



# **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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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

	<b>SECTION 1 – CONTRACT PRELIMINARIES</b>	<b>Tender Cost (£)</b>
<b>1.1</b>	<b>INTRODUCTION</b>	
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.	
<b>1.2</b>	<b>PROJECT PARTICULARS</b>	
1.2.1	<b>Employer:</b> 20:20 (Residential Management) Ltd, 2020 Building, Skinner Lane, Leeds LS7 1BB Tel: 07808 158351 Email: <a href="mailto:nick@2020leeds.co.uk">nick@2020leeds.co.uk</a> Contact: Nick Massingham	
1.2.2	<b>Employers Agent (EA):</b> Cardoe Martin Limited, Aizlewood Business Centre, Aizlewood's Mill, Nursery Street, Sheffield S3 8GG Tel: 0755 1286996 Email: <a href="mailto:l.rhodes@cardoemartin.co.uk">l.rhodes@cardoemartin.co.uk</a> Contact: Lee Rhodes	
1.2.3	<b>CDM Co-ordinator:</b> Bell Group (Safety Services), Offices 7 & 8 Tayson House, Methley Road, Castleford WF10 1PA Tel: 01977 808557 Email: <a href="mailto:m.lake@bellgroup.co.uk">m.lake@bellgroup.co.uk</a> Contact: Marcia Lake	
1.2.4	<b>Site/Property Location:</b> 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.

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**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.

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**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 13<sup>th</sup> August 2020 (Appendix 4).

Contractor to provide full breakdown schedule of all associated works.

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**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	£

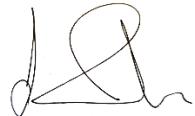
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**SECTION 4 - TOTAL £**

## 5.0 TENDER SUMMARY PAGE

<b><u>SECTION 5 – TENDER SUMMARY PAGE</u></b>		<b>Tender Cost (£)</b>
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	£
<b><u>Contract Sum Total</u></b>		<hr/> £

Prepared by Lee Rhodes MRICS



Signed

Dated 11<sup>th</sup> 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 6<sup>th</sup> 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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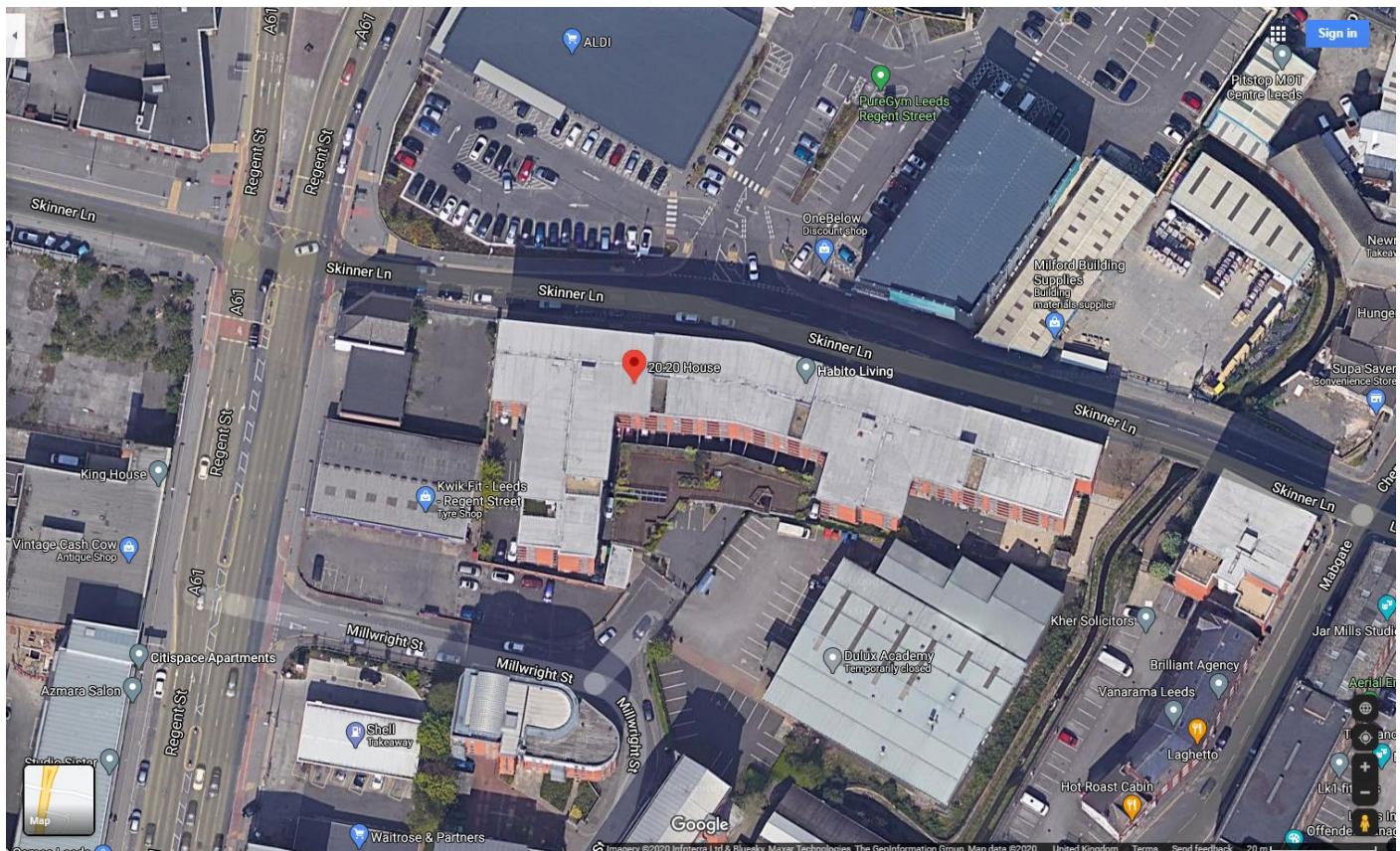
<b>Rev</b>	<b>Description</b>	<b>Date</b>	<b>Amended By</b>
P1	Initial issue	23 September 2020	Philip Baker

## 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](mailto: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](mailto: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)**

<b>Specified Risk</b>	<b>Present</b>	<b>Details</b>
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: 3<sup>rd</sup> 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*



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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 3<sup>rd</sup> 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.



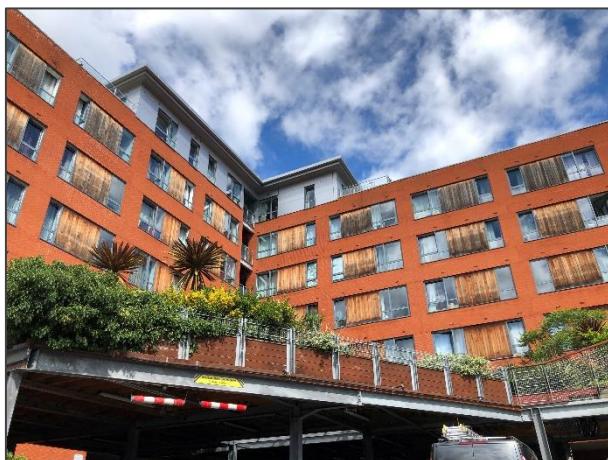
*Photograph No. 1 - Front elevation to Skinner Lane*



*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.

