J	External wall insulation over 300mm girth	449	m2	£ 45.38	£ 20,375.62
	Insulation behind pillars between windows	20	m2	£ 45.38	£ 907.60
	Insulation behind pillars 1 to 6	28	m2	£ 45.38	£ 1,270.64
BQ/36	Insulation to ceiling panels	12	m2	£ 45.38	£ 544.56
A	Extra over last for fitting into recesses in trapezoidal wall sheeting; 175 wide x 50 thick at 350€/m vertically	449	m2	£ -	£ -
	Genius 5251 structural top hat and Z rails; vertically; centres ranging from 400mm to 600mm generally depending on location; all as approved by manufacturer; to suit panel size				
	Supply and install breather membrane to Rainscreen system	449	M2	£ 6.90	£ 3,098.10
B	Vertical Tophat rails supplied by Genius Fascades Refer clause H92 Rainscreen Cladding	449	m2	£ 55.43	£ 24,888.07
	3mm Aluminium prime tray panel by Genius Fascades; reference clause H92 Rainscreen Cladding				
C	Cladding; secret fixed to top hat vertical rails with and including large format Genius Fascades clips and low profile rivets supplied by Genius Fascades	449	m2	£ 306.82	£ 137,762.18
	Cladding to pillars between windows	20	m2	£ 306.82	£ 6,136.40

	Cladding to pillars 1 to 6	28	m2	£	306.82	£	8,590.96
	Cladding to ceiling panels	12	m2	£	306.82	£	3,681.84
	Fix new Aluminium L rail (item 15 on drawing) fixed to Genius Fascade and Soffit						
D	40 x 40mm Aluminium Angle iron; existing reused	249	m	£	25.13	£	6,257.37
							£288,797.29

Item	Description	Quantity	Unit	Rate	Amount
BQ/36	<u>Cladding Works as described in Option 1 Wintech Report</u>				
E	Fix new Aluminium L rail 9item 15 on drawing) fixed to Genius Fascade and Soffit 300mm steped profile; existing reuse	249	m	£ 43.41	£ 10,809.09
	Fix new powder coated aluminium flashings to jams and heads of windows and doors				
	Window and door flashings	333	m	£ 28.88	£ 9,617.04
	Install new powder coated Aluminium soffit to eaves level; 300mm girth in stepped profile;	249	m	£ 46.45	£ 11,566.05
	Take from store and refix existing louvre vent grill;				
F	Wall mounted louvre vent grill cut and fixed to Genius panels Take from store and reinstall light fitting	14	nr	£ 57.50	£ 805.00
G	Wall mounted light fitting fixed to cladding panels Take from store and refix boiler flues	6	nr	£ 150.00	£ 900.00
H	Boiler flues including testing etc.	17	nr	£ 340.00	£ 5,780.00
BQ/37	Take from Store and refix CCTV installation				
A	Cameras etc	1	Item	£ 2,450.00	£ 2,450.00
C	Siderise Horizontal cavity barrier RH50 (C/S) all as previous B of Q and in accordance with spec clause 440X	249	m	£ 41.15	£ 10,246.35
D	SideriseVertical cavity barrier RH50 (C/S) all as previous B of Q and in accordance with spec clause 440X	30	m	£ 41.15	£ 1,234.50
E	Fire seal certified fire mastic seal to steel beams at abutment of vertical and horizontal fire barriers	10	nr	£ 10.93	£ 109.30
F	Fire Seal; Intumescent collars to vent / srvice duct sleeve protruding through	20	nr	£ 26.22	£ 524.40
SITE WORKS					
G	Clean tarmadam road, concrete footpaths and car parking areas following completion of works	1	Item	£ 1,500.00	£ 1,500.00
BQ/38	Make good all grassed/lawn areas around the building following completion of the works & removal of welfare facilities				
A	Allow for all costs associated with this	1	Item	£ 500.00	£ 500.00

BQ/39	The Contractor shall comply with all enactments, regulations, and working rules relating to the safety, health and welfare of workpeople and other persons authorised to be on the site.				
A	allow for all costs associated with this requirement	1	Item	£ 3,500.00	£ 3,500.00

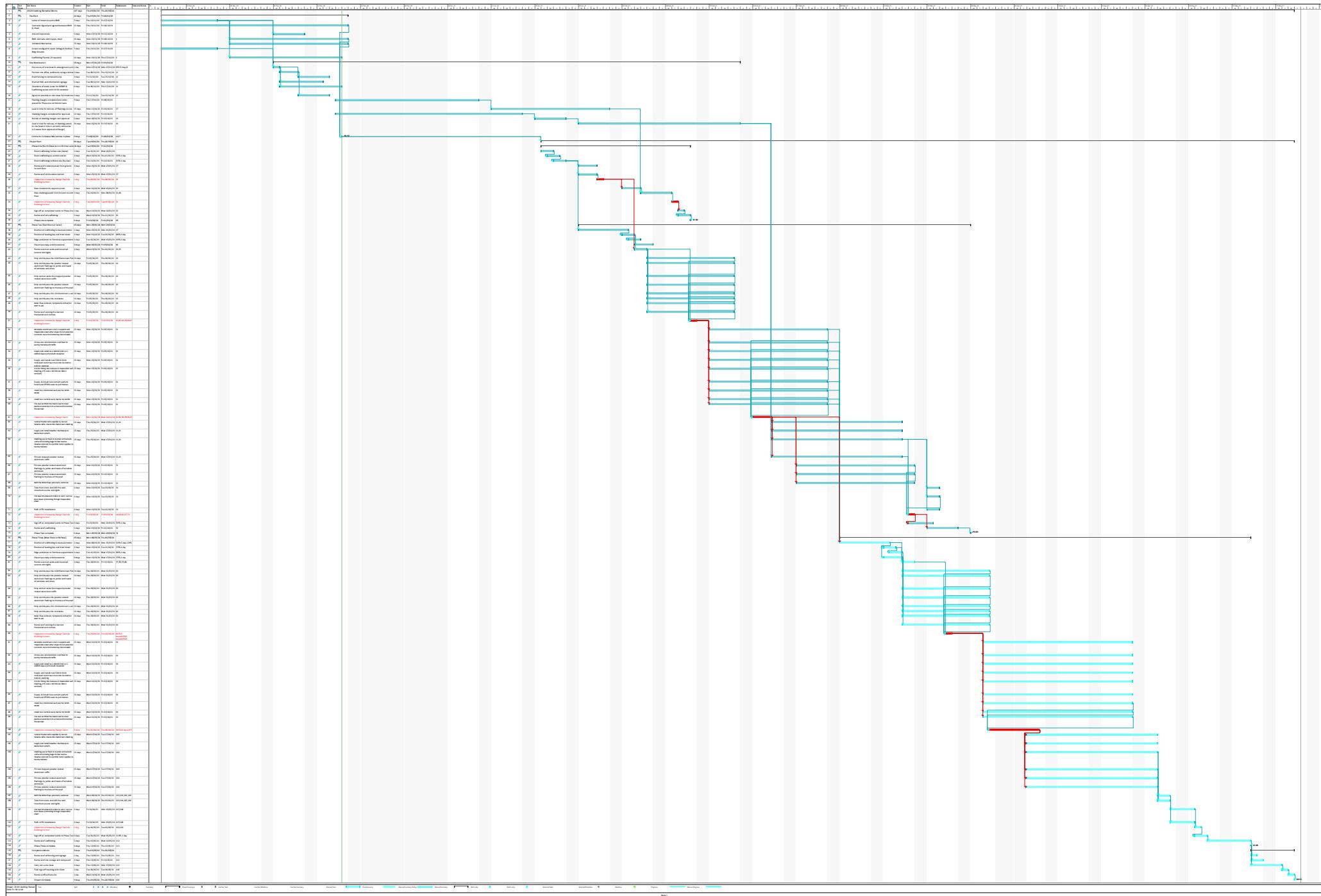
Page 3

£59,541.73

Item	Description	Quantity	Unit	Rate	Amount
	The site shall be kept tidy and clean at all times and P.P.E. shall be provided for the use of all visitors.				
B	allow for all costs associated with this requirement	1	Item	£ 1,000.00	£ 1,000.00
	Contractor shall ensure that no damage beyond fair wear and tear is caused to public or private roads and footpaths by site traffic and that they shall be kept clean.				
C	allow for all costs associated with this requirement	1	Item	£ 500.00	£ 500.00
	The appointed main contractor shall accept the role of principal contractor under CDM 2015 or the most recent update and shall provide for complying with all requirements of same appointment.				
D	allow for all costs associated with this requirement	1	Item	£ 5,500.00	£ 5,500.00
BQ/40	Reconnect, test and commission all services disconnected to facilitate the works. All relevant certification of re-commissioned services to be provided by the Contractor to the Engineer.				
A	allow for all costs associated with this requirement	1	Item	£ 2,000.00	£ 2,000.00
	A full clean of the property to be carried out prior to hand over. The property must be handed back in immaculate condition.				
B	allow for all costs associated with this requirement	1	Item	£ 1,500.00	£ 1,500.00
	Handover the property to the owner				
C	allow for all costs associated with this requirement	1	Item	£ 500.00	£ 500.00
	Furnish all detail required for hand-over / completion file to PD				
D	allow for all costs associated with this requirement	1	Item	£ 2,800.00	£ 2,800.00
	Structural Design		Sum		£ 11,500.00
	Architect - Condensation Analysis (PC Sum)		Sum		£ 10,000.00
					£35,300.00

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£35,300.00



DATED 09 DECEMBER 2021

- (1) AJ CLADDING LIMITED
- (2) 20:20 HOUSE (RESIDENTIAL MANAGEMENT)
LIMITED
- (3) BALLYMORE CIVILS LIMITED

SUB-CONTRACTOR'S WARRANTY
in favour of Employer
in respect of a development at
20:20 Building, Skinner Lane, Leeds



GOWLING WLG

THIS DEED is made

20

BETWEEN

- (1) **AJ CLADDING LIMITED** (company registration number SC227453) whose registered office is at 60 Clove Myll Wynd, Larkhall, Scotland ML9 1NT ("the Sub-Contractor")
- (2) **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 Company")
- (3) **BALLYMORE CIVILS LIMITED** (Company registration number NI615559) whose registered office is at 3 Gortrush Business Centre, 27 Gortrush Industrial Estate, Great Northern Rd, Omagh BT78 5EJ ("the Contractor")

IN CONSIDERATION of the sum of one pound (£1.00) paid by the Company to the Sub-Contractor (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 :

"Building Contract"	the JCT Design and Build Contract 2016 as amended by a bespoke schedule of amendments and entered into or to be entered into by the Company and the Contractor for the carrying out and completion of the Works and includes any subsequent agreement varying or supplementing such contract
"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
"Practical Completion"	practical completion of the Works under the Building Contract
"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday
"Site"	20:20 Building, Skinner Lane, Leeds LS7 1BB
"Sub-Contract"	the sub-contract for the Sub-Contract Works entered into or to be entered into between the Contractor and the Sub-Contractor

"Sub-Contract Works"	the cladding works carried out and/or to be carried out by the Sub-Contractor under the Sub-Contract
"Sub-Contractor's Design Documents"	all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed by or on behalf of the Sub-Contractor in the course of or as a result of carrying out the Sub-Contract Works whether in existence or to be made or produced and including all amendments additions and all designs ideas concepts and inventions contained in them
"Working Day"	any day which is not a Saturday, Sunday or Public Holiday
"Works"	the works performed and/or to be performed by the Contractor under the Building Contract

1.2 Interpretation

- 1.2.1 The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.
- 1.2.2 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.2.3 Words of one gender include both other genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.2.4 References to "liability" include where the context so allows claims demands proceedings losses costs and expenses.
- 1.2.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

1.3 Circumstances

- 1.3.1 By the Building Contract the Company employed the Contractor to carry out the Works.
- 1.3.2 By the Sub-Contract the Contractor employed the Sub-Contractor to carry out the Sub-Contract Works.
- 1.3.3 It is a term of the Building Contract that the Contractor procures that the Sub-Contractor enters into this deed for the benefit of the Company and its permitted assigns.

2. DUTY OF CARE

The Sub-Contractor warrants and undertakes to the Company that:

- 2.1 it has performed and will continue to perform its duties to the Contractor under the Sub-Contract;
- 2.2 the design of the Sub-Contract Works has been and will be carried out using all the reasonable skill care and diligence to be expected of a design sub-contractor acting in the capacity of the Sub-Contractor and experienced in the provision of the Sub-Contract Works for developments and projects of the same size scope complexity, nature and timescale as the Works.

3. PROHIBITED MATERIALS

- 3.1 The Sub-Contractor has not and shall not specify nor use nor authorise cause or allow to be used within or in relation to the Works 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 persons involved in the installation construction or maintenance of the Works or the completed Works or to the eventual occupants of the Works; or
 - 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 Works are being carried out are generally accepted as (or are reasonably suspected 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 any 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 Works or any part the Works

to a period less than that specified or which would normally be expected.
- 3.3 The Sub-Contractor warrants that it shall comply with and have regard to the guide entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices or such other version of such publication current

at the time of use in assessing whether or not an intended material is deleterious in the terms set out in clause 3.

- 3.4 The Sub-Contractor will as soon as reasonably practicable notify the Company if it becomes aware of any proposed or actual use in the Works of any materials not compliant with clause 3.1.

