

Dated 27 February 2023

(1) THE SECRETARY OF STATE FOR EDUCATION

- and -

(2) ISG CONSTRUCTION LIMITED

---

**Pre-Construction Services Agreement  
Incorporating the JCT Pre-Construction Services  
Agreement (General Contractor) 2016 edition with  
amendments**

---

**relating to the design and construction of  
re-fit and refurbishment works to St Paul's Place, Sheffield**

THIS CONTRACT is made on 27 February 2023

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the “**Employer**”); and
- (2) **ISG CONSTRUCTION LIMITED** (company number 00450103) whose registered office is situated at Aldgate House, 33 Aldgate High Street, London EC3N 1AG (the “**Contractor**”)

**IT IS HEREBY AGREED AS FOLLOWS:**

**RECITALS:**

- (First) The Employer wishes to have the following work carried out:  
  
Interiors refurbishment and associated MEP works to increase the workstation capacity at St. Paul’s Place, 125 Norfolk Street, Sheffield, S1 2JF (the ‘**Project**’), as described in greater detail in the document(s) identified in the Particulars, that work to be carried out under a main contract (the ‘**Main Contract**’) provisional details of which are also given or referred to in the Particulars;
- (Second) the Employer’s Agent for the pre-construction phase of the Project (the ‘**Pre-Construction Period**’) is [REDACTED] of Mace Consult Limited or such other person as may be appointed by the Employer to act as employer’s agent in connection with the Contract from time to time.
- (Third) The Principal Designer for the purposes of the CDM Regulations is the Contractor or such other person as may be appointed by the Employer to act as principal designer under the CDM Regulations.
- (Fourth) The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such other person as may be appointed by the Employer to act as contractor under the CDM Regulations.
- (Fifth) Prior to the execution of this Agreement, the Contractor has submitted to the Employer a Proposal, on the basis of which the Employer has requested that, for the fee specified in Annex A (the ‘**Fee**’) and other payments in accordance with this Agreement, the Contractor should during the Pre-Construction Period provide the pre-construction services listed in Annex B;
- (Sixth) It is intended that work on the Construction Phase of the Project shall commence on site on 10 July 2023 (the ‘**Date of Possession**’) with a duration initially estimated at 44 weeks and that for the purposes of the Main Contract, not later than 2 weeks prior to the date of Possession:
  - the Parties shall agree the terms of the Main Contract, and
  - the Contract Sum shall be agreed between the Parties
 in conformity with the requirements ‘(the ‘**Main Contract Requirements**’) identified in the Particulars.
- (Seventh) This agreement is entered into pursuant to the CCS RM6088 Lot 2.1:

Construction Works and Associated Services – North England Crown Commercial Service Framework (the "Framework Agreement").

(Eighth) This Agreement shall incorporate all the provisions of the Joint Contracts Tribunal Standard Form Pre-Construction Services Agreement (General Contractor 2016 Edition ('**JCT PCSA 2016**'), except that:

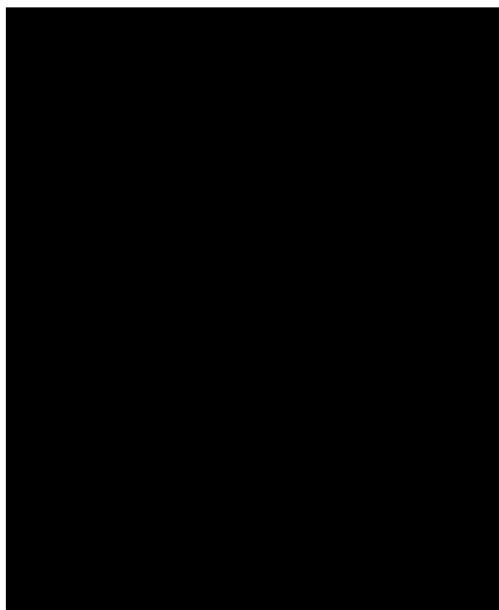
- (i) the Agreement and the Recitals contained in JCT PCSA 2016 shall be replaced in their entirety by the Agreement and Recitals in this Contract;
- (ii) The Conditions, the Particulars and the Annexes shall have effect as modified by the Schedule to this Contract; and
- (iii) The Conditions, the Particulars and the Annexes shall be construed as varied accordingly and if there is any ambiguity, conflict or discrepancy within or between the Conditions, the Particulars or the numbered Annexes contained in JCT PCSA 2016 and the Schedule of Amendments set out in this Agreement, then the Schedule of Amendments shall prevail.

