



Do not Date

2021

Duty of Care Agreement
for ACM cladding remedial works at
20:20 Block B Flats

RPP Limited ⁽¹⁾
20:20 House (Residential Management) Limited ⁽²⁾ and
The Secretary of State for Housing, Communities and Local Government ⁽³⁾



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DATE *Do not Date*

PARTIES

- (1) RPP Limited (registered in England and Wales with company No. 07159352) whose registered office is c/o Mazars LLP, 5th Floor, 3 Wellington Place, Leeds, LS1 4AP (**Consultant**).
- (2) 20:20 House (Residential Management) Limited (registered in England and Wales with company No. 06770847) whose registered office is Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB (**Employer**).
- (3) The Secretary of State for Housing, Communities and Local Government (**MHCLG**).

BACKGROUND

- (A) By the Appointment, the Employer has engaged the Consultant to act in the capacity of cost consultant in relation to the completion of the Remedial Works on the terms and subject to the conditions set out in the Appointment.
- (B) The MHCLG has established the private sector ACM cladding remediation fund (ACM Fund). The ACM Fund provides funding for the replacement of unsafe ACM cladding systems on private residential buildings. The Employer is an applicant of the ACM Fund.
- (C) Pursuant to a funding agreement dated in or around the date of this Deed between the MHCLG, the Delivery Partner and the Employer, the MHCLG has agreed to fund the Remedial Works at the Site (**Funding Agreement**).
- (D) The Consultant has agreed to enter into this Deed for the benefit of the MHCLG and its successors in title and assigns.

AGREED TERMS

In consideration of the payment of £1 by the MHCLG to the Consultant (receipt of which is hereby acknowledged) and which the parties hereby agree to be full and valuable consideration it is hereby agreed that:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the words below have the meanings next to them unless the context requires otherwise:

ACM	Aluminium Composite Material.
ACM Cladding	ACM cladding which shall include the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding includes the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashings, fixings, gaskets and sealants.
ACM Fund	has the meaning ascribed in recital (B).
Appointment	the deed of appointment between the Employer and the Consultant dated 25 January 2021 for the carrying out of cost consulting services (as identified in the Appointment), duties and obligations in relation to the Remedial Works including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise. The Appointment services



	do not include the design, specification or products and/or materials and/or the inspection of quality and/or compliance of the Remedial Works.
Business Day	a day which is not a Saturday or Sunday or a bank or national holiday in England.
Construction Products Regulations	the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).
Contract	the building contract in respect of the Remedial Works made between 20:20 House (Residential Management) Limited and Ballymore Services Limited.
Delivery Partner	Homes England.
EU Exit	the UK ceasing to be a member state of the European Union and ceasing to be subject to any transitional arrangements which substantively treat the UK as a member state of the European Union.
Funding Agreement	has the meaning ascribed in recital (C).
Material	all calculations, photographs, brochures, reports, notes of meetings, data, databases, schedules, programmes, bills of quantities, budgets and/or other documents or materials produced or prepared by or on behalf of the Consultant in relation to and/or connection with the Remedial Works and/or Site (whether in existence or to be made) and all updates, amendments, additions and revisions to them and any works contained incorporated or referred to in them for any purpose relating to the Remedial Works and/or Site. Material shall exclude any documents or materials prepared by or on behalf of any other consultant or contractor appointed by the Employer, and any sub-contractor thereof, notwithstanding that the Consultant may include them within documentation produced or generated by the Services.
Practical Completion	the date of practical completion of the Remedial Works in accordance with the definition of "practical completion" (or equivalent) in the Contract and if there is no such definition (or equivalent) it means the date on which the Delivery Partner is satisfied that the Remedial Works have been completed in accordance with the Funding Agreement and the Contract.
Remedial Works	the Unsafe Cladding remedial works by Ballymore Services Limited at the Site.
Site	the building known as 20:20 Block B Flats upon which the Remedial Works are to be performed.
Unsafe Cladding	any ACM Cladding that has been identified as containing combustible materials (e.g. a polyethylene core in an aluminium composite panel) and which failed the series of BS8414 tests commissioned by the government over summer 2017. Full details



are set out in the consolidated advice note published by the Building Safety Programme on 5 September 2017, available here:

<https://www.gov.uk/government/publications/building-safety-programme-update-and-consolidated-advice-for-building-owners-following-large-scale-testing>