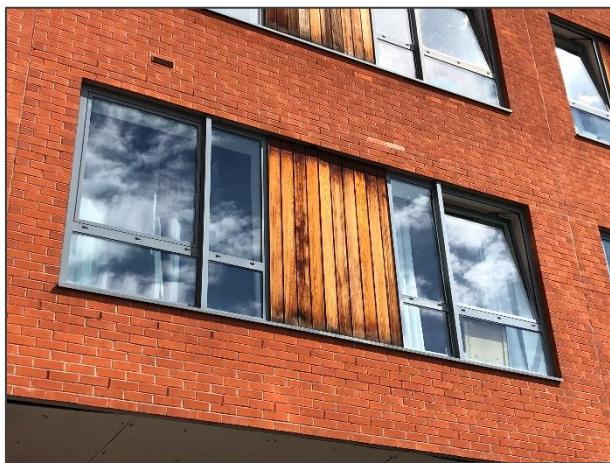
### 3.3 Timber cladding

The punched openings for the windows within the brickwork are separated with timber cladding to various extents across the façade.

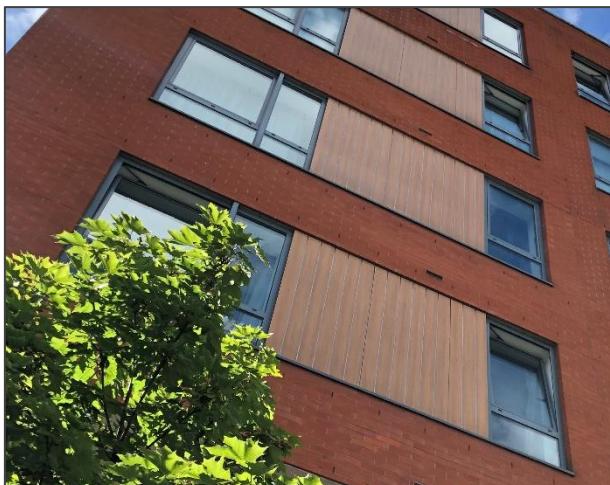
The façade comprises of an internal leaf of concrete blockwork (coated), vertical timber battens fixed to the face of the blockwork with horizontal timber battens on top. This is fully filled with mineral wool and then covered by a breather membrane. The timber slats are secured to the horizontal timber 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 set prior to removal

- 5.1.3 Vertically, there is a nominal 20mm joint between panels; horizontally, this is 8-10mm.



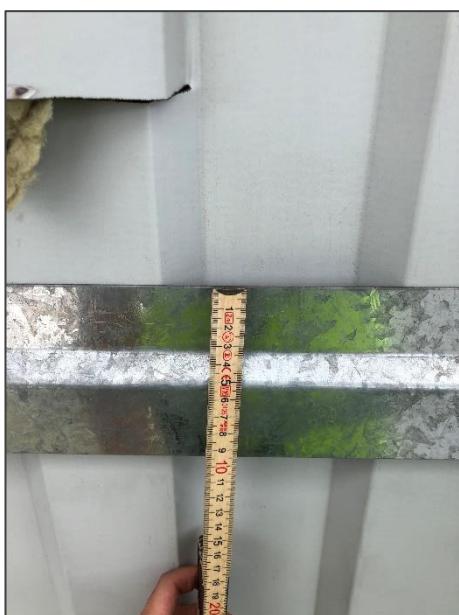
Photograph No. 13 - Horizontal joint - 8-10mm, depending on where measurement was taken

## 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

## 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.

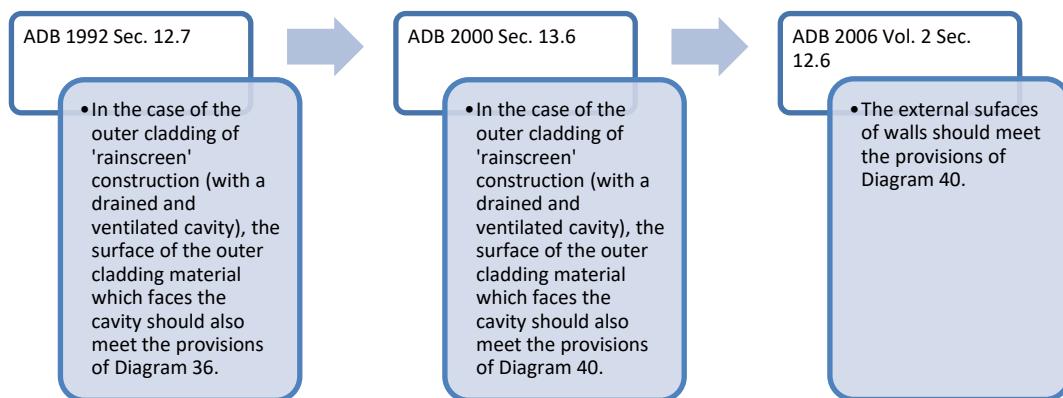


Figure 3 – Surface spread of flame requirements

- 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.

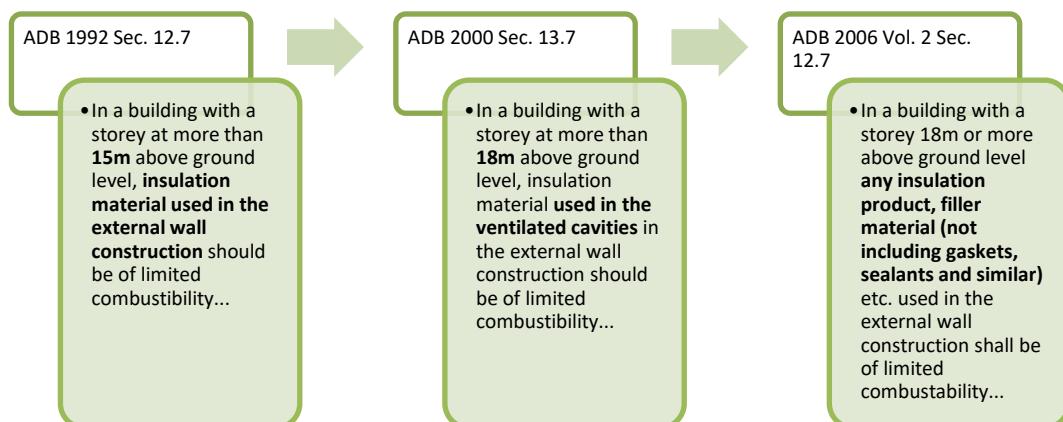


Figure 4 - Changes to cladding combustibility requirements in ADB

- 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.

