



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⁾



Ministry of Housing,
Communities &
Local Government

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Final

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.....