4. RESTRAINTS ON THE SUB-CONTRACTOR

The Sub-Contractor may not exercise any rights of set-off or counterclaim which may be permissible against his liability under the Sub-Contract 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 Sub-Contractor in relation to performance of the Sub-Contractor's duties under the Sub-Contract unless and until the Company has given notice under clause 7.2 or clause 7.3.

6. LIABILITY FOR PAYMENT

The Company has no liability to the Sub-Contractor in respect of fees and expenses under the Sub-Contract unless and until the Company has given notice under clause 7.1 or clause 7.3.

7. STEP-IN RIGHTS

- 7.1 The Sub-Contractor agrees that it will not without first giving the Company previous notice in writing exercise any right it may have to terminate or suspend the Sub-Contract or to treat the same as having been repudiated by the Contractor. Such notice to the Company shall:
- 7.1.1 if the grounds are that a sum which is due has not been paid by the final date for payment and no effective notice to pay less has been given be given no less than 7 days before the Sub-Contractor exercises any such right; otherwise
- 7.1.2 be given no less than 15 Working Days before the Sub-Contractor exercises any such right.
- 7.2 The right of the Sub-Contractor to terminate or suspend the Sub-Contract with the Contractor or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice and subject to clause 7.4 the Company shall give notice in writing to the Sub-Contractor requiring the Sub-Contractor to accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract.
- 7.3 If so required by notice in writing given by the Company and subject to clause 7.4 the Sub-Contractor shall accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor 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 Building Contract.

- 7.4 Any notice given by the Company under clause 7.2 shall state that the Company or its appointee accepts liability for payment of fees payable to the Sub-Contractor under the Sub-Contract and for performance of the Contractor's obligations under the Sub-Contract and in the case of the Company nominating an appointee the Company guarantees all payments due to the Sub-Contractor from its appointee.
- 7.5 Compliance by the Sub-Contractor with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination nor otherwise prevent the Sub-Contractor from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.2.

8. PRODUCT LIABILITY INSURANCE

- 8.1 The Sub-Contractor warrants that, without prejudice to its liability under this deed, it shall effect and will maintain at all relevant times during the Works and for the period of twelve six years from the date of Practical Completion with reputable insurers carrying on business in the United Kingdom product liability insurance cover of at least five million pounds (£5,000,000) for any one occurrence but in the aggregate in the period of insurance PROVIDED ALWAYS such insurance continues to be available in the United Kingdom market upon reasonable terms and conditions and at commercially reasonable premium rates.
- 8.2 The Sub-Contractor shall throughout the period referred to in clause 8.1 provide to the Company, when reasonably requested by him to do so, evidence that the insurance required by clause 8.1 is being maintained in accordance with clause 8.1.
- 8.3 The Sub-Contractor 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 Sub-Contractor 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 Sub Contractor's Design Documents shall remain vested in the copyright owner.
- 9.2 The Sub-Contractor waives any Moral Rights that it may have as author in respect of the Sub Contractor's Design Documents and/or the Sub-Contract Works 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 Sub Contractor's Design Documents and/or the Sub-Contract Works.
- 9.3 The Sub-Contractor grants or shall procure the grant from third parties engaged by the Sub-Contractor (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Sub Contractor's Design Documents for any purpose whatsoever connected with the Site and/or the Works 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 Works and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Sub-Contractor shall not be liable for the consequences of any use of the Sub Contractor's Design Documents for any purpose other than that for which the same was prepared.

9.4 The Sub-Contractor 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 Works 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 Sub Contractor's Design Documents as may be reasonably requested by the Company.

10. ASSIGNMENT

- 10.1 The Company may (without the consent of the Sub-Contractor) assign its rights under this deed to :
- 10.1.1 any Group Company;
- 10.1.2 any other party on two occasions only.
- 10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.2.
- 10.3 The Sub-Contractor 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 Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.

11. CONTRACTOR ACKNOWLEDGEMENT

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

12. PERIODS OF RECKONING TIME

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

13. LIMITATION AND MISCELLANEOUS

- 13.1 The liability of the Sub-Contractor under this deed shall be limited to claims arising within twelve years after the date of Practical Completion.
- 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 Sub-Contract shall not in any way derogate from the Sub-Contractor's obligations hereunder nor diminish any liability on its part under this deed.
- 13.4 The Sub-Contractor acknowledges that:
- 13.4.1 the Company shall be deemed to have relied upon the Sub-Contractor's reasonable skill care and diligence in respect of those matters relating to the Works which lie within the scope of its responsibilities under the Sub-Contract 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 Works shall abate or reduce the Sub-Contractor'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 Sub-Contractor 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 funder in the same form as this deed (save that this clause and the step in provisions shall be deleted and the recitals amended to reflect the correct factual position).

15. NOTICES

- 15.1 Any notice to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered office for the time being or in any other case to any address for the time being of the person to be served.
- 15.2 Notice may be served by:
- 15.2.1 personal delivery; or
- 15.2.2 pre-paid registered or recorded delivery mail; or
- 15.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.

- 15.3 Notices and communications shall be deemed to have been served or received as follows:
- 15.3.1 in the case of personal delivery on the date of delivery;
- 15.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
- 15.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

16. LAW

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

EXECUTED AND DELIVERED as a deed on the date at the head of this deed

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

.....
Director 

Print name..... *JOHN EASTON*

.....
Director/Secretary

Print name.....

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

.....
Director

Print name.....

.....
Director/Secretary

Print name.....

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 Mc Callan
.....
Director/Secretary

Print name JAMES MC CALLAN

DATED 26 October **20²¹**

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

FAÇADE ENGINEER'S APPOINTMENT
in respect of a development at
20:20 Building, Skinner Lane, Leeds LS7 1BB



GOWLING WLG

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THIS AGREEMENT is made

26 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) **WINTECH LIMITED** (Company registration number 2430998) whose registered office is at Quartz House, Pendeford Business Park, Wobaston Road, Wolverhampton, WV9 5HA ("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 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) the Quantity Surveyor
	(d) International Fire Consultants Limited (the Fire 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 Quantity Surveyor 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 drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other 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 and all designs ideas concepts and inventions contained in them
"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"	a 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)
"Quantity Surveyor"	RPP Limited or such other person as may be appointed from time to time by the Employer as quantity surveyor in relation to the Project
"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 LS7 1BB 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)

"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"	a 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)
"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.

1.3 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 façade consultant 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 façade consultant 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 properly qualified and competent façade consultant experienced in the provision of professional services for developments and projects of a similar size scope value character and complexity as 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.
- 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 have regard to and shall advise the Employer upon any obligations imposed upon the Employer and/or a Group Company contained in or arising from:
 - 4.3.1 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
 - 4.3.2 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.
- 4.4 The Consultant shall in the performance of the Services have due regard to the Project Programme and the Construction Programme and the target dates contained in the Project Programme and the Construction Programme.
- 4.5 The Consultant shall liaise with the Professionals and all others involved in the design of the Project fully and effectively to the intent that the overall design of the Project is fully integrated.
- 4.6 The Consultant further acknowledges the role of the Project Manager as the consultant with authority and responsibility for the overall co-ordination and management of the Project and shall co-operate and liaise with him fully and effectively.
- 4.7 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.

- 4.8 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.
- 4.9 The Consultant shall comply with its obligations under the CDM Regulations and 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 subject to the standard of skill care and diligence required by clause 3.1 ensure that any design of the Project (including any design or performance criteria) carried out or drawn up by the Consultant in the performance of the Services and any Project Material produced by the Consultant (or for which the Consultant is responsible) and that any Project Material comply with and are in accordance with:
- 5.1.1 all Statutory Requirements;
 - 5.1.2 all Required Consents;
 - 5.1.3 all relevant codes of practice and British or European standards;
 - 5.1.4 the requirements and regulations of all relevant statutory or other undertakers or utilities.

- 5.2 The Consultant shall comply with all Statutory Requirements and all Required Consents in the performance of the Services.
- 5.3 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 which at the time of specification :
- 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 subject to the standard of skill care and diligence required by clause 3.1 warrants that it shall comply with and have regard to the publication entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices" (current edition) in assessing whether or not an intended material is deleterious in the terms set out in clause 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.
- 6.5 For the avoidance of doubt, this clause 6 shall not impose any additional duty on the Consultant to inspect the Project over and above any such duty contained elsewhere in this Appointment.

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). Removal of such person shall not be deemed to be an admission of liability on the part of the Consultant.

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 The Consultant shall not sublet or delegate any of the Services to the Contractor or any Sub-Contractors without first consulting with the Employer and obtaining the Employer's prior written agreement to such sub-letting or delegation.
- 8.5 If the Consultant considers that any design or other professional service should be carried out by a specialist consultant to be engaged directly by the Employer the Consultant shall so advise the Employer.
- 8.6 If the Employer agrees to any sub-letting or delegation to the Contractor or any Sub-Contractor under clause 8.4 or the appointment of specialist consultants under clause 8.4 the Consultant shall:
 - 8.6.1 advise the Employer on the competence and experience of the Contractor Sub-Contractor or specialist consultant; and
 - 8.6.2 to the extent that the services carried out by the Contractor Sub-Contractor or specialist consultant relate to or impact upon the Services being provided by the Consultant (or vice versa) co-ordinate and integrate the services carried out by the specialist consultant Contractor or Sub-Contractor with the Services; and
 - 8.6.3 check comment and advise the Employer upon the integrity and adequacy of any design produced by the Contractor Sub-Contractor or specialist

consultant and upon the competence proper execution and performance of such Contractor Sub-Contractor or specialist consultant.

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 or 12 years from completion of the Services in the event that Practical Completion is not achieved (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 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 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 and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Project Material for any purpose whatsoever connected with the Project and/or the Site and/or any premises constructed or to be constructed on the Site including without limitation the execution completion maintenance letting occupation management sale advertisement extension (save that such use shall not include a licence to reproduce the designs contained in the Project Material for the extension of the Project) 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 and any mortgagees);
 - 12.4.2 it will provide the Employer or any person acquiring an interest in all or part of the Site (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 to design 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 AND NOVATION

- 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 its rights and interests in or under this agreement to any party on two occasions only 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.
- 13.4 If the Employer selects a design and build form of building contract for the completion of any design and/or carrying out the Works the Consultant shall within 10 Working Days of a request so to do from or on behalf of the Employer execute and deliver to the Employer a deed of novation in the form set out in Schedule 6 with the intent that the engagement of the Consultant under this agreement be novated to the Contractor

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).
- 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.

- 14.5 The Consultant shall provide collateral warranties pursuant to clause 14.1 or Third Party Rights pursuant to clause 14.3 at no cost to the Employer for up to a maximum of three beneficiaries. Any further collateral warranties or Third Party Rights will be provided for a fee of no more than £600 per beneficiary.

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 by giving the Consultant 7 days' 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 by giving to the Consultant 7 days' 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 subject to the standard of skill care and diligence required by clause 3.1 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 14.5 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; or
- 21.1.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.

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

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 the address above 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 request, 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.

26. LIMITATION OF LIABILITY

- 26.1 Notwithstanding anything to the contrary contained in this agreement, the liability of the Consultant under or in connection with this agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed the sum of two millions pounds (£2,000,000) in the aggregate.

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

DocuSigned by:

Nick Massingham

466ED44708344D7.....

Director

Nick Massingham

Print name.....

DocuSigned by:

Pogson

60GA06C768D1496.....

Witness

Philip Pogson

Witness name.....

52, Queenswood Road, LS6 3NS

.....
Witness address

Executed as a deed by
WINTECH LIMITED
acting by two a Directors

DocuSigned by:

D6C355664AF4426...
Director

David watabiki
Print name.....

DocuSigned by:

5E6DFD68170D47A...
Director

Paul Savidge
Print name.....

SCHEDULE 1
Main Details

- 7.1.1 The Team Director is David Watabiki
- 7.1.2 The Consultant's key personnel are:
- (i) Paul Savage
 - (ii) Harvir Bansal
- 10.1.1 The Fee is ONE HUNDRED AND SIXTEEN THOUSAND SIX HUNDRED AND FIFTY POUNDS (£116,650)
- 10.1.2 Reimbursable expenses disbursements costs overheads etc : none
- 10.2.4 Hourly rates for Additional Services are:
£185.33
- 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:

Payment Stage	Amount (£)
Initial Document Review and Site Survey	2,980.00
Reporting	ACM Cost: 2,780.00 Timber Cost: 2,780.00
Desktop and Meeting Time	4,170
Remedial Specification	ACM Cost: 3,475.00 Timber Cost: 3,475.00
Tender Review	1,390
Site visits (30 no)	68,550 (2,285 per visit)
Design Audit	18,070.00
Additional 1no. site visit	1,590
Additional 1no. site visit	1,550
4-days review of Penthouse 2 details	5,840

- 11.1 The level of professional indemnity insurance cover required is two million pounds (£2,000,000) in the aggregate for each period of insurance.

SCHEDULE 2

The Standard Services

1.0 Initial Document Review and Site Survey

The Consultant will carry out an initial review of the available O&M information for both the ACM and Timber areas to try to understand the intended construction prior to attending site. The Consultant will subsequently attend site for 1No. day to witness the opening up of a selection of the ACM and Timber areas. The Consultant understands that the Employer will be providing both the contractors and access equipment required to carry out the review and therefore the Consultant has not made any allowance for this in their costs.