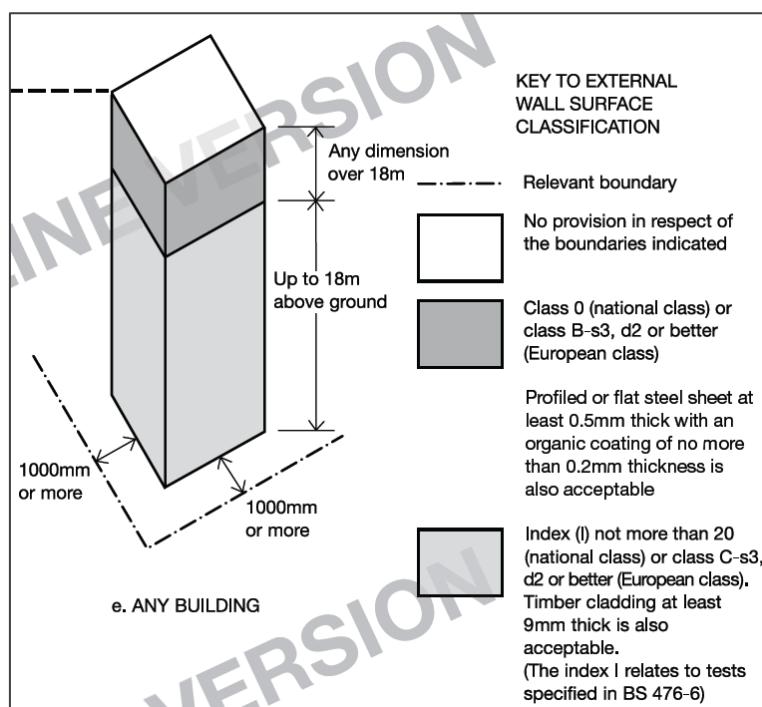


Figure 5 – Excerpt of Diagram 40 from ADB 2006 showing requirement for Class 0 above 18 m

## 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.



## 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.



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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.