1.2 In this Deed unless the context requires otherwise:

- 1.2.1 references to a Clause or Schedule are to a clause of, or schedule to this Deed, references to this Deed include its schedules, and references in a Schedule to a paragraph are to a paragraph of that Schedule;
- 1.2.2 references to this Deed or any other document are to this Deed or that document as amended from time to time;
- 1.2.3 words denoting the singular include the plural and vice versa;
- 1.2.4 references to a person include any corporate or unincorporated body;
- 1.2.5 the table of contents and headings in this Deed do not affect its interpretation;
- 1.2.6 writing or written does not include e-mail or any other form of electronic communication;
- 1.2.7 the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.8 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives;
- 1.2.9 unless otherwise specified, a reference to a statutory provision is a reference to that provision as amended, consolidated, extended or re-enacted from time to time (whether before or after the date of this Deed) and to any subordinate legislation made under it, except to the extent that it would increase the liability of any party under this Deed; and
- 1.2.10 Not used.
- 1.2.11 unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended or re-enacted on or after EU Exit.

2. EXERCISE OF SKILL AND CARE

- 2.1 The Consultant warrants and undertakes to the MHCLG that it has observed and performed and shall continue to observe and perform each and all of its services, duties and obligations contained in or implied by the Appointment. Save as expressly provided for in this Deed the duty of the Consultant is to be treated as being no greater (and of no longer duration) than it would have been if the MHCLG had been a party to the Appointment in accordance with the provisions of the Appointment instead of this Deed but neither this provision nor any other provision in this Deed shall entitle the Consultant to raise any defence based on set-off or counterclaim and/or prevent the MHCLG from recovering loss and/or damage from the Consultant as a result of the



Consultant's breach of any provisions of this Deed on the basis that the Employer has not suffered any loss and/or damage and/or the same loss and/or damage and the Consultant hereby irrevocably agrees and undertakes not to raise any such arguments by way of defence and/or set-off and/or counterclaim to any claim made by the MHCLG.

- 2.2 Without prejudice to the generality of Clause 2.1 the Consultant warrants and undertakes to the MHCLG that it has exercised and shall continue to exercise in the performance of the services, duties and obligations contained in or implied by the Appointment the reasonable skill and care to be expected of a properly qualified and competent consultant experienced in performing similar services, duties and obligations in relation to works of a similar nature, value, scope, character, complexity and timescale to the Remedial Works.
- 2.3 The Consultant acknowledges that the MHCLG has relied and shall rely on the warranties under this Clause 2 and the other terms of this Deed and may and/or shall suffer loss and/or damage in the event of a breach of these warranties and/or the other terms of this Deed.
- 2.4 The obligations of the Consultant under this Deed shall not be released or diminished by the appointment of any person by the MHCLG to carry out any independent enquiry into any matter.

3. OBLIGATIONS PRIOR TO TERMINATION OF THE APPOINTMENT

- 3.1 The Consultant warrants and undertakes to the MHCLG that it shall not exercise or seek to exercise any right of termination of the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations thereunder for any reason whatsoever (including any services, duties and/or obligations in relation to the Remedial Works by reason of breach on the part of the Employer) without giving to the MHCLG not less than 28 days' notice of its intention to do so and specifying the grounds for the proposed termination and/or discontinuance.
- 3.2 Any period stipulated in the Appointment for the exercise by the Consultant of a right of termination of the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations in relation to the Remedial Works shall be extended as may be necessary to take account of the period of notice required under Clause 3.1.
- 3.3 Compliance by the Consultant with the provisions of Clause 3.1 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of termination of the Appointment and/or to discontinue the performance of any of the Consultant's services, duties and/or obligations in relation to the Remedial Works, nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice.

4. INTELLECTUAL PROPERTY RIGHTS

All rights including copyright in all the Materials, if any, shall remain vested in the Consultant but, subject to the Consultant having been paid all sums due and payable under the Appointment, the MHCLG and its appointee shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Materials and to reproduce the content of them for any purpose relating to the Remedial Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Remedial Works. Such licence shall enable the MHCLG and its appointee to copy and use the Consultant's Materials for an extension of the Remedial Works but shall not include any right or licence to reproduce the content contained in them for any extension of the Remedial Works. The Consultant shall not be liable for any such use by the MHCLG or its appointee of any of the Materials for any purpose other than that for which they were prepared.

5. INSURANCE

- 5.1 The Consultant warrants to the MHCLG that it maintains, has at all relevant times maintained, and shall continue to maintain throughout the duration of the Remedial Works and for a period of 12 years following Practical Completion (irrespective of any termination of the Appointment or the Consultant's employment under the Appointment for any reason) professional indemnity



insurance with reputable insurers lawfully carrying on such insurance business in the United Kingdom with a limit of indemnity of not less than that set out in the Appointment for any one occurrence or series of occurrences arising out of any one event to cover any claims made under this Deed against the Consultant in relation to the Remedial Works.