(Ninth) Notwithstanding that this agreement may be signed underhand, the parties hereby agree that the limitation period under this agreement shall be twelve (12) years from the date on which the cause of action accrued. For the avoidance of doubt, section 5 of the Limitation Act 1980 does not apply to this agreement.

(Tenth) Each party agrees that this agreement may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this agreement as if signed by each party's manuscript signature.

By signing below, the Contractor confirms that this agreement is irrevocably and unconditionally released to the Employer for completion.

This agreement is executed on the date stated at the beginning of this agreement.



THE SECRETARY OF STATE FOR EDUCATION

and signatory for and on behalf of **ISG CONSTRUCTION**

and on behalf of **ISG CONSTRUCTION LIMITED**

**SCHEDULE OF AMENDMENTS TO THE  
JCT PRE-CONSTRUCTION SERVICES AGREEMENT  
(GENERAL CONTRACTOR) 2016 EDITION**

**relating to the design and construction of  
re-fit and refurbishment works to St Paul's Place, Sheffield**

**CONDITIONS**

**SECTION 1: DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

INSERT the following additional definitions in clause 1.1:

Completion Date: PCSA completion as may be extended in accordance with clause 5.1A.

Permitted Delay means a delay caused by:

(a) any variation (unless such variations result in a net reduction of time necessary to undertake the Services);

(b) any breach by the Employer of any obligation under this Agreement that causes a delay to the Services (subject to the Contractor using all reasonable endeavours to mitigate the impact of any such delay)

Schedule of Amendments: the schedule of amendments headed "Schedule of Amendments to the JCT Pre-Construction Services Agreement (General Contractor) 2016 Edition".

Works: the works and the services required for the design, construction, completion and commissioning of the Project as more particularly described in the Main Contract."

**1.5 Applicable Law**

1.5 DELETE clause 1.5 and INSERT the following wording:

'This Agreement shall be governed and construed in accordance with English law and the English courts shall have exclusive jurisdiction (except for the purposes of enforcement of an English court judgment or order in another jurisdiction) with regard to all matters arising from it.'

**1.6 Duration and Effect of this Agreement**

INSERT the following as new clauses 1.6 – 1.11:

**"Duration and Effect of this Agreement**

1.6 The Parties' obligations under this agreement start on the date of this Agreement or, if earlier, the date on which the Contractor commenced performance of the Pre-Construction Services until the earlier of:

- 1.6.1 the execution and completion of the Main Contract;
- 1.6.2 the completion of the Services (where the Employer does enter into the Main Contract with the Contractor pursuant to clause 2.7.2); and
- 1.6.2 the Contractor or the Employer issuing a notice of termination of this Agreement under Clause 10.5.
- 1.7 Before execution and completion of the Main Contract, the rights and obligations of the Parties in relation to the Pre-Construction Services shall be governed by the provisions of this Agreement supplemented, where applicable, by the terms of the Main Contract. If there is any conflict or difference between this agreement and the terms of the Main Contract, this Agreement prevails.
- 1.8 On the execution and completion of the Main Contract, the Parties' respective rights and liabilities in respect of all matters with which this Agreement is concerned (including any design performed or any work carried out or order placed) shall be subsumed into and be subject to the Main Contract.
- 1.9 Should there be any ambiguity or conflict in or between the documents comprising this Agreement, the priority of the documents is in accordance with the following sequence:
  - 1.9.1 the terms and conditions of this Agreement;
  - 1.9.2 the terms and conditions of the Framework Agreement;
  - 1.9.4 the Employer's Requirements;
  - 1.9.5 the terms of the Main Contract; and
  - 1.9.5 any other Annex forming part of this Agreement and the order of precedence of such documents shall be decided by the Employer.
- 1.10 Nothing in this Agreement shall prevent or restrict the Employer from entering into negotiations or contracting with any other contractor at any time in relation to the Project.
- 1.11 Subject to Clause 1.9 above, the Parties agree that they will comply with the terms of the Framework Agreement.