## 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.



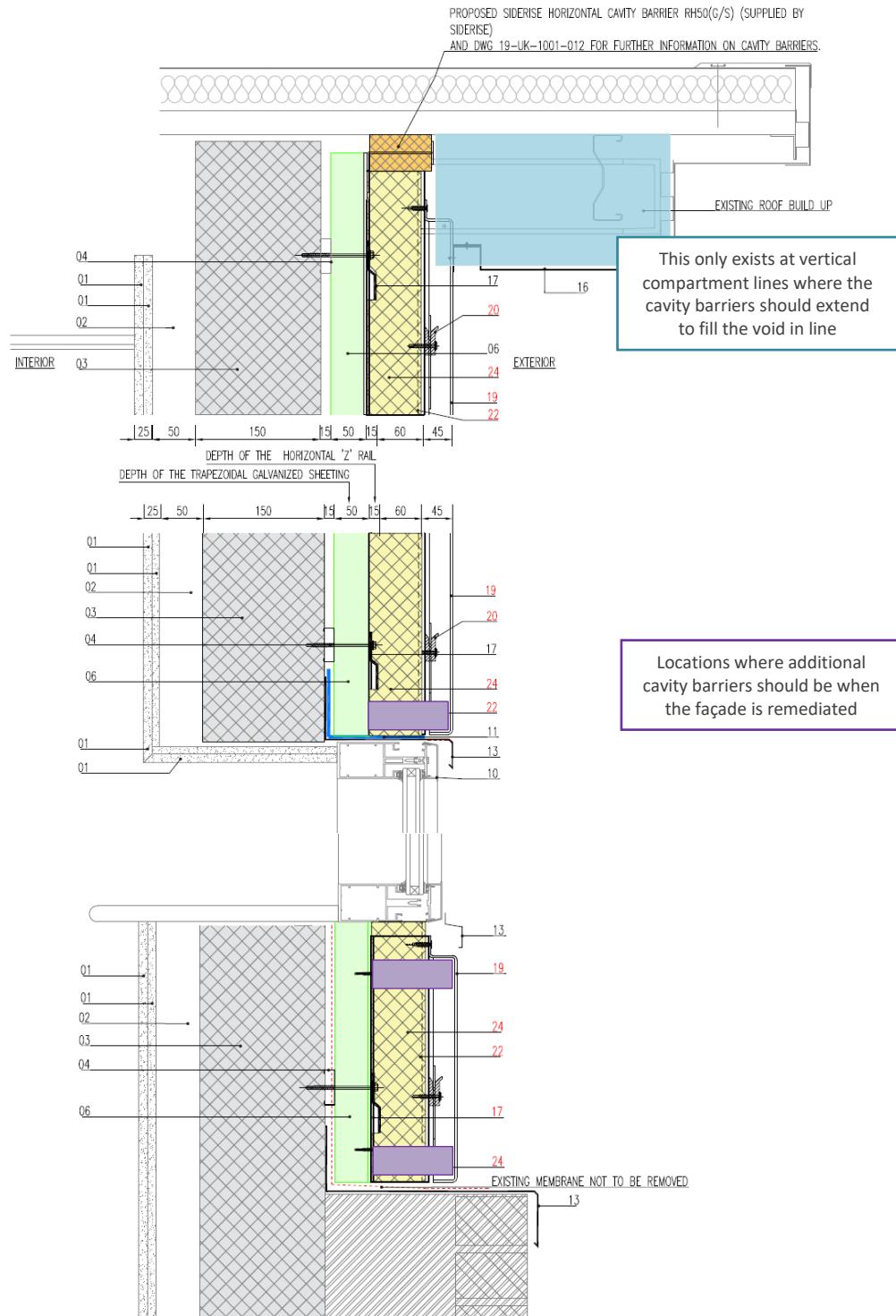


Figure 2- AOCA proposed detail

## 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	<a href="mailto:nick@2020leeds.co.uk">nick@2020leeds.co.uk</a>
Employers Agent / CA	Cardoe Martin	Aizlewood Business Centre Aizlewood's Mill, Nursery St, Sheffield S3 8GG	Lee Rhodes	07551 286996	<a href="mailto:l.rhodes@cardoemartin.co.uk">l.rhodes@cardoemartin.co.uk</a>
Principal Designer	Bell Group	Offices 7 & 8, Tayson House, Methley Road,Castleford,WF10 1PA	Marcia Lake	01977 808657	<a href="mailto:m.lake@bellgroup.co.uk">m.lake@bellgroup.co.uk</a>
Fire Engineer	IFC	Park Street Business Centre, 20 Park Street, Princes Risborough, Buckinghamshire, HP27 9AH	Vincent Rafferty	07702 254330	<a href="mailto:vincent.rafferty@ifcgroup.com">vincent.rafferty@ifcgroup.com</a>
Façade Engineer	Wintech	Quartz House,Pendeford Business Park, Wolverhampton,WV9 5HA	Jasmine Young	07950 297628	<a href="mailto:j.young@wintech-group.com">j.young@wintech-group.com</a>
Building Control	Leeds Building Control	Merrion House 110 Merrion Centre, Leeds LS2 8BB	Rodger Oldfield		<a href="mailto:roger.j.oldfield@leeds.gov.uk">roger.j.oldfield@leeds.gov.uk</a>
Lawyers	Gowling WLG	Gowling WLG (UK) LLP 4 More London Riverside, London, SE1 2AU, United Kingdom	Tarfa Ahmad	07795 305420	<a href="mailto:Tarfa.Ahmad@gowlingwlg.com">Tarfa.Ahmad@gowlingwlg.com</a>
Principal Contractor	Ballymore Services	3 Gortrush Business Centre, 27 Gortrush Industrial Estate, Great Northern Rd, Omagh BT78 5EJ	Rory McCallan	07990 690924	<a href="mailto:rory@ballymoreservices.com">rory@ballymoreservices.com</a>

# 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 [ ] 20[ ]

(1) [ ]

(2) [ ]

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

**relating to a development at  
[ ]**

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

**DRAFTING NOTE : Article 10 must be written in the JCT Form**

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 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"

**DRAFTING NOTE (to be deleted before amendments finally engrossed)** – Article 10 (heading and text) is to be handwritten in the contract document once drawn up and removed from this set of amendments

### **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."

Insert new article:

### **Article 13:Bond**

"The Contractor shall procure and deliver to the Employer upon the execution of this Contract a performance bond in the sum equal to 10% of the Contract Sum, in the form set out in Annex 3 to this Schedule of Amendments, duly executed as a deed by a reputable UK bank or insurance company acceptable to and previously approved in writing by the Employer. The Employer shall be entitled (subject to clause 4.9.5) to retain from any payments becoming due under this Contract a sum equal to 10% of the Contract Sum until such bond is provided. Any amount so retained shall become due for release to the Contractor only when the bond is provided or if none is provided on the date on which a bond in the terms of the form set out in Annex 3 to this Schedule of Amendments would have lapsed."

Insert new article:

### **Article 14:Parent Company Guarantee**

"The Contractor shall procure and deliver to the Employer upon execution of this Contract a parent company guarantee in the form set out in Annex 8 to this Schedule of Amendments executed as a deed by the ultimate holding company of the Contractor or such other parent company acceptable to and previously approved in writing by the Employer. The Employer shall not be liable to make any payment under this Contract (subject to clause 4.9.5) until the Contractor has complied with this article."

**CONTRACT PARTICULARS**

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

Article 8	Arbitration
Clause 2.17.3	Limit of Contractor's liability for loss of use etc (if any)
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 Between the definitions of "Acceleration Quotation" and "Adjudicator" insert :

Access Area see **clause 2.5.3**

Access Date see **clause 2.5.3**

Access Standard see **clause 2.5.3**

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 report prepared by the Contractor which shall include (without limitation)

(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 2.49**; 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"

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) [ ] ([ ])

(b) [ ] ([ ])

[and reference to a "Novated Consultant" means any one of them]

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 [ ]
------	-----------------

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

Sub-Consultants	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
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Sub-Contractors	those sub-contractors engaged or to be engaged to carry out the following elements of the Works:
-----------------	--

(a) [ ]

(b) [list to be confirmed]

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

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

Between the definitions of "Terrorism Cover" and "Valuation" insert:

Third Party Agreements any agreement set out in **Annex 9 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

Delete the definition of "Works" and insert:

Works comprises the design and construction of [ ] 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

## 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 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

2.1.5.3.4 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 Early use by Employer**

Insert new clauses 2.5.3 – 2.5.7

- 2.5.3 "Notwithstanding clauses 2.5.1 and 2.5.2 the Contractor shall procure that the relevant Access Area listed below reaches the relevant Access Standard on the Access Date listed for that Access Area.

<b>Access Area</b>	<b>Access Date</b>	<b>Access Standard (if required)</b>
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- 2.5.4 On the relevant Access Date the Contractor shall give the Employer and/or any persons (including but not limited to any Purchaser and/or Tenant) authorised or engaged by the Employer full and unrestricted access to the relevant Access Area to enable the Employer or such persons to carry out fitting out work. Such access shall not be deemed to be partial possession under clause 2.30.
- 2.5.5 The Employer acknowledges that whilst it or such persons referred to in clause 2.5.4 are undertaking works in the relevant Access Area the Contractor will require reasonable access to that Access Area for the purposes of the Works. The Contractor and the Employer will co-operate fully with each other in relation to the programming and carrying out of the respective works in the relevant Access Area as from the relevant Access Dates to prevent avoidable disruption and damage to their respective works.
- 2.5.6 Every person referred to in clause 2.5.4 shall for the purposes of clauses 6.1 to 6.3 inclusive be deemed to be Employer's Persons.
- 2.5.7 The access and/or the execution of the work referred to in clause 2.5.4 shall not in any way be deemed to be or treated as taking possession of part or parts of the Works by the Employer as referred to in clause 2.30 and the provisions of clauses 2.31 to 2.34 inclusive shall not apply to such access and/or the execution of such fitting out work."

## **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 2.6.2 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 "where the Employer's Requirements do not provide the information referred to in clause 2.6.1, the Contractor shall permit the execution of such work within a reasonable period of the date or dates on which such information is provided and shall co-ordinate the carrying out and completion of the Works with such work."

## **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**

In line 1 delete "Subject to clause 2.15, the Contractor shall not" and insert "The Contractor shall"

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

### **2.12 Employer's Requirements – inadequacy**

Delete clause 2.12 and insert "Not used."

### **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."

2.15.2.2 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 and insert:

2.17.1 "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)."

## **ADJUSTMENT OF COMPLETION DATE**

### **2.25 Fixing Completion Date**

Insert new clause:

- 2.25.1.3 "and PROVIDED THAT (a) the Contractor has complied with clause 2.25.6 and (b) any delay caused by a Relevant Event which is concurrent with another delay for which the Contractor is responsible shall not be taken into account;"

### **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 upon the Site or concern the Contractor's employees and do not arise out of or in connection with a national labour dispute"
- 2.26.12 In line 2 before ":" insert "which the Contractor could not have reasonably foreseen at the Base Date"
- 2.26.13 Delete clause 2.26.13 and insert "Not used."
- 2.26.14 Delete clause 2.26.14 and insert "Not used."