2.0 Reporting

Upon completion of the above review the Consultant will provide a separate report for the ACM and Timber. The Consultant's report will comment on their findings from the initial O&M review and the site investigation to comment on whether the construction of the facades were naturally compliant at the time of construction, as well as current guidance. The Consultant will provide some high level remedial solutions for consideration by the Employer.

3.0 Desktop and Meeting Time

Following on from the issue of the report, there may be a requirement to attend meetings or carry out desktop time/correspondence with the Employer and the team to discuss and agree remedial solutions prior to production of the remedial specification. At this point it is difficult to determine how much time may be required and therefore we have confirmed our day rate so that costs can be charged based on time taken.

4.0 Remedial Specification

The Consultant will produce a remedial specification document which details the required replacement components, along with performance requirements and any standards or regulations that need to be met. The document will include required technical submittals that the contractor will need to provide alongside the detailed design, as well as any allowance for testing upon completion.

5.0 Tender Review

Once the Façade Contractors provide their tender returns, the Consultant will carry out a review of the bids that they have made to see if they have generally provided a bid that meets the requirements of the specification.

Design Audit Scope:

Once the specialist Façade Contractor begins their design work, the Consultant will carry out a detailed technical review to help see that it meets the requirements of the project specification and the Employer's requirements, as well as all applicable standards and regulations. As part of this process the supporting calculations will be reviewed by the Consultant's in-house specialist Structural and Thermal Engineers. The Consultant's costs are based on the review of up to 30No. details (up to twice for each detail), along with supporting structural and thermal calculations and associated data sheets.

Site Monitoring Visits

The Consultant will provide an attendance on site at agreed intervals to help see that the works are installed in compliance with the design details, specification and with the appropriate level of expertise, craftsmanship and quality. The Consultant will make a photographic record of the

findings, observations and progress made on site. During the Consultant's attendance they will make themselves available for any meetings that may be required with the sub-contractors and Professional Team if requested. The Consultant's cost also allows for the ongoing correspondence and desktop works required between their visits.

The final scope will be dependent on the quality of the chosen Sub-Contractor and the duration of the façade works; however, the Consultant would recommend an attendance once weekly during the course of the façade works on site.

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 a properly qualified and competent façade consultant 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 or 12 years from completion of the Services in the event that Practical Completion is not achieved with reputable insurers carrying on business in the United Kingdom professional indemnity insurance cover of the amount 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 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 and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Project Material for any purpose whatsoever connected with the 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 (save that such use shall not include a licence to reproduce the designs contained in the Project Material for the extension of the Project) 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 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.

6.3 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 12 years from completion of the Services in the event that Practical Completion is not achieved.
- 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 provided always that nothing in this clause shall modify or affect any rights which the Consultant might have but for the existence of this clause to claim a contribution from any third party whether under statute or at common law.
- 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 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 provided always that nothing in this clause shall modify or affect any rights which the Consultant might have but for the existence of this clause to claim a contribution from any third party whether under statute or at common law.
- 7.5 Subject to paragraph 3:
 - 7.5.1 the Consultant shall have no greater obligations to the Third Party by virtue of this schedule than it would have had if the Third Party had been named in the Appointment jointly with the Employer; and
 - 7.5.2 the Consultant shall be entitled in any action or proceedings by the Third Party to rely on any limitation or exclusion in the Appointment and to raise equivalent rights of defence of liability as it would have against the Employer under the Appointment.

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; or
 - 8.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.
- 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;
 - 8.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

9. LAW

This schedule shall be governed by English law and the Consultant and the Third Party hereby submit to the non 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
Deed of Collateral Warranty in favour of Funder/Purchaser/Tenant/Employer

DATED _____ 20[]

(1) [REDACTED]

(2) [REDACTED]

(3) [REDACTED]

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

[REDACTED]



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")] [("the Contractor")]

DRAFTING NOTE : Employer/Contractor 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] [Company] 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 drawings plans models specifications reports calculations charts diagrams sketches (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 and all designs ideas concepts and inventions contained in them
"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] [Company] employed the Consultant to act as [] in relation to the Project.
- 1.3.2 [The Appointment of the Consultant has been novated to the Contractor.]

- 1.3.3 [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].]
- 1.3.4 It is a term of the Appointment that the Consultant enter into this deed for the benefit of the Company and its permitted assigns.

2. DUTY OF CARE

The Consultant warrants and undertakes to the Company that:

- 2.1 it has performed and will continue to perform its duties under the Appointment;
- 2.2 it has exercised and will continue to exercise the reasonable skill care and diligence to be expected of a properly qualified and competent façade consultant 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 which at the time of specification:
 - 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 subject to the standard of skill care and diligence required by clause 2.1 warrants that it shall comply with and have regard to the publication entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices" (current edition) in assessing whether or not an intended material is deleterious in the terms set out in clause 3.1.
- 3.4 The Consultant will as soon as reasonably practicable notify the Company if it becomes aware of any proposed or actual use in the Project of any materials not compliant with clause 3.1.
- 3.5 For the avoidance of doubt, this clause 3 shall not impose any additional duty on the Consultant to inspect the Project over and above any such duty contained elsewhere in the Appointment.

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] [Contractor] or to discontinue the performance of any duties to be performed by the Consultant pursuant to the Appointment and if the grounds are that fees which are due have not been paid by the final payment date and no effective notice to withhold payment or pay less has been given such notice shall be not less than 7 days otherwise such notice shall be not less than 15 Working Days.
- 7.2 The right of the Consultant to terminate the Appointment with the [Employer] [Contractor] or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice and subject to clause 7.4 the Company shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Company or its appointee to the exclusion of the [Employer] [Contractor] in respect of the carrying out and completion of the Project upon the terms

and conditions of the Appointment PROVIDED THAT the rights of the [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] [Contractor] in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment. The [Employer] [Contractor] acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Company under this clause as conclusive evidence for the purposes of this deed that the right to serve such notice has accrued to the Company pursuant to the terms of the agreement between the [Employer] [Contractor] and the Company.
- 7.4 Any notice given by the Company under this clause 7 shall state that the Company or its appointee accepts liability for payment of fees payable to the Consultant under the Appointment (including those due and owing under the Appointment at the date of any notice served by the Company) and for performance of the [Employer's] [Contractor's] obligations under the Appointment and in the case of the Company appointing a nominee the Company guarantees all payments due to the Consultant from its appointee.
- 7.5 Compliance by the Consultant with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the [Employer] [Contractor] giving rise to the right of termination nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.2.

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 or completion of the Services if Practical Completion is not achieved with reputable insurers carrying on business in the United Kingdom professional indemnity insurance cover of at least two million pounds (£2,000,000) in the aggregate for each period of insurance PROVIDED ALWAYS such insurance continues to be available in the United Kingdom market to professional consultants of a similar size to and providing similar services as the Consultant upon reasonable terms and conditions and at commercially reasonable premium rates.
- 8.2 The Consultant shall throughout the period referred to in clause 8.1 provide to the Company, when reasonably requested by him to do so, evidence that the insurance required by clause 8.1 is being maintained in accordance with clause 8.1.
- 8.3 The Consultant shall immediately inform the Company as soon as it becomes aware that the insurance referred to in clause 8.1 is not maintained in accordance with this

deed or for any reason becomes void or unenforceable and shall agree with the Company the best means of protecting the Consultant and the Company's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

9. COPYRIGHT

- 9.1 Copyright in the Project Material shall remain vested in the copyright owner.
- 9.2 The Consultant waives any Moral Rights that it may have as author in respect of the Project Material and/or the Project and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Project Material and/or the Project.
- 9.3 The Consultant grants or shall procure the grant from third parties engaged by the Consultant (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Project Material for any purpose whatsoever connected with the Project and/or the Site and/or any premises constructed or to be constructed on the Site including without limitation the execution completion maintenance letting occupation management sale advertisement extension (save that such use shall not include a licence to reproduce the designs contained in the Project Material for the extension of the Project) 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 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.3.
- 10.3 The Consultant undertakes with the Company not to contend that any person to whom this deed may be assigned will be precluded from recovering under this deed any loss resulting from any breach of this deed either by reason that the person is an assignee and not the original party to this deed or by reason that the Company named in this

deed or any intermediate owner of the Company's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

11. [EMPLOYER] [CONTRACTOR] ACKNOWLEDGEMENT

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

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 completion of the Services if Practical Completion is not achieved.
- 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 provided always that nothing in this clause shall modify or affect any rights which the Consultant might have but for the existence of this clause to claim a contribution from any third party whether under statute or at common law.
- 13.4 The Consultant acknowledges that:
 - 13.4.1 the Company shall be deemed to have relied upon the Consultant's reasonable skill care and diligence in respect of those matters relating to the Project which lie within the scope of its responsibilities under the Appointment or under this deed;
 - 13.4.2 no negligent or other act omission 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 provided always that nothing in this clause shall modify or affect any rights which the Consultant might have but for the existence of this clause to claim a contribution from any third party whether under statute or at common law.
- 13.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend any terms of this deed to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been entitled to enforce such terms.

13.6 Subject to clause 4:

- 13.6.1 the Consultant shall have no greater liability to the Company by virtue of this deed than it would have had if the Company had been named in the Appointment jointly with the Employer; and
- 13.6.2 the Consultant shall be entitled in any action or proceedings by the Company to rely on any limitation or exclusion in the Appointment and to raise equivalent rights of defence of liability as it would have against the Employer under the Appointment.

14. NOTICES

- 14.1 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.
- 14.2 Notice may be served by:
 - 14.2.1 personal delivery; or
 - 14.2.2 pre-paid registered or recorded delivery mail; or
 - 14.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.
- 14.3 Notices and communications shall be deemed to have been served or received as follows:
 - 14.3.1 in the case of personal delivery on the date of delivery;
 - 14.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
 - 14.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

15. LAW

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

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

Deed of Collateral Warranty in favour of MHCLG

Date.....**2021** insert date

**Collateral Warranty
from Consultant to MHCLG
relating to ACM cladding remedial works at 20:20 Block B
Flats, Skinner Lane, Leeds LS7 1BE**

Wintech Limited ⁽¹⁾
The Ministry of Housing, Communities & Local Government ⁽²⁾ and
20:20 House (Residential Management) Limited ⁽³⁾

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DATE..... 2021

PARTIES

- (1) **WINTECH LIMITED** (No. 02430998) whose registered office is Quartz House, Pendeford Business Park, Wolverhampton, West Midlands, United Kingdom, WV9 5HA (**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) **20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED** (No.06770847) whose registered office is Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB (**Employer**).

BACKGROUND

- (A) By the Appointment, the Employer has engaged the Consultant to act in the capacity of facade engineer 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 23 February 2021 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 definition ascribed to in Recital (B).

Appointment the deed of appointment between the Employer and the Consultant dated 3 July 2020 for the carrying out of facade engineer 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.

Business Day	a day which is not a Saturday or Sunday or a bank or national holiday in England.
Contract	the contract between the Employer and the Contractor dated 2 December 2020 for the design, carrying out and completion of Remedial Works including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.
Contractor	Ballymore Services Limited (No. NI622883) whose registered office is 20 Armagh Road, Portadown, Craigavon, Northern Ireland, BT62 3DP
Construction Regulations	Products 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 Contract 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 Contract.
Remedial Works	the Unsafe ACM Cladding remedial works by the Employer at the Site.
Site	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 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 and the Consultant shall be entitled in any action or proceedings by the MHCLG to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Employer under the Appointment 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 the reasonable skill, care and diligence to be expected of a properly qualified and competent facade engineer 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 Not used.
 - 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 at commercially reasonable rates and terms with a limit of indemnity and basis of cover of not less than that set out in the Appointment in the annual aggregate to cover 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.
- 6.4 The Consultant shall as soon as reasonably practicable inform the MHCLG if the insurance referred to in Clause 6.1 ceases to be available at commercially reasonable rates and terms and shall obtain such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain. For the purposes of this Clause 6, commercially reasonable rates shall mean such level of premium rates at which other consultants of a similar size and financial standing as the Consultant at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, errors, omissions,

negligence, breaches, defaults, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

7. 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.

8. EXCLUDED MATERIALS

- 8.1 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 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:
- 8.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
 - 8.1.2 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;
 - 8.1.3 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
 - 8.1.4 to be supplied or placed on the market in breach of the Construction Products Regulations.

9. COMMUNICATIONS

- 9.1 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: Paul Savidge

Address: Wintech Limited, Quartz House, Pendeford Business Park,
Wolverhampton, WV9 5HA

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: Nick Massingham

Address: Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB

- 9.2 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.

10. 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.

11. ASSIGNMENT

- 11.1 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.
- 11.2 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11.1 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.
- 11.3 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.

12. 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.

13. 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.

14. GOVERNING LAW AND JURISDICTION

- 14.1 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.
- 14.2 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).

15. 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.

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 Director's signature
on behalf of **WINTECH LIMITED** in the presence of:

witness' signature
.....

Name.....

Address.....
.....

Occupation.....

The **CORPORATE SEAL** of **THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT** herewith affixed is authenticated by:

Signed as a deed by
for and on behalf of **20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED** Director's signature
in the presence of:

..... witness'
signature

Name.....