## **SECTION 2: CONTRACTOR'S GENERAL OBLIGATIONS**

### **2.1 Performing the Services**

- 2.1 INSERT the words "this Agreement," after the words "in accordance with" in line 1 and in line 2 DELETE the words "with due regard to" and INSERT "in compliance with".
- 2.1.1 DELETE clause 2.1.1 and SUBSTITUTE the following:
 

"exercise the reasonable skill, care and diligence to be expected of a design consultant having experience of projects of a similar nature, size, scope, character and complexity to the Project."
- 2.1.4 INSERT the following:

- “2.1.4 allocate personnel of sufficient numbers and qualifications to perform the Pre-Construction Services, deploying as a minimum the personnel and resources referred to in paragraph 2.1.2.”
- 2.1.5 INSERT the following:
- “2.1.5 at all times meet any standards, policies and procedures applicable to the Pre-Construction Services as specified by the Employer in the Employer’s Requirements during the term of this Agreement.”

## **2.6 Sub-contracting**

RENUMBER clause 2.6 to 2.6.1 and insert the additional clauses after clause 2.6.1:

- “2.6.1 At the end of the first sentence INSERT "and the Contractor shall confirm to the Employer whether or not the Contractor intends to use any sub-contractor proposed for the Pre-Construction Services to also provide work, services or goods for works under the Main Contract.
- 2.6.2 In placing orders, executing work, delegating or sub-contracting the Pre-Construction Services, or carrying out any other function under this Agreement, the Contractor shall comply with the Employer’s instructions and the procedures and obligations referred to in the Employer’s Requirements and, where applicable, the Main Contract.
- 2.6.3 Without affecting the Contractor’s obligations under this Agreement or the Main Contract, the Contractor shall:
- (i) be responsible for the acts and activities of its consultants and sub-contractors, and its liability to the Employer shall not in any way be reduced, qualified, released or diminished by the Employer’s approval of any list, design, document, material, programme, sub-contract, supply agreement, order, appointment, consultant, sub-contractor or supplier;
  - (ii) ensure that any consultant and/or sub-contractor appointed during the Pre-Construction Period in relation to any element of the design of the Works shall provide a collateral warranty or shall grant third party rights as provided for, and in favour of the parties identified in, the Main Contract;
  - (iii) ensure that any consultant appointment and/or sub-contract entered into in relation to the Pre-Construction Services contains a clause that permits its termination if the Employer does not enter into the Main Contract with the Contractor;
  - (iv) itself, and shall procure that any consultant and/or sub-contractor appointed by it in relation to the Pre-Construction Services shall, on any termination of this Agreement by the Employer, consent to and (if requested by the Employer or the Contractor) effect the novation of their respective appointment and/or sub-contract (as applicable) and any other similar document to the Employer or any person that the Employer nominates; and
  - (v) give the Employer a copy of any sub-contract, and any other similar document within three business days of the Employer’s request to do so.”

## **2.7 Second Stage Tender**

- 2.7.1 DELETE the words ‘Second Stage Tender Requirements’ in the second line and INSERT ‘the Main Contract Requirements’.

At the end of clause 2.7.1 INSERT the following:

"and on the basis that the Main Contract will be the JCT D&B 2016 Edition standard form with bespoke amendments ".