## 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."

Insert new clause:

#### 2.29.5 Payment or allowance of liquidated damages for delay in achieving early access

- 2.29.5.1 In the event that the Contractor fails to complete such part or parts of the Works (including any works set out in the Employer's Requirements) as are necessary to enable full and unrestricted access to the relevant Access Area or any one of them by the relevant Access Date, and subject to clause 2.29.5.2, the Contractor shall pay or allow to the Employer liquidated and ascertained damages for the relevant Access Area at the relevant rate stated below.

<b>Access Area</b>	<b>Access Date</b>	<b>Liquidated and ascertained damages calculated at the rate per week or part thereof</b>

- 2.29.5.2 For the purposes of this clause 2.29.5 references to the following words and phrases shall have the following meanings and clauses 2.24, 2.25, 2.26 and 2.29 shall be construed accordingly:

<b>Words and phrases</b>	<b>Meaning</b>
"Works"	the relevant Access Area

"Completion Date"	the Access Date
["Contract Particulars"]	[clause 2.29.5.1]
"date of practical completion"	the date when the Contractor gives full and unrestricted access to the relevant Access Area

- 2.29.5.3 The amount of liquidated and ascertained damages paid by or withheld or deducted from the Contractor for each week of delay or part thereof in providing full and unrestricted access to the Access Areas beyond the relevant Access Dates shall be credited against any liability that the Contractor might have to pay or allow the withholding or deduction of liquidated and ascertained damages for each week of delay, or part thereof in the completion of the construction of the Works beyond the Completion Date."

## PARTIAL POSSESSION BY EMPLOYER

### 2.31 Practical completion date

In line 3 before "." insert "PROVIDED HOWEVER that the Rectification Period for the Relevant Part shall be deemed to be extended and shall run until the issue by the Employer of the Notice of Completion of Making Good in respect of the whole of the Works"

## 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.

## **MINIMUM FLOOR AREAS**

### **2.46      Required minimum floor areas**

The Contractor warrants and undertakes to the Employer that the units forming the buildings to be constructed as part of the Works described in column 1 shall have the respective gross internal areas shown in column 2 subject only to the tolerances shown for each unit in column 3:

<b>Unit (column 1)</b>	<b>Gross internal area (column 2)</b>	<b>Tolerance (column 3)</b>
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**2.47 Consequences of not complying with clause 2.46**

2.47.1 In the event that the gross internal area for any unit is less than the relevant area for that unit specified in clause 2.46 column 2 and provided the gross internal area is within the tolerance shown in column 3 the Contractor shall pay to the Employer by way of liquidated and ascertained damages in the amount specified below for the relevant unit for each square foot or part thereof that the said gross internal area for that unit is less than area specified in clause 2.46 column 2:

Unit	LADs
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2.47.2 For the avoidance of doubt notwithstanding clause 2.47.1 in the event that the gross internal area of any unit in the building to be constructed on the site is outside the tolerance for that unit shown in clause 2.46 column 3, the Employer shall not be bound by any provision of this Contract to accept the Works or issue a written statement of practical completion in respect thereof. The Employer at its option shall be entitled to determine forthwith by notice in writing the employment of the Contractor under this Contract whereupon the provisions of clauses 8.7 and 8.8 shall apply. The Contractor shall indemnify and keep indemnified the Employer against all claims losses damages expenses costs or the like arising out of any breach by the Contractor of its warranties and undertakings in clause 2.46.

**CONTRACTOR'S REPORTING**

**2.48 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.

**2.49 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**

**2.50 Contractor to inspect the site**

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 ground, the sub-surface conditions and sub-soil, 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. 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 or have affected the execution of the Works.

**2.51 Determination of location of obstructions, services and drainage etc**

Without limitation to clause 2.50 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 and the Contract Sum shall be deemed to be inclusive of all costs which may be incurred in carrying out any diversions of the underground and over-ground services and/or drainage and the costs of the Contractor's operations in the vicinity of any such services (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).

#### **2.52 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.

#### **2.53 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**

#### **2.54 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.

#### **2.55 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**

#### **2.56 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 2.56 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.

#### **2.57 Licence**

Without prejudice to the Contractor's obligations under clause 2.56 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 obtain 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.

#### **2.58 No trespass**

Without prejudice to the obligations of the Contractor under clauses 2.56 and 2.57 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)"

##### **3.2 Site Manager**

Delete clause 3.2 and insert:

- 3.2.1 "The Contractor's agent must be approved by the Employer's Agent on behalf of the Employer, for which purpose the Contractor shall first provide the Employer's Agent with full details of the experience and qualification of the Contractor's agent.
- 3.2.2 Subject always to the terms of his contract of employment, the Contractor shall ensure that, so long as he remains an employee or servant of the Contractor and is not incapacitated by illness or otherwise not absent from work as a consequence of his reasonable holiday entitlement, the Contractor's agent will undertake overall supervision of the Works for whatever time may be required to ensure the completion of the Works in accordance with this Contract.
- 3.2.3 The Contractor's agent shall not be changed by the Contractor without the consent of the Employer to such change (such consent not to be unreasonably withheld) and the approval by the Employer's Agent of the substitute pursuant to clause 3.2.1.
- 3.2.4 The Employer's Agent may at any time request the removal from the Works of the Contractor's agent for reasons of incompetence or inefficiency and request the prompt appointment of a satisfactory substitute, approved by the Employer's Agent pursuant to clause 3.2.1.

- 3.2.5 Any costs incurred by the Contractor in replacing the Contractor's agent (in any circumstances) shall be borne by the Contractor.
- 3.2.6 Any instructions given to the Contractor's agent by the Employer's Agent shall be deemed to have been issued to the Contractor."

## **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 properly; 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**

4.21.2.2 In line 2 after "or test" insert "or series of inspections or tests"

At the end of clause before ":" insert "or unless the inspection or test was reasonably required as a result of a previous inspection or test or series thereof"

#### **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**

##### **5.8 No effect on preliminaries**

Valuations of additional or substituted work shall not change the amount included in the Contract Sum under the heading Preliminaries unless it can be shown that the change directly affects the assumptions made or which ought reasonably to have been made by the Contractor in preparing his tender.

##### **5.9 Effect on profits and overheads**

The allowance for profit and overheads within the Contract Sum Analysis shall be adjusted pro rata to the value of any additional or substituted work.

#### **QUOTATIONS BEFORE CHANGES INSTRUCTIONS**

**5.10 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 5.11 to 5.15.

**5.11 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 5.10) the Contractor shall provide the Employer with:

- 5.11.1 an estimate of the valuation of the proposed Change in the form of a quotation or quotations from the Contractor; and
- 5.11.2 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.