Address.....
.....

Occupation.....

**SCHEDULE 6
Deed of Novation**

DATED _____ 20[]

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

DEED OF NOVATION
in respect of a development at
[]



THIS DEED is made

20[]

BETWEEN

- (1) [] (Company registration number []) whose registered office is at [] ("the Client")
- (2) [] (Company registration number []) whose registered office is at [] ("the Contractor")
- (3) [] (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")

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS AND CIRCUMSTANCES

1.1 Definitions

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

"Appointment"	the appointment entered into between the Consultant and the Client dated []
"Project"	[] at the Site
"Site"	[]
"1999 Act"	the Contracts (Rights of Third Parties) Act 1999

1.2 Circumstances

- 1.2.1 By the Appointment the Client appointed the Consultant to act as Façade Consultant in relation to the Project
- 1.2.2 It has been agreed between the Client and the Contractor that the Contractor shall (subject to obtaining the consent of the Consultant) assume the obligations of the Client under the Appointment
- 1.2.3 The Consultant consents to the substitution of the Contractor for the Client under the Appointment
- 1.2.4 This deed is supplemental to the Appointment

2. RELEASE BY CLIENT

The Client releases and discharges the Consultant from further performance of the Consultant's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed

3. RELEASE BY CONSULTANT

The Consultant releases and discharges the Client from further performance of the Client's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed

4. ACCEPTANCE OF LIABILITY BY CONTRACTOR

The Contractor accepts the liabilities of the Client under the Appointment and agrees to perform all the duties and to discharge all the obligations of the Client under it and to be bound by all its terms and conditions in every way as if he were named in the Appointment as a party ab initio in place of the Client. Without limiting the generality of the foregoing the Contractor acknowledges and agrees that he will receive and accept responsibility for negotiating and settling all claims and demands whatsoever against the Client arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed

5. ACCEPTANCE OF LIABILITY BY CONSULTANT

- 5.1 The Consultant agrees to perform all his duties and to discharge all his obligations under the Appointment and to be bound by all its terms and conditions in favour of the Contractor in every way as if the Contractor were named in the Appointment as a party ab initio in place of the Client
- 5.2 Without limiting the generality of the foregoing:
 - 5.2.1 the Consultant acknowledges and agrees that the Contractor shall have the right to enforce the Appointment and pursue all claims and demands (future or existing) by the Client whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed
 - 5.2.2 it is agreed and acknowledged that any dispute between the Consultant and Contractor which arises from or in connection with a breach or alleged breach of the Appointment which occurred or is alleged to have occurred prior to the date of this deed shall be dealt with in all respects and for all purposes as though at the date of the said breach or alleged breach the party defined as "the Client" in the Appointment had been the Contractor
- 5.3 The Consultant acknowledges that the Contractor is entitled to rely and may rely upon the performance by the Consultant of all of its obligations and the services required to be carried out by the Consultant under the Appointment and that the Contractor may suffer loss consequent upon the failure by the Consultant to perform such obligations and/or services to the standard of care required under the Appointment and whether or not the obligations and/or services were originally performed for the Contractor or the Client before or after the date of this deed
- 5.4 The Consultant agrees that in defence of any claim brought by the Contractor in respect of breach by the Consultant of its duties and/or obligations under the Appointment prior to the date hereof it shall not assert that the Contractor is precluded from recovering any loss resulting from such breach of the Appointment on the

grounds that the Client for whom such duties and/or obligations were originally performed has suffered no loss or a loss different from the Contractor by reason of any breach by the Consultant

6. ACKNOWLEDGEMENT OF PAYMENT

The Consultant acknowledges that up to the point of novation he has been paid all sums properly due from the Client

7. CONSULTANCY AGREEMENT IN FORCE

The terms and conditions of this deed represent the entire agreement between the parties relating to the novation of the Appointment and except as specifically amended by this deed all the terms and conditions of the Appointment remain in full force and effect

8. NO DISCHARGE OF CONSULTANT'S LIABILITY

Nothing in this deed shall operate to discharge the Consultant from any liability in respect of duties performed prior to the execution hereof

9. THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

- 9.1 The Consultant shall contemporaneously with the execution of this deed execute a collateral warranty in favour of the Client in the form set out the Appointment
- 9.2 Nothing in this deed shall affect or derogate from any collateral warranty given or to be given by the Consultant to the Client
- 9.3 Subject to clause 14.1 of the Appointment the Consultant shall at the request of the Client enter into a collateral warranty with any Tenant and/or Purchaser and/or Funder and/or MHCLG (as those terms are defined in the Appointment) in the form set out in the Appointment within fourteen days of such request
- 9.4 Subject to clause 14.3 of the Appointment the Client shall be entitled to issue Nominating Notices conferring Third Party Rights pursuant to the Appointment (as those terms are defined in the Appointment).

10. 1999 ACT

- 10.1 Unless the right of enforcement is expressly provided for in this deed a person who is not a party to this deed may not by virtue of the 1999 Act enforce any of its terms
- 10.2 Except to the extent that there is express provision in this deed to the contrary the parties may by agreement rescind or vary this deed without the consent of any such person

IN WITNESS whereof the parties hereto have executed this deed as a deed and delivered the same the day and year first before written

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



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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**

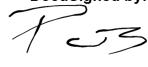
acting by a director in the
presence of a witness

.....
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) [REDACTED]
- (2) [REDACTED]
- (3) [REDACTED]

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

[REDACTED]



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⁾



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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



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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



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



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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



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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



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- 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.



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- 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.



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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:

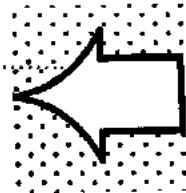
..... witness signature

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

DATED 12 January 20 22

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

FIRE ENGINEER'S APPOINTMENT
in respect of a development at
20:20 Building, Skinner Lane, Leeds LS7 1BB



GOWLING WLG

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THIS AGREEMENT is made

12 January

20 22

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) **INTERNATIONAL FIRE CONSULTANTS LIMITED** (Company registration number 02194010) whose registered office is at KIWA House, Malvern View Business Park, Stella Way, Bishops Cleeve, Cheltenham GL52 7AH ("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 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
"Management Company"	any right to manage company or party with responsibility for management of the whole or part of the Site or of an estate of which the Site forms part
"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) the Quantity Surveyor (d) Wintech Limited (the Façade Consultant) 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"	the design and construction of ACM cladding remediation works at the Site
"Project Cost Plan"	the document drawn up or to be drawn up by the Quantity Surveyor 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 drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other 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 and all designs ideas concepts and inventions contained in them

"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"	a 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
"Quantity Surveyor"	Rex Procter or such other person as may be appointed from time to time by the Employer as quantity surveyor in relation to the Project
"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 LS7 1BB 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) and including any services which although not expressly referred to in this agreement are either reasonably to be inferred from or are ancillary to the services set out in schedule 2 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"	a 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
"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 fire engineer 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 fire engineer 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 properly qualified and competent fire engineer experienced in the provision of professional services for developments and projects of a similar size scope value character and complexity as the Project.

3.2 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.

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 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.

4.3 The Consultant will use subject to the standard of skill, care and diligence required by clause 3.1 not to do or omit to do anything which enables or is likely to enable the Contractor:

4.3.1 to treat the Building Contract as terminated; and/or

4.3.2 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

4.3.3 to apply for or become entitled to an extension of time under the Building Contract.

- 4.4 The Consultant shall have regard to and shall advise the Employer upon any obligations imposed upon the Employer and/or a Group Company contained in or arising from:
- 4.4.1 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
 - 4.4.2 any Statutory Requirement or otherwise
- and shall subject to the standard of skill, care and diligence required by clause 3.1 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.
- 4.5 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.
- 4.6 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.
- 4.7 The Consultant acknowledges the role of the Façade Consultant as the lead design consultant in connection with the Project and where appropriate shall co-operate and liaise with him and all others involved in the design of the Project fully and effectively to the intent that the overall design of the Project is fully integrated.
- 4.8 The Consultant further acknowledges the role of the Project Manager as the consultant with authority and responsibility for the overall co-ordination and management of the Project and shall co-operate and liaise with him fully and effectively.
- 4.9 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.
- 4.10 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.
- 4.11 The Consultant shall comply with its obligations under the CDM Regulations and 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 ensure that any design of the Project (including any design or performance criteria) carried out or drawn up by the Consultant in the performance of the Services and any Project Material produced by the Consultant (or for which the Consultant is responsible) and that any works once constructed in accordance with any such design or design or performance criteria or Project Material comply with and are in accordance with:
- 5.1.1 all Statutory Requirements;
 - 5.1.2 all Required Consents;

- 5.1.3 all relevant codes of practice and British or European standards;
- 5.1.4 the requirements and regulations of all relevant statutory or other undertakers or utilities.
- 5.2 The Consultant shall comply with all Statutory Requirements and all Required Consents in the performance of the Services.
- 5.3 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 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 The Consultant shall not sublet or delegate any of the Services to the Contractor or any Sub-Contractors without first consulting with the Employer and obtaining the Employer's prior written agreement to such sub-letting or delegation.

8.5 If the Consultant considers that any design or other professional service should be carried out by a specialist consultant to be engaged directly by the Employer the Consultant shall so advise the Employer.

- 8.6 If the Employer agrees to any sub-letting or delegation to the Contractor or any Sub-Contractor under clause 8.4 or the appointment of specialist consultants under clause 8.4 the Consultant shall:
- 8.6.1 advise the Employer on the competence and experience of the Contractor Sub-Contractor or specialist consultant; and
 - 8.6.2 to the extent that the services carried out by the Contractor Sub-Contractor or specialist consultant relate to or impact upon the Services being provided by the Consultant (or vice versa) co-ordinate and integrate the services carried out by the specialist consultant Contractor or Sub-Contractor with the Services; and
 - 8.6.3 check comment and advise the Employer upon the integrity and adequacy of any design produced by the Contractor Sub-Contractor or specialist consultant and upon the competence proper execution and performance of such Contractor Sub-Contractor or specialist consultant.

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 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 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 or, in the event that Practical Completion is not achieved, 12 years from the date the Consultant finishes the Services (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 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 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 and design right without limitation of time (and without payment of any fee) to use copy and reproduce *inter alia* the Project Material for any purpose whatsoever connected with the Project and/or the Site and/or any premises constructed or to be constructed on the Site including without limitation the execution completion maintenance letting occupation management sale advertisement extension alteration reinstatement and repair 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. Such licence shall include a licence to use the Project Material for the extension of the Project but such use shall not include a licence to reproduce the designs contained in the Project Material for the extension of the Project.
- 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 and any mortgagees);
 - 12.4.2 it will provide the Employer or any person acquiring an interest in all or part of the Site (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 to design 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 AND NOVATION**
- 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 its rights and interests in or under this agreement at any time to:
- 13.2.1 any Fund; or
 - 13.2.2 a Group Company; or
 - 13.2.3 to any other person on two occasions only
- 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.
- 13.4 If the Employer selects a design and build form of building contract for the completion of any design and/or carrying out the Works the Consultant shall within 10 Working Days of a request so to do from or on behalf of the Employer execute and deliver to the Employer a deed of novation in the form set out in Schedule 6 with the intent that the engagement of the Consultant under this agreement be novated to the Contractor

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 Management Company; and/or
- 14.1.5 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).

- 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:
 - 14.2.1 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; and/or
- 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.
- 14.5 The Consultant shall not be obliged to provide a combined maximum of more than 5 deeds of collateral warranties pursuant to clause 14.1 and/or Third Party Rights in accordance with clause 14.3 under this agreement.

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 14.5 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 either:
 - 21.1.1 personal delivery; or
 - 21.1.2 pre-paid registered or recorded delivery mail; or
 - 21.1.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.
- 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;

- 21.2.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.
- 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 the address above 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 thereafter at the reasonable request of the Employer, 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 two Directors/a
 Director and the Secretary

DocuSigned by:

 Nick Massingham
 465ED1470B344D7.....
 Director

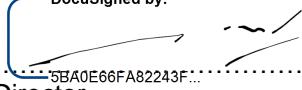
Nick Massingham
 Print name.....

DocuSigned by:

 Philip Pogson
 60CA06C753D1496.....
 Director/Secretary

Philip Pogson
 Print name.....