2.7.2 DELTE clause 2.7.2 and INSERT the following:

"The Employer is under no obligation to enter into the Main Contract and the Contractor shall have no claim against the Employer for loss of profit, loss of contract, loss of business, loss of chance or any indirect or consequential loss in the event that the Employer does not enter into the Main Contract."

## **2.8 Liability for design work**

2.8 DELETE "unless otherwise specifically provided in Annex B have no liability of any kind " and SUBSTITUTE "be liable".

In line 3 DELETE "other than" and SUBSTITUTE "including for".

In line 4 DELETE ", unless and until" and SUBSTITUTE ". Once".

In line 5 DELETE "upon entry into which".

### **2.8A Exclusion of fitness for purpose liability**

2.8A Insert a new clause 2.8A as follows:

"2.8A Notwithstanding any other provision of this Agreement (including but not limited to any Annexure to this Agreement) the Contractor shall be under no express or implied fitness for purpose obligation in relation to the design of the Pre-construction Services. The Contractor's design liability under this contract shall be limited to the skill, care and diligence referred to in clause 2.1.1."

## **2.9 Reliance**

2.9 Insert a new clause 2.9 as follows:

"2.9 The Contractor acknowledges that the Employer will rely on the Contractor's professional expertise when performing the Pre-construction Services and the Employer may rely on any certificate or written approval or statement the Contractor give in respect of the Project. The Contractor acknowledges that the Employer is deemed not to have any intrinsic expert knowledge or skill relating to the Pre-construction Services."

## **SECTION 5: ADDITIONAL SERVICES, FEE ADJUSTMENT ETC.**

### **5.1A Programme**

INSERT the following new clause 5.1A:

"5.1A.1 The Contractor shall complete the Pre-Construction Services in accordance with the Programme and, subject to clause 5.1A.2 by the Completion Date.

5.1A.2 The Completion Date shall be extended by such period as shall be decided by the Employer at its discretion (acting reasonably) as being the direct result of a Permitted Delay."

**5.2 Changes, delaying events etc**

DELETE this clause and INSERT:

- 5.2.1 “The Fee and/or other amounts payable under this Agreement shall be adjusted for additional work and for any additional costs that the Contractor incurs as a result of instructions for any Additional Services. The Contractor shall notify the Employer if it will require additional payment for those services or claim any additional time within ten business days of receipt of the Employer’s instruction issued pursuant to clause 5.1. That notice shall state the total sum the Contractor requires to perform those Additional Services and, where applicable, an estimate of any additional time required. On receiving such a notice from the Contractor, the Employer may cancel its instruction, at no cost to the Employer, the Contractor shall not be paid for those Additional Services nor the preparation of providing the notice, and the Contractor shall not perform those Additional Services.”

**5.3 Notification by the Contractor**

DELETE this clause and INSERT “Not used”.

**5.4 Adjustment of Fee or additional payment and time**

- “5.4 DELETE the reference to clause “5.3” and INSERT a reference to clause “5.2.1”.

DELETE the words “or the Contractor is able to demonstrate loss and/or expense arising from an event or cause within clause 5.2.2” and INSERT “and the Contractor has complied with the requirements of clause 5.2.1”

DELETE the words “agreed between the parties, or in default of such agreement,” in line 4.

DELETE the words “Where relevant a fair adjustment of time shall be made.” and INSERT “The Employer may adjust the Completion Date at its discretion, acting reasonably.”

**SECTION 6: PAYMENT****6.3 Due date and final date for payment**

- 6.3.1 DELETE clause 6.3.1 and INSERT “The due date for payment of any amount payable under section 6 shall be the later of either seven (7) days after the application date specified in Annex A and the date of receipt of the Contractor’s payment application by the Employer.”

- 6.3.2 DELETE “14” and SUBSTITUTE “28.”