**5.12 Procedure following receipt of contractor information**

- 5.12.1 Following receipt by him of the estimates referred to in clause 5.11 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.
- 5.12.2 If agreement is reached as referred to in clause 5.12.1 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 5.12 to 5.15) 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.
- 5.12.3 If no agreement can be reached in relation to the estimates referred to in clause 5.11 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.

**5.13 Consequences of a Confirmation Instruction order not being issued**

If the Employer does not issue a Confirmation Instruction pursuant to clauses 5.12.2 or 5.12.3, 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.

**5.14 Work not to be carried out until formal Change instruction issued**

Whenever the Employer issues a preliminary notice of Change pursuant to clause 5.10, no work pursuant to the proposed Change to which the preliminary notice relates shall be commenced until such time as the Employer so instructs.

**5.15 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 or out of the presence on site of any person or persons for any other reason"

#### **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 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"

In line 5 after "or any Contractor's Person" insert "or out of the presence on site of any person or persons for any reason whatsoever"

### **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**

### **6.15 Obligation to insure**

Delete clause 6.15 and insert:

6.15.1 "The Contractor warrants that without prejudice to its liability under this Contract, 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 of the Works 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 upon reasonable terms and conditions and at commercially reasonable premium rates.

6.15.2 The Contractor shall throughout the period referred to in clause 6.15.1 provide to the Employer, when reasonably requested by him to do so, evidence that such insurances are being maintained in accordance with this clause.

6.15.3 The obligations in this clause 6.15 and clause 6.16 shall continue notwithstanding termination of this Contract or determination of the Contractor's employment under this Contract in either case for any reason whatsoever."

### **6.16 Increased cost and non availability**

In line 1 after "reasonable rates" insert "or for any reason becomes void or unenforceable"

## **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"

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"

### **7.5 Notices**

Delete the final sentence of clause 7.5.

### **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** If the Contractor fails to execute any such deed or deeds within 10 Business Days of the request to do so pursuant to clause 7C.1 the Employer may execute such deed or deeds on behalf of the Contractor and for such purpose the Contractor hereby irrevocably appoints the Employer as the Contractor's attorney under and pursuant to Section 4 of the Power of Attorney Act 1971. Upon the exercise of any such power of attorney the Employer will pay to the Contractor any sums withheld in accordance with clause 7C.

**7C.3** 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 [ ] pounds (£[ ]) 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 [ ] pounds (£[ ]) 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 [ ] pounds (£[ ]) 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 [ ] pounds (£[ ]) 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."

**DRAFTING NOTE – Delete amendments to clause 8.12 if clause 2.29.5 is not used.**

#### **8.12 [CONSEQUENCES OF TERMINATION UNDER CLAUSES 8.9 TO 8.11 ETC**

8.12.3.5 In line 2 before ";" insert "but excluding any sums which may be or have been payable in accordance with clause 2.29.5"]

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. PROFESSIONAL INDEMNITY INSURANCE**

4.1 The Contractor warrants that, without prejudice to its liability under this annex, 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 insurance cover of the amount referred to in clause 6.12 of the Building Contract 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.

4.2 The Contractor 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 Contractor 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 Contractor 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 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.

## **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  
BOND**

**DATED** \_\_\_\_\_ **20[ ]**

(1) [ ]  
(2) [ ]

**GUARANTEE BOND**  
**in respect of a development at**  
[ ]

**THIS GUARANTEE BOND** is made

20[ ]

**BETWEEN**

- (1) [ ] (company registration number [ ]) ("the  
Contractor") whose registered office is at [ ]
- (2) [ ] (company registration number [ ]) ("the Guarantor") whose registered office is at [ ]
- (3) [ ] (company registration number [ ]) ("the  
Employer") whose registered office is at [ ]

**WHEREAS**

- (A) The Employer has entered into a contract dated [ ] ("the Building Contract") with the Contractor for works known as [ ] at [ ]
- (B) At the request of the Contractor the Guarantor has agreed with the Employer to guarantee the performance of the obligations of the Contractor under the Building Contract upon the terms and conditions of this Guarantee Bond.

**NOW THIS DEED WITNESSETH** as follows:

1. The Guarantor undertakes to the Employer that in the event of a breach of the Building Contract by the Contractor or in the event that the Building Contract or the employment of the Contractor is determined by reason of any one or more of the events set out in clause 8 of the Building Contract and notwithstanding any objection that may be raised the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge the damages sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Building Contract as agreed between the Employer and the Guarantor.
2. The maximum aggregate liability of the Guarantor under this Guarantee Bond shall not exceed the sum of [ ] pounds (£[ ]) but subject to such limitation and to clause 4 below the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Building Contract.
3. The liability of the Guarantor under this Guarantee Bond shall remain in full force and effect and shall not be discharged or released by any act omission matter or thing which but for this provision might otherwise operate to release or otherwise exonerate the Guarantor from its obligations under this Guarantee Bond in whole or in part including without limitation and whether or not known to the Employer the Contractor and/or the Guarantor:
  - 3.1 the liquidation winding up or dissolution of the Contractor;
  - 3.2 any variation of or amendment to the Building Contract or in the extent or nature of the obligations to be performed under the Building Contract so that references to the Building Contract in this Guarantee Bond shall include each such variation or amendment;

- 3.3 any time waiver or indulgence granted to the Contractor or any other person;
  - 3.4 the taking variation compromise renewal or release of or refusal or neglect to perfect or enforce any rights remedies or securities against the Contractor or any other person;
  - 3.5 any legal limitation disability or incapacity relating to the Contractor or any other person;
  - 3.6 any unforeseen invalidity or frustration of any of the obligations of or expressed to be assumed by the Contractor or any other person under or in respect of the Building Contract or any other document or security; and
  - 3.7 the exercise of any claim right of set-off or other rights which the Guarantor may have at any time against the Contractor the Employer or any other person howsoever arising.
4. Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon [the date of the issue of the certificate of [practical completion] [making good defects]] save in respect of any claim in writing made by the Employer under this Guarantee Bond before the expiry date which has not been satisfied.
  5. The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Building Contract.
  6. This Guarantee Bond and the benefit thereof may be assigned by the Employer to any person to whom the Employer assigns its interest under the Building Contract at any time and references to "Employer" shall include such assigns.
  7. For the purposes of the Contracts (Rights of Third Parties Act) 1999 the parties do not intend any terms of this Guarantee Bond to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been able to enforce such terms.
  8. This Guarantee Bond shall be governed by English law and the parties hereby submit to the non exclusive jurisdiction of the English courts.

**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. PROFESSIONAL INDEMNITY INSURANCE

- 8.1 The 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 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 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 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 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 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.