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

DocuSigned by:

5BA0E66FA82243F...
Director

Print name..... **Mark Horwood**

DocuSigned by:

9EDBB3126EBA49A...
Director/Secretary

Print name..... **Paul Brown**

SCHEDULE 1**Main Details**

- 7.1.1 The Team Director is Vincent Rafferty
- 7.1.2 The Consultant's key personnel are:
- (i) Jon Pagan
 - (ii) Vincent Rafferty
- 10.1.1 The Fee is FORTY SEVEN THOUSAND AND TWO HUNDRED POUNDS (£47,200.00)
- 10.1.2 Reimbursable expenses disbursements costs overheads etc: none
- 10.2.4 Hourly rates for Additional Services are:
- | | |
|---|---------------|
| Director of Fire Safety Engineering | £165 per hour |
| Principal Engineer/Associate Director | £135 per hour |
| Fire Safety Engineering Manager/Technical Manager | £120 per hour |
| Senior Fire Safety Engineer/Senior Fire Engineer | £110 per hour |
| Fire Safety Engineers | £100 per hour |
| Graduate Engineers | £75 per hour |
| Technician Engineers | £50 per hour |

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:

Instalment	Amount
June 2020	£8,000.00
April 2021	£3,000.00
June 2021	£2,300.00
October 2021	£6,000.00
November 2021	£24,900.00
November 2021	£3,000.00 (variation)

- 11.1 The level of professional indemnity insurance cover required is two million pounds (£2,000,000.00) for any one occurrence or series of occurrences arising out of the same event

SCHEDULE 2

The Standard Services

- 1.1 Physical inspection of the external wall construction.
- 1.1.1 Where the external wall includes more than one external wall build-up, each one will need to be investigated separately. As such, IFC will look to inspect the external wall system on five occasions during its construction.
- 1.1.2 IFC advocate inspecting at the beginning, middle and end of the external wall construction, where possible.
- 1.2 IFC will initially undertake a desktop Engineering Review and Analysis of the information provided in order to fully understand the design and specification of the external wall system ahead of any site inspection/s.
- 1.2.1 For this review, IFC will be reliant on information of the GA plans and drawings indicating the design of the external wall system.
- 1.2.2 IFC will undertake one review of the specification to check that it is in line with Building Regulations Amendments 2018. (As insulation is being replaced, these regulations will be triggered.)
- 1.2.3 IFC will provide one set of mark ups of the elevations showing where cavity barriers should be provided. This will include the brick element of the external wall.
- 1.2.4 The review will address the fire risk presented by any significant attachments to the external walls (e.g. balconies).
- 1.3 Once the Engineering Review and Analysis is complete, IFC will undertake 5no. site inspections over the course of the construction.
- 1.4 Following the investigation IFC will produce a report describing the results of the investigation and describing IFC's conclusions as to the level of fire risk present. If IFC conclude that further work is required to reduce the risk, that will be included in the report.
- 1.5 Any further ongoing support in implementing additional measures is outside of the fee proposal.
- 1.6 IFC will complete the industry standard EWS1 form (or its replacement once published) to confirm the results of the review.

Design Responsibility

IFC will review the construction details and technical submissions by the design team and identify where any changes are required, IFC will then take design responsibility for these elements under CDM 2015.

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 which for the purposes of this schedule excludes Services which relate to the issue of the EWS/1 form
"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 a properly qualified and competent fire engineer experienced in the provision of professional services for developments and projects of a similar size scope value character and complexity as the Project.

3. 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 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 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 and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Project Material for any purpose whatsoever connected with the 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. Such licence shall include a licence to use the Project Material for the extension of the Project but such use shall not include a licence to reproduce the designs contained in the Project Material for the extension of the Project.
- 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 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.
- 6.3 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, in the event that Practical Completion is not achieved, 12 years from the date the Consultant finishes 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 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.
- 7.5 Subject to paragraph 3:
- 7.5.1 the Consultant shall have no greater liability to the Third Party by virtue of this schedule than it would have had if the Third Party had been named in the Appointment jointly with the Employer; and
 - 7.5.2 the Consultant shall be entitled in any action or proceedings by the Third Party to rely on any limitation or exclusion in the Appointment and to raise equivalent rights of defence of liability as it would have against the Employer under the Appointment.

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; or
 - 8.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.
- 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;
 - 8.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

9. LAW

This schedule shall be governed by English law and the Consultant and the Third Party hereby submit to the non 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

Deed of Collateral Warranty in favour of Funder/Purchaser/Tenant/Employer

DATED _____ 20[]

(1) [REDACTED]

(2) [REDACTED]

(3) [REDACTED]

CONSULTANT'S WARRANTY

in favour of [Purchaser] [Fund] [Tenant] [Employer]
in respect of a development at

[REDACTED]



GOWLING WLG

THIS DEED is made

20[]

BETWEEN

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

OR

[] [] [] [] [] 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")] [("the Contractor")]

DRAFTING NOTE : Employer/Contractor 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] [Company] dated [] 20[] which for the purposes of this deed excludes Services which relate to the issue of the EWS/1 form

"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 drawings plans models specifications reports calculations charts diagrams sketches (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 and all designs ideas concepts and inventions contained in them
"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] [Company] employed the Consultant to act as [] in relation to the Project.
- 1.3.2 [The Appointment of the Consultant has been novated to the Contractor.]
- 1.3.3 [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].]
- 1.3.4 It is a term of the Appointment that the Consultant enter into this deed for the benefit of the Company and its permitted assigns.

2. DUTY OF CARE

The Consultant warrants and undertakes to the Company that:

- 2.1 it has performed and will continue to perform its duties under the Appointment;

- 2.2 it has exercised and will continue to exercise the reasonable skill care and diligence to be expected of a properly qualified and competent [] 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 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] [Contractor] or to discontinue the performance of any duties to be performed by the Consultant pursuant to the Appointment and if the grounds are that fees which are due have not been paid by the final payment date and no effective notice to withhold payment or pay less has been given such notice shall be not less than 7 days otherwise such notice shall be not less than 15 Working Days.
- 7.2 The right of the Consultant to terminate the Appointment with the [Employer] [Contractor] or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice and subject to clause 7.4 the Company shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Company or its appointee to the exclusion of the [Employer] [Contractor] in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment PROVIDED THAT the rights of the [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] [Contractor] in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment The [Employer] [Contractor] acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Company under this clause as conclusive evidence for the purposes of this deed that the right to serve such notice has accrued to the Company pursuant to the terms of the agreement between the [Employer] [Contractor] and the Company.
- 7.4 Any notice given by the Company under this clause 7 shall state that the Company or its appointee accepts liability for payment of fees payable to the Consultant under the Appointment (including those due and owing under the Appointment at the date of any notice served by the Company) and for performance of the [Employer's] [Contractor's] obligations under the Appointment and in the case of the Company appointing a nominee the Company guarantees all payments due to the Consultant from its appointee.
- 7.5 Compliance by the Consultant with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the [Employer] [Contractor] giving rise to the right of termination nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.2.

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 or, in the event that Practical Completion is not achieved, 12 years from the date the Consultant finishes the Services with reputable insurers carrying on business in the United Kingdom professional indemnity insurance cover of at least two million pounds (£2,000,000.00) for any one occurrence or series of occurrences arising out of the same event PROVIDED ALWAYS such insurance continues to be available in the United Kingdom market to professional consultants of a similar size to and providing similar services as the Consultant upon reasonable terms and conditions and at commercially reasonable premium rates.
- 8.2 The Consultant shall throughout the period referred to in clause 8.1 provide to the Company, when reasonably requested by him to do so, evidence that the insurance required by clause 8.1 is being maintained in accordance with clause 8.1.
- 8.3 The Consultant shall immediately inform the Company as soon as it becomes aware that the insurance referred to in clause 8.1 is not maintained in accordance with this deed or for any reason becomes void or unenforceable and shall agree with the Company the best means of protecting the Consultant and the Company's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

9. COPYRIGHT

- 9.1 Copyright in the Project Material shall remain vested in the copyright owner.
- 9.2 The Consultant waives any Moral Rights that it may have as author in respect of the Project Material and/or the Project and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Project Material and/or the Project.
- 9.3 The Consultant grants or shall procure the grant from third parties engaged by the Consultant (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Project Material for any purpose whatsoever connected with the Project and/or the Site and/or any premises constructed or to be constructed on the Site including without limitation the execution completion maintenance letting occupation management sale advertisement extension alteration reinstatement and repair of the Site and/or the Project and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Consultant shall not be liable for the consequences of any use of the Project Material for any purpose other than that for which the same was prepared. Such licence shall include a licence to use the Project Material for the extension of the Project but such use shall not include a licence to reproduce the designs contained in the Project Material for the extension of the Project.
- 9.4 The Consultant agrees that:
 - 9.4.1 the Company may assign the licence referred to in clause 9.3 or grant a sub-licence or sub-licences from such licence to any person with an interest in the Site and/or the Project and/or any premises constructed or to be constructed on the Site;
 - 9.4.2 subject to payment of its reasonable copying costs it will provide the Company with such information and copies of the Project Material as may be reasonably requested by the Company.

10. ASSIGNMENT

- 10.1 The Company may (without the consent of the Consultant) assign its rights under this deed to:
- 10.1.1 any Mortgagee and by way of re-assignment on redemption;
 - 10.1.2 any Group Company;
 - 10.1.3 any other party on two occasions only.
- 10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.3.
- 10.3 The Consultant undertakes with the Company not to contend that any person to whom this deed may be assigned will be precluded from recovering under this deed any loss resulting from any breach of this deed either by reason that the person is an assignee and not the original party to this deed or by reason that the Company named in this deed or any intermediate owner of the Company's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

[EMPLOYER] [CONTRACTOR] ACKNOWLEDGEMENT

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

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, in the event that Practical Completion is not achieved, 12 years from the date the Consultant finishes the Services.
- 13.2 The rights of the Company conferred by this deed are additional to any other that it may enjoy by grant assignment or at law.
- 13.3 Any consent approval comment or expression of satisfaction given by the Company with regard to any matter or thing relating to the Appointment shall not in any way derogate from the Consultant's obligations under this deed nor diminish any liability on its part under this deed.
- 13.4 The Consultant acknowledges that:
- 13.4.1 the Company shall be deemed to have relied upon the Consultant's reasonable skill care and diligence in respect of those matters relating to the Project which lie within the scope of its responsibilities under the Appointment or under this deed;
 - 13.4.2 no negligent or other act omission or delay by or on behalf of the Company and their respective successors in title and assigns in inspecting approving or informing itself about anything relating to the Project shall abate or reduce the Consultant's liability under this deed to the Company and its respective successors in title and assigns.

- 13.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend any terms of this deed to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been entitled to enforce such terms.
- 13.6 Subject to clause 4:
- 13.6.1 the Consultant shall have no greater liability to the Company by virtue of this deed than it would have had if the Company had been named in the Appointment jointly with the Employer; and
 - 13.6.2 the Consultant shall be entitled in any action or proceedings by the Company to rely on any limitation or exclusion in the Appointment and to raise equivalent rights of defence of liability as it would have against the Employer under the Appointment.

14. [ADDITIONAL WARRANTIES]

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

DRAFTING NOTE: CLAUSE 14 IS ONLY TO BE INCLUDED IN THE EMPLOYER WARRANTY ONLY

15. NOTICES

- 15.1 Any notice to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered office for the time being or in any other case to any address for the time being of the person to be served.
- 15.2 Notice may be served by:
- 15.2.1 personal delivery; or
 - 15.2.2 pre-paid registered or recorded delivery mail; or
 - 15.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.
- 15.3 Notices and communications shall be deemed to have been served or received as follows:
- 15.3.1 in the case of personal delivery on the date of delivery;
 - 15.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
 - 15.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

16. LAW

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

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

Deed of Collateral Warranty in favour of MHCLG

Date.....2021

**Collateral Warranty
from Consultant to MHCLG
relating to ACM cladding remedial works at 20:20 Block B
Flats, Skinner Lane, Leeds, LS7 1BE**

International Fire Consultants Limited ⁽¹⁾
The Ministry of Housing, Communities & Local Government ^{(2) and}
20:20 (Residential Management Limited) ⁽³⁾

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DATE..... 2021

PARTIES

- (1) **INTERNATIONAL FIRE CONSULTANTS LIMITED** (No. 02194010) whose registered office is at Kiwa House Malvern View Business Park, Stella Way, Bishops Cleeve, Cheltenham, Gloucestershire, GL52 7DQ (**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) **20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED** (No.06770847), whose registered office is Management Office Twenty Twenty, Skinner Lane, LS7 1BB (**Employer**).

BACKGROUND

- (A) By the Appointment, the Employer has engaged the Consultant to act in the capacity of fire engineer 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 23 February 2021 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 definition ascribed to in Recital (B).
Appointment	the deed of appointment between the Employer and the Consultant dated 23 July 2021 for the carrying out of fire engineer 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.

Business Day	a day which is not a Saturday or Sunday or a bank or national holiday in England.
Contract	the contract between the Employer and the Contractor dated on or around the date of the Funding Agreement for the design, carrying out and completion of Remedial Works including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.
Contractor	Ballymore Service Limited (No.NI622883) whose registered office is 20 Armagh Road, Portadown, Craigavon, Northern Ireland, BT61 3DP
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).
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 Contract 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 Contract.
Remedial Works	the Unsafe ACM Cladding remedial works by the Employer at the Site.
Site	building(s) 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 are set out in the consolidated advice note published by the Building Safety Programme on 5 September 2017, available here: 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 fire engineer 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.

7. 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.

8. EXCLUDED MATERIALS

- 8.1 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:
- 8.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
 - 8.1.2 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;
 - 8.1.3 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
 - 8.1.4 to be supplied or placed on the market in breach of the Construction Products Regulations.

9. COMMUNICATIONS

- 9.1 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 Vincent Rafferty

Address: International Fire Consultants Limited, Park Street Business Centre, 20 Park Street, Princes Risborough, Buckinghamshire, HP27 9AH

in the case of the **MHCLG**:

The Director of Building Safety

Ministry of Housing, Communities and Local Government

2 Marsham Street, London, SW1P 4DF The Director Building Safety

in the case of the **Employer**:

Names: Nick Massingham

Address: Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB

- 9.2 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.

10. 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.