**SECTION 7: INSURANCE****7.1 Professional Indemnity and Public Liability insurance**

- 7.1 INSERT the following at the end of the clause:

“(but this proviso shall not benefit the Contractor to the extent that such insurance is not available on such rates and terms due to the acts and/or

defaults and/or claims record of the Contractor)."

## **SECTION 8: USE OF CONTRACTOR'S INFORMATION, CONFIDENTIALITY ETC.**

### **8.2 Use of Contractor's Information**

"8.2 DELETE the words "Subject to all monies due and payable under this Agreement to the Contractor having been paid, the" and INSERT "The".

## **SECTION 9: ASSIGNMENT AND NOVATION**

### **9.1 Assignment**

DELETE clause 9.1 and SUBSTITUTE the following:

"9.1 The benefit to the Employer of this Agreement may be assigned by absolute legal assignment without the Contractor's consent. The Contractor shall not be entitled to contend that any person to whom this Agreement is assigned in accordance with this clause is precluded from recovering under this Agreement any loss incurred by such assignee resulting from any breach of this Agreement (whenever happening), by reason that such person is an assignee and not a named party under this Agreement or by reason that the Employer or any intermediate assignee or party escaped any loss by reason of the disposal of any interest in the Development or that the Employer or any intermediate assignee or party has not suffered any or as much loss as such assignee. The Contractor shall not, without the prior written consent of the Employer, assign this agreement or any rights thereunder."

INSERT the following additional clauses:

### **"11 Counterparts**

11.1 This Agreement may be executed in any number of counterparts each of which when executed and delivered shall constitute an original of this Agreement but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each party has executed at least one counterpart."

### **"12 Limit of Employer's Liabilities**

12.1 The Employer's liability, however that liability arises (including a liability arising by breach of contract, arising by tort, including the tort of negligence, or arising by breach of statutory duty) in connection with this Agreement, shall be limited to the following:

12.1.1 a fair and reasonable proportion of the Pre-Construction Fee, which shall be commensurate with the Pre-Construction Services performed by the Contractor to the date of issue of any notice of termination of this Agreement, but which shall not exceed the Contractor's cumulative entitlement to the Pre-Construction Fee at the date of issue of any notice of termination, as set out in and calculated in accordance with Annex A (Fees); and

12.1.2 a fair and reasonable proportion of any payment due under clause 5 for any Additional Services;

provided that this clause 12.1 shall not exclude or limit any liability of the Employer for death or personal injury caused by the Employer's negligence.

- 12.2 The parties acknowledge and agree that unless the Employer has entered into the Main Contract the Employer shall be under no obligation to the Contractor other than as set out in this Agreement (including being under no obligation with respect to any tender, further contract or other appointment to carry out part or all of the Project or the Works) and the Contractor shall have no claim against the Employer for loss of profit, loss of contract, loss of business, loss of chance or other similar loss or any indirect or consequential loss.



**AMENDMENTS TO THE CONTRACT PARTICULARS SET OUT IN JCT PCSA 2016**

<i>Clause etc.</i>	<i>Term</i>	<i>Document/Listing</i>
First Recital	Project (detailed description)	Interiors refurbishment and associated MEP works to increase the workstation capacity at St. Paul's Place, 125 Norfolk Street, Sheffield S1 2JF.
First Recital	Main Contract	JCT Design and Build Contract 2016 with bespoke amendments.
Fifth Recital	First stage tender/Contractor's initial proposals	<p>The Contractor's PCSA Proposal included in Annex A and following technical submission documents:</p> <ul style="list-style-type: none"> <li>1.1.1 Staffing Structure</li> <li>1.1.2 Management of works and interface with employers team</li> <li>1.1.3 Design development</li> <li>1.1.4 Key challenges</li> <li>1.1.5 Supply chain information</li> <li>1.2.1 Project delivery</li> <li>1.3.1 Programme</li> <li>1.3.2 SMEs, Apprentices, UK Labour and corporate social responsibility</li> <li>1.3.3 Sustainability</li> <li>1.4.1 Cost Plan</li> <li>1.4.2 Financial Risk</li> </ul>
Sixth Recital	Main Contract Requirements	<ul style="list-style-type: none"> <li>• <b>Drawings</b> <ul style="list-style-type: none"> <li>○ <b>Demolition</b> <ul style="list-style-type: none"> <li>▪ 10023158151-MAC-01-00-D-A-3002-GroundFloorDemolitionPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-01-D-A-3004-FirstFloorDemolitionPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-02-D-A-3005-SecondFloorDemolitionPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-03-D-A-3006-ThirdFloorDemolitionPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-04-D-A-3007-FourthFloorDemolitionPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-05-D-A-3008-FifthFloorDemolitionPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-06-D-A-3009-SixthFloorDemolitionPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-07-D-A-3010-SeventhFloorDemolitionPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-B1-D-A-3001-BasementFloorDemolitionPlan-A2-P02</li> </ul> </li> </ul> </li> </ul>