## **[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

## **[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.

### **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.....2020 *insert date*

**Collateral Warranty  
from Contractor to MHCLG  
relating to ACM cladding remedial Works at [●]**

[Contractor]<sup>(1)</sup>

The Ministry of Housing, Communities & Local Government<sup>(2)</sup> and

[Employer]<sup>(3)</sup>

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Date..... **2020** insert date

## PARTIES

- (1) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership) [whose registered office is [●] / whose principal place of business is [●]] (**Contractor**).
- (2) **THE MINISTRY OF HOUSING, COMMUNITIES & LOCAL GOVERNMENT**, a UK government department whose principal office is at 2nd floor NW, Fry Building, 2 Marsham Street, London, SW1P 4DF, United Kingdom (**MHCLG**).
- (3) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership) [whose registered office is [●] / whose principal place of business is [●]] (**Employer**).

## BACKGROUND

- (A) By the 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 ACM cladding remediation fund (**ACM Fund**). The ACM Fund provides funding for the replacement of unsafe ACM cladding systems on private residential buildings. The Employer is an applicant of the ACM Fund.
- (C) Pursuant to a funding agreement dated [●] between the MHCLG, the Delivery Partner and the Employer, the MHCLG has agreed to fund the Remedial Works at the Site (**Funding Agreement**).
- (D) The Contractor 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 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 Deed the words below have the meanings next to them unless the context requires otherwise:

<b>ACM</b>	aluminium composite material.
<b>ACM Cladding</b>	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.
<b>ACM Fund</b>	has the definition ascribed to it in recital (B).
<b>Business Day</b>	a day which is not a Saturday or Sunday or a bank or national holiday in England.
<b>Construction Products Regulations</b>	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).

<b>Contract</b>	the 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.
<b>Delivery Partner</b>	Homes England.
<b>EU Exit</b>	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.
<b>Funding Agreement</b>	has the definition ascribed to it in recital (C).
<b>Material</b>	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.
<b>Practical Completion</b>	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.
<b>Remedial Works</b>	the Unsafe Cladding remedial works, services and obligations to be performed by the Contractor under the Contract.
<b>Site</b>	building(s) known as [●] upon which the Remedial Works are to be performed.
<b>Unsafe Cladding</b>	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 Contractor is a partnership each partner shall be jointly and severally liable under this Deed. 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 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 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 Deed the duty of the Contractor is to be treated as being no greater than it would have been if the MHCLG had been a party to the Contract instead of this Deed but neither this provision nor any other provision in this Deed 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 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 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 [● / designer of the relevant discipline] 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 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 Contractor 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 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 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 Contract or the Contractor's employment under the Contract 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 Contract for any one

occurrence or series of occurrences arising out of any one event to cover any claims made under this Deed against the Contractor in relation to the Remedial Works; and

- 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 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 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.

## **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 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 **Contractor**:

Names:.....

Address: .....

.....  
in the case of the **MHCLG**:

The Director of Building Safety

Ministry of Housing, Communities and Local Government

2 Marsham Street, London, SW1P 4DF

in the case of the **Employer**:

Names: .....

Address: .....

- 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 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 Deed and/or any benefit arising under or out of this Deed by absolute assignment on three occasions only. In this Deed 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 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 Contractor 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 Contractor out of this Deed.

## **12. LIMITATION PERIOD**

The liability of the Contractor under this Deed shall cease 12 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 Deed 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 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 [Contractor] in the presence of:

..... witness' signature

Name.....

Address.....

..... Occupation.....

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

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

Authorised Signatory \_\_\_\_\_

Print Name: \_\_\_\_\_

Signed as a deed by .....  
..... Director's printed name for Director's signature  
and on behalf of [Employer] in the presence of:

..... witness'  
signature

Name.....

Address.....

..... Occupation.....

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

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

**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

**ANNEX 8  
PARENT COMPANY GUARANTEE**

**DATED** \_\_\_\_\_ **20[ ]**

(1) [ ]  
(2) [ ]

**PARENT COMPANY GUARANTEE  
in respect of a development at**

[ ]



**GOWLING WLG**

**THIS DEED** is made

20[ ]

**BETWEEN**

- (1) [ ] (company registration number [ ]) whose registered office is at [ ] ("the Employer")
- (2) [ ] (company registration number [ ]) whose registered office is at [ ] ("the Guarantor")

**IN CONSIDERATION** of the sum of ONE POUND (£1) paid by the Employer to the Guarantor (receipt of which is hereby acknowledged) and in consideration of the Contractor's involvement in the Project **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 building contract 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 [ ]
"Obligations"	terms duties undertakings and obligations of the Contractor to be observed performed or carried out under the Building Contract
"Project"	the design and construction of [ ] at the Site
"Site"	[ ]
"Working Day"	any day except Saturday Sunday and bank or other public holidays in England
"Works"	the works to be carried out by the Contractor in relation to the Project

### 1.2 Circumstances

- 1.2.1 The Employer has appointed or may appoint the Contractor in relation to the Project under the Building Contract.
- 1.2.2 [The Contractor is a wholly-owned subsidiary of the Guarantor under and in accordance with the Companies Act 2006]

- 1.2.3 The Guarantor agrees to guarantee the due performance by the Contractor of the Building Contract.

## **2. GUARANTEE**

The Guarantor hereby unconditionally and irrevocably guarantees to the Employer and its successors and assigns the full and timeous performance observance and compliance by the Contractor of the Obligations

## **3. GUARANTOR TO BE PRINCIPAL DEBTOR: TIME INDULGENCE ETC.**

It is hereby agreed that the Employer shall at all times be entitled (but not obliged) to treat the Guarantor as sole principal debtor in regard to the liability of the Guarantor provided hereunder by reason whereof inter alia the liability of the Guarantor hereunder shall be neither discharged nor reduced by:

- 3.1 any variation or alteration to the Building Contract or any other guarantee or indemnity subsisting from time to time in connection with the Building Contract;
- 3.2 any assignment by the Contractor of any interest under or of the benefit of the Building Contract;
- 3.3 any suspension or termination of the Contractor's employment under the Building Contract;
- 3.4 the demand or failure to demand payment from the Contractor;
- 3.5 the enforcing or failure to enforce the Obligations any other guarantee indemnity or security subsisting from time to time in connection therewith or any right or remedy generally;
- 3.6 the compromise or release of any such guarantee indemnity or security;
- 3.7 the dissolution amalgamation reconstruction or reorganisation of the Contractor;
- 3.8 the ineffectiveness illegality or unenforceability of any of the Obligations or of the Building Contract;
- 3.9 any breach by the Contractor of the Obligations or the Building Contract or other default of the Contractor which for the avoidance of doubt shall include an event under clause 8 of the Building Contract;
- 3.10 any time indulgence waiver or consent given whensover or howsoever to the Contractor.

## **4. CONTINUING SECURITY**

The Guarantor's undertakings hereunder shall remain fully subsisting until such time as the Contractor has fully performed the Obligations and there has been a cessation of all liabilities of the Contractor under the Building Contract.