11. ASSIGNMENT

- 11.1 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.
- 11.2 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11.1 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.
- 11.3 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.

12. 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.

13. 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.

14. GOVERNING LAW AND JURISDICTION

- 14.1 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.
- 14.2 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).

15. 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.

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 **INTERNATIONAL FIRE**
CONSULTANTS LIMITED in the presence of:

..... *witness' signature*

Name.....

Address.....
.....

Occupation.....

The **CORPORATE SEAL** of **THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT** herewith affixed is authenticated by:

Signed as a deed by..... for
and on behalf of **20:20 (RESIDENTIAL MANAGEMENT)** Director's signature
LIMITED in the presence of:

..... *witness' signature*

Name.....

Address.....
.....

Occupation.....

**SCHEDULE 6
Deed of Novation**

DATED _____ 20[]

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

DEED OF NOVATION
in respect of a development at
[]



THIS DEED is made

20[]

BETWEEN

- (1) [] (Company registration number []) whose registered office is at [] ("the Client")
- (2) [] (Company registration number []) whose registered office is at [] ("the Contractor")
- (3) [] (Company registration number []) whose registered office is at [] ("the Consultant")

OR

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

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS AND CIRCUMSTANCES

1.1 Definitions

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

"Appointment"	the appointment entered into between the Consultant and the Client dated []
"Project"	[] at the Site
"Site"	[]
"1999 Act"	the Contracts (Rights of Third Parties) Act 1999

1.2 Circumstances

- 1.2.1 By the Appointment the Client appointed the Consultant to act as [] in relation to the Project
- 1.2.2 It has been agreed between the Client and the Contractor that the Contractor shall (subject to obtaining the consent of the Consultant) assume the obligations of the Client under the Appointment
- 1.2.3 The Consultant consents to the substitution of the Contractor for the Client under the Appointment
- 1.2.4 This deed is supplemental to the Appointment

2. RELEASE BY CLIENT

The Client releases and discharges the Consultant from further performance of the Consultant's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to or subsequent to the date of this deed

3. RELEASE BY CONSULTANT

The Consultant releases and discharges the Client from further performance of the Client's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to or subsequent to the date of this deed

4. ACCEPTANCE OF LIABILITY BY CONTRACTOR

The Contractor accepts the liabilities of the Client under the Appointment and agrees to perform all the duties and to discharge all the obligations of the Client under it and to be bound by all its terms and conditions in every way as if he were named in the Appointment as a party ab initio in place of the Client. Without limiting the generality of the foregoing the Contractor acknowledges and agrees that he will receive and accept responsibility for negotiating and settling all claims and demands whatsoever against the Client arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed

5. ACCEPTANCE OF LIABILITY BY CONSULTANT

- 5.1 The Consultant agrees to perform all his duties and to discharge all his obligations under the Appointment and to be bound by all its terms and conditions in favour of the Contractor in every way as if the Contractor were named in the Appointment as a party ab initio in place of the Client
- 5.2 Without limiting the generality of the foregoing:
- 5.2.1 the Consultant acknowledges and agrees that the Contractor shall have the right to enforce the Appointment and pursue all claims and demands (future or existing) by the Client whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed
- 5.2.2 it is agreed and acknowledged that any dispute between the Consultant and Contractor which arises from or in connection with a breach or alleged breach of the Appointment which occurred or is alleged to have occurred prior to the date of this deed shall be dealt with in all respects and for all purposes as though at the date of the said breach or alleged breach the party defined as "the Client" in the Appointment had been the Contractor
- 5.3 The Consultant acknowledges that the Contractor is entitled to rely and may rely upon the performance by the Consultant of all of its obligations and the services required to be carried out by the Consultant under the Appointment and that the Contractor may suffer loss consequent upon the failure by the Consultant to perform such obligations and/or services to the standard of care required under the Appointment and whether or not the obligations and/or services were originally performed for the Contractor or the Client before or after the date of this deed
- 5.4 The Consultant agrees that in defence of any claim brought by the Contractor in respect of breach by the Consultant of its duties and/or obligations under the Appointment prior to the date hereof it shall not assert that the Contractor is precluded from recovering any loss resulting from such breach of the Appointment on the grounds that the Client for whom such duties and/or obligations were originally performed has suffered no loss or a loss different from the Contractor by reason of any breach by the Consultant

6. ACKNOWLEDGEMENT OF PAYMENT

The Consultant acknowledges that up to the point of novation he has been paid all sums properly due from the Client

7. CONSULTANCY AGREEMENT IN FORCE

The terms and conditions of this deed represent the entire agreement between the parties relating to the novation of the Appointment and except as specifically amended by this deed all the terms and conditions of the Appointment remain in full force and effect

8. NO DISCHARGE OF CONSULTANT'S LIABILITY

Nothing in this deed shall operate to discharge the Consultant from any liability in respect of duties performed prior to the execution hereof

9. THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

- 9.1 The Consultant shall contemporaneously with the execution of this deed execute a collateral warranty in favour of the Client in the form set out the Appointment
- 9.2 Nothing in this deed shall affect or derogate from any collateral warranty given or to be given by the Consultant to the Client
- 9.3 The Consultant shall at the request of the Client enter into a collateral warranty with any Tenant and Purchaser (as those terms are defined in the Appointment) in the form set out in the Appointment within fourteen days of such request
- 9.4 The Client shall be entitled to issue Nominating Notices conferring P&T Rights and/or Funder Rights pursuant to the Appointment (as those terms are defined in the Appointment).

10. 1999 ACT

- 10.1 Unless the right of enforcement is expressly provided for in this deed a person who is not a party to this deed may not by virtue of the 1999 Act enforce any of its terms
- 10.2 Except to the extent that there is express provision in this deed to the contrary the parties may by agreement rescind or vary this deed without the consent of any such person

IN WITNESS whereof the parties hereto have executed this deed as a deed and delivered the same the day and year first before written

DATED 12 January 20 22

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

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



GOWLING WLG

THIS DEED is made

12 January

20 22

BETWEEN

- (1) **INTERNATIONAL FIRE CONSULTANTS LIMITED** (Company registration number 02194010) whose registered office is at KIWA House, Malvern View Business Park, Stella Way, Bishops Cleeve, Cheltenham GL52 7AH ("the Consultant")
- (2) **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 Company")
- (3) **BALLYMORE CIVILS LIMITED** (Company registration number NI615559) whose registered office is at 3 Gortrush Business Centre, 27 Gortrush Industrial Estate, Great Northern Rd, Omagh BT78 5EJ ("the Contractor")

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 Company dated 20 22 12 January
"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"	the design and construction of ACM cladding remediation works at the Site
"Project Material"	all drawings plans models specifications reports calculations charts diagrams sketches (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 and all designs ideas concepts and inventions contained in them
"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"	20:20 Building, Skinner Lane, Leeds LS7 1BB where the Works are to be carried out
"Working Day"	any day except Saturday Sunday and bank or other public holidays in England

1.2 Interpretation

In this deed unless the context otherwise requires:

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

1.3 Circumstances

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

2. DUTY OF CARE

The Consultant warrants and undertakes to the Company that:

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

3. DELETERIOUS MATERIALS

- 3.1 The Consultant has exercised and will continue to exercise the standard of skill care and diligence required by clause 2.2 to see that it has not and shall not specify authorise cause or allow to be used within or in relation to the Project any materials:

- 3.1.1 where it is known or there are reasonable grounds for suspecting that such materials might in themselves or as a result of the manner of their use pose a hazard to health and in particular to the health of the persons involved in the installation construction or maintenance of the Project or to the eventual occupants of the Project;

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

4. RESTRAINTS ON CONSULTANT

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

5. INSTRUCTIONS

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

6. LIABILITY FOR PAYMENT

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

7. STEP-IN RIGHTS

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

8. PROFESSIONAL INDEMNITY INSURANCE

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

- 8.2 The Consultant shall throughout the period referred to in clause 8.1 provide to the Company, when reasonably requested by him to do so, evidence that the insurance required by clause 8.1 is being maintained in accordance with clause 8.1.
- 8.3 The Consultant shall immediately inform the Company as soon as it becomes aware that the insurance referred to in clause 8.1 is not maintained in accordance with this deed or for any reason becomes void or unenforceable and shall agree with the Company the best means of protecting the Consultant and the Company's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

9. COPYRIGHT

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

- 9.4 The Consultant agrees that:

- 9.4.1 the Company may assign the licence referred to in clause 9.3 or grant a sub-licence or sub-licences from such licence to any person with an interest in the Site and/or the Project and/or any premises constructed or to be constructed on the Site;
- 9.4.2 subject to payment of its reasonable copying costs it will provide the Company with such information and copies of the Project Material as may be reasonably requested by the Company.

10. ASSIGNMENT

- 10.1 The Company may (without the consent of the Consultant) assign its rights under this deed to:
 - 10.1.1 any Mortgagee and by way of re-assignment on redemption;
 - 10.1.2 any Group Company;
 - 10.1.3 any other party on two occasions only.
- 10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.3.

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

11. CONTRACTOR ACKNOWLEDGEMENT

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

12. PERIODS OF RECKONING TIME

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

13. LIMITATION AND MISCELLANEOUS

13.1 The liability of the Consultant under this deed shall be limited to claims arising within twelve years after the date of Practical Completion or, in the event that Practical Completion is not achieved, 12 years from the date the Consultant finishes the Services.

13.2 The rights of the Company conferred by this deed are additional to any other that it may enjoy by grant assignment or at law.

13.3 Any consent approval comment or expression of satisfaction given by the Company with regard to any matter or thing relating to the Appointment shall not in any way derogate from the Consultant's obligations under this deed nor diminish any liability on its part under this deed.

13.4 The Consultant acknowledges that:

13.4.1 the Company shall be deemed to have relied upon the Consultant's reasonable skill care and diligence in respect of those matters relating to the Project which lie within the scope of its responsibilities under the Appointment or under this deed;

13.4.2 no negligent or other act omission or delay by or on behalf of the Company and their respective successors in title and assigns in inspecting approving or informing itself about anything relating to the Project shall abate or reduce the Consultant's liability under this deed to the Company and its respective successors in title and assigns.

13.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend any terms of this deed to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been entitled to enforce such terms.

13.6 Subject to clause 4:

13.6.1 the Consultant shall have no greater liability to the Company by virtue of this deed than it would have had if the Company had been named in the Appointment jointly with the Employer; and

13.6.2 the Consultant shall be entitled in any action or proceedings by the Company to rely on any limitation or exclusion in the Appointment and to raise equivalent rights of defence of liability as it would have against the Employer under the Appointment.

14. ADDITIONAL WARRANTIES

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

15. NOTICES

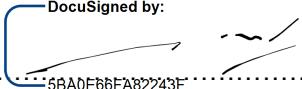
- 15.1 Any notice to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered office for the time being or in any other case to any address for the time being of the person to be served.
- 15.2 Notice may be served by:
- 15.2.1 personal delivery; or
 - 15.2.2 pre-paid registered or recorded delivery mail; or
 - 15.2.3 facsimile transmission (transmitted before 4.00pm on a Working Day) and confirmed by first class pre-paid post.
- 15.3 Notices and communications shall be deemed to have been served or received as follows:
- 15.3.1 in the case of personal delivery on the date of delivery;
 - 15.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;
 - 15.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

16. LAW

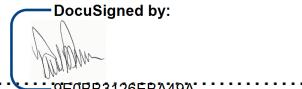
This deed shall be governed by English law and the Consultant and the Company hereby submit to the jurisdiction of the English courts.

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

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

DocuSigned by:

5BA0E66FA82243F...
Director

Mark Horwood
Print name.....

DocuSigned by:

9E0BB3126EBA49A...
Director/Secretary

Paul Brown
Print name.....

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

DocuSigned by:

Nick Massingham

465ED14708344D7...

Director

Nick Massingham

Print name.....

DocuSigned by:

Philip Pogson

60CA06C753D1A96...

Director/Secretary

Philip Pogson

Print name.....

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

DocuSigned by:

Anthony Marley

2059D8E1C55C404...

Director

Anthony Marley

Print name.....

DocuSigned by:

Mary McCallan

699E607097FF447...

Director/Secretary

Mary McCallan

Print name.....