Clause etc.	Term	Document/Listing
		<ul style="list-style-type: none"> <li>▪ 10023158151-MAC-01-M0-D-A-3003-MezzanineFloorDemolitionPlan-A2-P02</li> <li>○ <b>Existing</b> <ul style="list-style-type: none"> <li>▪ 10023158151-MAC-01-00-D-A-1002-ExistingGroundFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-01-D-A-1004-ExistingFirstFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-02-D-A-1005-ExistingSecondFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-03-D-A-1006-ExistingThirdFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-04-D-A-1007-ExistingFourthFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-05-D-A-1008-ExistingFifthFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-06-D-A-1009-ExistingSixthFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-07-D-A-1010-ExistingSeventhFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-B1-D-A-1001-ExistingBasementFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-M0-D-A-1003-ExistingMezzanineFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-RF-D-A-1011-ExistingRoofPlan-A2-P02</li> </ul> </li> <li>○ <b>MEP</b> <ul style="list-style-type: none"> <li>▪ 10023158151-MAC-01-00-D-Z-4002-ProposedMEPServicesGroundFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-01-D-Z-4004-ProposedMEPServicesFirstFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-02-D-Z-4005-ProposedMEPServicesSecondFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-03-D-Z-4006-ProposedMEPServicesThirdFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-04-D-Z-4007-ProposedMEPServicesFourthFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-05-D-Z-4008-ProposedMEPServicesFifthFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-06-D-Z-4009-ProposedMEPServicesSixthFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-07-D-Z-4010-ProposedMEPServicesSeventhFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-B1-D-Z-4001-ProposedMEPServicesBasementFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-M0-D-Z-4003-ProposedMEPServicesMezzanineFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-RF-D-Z-4011-ProposedMEPServicesRoofPlan-A2-P02</li> </ul> </li> </ul>