- 5.2 As and when reasonably required by the MHCLG the Consultant shall provide satisfactory documentary evidence (in the form of a broker's note) of the terms of insurance referred to in Clause 5.1 and that the insurance referred to in Clause 5.1 is being properly maintained, and shall confirm that payment has been made in respect of the last preceding premium due under such insurance.
- 5.3 The Consultant warrants that it has at all relevant times observed and shall continue to observe all of the conditions of the insurance policy referred to in Clause 5.1 and all of the insurance provisions contained or referred to in the Appointment.

6. HEALTH AND SAFETY

The Consultant warrants that it has complied and shall comply with all of its obligations in relation to the Remedial Works as set out in the Construction (Design and Management) Regulations 2015.

7. EXCLUDED MATERIALS

- 7.1 Subject to the standard of care set out at clause 2.1, the Consultant warrants that it has not and shall not permit the use of and/or specify for use in or in connection with the Remedial Works any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the Consultant's trade and/or the construction industry:

- 7.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
- 7.1.2 to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the Remedial Works or any part thereof and/or to other structures, finishes, plant and/or machinery;
- 7.1.3 not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or
- 7.1.4 to be supplied or placed on the market in breach of the Construction Products Regulations.

8. COMMUNICATIONS

- 8.1 Except as otherwise provided for in this Deed, all notices or other communications under or in respect of this Deed to either party shall be deemed to be duly given or made when delivered to that party at the address appearing below (or at such other address as that party may hereafter specify for this purpose to the other):

in the case of the Consultant: Alex Blenard, RPP Limited, First Floor, Riverside West,
Whitehall Road, Leeds LS1 4AW



in the case of the MHCLG: Director of Building Safety, Ministry of Housing,
Communities and Local Government, 2 Marsham
Street, London SW1P 4DF

in the case of the Employer: Nick Massingham, Management Office Twenty Twenty,
Skinner Lane, Leeds, LS7 1BB

- 8.2 A notice or other communication which is not received on a Business Day or which is received after business hours in the place of receipt shall be deemed to be given or made on the next following Business Day in that place.

9. CONCURRENT LIABILITIES

The rights and benefits conferred upon the MHCLG by this Deed are in addition to any other rights and remedies it may have against the Consultant including, without prejudice to the generality of the foregoing, any remedies in negligence.

10. ASSIGNMENT

- 10.1 The MHCLG may without the consent of the Consultant assign transfer and/or charge the benefit of all or any of the Consultant's obligations under this Deed and/or any benefit arising under or out of this Deed:

10.1.1 by absolute assignment to any other government department, body/or organisation;
and

10.1.2 by absolute assignment on two other occasions only.

The Beneficiary shall notify the Consultant of any assignment. If the Beneficiary fails to do this the assignment shall still be valid.

- 10.2 In this Deed references to the MHCLG include where the context admits its permitted assignees.
- 10.3 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named party under this Deed.
- 10.4 The Consultant shall not be entitled to assign, transfer and/or charge the benefit of any (if any) of the MHCLG's obligations under this Deed and/or any benefit (if any) arising to the Consultant out of this Deed.

11. LIMITATION PERIOD

The liability of the Consultant under this Deed shall cease 12 years following Practical Completion save in relation to any claims made by the MHCLG against the Consultant and/or notified by the MHCLG to the Consultant in writing prior thereto.

12. EMPLOYER

The Employer agrees that it shall not take any steps which would prevent or hinder the MHCLG from exercising its rights under this Deed and confirms that the rights of the MHCLG in Clause 3 override any obligations of the Consultant to the Employer under the Appointment.

13. GOVERNING LAW AND JURISDICTION

- 13.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.



- 13.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales which shall have jurisdiction to hear and decide any suit, action or proceedings and/or to settle any dispute or claim which may arise out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

14. RIGHTS OF THIRD PARTIES

Unless the right of enforcement is expressly provided for it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999. This Clause 14 shall not affect or prevent any assignees who take the benefit of this Deed pursuant to Clause 10 or successors in title to the MHCLG from enforcing the provisions of this Deed.

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



Signed as a deed by Director print name

.....

for and on behalf of **RPP LIMITED**

Director

in the presence of:

..... Witness signature

Name

Address

Occupation

Signed as a deed by Director's print name

.....

for and on behalf of **20:20 HOUSE (RESIDENTIAL
MANAGEMENT) LIMITED**

Director

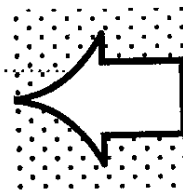
in the presence of:

..... witness signature

Name

Address

Occupation



**SIGN
HERE**

**The Corporate Seal of The Secretary Of State
For Housing, Communities And Local
Government** herewith affixed is authenticated by:

Authorised by the Secretary of State