DATED 12 January 20 22

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

DEED OF NOVATION
in respect of a development at
20:20 Building, Skinner Lane, Leeds LS7 1BB



THIS DEED is made

12 January

20 22

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 Client")
- (2) **BALLYMORE CIVILS LIMITED** (Company registration number NI615559) whose registered office is at 3 Gortrush Business Centre, 27 Gortrush Industrial Estate, Great Northern Rd, Omagh BT78 5EJ ("the Contractor")
- (3) **INTERNATIONAL FIRE CONSULTANTS LIMITED** (Company registration number 02194010) whose registered office is at KIWA House, Malvern View Business Park, Stella Way, Bishops Cleeve, Cheltenham GL52 7AH ("the Consultant")

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS AND CIRCUMSTANCES

1.1 Definitions

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

"Appointment"	the appointment entered into between the Consultant and the Client dated 12 January 2022
"Project"	the design and construction of ACM cladding remediation works at the Site
"Site"	20:20 Building, Skinner Lane, Leeds LS7 1BB where the Works are to be carried out
"1999 Act"	the Contracts (Rights of Third Parties) Act 1999

1.2 Circumstances

- 1.2.1 By the Appointment the Client appointed the Consultant to act as fire engineer in relation to the Project
- 1.2.2 It has been agreed between the Client and the Contractor that the Contractor shall (subject to obtaining the consent of the Consultant) assume the obligations of the Client under the Appointment
- 1.2.3 The Consultant consents to the substitution of the Contractor for the Client under the Appointment
- 1.2.4 This deed is supplemental to the Appointment

2. RELEASE BY CLIENT

The Client releases and discharges the Consultant from further performance of the Consultant's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to or subsequent to the date of this deed

3. RELEASE BY CONSULTANT

The Consultant releases and discharges the Client from further performance of the Client's obligations under the Appointment and from all claims and demands whatsoever arising out of or in respect of the Appointment whether arising prior to or subsequent to the date of this deed

4. ACCEPTANCE OF LIABILITY BY CONTRACTOR

The Contractor accepts the liabilities of the Client under the Appointment and agrees to perform all the duties and to discharge all the obligations of the Client under it and to be bound by all its terms and conditions in every way as if he were named in the Appointment as a party ab initio in place of the Client. Without limiting the generality of the foregoing the Contractor acknowledges and agrees that he will receive and accept responsibility for negotiating and settling all claims and demands whatsoever against the Client arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed

5. ACCEPTANCE OF LIABILITY BY CONSULTANT

- 5.1 The Consultant agrees to perform all his duties and to discharge all his obligations under the Appointment and to be bound by all its terms and conditions in favour of the Contractor in every way as if the Contractor were named in the Appointment as a party ab initio in place of the Client
- 5.2 Without limiting the generality of the foregoing:
- 5.2.1 the Consultant acknowledges and agrees that the Contractor shall have the right to enforce the Appointment and pursue all claims and demands (future or existing) by the Client whatsoever arising out of or in respect of the Appointment whether arising prior to on or subsequent to the date of this deed
- 5.2.2 it is agreed and acknowledged that any dispute between the Consultant and Contractor which arises from or in connection with a breach or alleged breach of the Appointment which occurred or is alleged to have occurred prior to the date of this deed shall be dealt with in all respects and for all purposes as though at the date of the said breach or alleged breach the party defined as "the Client" in the Appointment had been the Contractor
- 5.3 The Consultant acknowledges that the Contractor is entitled to rely and may rely upon the performance by the Consultant of all of its obligations and the services required to be carried out by the Consultant under the Appointment and that the Contractor may suffer loss consequent upon the failure by the Consultant to perform such obligations and/or services to the standard of care required under the Appointment and whether or not the obligations and/or services were originally performed for the Contractor or the Client before or after the date of this deed
- 5.4 The Consultant agrees that in defence of any claim brought by the Contractor in respect of breach by the Consultant of its duties and/or obligations under the Appointment prior to the date hereof it shall not assert that the Contractor is precluded from recovering any loss resulting from such breach of the Appointment on the grounds that the Client for whom such duties and/or obligations were originally performed has suffered no loss or a loss different from the Contractor by reason of any breach by the Consultant

6. ACKNOWLEDGEMENT OF PAYMENT

The Consultant acknowledges that up to the point of novation he has been paid all sums properly due from the Client

7. CONSULTANCY AGREEMENT IN FORCE

The terms and conditions of this deed represent the entire agreement between the parties relating to the novation of the Appointment and except as specifically amended by this deed all the terms and conditions of the Appointment remain in full force and effect

8. NO DISCHARGE OF CONSULTANT'S LIABILITY

Nothing in this deed shall operate to discharge the Consultant from any liability in respect of duties performed prior to the execution hereof

9. THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

- 9.1 The Consultant shall contemporaneously with the execution of this deed execute a collateral warranty in favour of the Client in the form set out the Appointment
- 9.2 Nothing in this deed shall affect or derogate from any collateral warranty given or to be given by the Consultant to the Client
- 9.3 The Consultant shall at the request of the Client enter into a collateral warranty with any Tenant and Purchaser (as those terms are defined in the Appointment) in the form set out in the Appointment within fourteen days of such request
- 9.4 The Client shall be entitled to issue Nominating Notices conferring P&T Rights and/or Funder Rights pursuant to the Appointment (as those terms are defined in the Appointment).

10. 1999 ACT

- 10.1 Unless the right of enforcement is expressly provided for in this deed a person who is not a party to this deed may not by virtue of the 1999 Act enforce any of its terms
- 10.2 Except to the extent that there is express provision in this deed to the contrary the parties may by agreement rescind or vary this deed without the consent of any such person

IN WITNESS whereof the parties hereto have executed this deed as a deed and delivered the same the day and year first before written

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

DocuSigned by:

465ED14708344D7.....
Director

Nick Massingham
Print name.....

DocuSigned by:

60CA06C753D1496.....
Director/Secretary

Philip Pogson
Print name.....

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

DocuSigned by:

2059D9E1C55C404...
Director

Anthony Marley
Print name.....

DocuSigned by:

699E607097FF447...
Director/Secretary

Mary McCallan
Print name.....

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

DocuSigned by:

5BA0E66FA82243F...
Director

Mark Horwood
Print name.....

DocuSigned by:

9E0BB3126EBA49A...
Director/Secretary

Paul Brown
Print name.....

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 : 16TH 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, on 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

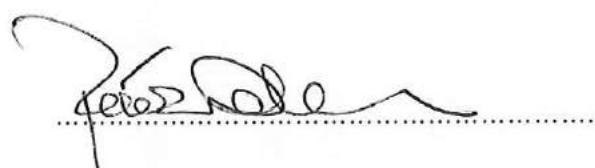

Witness Name


Witness Address

Executed as a deed by

PETER DOLAN

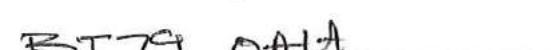
in the presence of a witness:

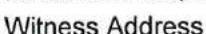



Witness Signature


Witness Name


Witness Address


Witness Address


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 Mc Callian
.....

Director/Secretary

Print name *JAMES MC CALLIAN*

in the presence of a witness:

JM Burke

.....

Witness Signature

GERARD COYLE

Witness Name

I. HOWMEWS TERRACE

BT79 0AT

Witness Address

Executed as a deed by

PETER DOLAN

in the presence of a witness:

Peter Dolan

.....

Witness Signature

GERARD COYLE

Witness Name

I. HOWMEWS TERRACE

BT79 0AT

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 Mc Callan*.....
Director/Secretary

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

in the presence of a witness:

J.M. Brink

Gerard Coyle

Witness Signature

GERARD COYLE

Witness Name

1. Acornview Terrace

BT79 OAH

Witness Address

Executed as a deed by

PETER DOLAN

in the presence of a witness:

Peter Dolan

Gerard Coyle

Witness Signature

GERARD COYLE

Witness Name

1. Acornview Terrace

BT79 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.

Jaudell
.....
Director/Secretary

Print name JAMES MC CALLAN

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.



Do not Date

Date.....2021 insert date

**Collateral Warranty
from Consultant to MHCLG
relating to ACM cladding remedial works at 20:20 Block B
Flats, Skinner Lane, Leeds LS7 1BE**

International Fire Consultants Limited ⁽¹⁾
The Ministry of Housing, Communities & Local Government ⁽²⁾ and
20:20 House (Residential Management) Limited ⁽³⁾



Do not Date

PARTIES

- (1) **INTERNATIONAL FIRE CONSULTANTS LIMITED** (No. 02194010) whose registered office is 20 Park Street, Princes Risborough, Buckinghamshire, HP27 9AH (**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) **20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED** (No. 06770847) whose registered office is Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB (**Employer**).

BACKGROUND

- (A) By the Appointment, the Employer has engaged the Consultant to act in the capacity of fire engineer 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 23 February 2021 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 definition ascribed to in Recital (B).
Appointment	the deed of appointment between the Employer and the Consultant dated 23 July 2020 for the carrying out of fire engineer 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.



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



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.



in the case of the Employer:

Names: Nick Massingham

Address: Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB

- 9.2 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.

10. 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.

11. ASSIGNMENT

- 11.1 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.
- 11.2 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11.1 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.
- 11.3 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.

12. 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.

13. 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.

14. GOVERNING LAW AND JURISDICTION

- 14.1 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.
- 14.2 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).



Signed as a deed by Director's

printed name for and on behalf of **INTERNATIONAL FIRE**

CONSULTANTS LIMITED in the presence of:

witness' signature

Name.....

Address.....

.....
Occupation.....

Authorised Signatory signature



**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 **20:20 HOUSE (RESIDENTIAL
MANAGEMENT) LIMITED** in the presence of:

Authorised Signatory signature

witness' signature

Name.....

Address.....

.....
Occupation.....



Date.....2021 insert date

**Collateral Warranty
from Consultant to MHCLG
relating to ACM cladding remedial works at 20:20 Block B
Flats, Skinner Lane, Leeds LS7 1BE**

Wintech Limited ⁽¹⁾
The Ministry of Housing, Communities & Local Government ⁽²⁾ and
20:20 House (Residential Management) Limited ⁽³⁾



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PARTIES

- (1) **WINTECH LIMITED** (No. 02430998) whose registered office is Quartz House, Pendeford Business Park, Wolverhampton, West Midlands, United Kingdom, WV9 5HA (**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) **20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED** (No.06770847) whose registered office is Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB (**Employer**).

BACKGROUND

- (A) By the Appointment, the Employer has engaged the Consultant to act in the capacity of facade engineer 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 23 February 2021 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 definition ascribed to in Recital (B).
Appointment	the deed of appointment between the Employer and the Consultant dated 3 July 2020 for the carrying out of facade engineer 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.



	a day which is not a Saturday or Sunday or a bank or national holiday in England.
Contract	the contract between the Employer and the Contractor dated 2 December 2020 for the design, carrying out and completion of Remedial Works including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.
Contractor	Ballymore Services Limited (No. NI622883) whose registered office is 20 Armagh Road, Portadown, Craigavon, Northern Ireland, BT62 3DP
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).
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 Contract 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 Contract.
Remedial Works	the Unsafe ACM Cladding remedial works by the Employer at the Site.
Site	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 are set out in the consolidated advice note published by the Building Safety Programme on 5 September 2017, available here: here



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 and the Consultant shall be entitled in any action or proceedings by the MHCLG to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Employer under the Appointment 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 the reasonable skill, care and diligence to be expected of a properly qualified and competent facade engineer 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 Not used.
- 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 at commercially reasonable rates and terms with a limit of indemnity and basis of cover of not less than that set out in the Appointment in the annual aggregate to cover 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.
- 6.4 The Consultant shall as soon as reasonably practicable inform the MHCLG if the insurance referred to in Clause 6.1 ceases to be available at commercially reasonable rates and terms and shall obtain such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain. For the purposes of this Clause 6, commercially reasonable rates shall mean such level of premium rates at which other consultants of a similar size and financial standing as the Consultant at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, errors, omissions, negligence, breaches, defaults, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

7. **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.

8. **EXCLUDED MATERIALS**

- 8.1 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 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:
- 8.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
 - 8.1.2 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;
 - 8.1.3 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
 - 8.1.4 to be supplied or placed on the market in breach of the Construction Products Regulations.

9. **COMMUNICATIONS**

- 9.1 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: Paul Savidge



Address: Wintech Limited, Quartz House, Pendeford Business Park,
Wolverhampton, WV9 5HA

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: Nick Massingham

Address: Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB

- 9.2 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.

10. 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.

11. ASSIGNMENT

- 11.1 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.
- 11.2 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11.1 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.
- 11.3 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.

12. 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.

13. 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.



14. GOVERNING LAW AND JURISDICTION

- 14.1 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.
- 14.2 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).

15. 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.

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

Final

Signed as a deed by Director's
printed name for and on behalf of **WINTECH LIMITED** in the
presence of:

..... *witness' signature*

Name.....

Address.....

.....
Occupation.....

The **CORPORATE SEAL** of **THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT** herewith affixed is authenticated by:

Signed as a deed by..... for
and on behalf of **20:20 HOUSE (RESIDENTIAL
MANAGEMENT) LIMITED** in the presence of:

Director's signature

..... *witness' signature*

Name.....

Address.....

.....
Occupation.....



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⁾



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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



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



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



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



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



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:

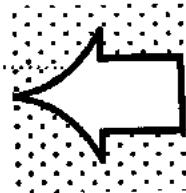
..... witness signature

Name

Address

Occupation

..... Director



**SIGN
HERE**

**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

Date..... *insert date*

Collateral Warranty
from Contractor to the MHCLG
relating to unsafe cladding remedial works at [20:20 Block
B Flats, Skinner Lane, Leeds LS7 1BE]

[Ballymore Services Limited]⁽¹⁾
The Ministry of Housing, Communities & Local Government⁽²⁾ and
[20:20 House (Residential Management) Limited]⁽³⁾

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Formatted: English (United States)

DATE..... insert date

PARTIES

- (1) **[BALLYMORE SERVICES LIMITED]** [(No.[NI622883] / trading together in partnership under the style [●] / a limited liability partnership) [whose registered office is [●] / whose principal place of business is [●20 Armagh Road, Portadown, Craigavon, Northern Ireland, BT62 3DP]] (Contractor).