## **5. GUARANTOR'S RECOVERY**

The Guarantor shall not make demand on or enforce any guarantee indemnity security right or remedy against the Contractor arising out of or in connection with the Building Contract without the consent of the Employer.

## **6. ASSIGNMENT**

- 6.1 The Employer shall be entitled at any time without the consent of the Guarantor to assign or transfer the benefit of this deed to any person to whom the benefit of the Building Contract has been assigned.
- 6.2 Save for clause 6.1 this deed and the benefits conferred by it may not be assigned by either party.

## **7. NO GREATER LIABILITY**

For the avoidance of doubt the Guarantor shall have no greater liability to the Employer under or by virtue of this guarantee than it would have had if the Guarantor had been named as Contractor under the Building Contract and the Guarantor shall be entitled in any action or proceedings by the Employer to raise all defences and limitations that would have been available to the Contractor under the Building Contract.

## **8. 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.

## **9. NOTICES**

- 9.1 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.
- 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 deed shall be governed by English law and the Employer and the Guarantor hereby submit to the non-exclusive jurisdiction of the English Courts

**IN WITNESS** whereof this deed has been executed by the parties as a deed the day and year first above written

**ANNEX 9  
THIRD PARTY AGREEMENTS**



## Private Sector Remediation - Delivery Workstream

### Phase 2:

### Detailed Design & Implementation Preparation

### Collateral Warranty – Contractor to Funder Homes England

Version No	Author	Date	Contents	Reviewed by (draft) Circulation (issued)	Status
0.1	Simon Lewis (WBD)	10 Sept 19	Collateral Warranty from Contractor to MHCLG relating to ACM cladding remedial Works	James H, Balraj P, Andrew B, Eleanor H, Angela L (WBD), Mark C (WBD), John C (WBD), Steve T, Catherine, I, Megan L, Dan M	Draft
0.2	Simon Lewis (WBD)	23 Sept 19	Collateral Warranty from Contractor to MHCLG relating to ACM cladding remedial Works	James H, Balraj P, Andrew B, Eleanor H, Angela L (WBD), Mark C (WBD), John C (WBD), Steve T, Catherine, I, Megan L, Dan M	Draft
0.3	Simon Lewis (WBD)	03 Oct 19	Collateral Warranty from Contractor to MHCLG relating to ACM cladding remedial Works	James H, Andrew Butt	Draft
0.4	Angela Lopes (WBD)	15 Oct 19	Collateral Warranty – Contract to Funder Homes England –  Document updated with minor changes and Homes England Delivery Partner cited in the Version	James H, Balraj P, Andrew B, Eleanor H, Simon L (WBD), Mark C (WBD), John C (WBD), Steve T, Catherine, I, Megan L, Dan M	Issued
0.5	Balraj P	24 Mar 20	Amended MHCLG and Homes England execution clauses		Final



Date ..... 2020 *insert date*

Collateral Warranty  
from Contractor to MHCLG  
relating to ACM cladding remedial Works at [●]

[Contractor]<sup>(1)</sup>

The Ministry of Housing, Communities & Local Government<sup>(2)</sup> and

[Employer]<sup>(3)</sup>



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## PARTIES

- (1) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership) [whose registered office is [●] / whose principal place of business is [●]) (**Contractor**)].
- (2) **THE MINISTRY OF HOUSING, COMMUNITIES & LOCAL GOVERNMENT**, a UK government department whose principal office is at 2nd floor NW, Fry Building, 2 Marsham Street, London, SW1P 4DF, United Kingdom (**MHCLG**).
- (3) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership) [whose registered office is [●] / whose principal place of business is [●]) (**Employer**)].

## BACKGROUND

- (A) By the 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 ACM cladding remediation fund (**ACM Fund**). The ACM Fund provides funding for the replacement of unsafe ACM cladding systems on private residential buildings. The Employer is an applicant of the ACM Fund.
- (C) Pursuant to a funding agreement dated [●] between the MHCLG, the Delivery Partner and the Employer, the MHCLG has agreed to fund the Remedial Works at the Site (**Funding Agreement**).
- (D) The Contractor 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 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 Deed the words below have the meanings next to them unless the context requires otherwise:

<b>ACM</b>	aluminium composite material.
<b>ACM Cladding</b>	ACM cladding which shall include the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding includes the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashings, gaskets and sealants.
<b>ACM Fund</b>	has the definition ascribed to it in recital (B).
<b>Business Day</b>	a day which is not a Saturday or Sunday or a bank or national holiday in England.
<b>Construction Products Regulations</b>	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).



	the 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.
<b>Delivery Partner</b>	Homes England.
<b>EU Exit</b>	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.
<b>Funding Agreement</b>	has the definition ascribed to it in recital (C).
<b>Material</b>	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.
<b>Practical Completion</b>	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.
<b>Remedial Works</b>	the Unsafe Cladding remedial works, services and obligations to be performed by the Contractor under the Contract.
<b>Site</b>	building(s) known as [●] upon which the Remedial Works are to be performed.
<b>Unsafe Cladding</b>	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:  <a href="https://www.gov.uk/government/publications/building-safety-programme-update-and-consolidated-advice-for-building-owners-following-large-scale-testing">https://www.gov.uk/government/publications/building-safety-programme-update-and-consolidated-advice-for-building-owners-following-large-scale-testing</a>

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 Contractor is a partnership each partner shall be jointly and severally liable under this Deed. 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 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 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 Deed the duty of the Contractor is to be treated as being no greater than it would have been if the MHCLG had been a party to the Contract instead of this Deed but neither this provision nor any other provision in this Deed 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 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 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 [● / designer of the relevant discipline] 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 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 Contractor 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 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 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 Contract or the Contractor's employment under the Contract 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 Contract for any one occurrence or series of occurrences arising out of any one event to cover any claims made under this Deed against the Contractor in relation to the Remedial Works; and

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 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 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.

## 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 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 **Contractor**:

Names:.....

Address: .....

.....



in the case of the **MHCLG**:

The Director of Building Safety

Ministry of Housing, Communities and Local Government

2 Marsham Street, London, SW1P 4DF

in the case of the **Employer**:

Names: .....

Address: .....

.....

- 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 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 Deed and/or any benefit arising under or out of this Deed by absolute assignment on three occasions only. In this Deed 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 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 Contractor 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 Contractor out of this Deed.

## 12. LIMITATION PERIOD

The liability of the Contractor under this Deed shall cease 12 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 Deed 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 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 [Contractor] in the  
presence of:

..... witness' signature

Name.....

Address.....  
.....

Occupation.....

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

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

Authorised Signatory \_\_\_\_\_

Print Name: \_\_\_\_\_

Signed as a deed by ..... Director's .....

..... Director's printed name for and on  
behalf of [Employer] in the presence of:

..... witness' signature

Name.....

Address.....  
.....

Occupation.....