Clause etc.	Term	Document/Listing
		<ul style="list-style-type: none"> <li>○ <b>Proposed</b> <ul style="list-style-type: none"> <li>▪ 10023158151-MAC-01-00-D-A-2002-ProposedGroundFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-01-D-A-2004-ProposedFirstFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-02-D-A-2005-ProposedSecondFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-03-D-A-2006-ProposedThirdFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-04-D-A-2007-ProposedFourthFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-05-D-A-2008-ProposedFifthFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-06-D-A-2009-ProposedSixthFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-07-D-A-2010-ProposedSeventhFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-B1-D-A-2001-ProposedBasementFloorPlan-A2-P02</li> <li>▪ 10023158151-MAC-01-M0-D-A-2003-ProposedMezzanineFloorPlan-A2-P02</li> </ul> </li> <li>• <b>Employers Requirements</b> <ul style="list-style-type: none"> <li>○ 10023158151-MAC-01-XX-T-A-0001-ArchitecturalEmployersRequirments-A2-P02</li> <li>○ 10023158151-MAC-01-XX-T-E-0001-ElectricalEmployersRequirements-A2-P02</li> <li>○ 10023158151-MAC-01-XX-T-S-0001-StructuralEmployersRequirements-A2-P02</li> <li>○ 10023158151-MAC-01-XX-T-Z-0001-MechanicalPHEmployersRequirements-A2-P03</li> </ul> </li> <li>• <b>Project Brief</b> <ul style="list-style-type: none"> <li>○ 10023158151-MAC-XX-XX-T-R-0001-ProjectBrief-A2-P02</li> </ul> </li> <li>• <b>Design Risk Assessment</b> <ul style="list-style-type: none"> <li>○ 10023158151-MAC-XX-XX-L-Z-6001-DesignersRiskAssessment</li> </ul> </li> <li>• <b>Pre-Construction Information</b> <ul style="list-style-type: none"> <li>○ 10023158151-MAC-XX-XX-T-O-5001_PreConstructionInformation-A2-P02</li> </ul> </li> <li>• <b>Tender Clarification Documents</b> <ul style="list-style-type: none"> <li>○ DFE040 – 0 Basement Existing.pdf</li> <li>○ DFE09 – Lift Floor Calculations.pdf</li> </ul> </li> </ul>
1.1	BIM Protocol	<p>ISO-19650 standard</p> <p>Refer to tender documents:</p> <p>10023158151-DFE-XX-XX-T-X-0004-ProjectsInformationProtocol-S0-P02.01</p> <p>10023158151-DFE-XX-XX-T-X-0003-ProjectsInformationStandard-S0-P02.01</p> <p>10023158151-DFE-XX-XX-L-X-0002-MasterInformationDeliveryPlan-S0-P02.01</p>

Clause etc.	Term	Document/Listing
		<p>10023158151-DFE-XX-XX-T-X-0002-ProjectsInformationProductionMethodsAndProcedures-S0-P02.01</p> <p>10023158151-DFE-XX-XX-T-X-0001-DfEsExchangeInformationRequirements-S0-P02.01</p> <p>10023158151-DFE-XX-XX-L-X-0001-DfEsDetailedExchangeInformationRequirements-S0-P02.01</p> <p>10023158151-MAC-01-ZZ-L-A-0001-COBieDataSet-A2-P01</p> <p>10023158151-MAC-01-ZZ-M-A-0001-ProposedArchitecturalModel-A2-P01.rvt</p> <p>10023158151-MAC-01-ZZ-M-A-0002-ProposedArchitecturalModelRendition-A2-P01.ifc</p> <p>10023158151-MAC-01-ZZ-M-A-3000-ExistingArchitecturalModel-A2-P01.rvt</p> <p>10023158151-MAC-01-ZZ-M-A-3001-ExistingArchitecturalModelRendition-A2-P01.ifc</p>
2.1	Cost Plan	6176 St Pauls Place Cost Plan Nr 2 Rev B 24.01.2023
2.1	Employer's Requirements	<p>Refer to tender documents:</p> <p>10023158151-MAC-01-XX-T-A-0001-ArchitecturalEmployersRequirments-A2-P02</p> <p>10023158151-MAC-01-XX-T-E-0001-ElectricalEmployersRequirements-A2-P02</p> <p>10023158151-MAC-01-XX-T-S-0001StructuralEmployersRequirements-A2-P02</p> <p>10023158151-MAC-01-XX-T-Z-0001-MechanicalPHEmployersRequirements-A2-P03</p>
2.1	Programme	<p>Refer to tender documents:</p> <p>10023158151-MAC-XX-XX-T-R-0002-ProjectProgramme-A2-P05</p>
2.1	Project Team	<p>As listed in PCI document:</p> <p>10023158151-MAC-XX-XX-T-O-5001_PreConstructionInformation-A2-P02</p>
2.1	Third Party Agreements	N/A