(CONTRACTOR)

- (1) **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**).
- (2) **[● 20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED]** [(No. [● 06770847] / trading together in partnership under the style [●] / a limited liability partnership) [whose registered office is [●] / whose principal place of business is [Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB ●]]] (**Employer**).

BACKGROUND

- (A) By the Contract, the Employer has employed the Contractor to design, carry out and complete Remedial Works at the Site on the terms and subject to the conditions set out in the Contract.
- (B) The MHCLG has established the Private Sector Remediation Fund and the Building Safety Fund (**ACM Funds**) . The ACM Funds provide funding for the replacement of unsafe ACM Cladding and Non-ACM Cladding systems on private residential buildings. The Employer is an applicant of the ACM Funds.
- (C) Pursuant to a funding agreement dated on or around the date of this Agreement 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 Contractor has agreed to enter into this Agreement 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 Contractor (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 Agreement 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 Funds has the definition ascribed to it in recital (B).

Business Day	a day which is not a Saturday or Sunday or a bank or national holiday in England.
Cladding	components that are attached to the primary structure of a building to form a non-structural surface and includes the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashing, fixings, gaskets and sealants.
Class A1	European Classification Class A1, classified in accordance with BS EN 13501-1:2007+A1:2009 entitled "Fire classification of construction products and building elements. Classification using test data from reaction to fire tests" (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30 th March 2007 and amended in November 2009.
Class A2-s1, d0	European Classification A2-s1, d0 classified in accordance with BS EN 13501-1:2007+A1:2009 entitled "Fire classification of construction products and building elements. Classification using test data from reaction to fire tests" (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30 th March 2007 and amended in November 2009.
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 between the Employer and the Contractor dated [REDACTED] for the design, carrying out and completion of Remedial Works including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.
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 Contractor 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.

Non-ACM Cladding	means (i) Cladding systems (other than Cladding systems which include ACM Cladding) which incorporate panels achieving European Class C-s1,d0 or worse in combination with any class of insulation, or Cladding systems with panels achieving Class B-s1,d0 or lower, unless the system has achieved a BR135 certificate pursuant to a BS8414 test, and/or (ii) any building with insulation or filler achieving Class B-s1,d0 or lower that is not installed in line with a Cladding system that has a BR135 certificate pursuant to a BS8414 test and both (i) and (ii) 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.
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.
Remedial Works	the building works under and/or in accordance with the Contract for the removal of the Unsafe Cladding on each of the buildings at the Site and replacement with Cladding that is of Class A1 or Class A2-s1, d0 standard.
Site	building(s) known as [●] upon which the Remedial Works are to be performed.
Unsafe Cladding	any ACM Cladding and Non-ACM Cladding that has been identified as containing combustible materials 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 Agreement unless the context requires otherwise:

- 1.2.1 references to a Clause or Schedule are to a clause of, or schedule to this Agreement, references to this Agreement include its schedules, and references in a Schedule to a paragraph are to a paragraph of that Schedule;
- 1.2.2 references to this Agreement or any other document are to this Agreement 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 Agreement do not affect its interpretation;

- 1.2.6 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;
- 1.2.7 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives;
- 1.2.8 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 Agreement) and to any subordinate legislation made under it except to the extent that it would increase the liability of any party under this Agreement;
- 1.2.9 if the Contractor is a partnership each partner shall be jointly and severally liable under this Agreement. Where the context so requires and where the Contractor is a partnership, the term **Contractor** shall be deemed to include any additional partner(s) who may be admitted into the partnership of the Contractor during the currency of this Agreement. This Agreement shall not automatically terminate upon the death, retirement or resignation of one or more members of such partnership; and
- 1.2.10 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 Contractor warrants and undertakes to the MHCLG that it has observed and performed and shall continue to observe and perform each and all of its duties and obligations contained in or implied by the Contract. Save as expressly provided for in this Agreement¹ the liability of the Contractor is to be treated as being no greater or longer than it would have been if the MHCLG had been a party to the Contract instead of this Agreement and² the Contractor shall be entitled in defence of any action or proceedings by the MHCLG under this Agreement to raise equivalent rights of defence of liability as it would have against the Employer under the Contract but neither this provision nor any other provision in this Agreement shall entitle the Contractor to raise any defence based on set-off or counterclaim and/or prevent the MHCLG from recovering loss and/or damage from the Contractor as a result of the Contractor's breach of any provisions of this Agreement on the basis that the Employer has not suffered any loss and/or damage and/or the same loss and/or damage and the Contractor 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 Contractor further warrants and undertakes to the MHCLG that:
 - 2.2.1 it has exercised and shall continue to exercise all reasonable skill, care and diligence in the performance of the Remedial Works to be expected of a properly qualified and competent building contractor experienced in performing similar services, duties and obligations in relation to developments of a similar nature, value, scope, character, complexity and timescale to the Remedial Works in:
 - (a) the design of the Remedial Works and of any part or parts of the Remedial Works to the extent that the Contractor has been or shall be responsible for such design; and

¹ No greater liability clause included to satisfy insurers

² Equivalent rights of defence provision to satisfy insurers.

- (b) the selection of goods and materials for the Remedial Works or any part or parts of the Remedial Works to the extent that such goods and materials have been or shall be selected by or on behalf of the Contractor;
- 2.2.2 the Remedial Works shall on completion satisfy all performance specifications and other requirements contained or referred to in the Contract;
- 2.2.3 the Remedial Works and all materials and goods comprised in them shall correspond as to description, quality and condition with the requirements of the Contract and shall be of sound manufacture and workmanship; and that
- 2.2.4 the Contractor in carrying out the Remedial Works, and the Remedial Works on completion shall comply with all applicable statutory and regulatory requirements.

For the avoidance of doubt, under the provisions of Clauses 2.2.2 and/or 2.2.3, the Contractor does not warrant that the Works when complete shall be fit for purpose.

- 2.3 The Contractor acknowledges that the MHCLG has relied and shall rely on the warranties under this Clause 2 and the other terms of this Agreement 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 Agreement.
- 2.4 The obligations of the Contractor under this Agreement 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 CONTRACT

- 3.1 The Contractor warrants and undertakes to the MHCLG that it shall not exercise or seek to exercise any right of termination of the Contract and/or to discontinue the performance of any of its duties and/or obligations thereunder for any reason whatsoever (including any 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 Contract for the exercise by the Contractor of a right of termination of the Contract and/or to discontinue the performance of any of its 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 Contractor with the provisions of Clause 3 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 Contract and/or to discontinue the performance of any of the Contractor's duties and/or obligations in relation to the Remedial Works, nor otherwise prevent the Contractor 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 CONTRACTOR TO THE MHCLG

- 4.1 The right of the Contractor to terminate the Contract and/or to discontinue the performance of any of its 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 Contractor:
 - 4.1.1 requiring the Contractor to continue performing its duties and obligations under the Contract in relation to the Remedial Works;
 - 4.1.2 acknowledging that the MHCLG is assuming all the duties and obligations of the Employer under the Contract;
 - 4.1.3 undertaking unconditionally to the Contractor to discharge all payments which may subsequently become due to the Contractor under the terms of the Contract, subject to

the same right to deduct retentions as would have applied to the Employer under the Contract;

and shall pay to the Contractor any sums which have become due and payable to it under the Contract but which were then unpaid, subject to the same right to deduct retentions as would have applied to the Employer under the Contract.

- 4.2 Upon compliance by the MHCLG with the requirements of Clause 4.1 the Contract shall continue in full force and effect as if the right of termination and/or discontinuance on the part of the Contractor had not arisen and in all respects as if the Contract had been made between the Contractor and the MHCLG to the exclusion of the Employer.
- 4.3 Notwithstanding that as between the Employer and the Contractor the Contractor's rights of termination of the Contract and/or discontinuance may not have arisen, the provisions of Clause 4.2 shall nevertheless apply if the MHCLG gives notice to the Contractor and the Employer to that effect and the MHCLG complies with the requirements on its part under Clause 4.1.
- 4.4 The Contractor 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 Contractor 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 Contractor but, subject to the Contractor having been paid all sums due and payable under the Contract, 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 Contractor'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 Contractor 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 Contractor warrants to the MHCLG that:
 - 6.1.1 Not used.
 - 6.1.2 it has at all relevant times maintained an all risks insurance policy and a public liability insurance policy covering the usual risks covered by these types of policies in respect of the Remedial Works.
- 6.2 As and when reasonably required by the MHCLG the Contractor shall provide satisfactory documentary evidence of the terms of insurance referred to in Clause 6.1 and that it has at all times maintained and shall continue to maintain at all times the insurance referred to in Clause 6.1, and shall confirm that payment has been made in respect of the last preceding premium due under such insurance.
- 6.3 The Contractor 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 Contract.
- 6.4 Not used.

7. HEALTH AND SAFETY

- 7.1 The Contractor 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.
- 7.2 The Contractor warrants that, in relation to the Remedial Works, it has complied and shall comply with the Health and Safety at Work etc. Act 1974 and all regulations made thereunder.

8. EXCLUDED MATERIALS

- 8.1 The Contractor 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 Contractor's trade and/or the construction industry:
 - 8.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
 - 8.1.2 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;
 - 8.1.3 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
 - 8.1.4 to be supplied or placed on the market in breach of the Construction Products Regulations.

9. COMMUNICATIONS

- 9.1 Except as otherwise provided for in this agreement, all notices or other communications under or in respect of this agreement to either party shall be in writing and, unless otherwise stated, may be made by letter or by electronic mail and in the case of:
 - 9.1.1 MHCLG by letter, by personal delivery or by sending it by recorded postal delivery to the address specified at the head of this agreement and marked for the attention of the Director of Building Remediation & Grenfell or to such other address as notified in writing by MHCLG to the other parties;
 - 9.1.2 the Contractor, by letter, by personal delivery or by sending it by recorded postal delivery to the address specified at the head of this agreement and marked for the attention of a board level director or member of the Contractor or such other address as notified in writing by the Contractor to the other parties;
 - 9.1.3 the Employer, by letter, by personal delivery or by sending it by recorded postal delivery to the address specified at the head of this agreement and marked for the attention of a board level director or member of the Employer or such other addresses as notified in writing by the Employer to the other parties;
 - 9.1.4 any notice or other communication to be made between the parties by electronic mail shall be made to the email address as may be supplied by them to the other parties from time to time by not less than five Business Days' notice.

- 9.2 Any written notice or other communication sent by post will be deemed served and received on the second Business Day following the day of posting and where delivered personally will be deemed to have been served when delivered.
- 9.3 Any such electronic notice as specified in clause 9.1.4 above made between the parties will be effective only when actually received in readable form.
- 9.4 Any electronic notice or other communication which becomes effective, in accordance with clause 9.1.4 above, after 5:00pm in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this agreement shall be deemed only to become effective on the following Business Day.
- 9.5 With respect to service by email, only a response or communication issued by a member of issuing party's legal team or senior management shall constitute a formal response to legal proceedings.

10. CONCURRENT LIABILITIES

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

11. ASSIGNMENT

- 11.1 The MHCLG may without the consent of the Contractor from time to time assign transfer and/or charge the benefit of all or any of the Contractor's obligations under this Agreement and/or any benefit arising under or out of this Agreement by absolute assignment on three occasions only. In this Agreement references to the MHCLG include where the context admits its assignees.
- 11.2 The Contractor shall not be entitled to contend that any person to whom this Agreement is assigned in accordance with Clause 11.1 is precluded from recovering under this Agreement any loss incurred by such assignee resulting from any breach of this Agreement (whenever happening), by reason that such person is an assignee and not a named party under this Agreement.
- 11.3 The Contractor shall not be entitled to assign, transfer and/or charge the benefit of any (if any) of the MHCLG's obligations under this Agreement and/or any benefit (if any) arising to the Contractor out of this Agreement.

12. LIMITATION PERIOD

The liability of the Contractor under this Agreement shall cease 6 years following Practical Completion save in relation to any claims made by the MHCLG against the Contractor and/or notified by the MHCLG to the Contractor in writing prior thereto.

13. EMPLOYER

The Employer agrees that it shall not take any steps which would prevent or hinder the MHCLG from exercising its rights under this Agreement and confirms that the rights of the MHCLG in Clauses 3 and 4 override any obligations of the Contractor to the Employer under the Contract.

14. GOVERNING LAW AND JURISDICTION

- 14.1 This Agreement 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.
- 14.2 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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

15. 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 Agreement 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 Agreement pursuant to Clause 11 or successors in title to the MHCLG from enforcing the provisions of this Agreement.

16. ELECTRONIC EXECUTION

The parties acknowledge and agree that this Agreement may be executed by electronic signature (whatever form the electronic signature takes) and that this method of signature is conclusive of the parties intention to be bound by this Agreement as if signed by the parties manuscript signature.

17. COUNTERPARTS

This Agreement may be executed in any number of counterparts, but will not take effect until each Party has executed at least one counterpart. Each counterpart will constitute an original, but all the counterparts together will constitute a single agreement.

Signed for and on behalf of [Contractor]

.....

Director's signature

.....

Director's name

Signed for and on behalf of **THE SECRETARY OF
STATE FOR HOUSING, COMMUNITIES AND LOCAL
GOVERNMENT**

.....

Authorised Signatory's signature

.....

Authorised Signatory's name

Signed for and on behalf of [Employer]

.....

Director's signature

.....

Director's name