<i>Clause etc.</i>	<i>Term</i>	<i>Document/Listing</i>
2.1.2	Contractor's Key Personnel	
2.1.2	Contractor's Representative	
7.1.1	Professional Indemnity Insurance – level of cover	£10,000,000 (ten million pounds) any one claim but separate aggregate limits of the same level for i) pollution/contamination, ii) asbestos and iii) cladding/fire safety.
7.1.2	Public Liability Insurance	£10,000,000 (ten million pounds) for any one occurrence or series of occurrences arising out of one event.
9.2.1	Consultant Team members to whom clause 9.2 applies	does not apply
9.2.2	Sub-Contractors/Suppliers to whom clause 9.2 applies	does not apply
9.2.2 (hanging paragraph)	Novation	does not apply
10.2	Period (if other than 6 months)	6 months
10.7	Adjudication	The adjudicator shall be appointed by the Royal Institution of Chartered Surveyors.

**Annex A – DELETE and INSERT new “Annex A: Fees”**

Stage 1 Tender Pricing Schedule

10023158151 Department for Education - St Pauls Place Refurbishment

TENDER PRICING DOCUMENT

Key	
0	Linked cell - no entry required
	Unlinked cell - manually enter value
N/A	Not applicable - complete separate schedule of rates
0	Linked cell (total)- no entry required

Ref	Description	Total (£)	Comments
	PCSA PHASE		
1	Pre-Construction Agreement		
1.1	Schedule 1.1 Pre-construction Services		
1.2	Schedule 1.2 Pre-construction Services - Design Fees		
1.3	Schedule 1.3 Pre-construction Survey Costs		
1.4	Overheads & Profit on above		
	Pre-Construction Agreement Fee/PCSA Design Fee Total:		
	CONSTRUCTION STAGE		
2	Preliminaries & Design Fees		
	Contractor's Management (People)		
2.1	Schedule 2.1 (Construction Staff)		The costs provided for out of hours working rates, relate to day rates only, subject to requirements at the next stage.
2.2	Schedule 2.2 - Contractor's Preliminaries		
2.3	Schedule 2.3 - Contractor's Preliminaries		
2.4	Schedule 2.4 - Contractor's Preliminaries		
2.5	Schedule 2.5 - Contractor's Preliminaries		
2.6	Schedule 2.6 - Construction Period Design Fees		
2.7	Overheads & Profit on above		
	Preliminaries/Construction Phase Design Fee Total:		
	FIXED PRICE MAIN CONTRACTOR'S RISK ALLOWANCE		
3	Main Contractor's Risk Allowance (state as lump sum, excluding OH&P)		
	MAIN CONTRACTOR'S PROFIT MARGIN		
4	Main Contractor's OH&P Margin (state as percentage)		
	Overall Total		Please see Form of Tender submitted in 2.3 Additional Attachements Area

## **Annex B – DELETE and INSERT new “Annex B: Pre-Construction Services”**

### **ANNEX B – PRE-CONSTRUCTON SERVICES, PERONNEL AND RESOURCES AND RIBA PLAN OF WORK STAGE 3 & 4 DELIVERABLES**

#### **Part 1 – Pre-Construction Services**

The parties acknowledge that the Pre-Construction Period Services will require the Contractor to manage the design process of the Professional Design Team picking up from the RIBA 2 information to RIBA Stage 4.

#### **Design Development**

1. Lead the Professional Design Team in all respects with assistance from the Employer and the Other Consultants in the performance of their respective duties including, but without limitation to the following:
  - 1.1. Take responsibility for managing the design process of the Professional Design Team, and for advising issues of practicality, buildability, availability and suitability of materials, co-ordination, and efficiency.
  - 1.2. Provide guidance on waste and recycling management procedures and techniques during the design process, such that on-site wastage is kept to an absolute minimum.
  - 1.3. Undertake a review of the current proposed design of the Works, and of any revised or further design prepared from time to time, both so as to ensure buildability and with a view to identifying potential cost savings. Propose alternative materials and methods and provide input to cost/benefit analysis of all alternatives considered by the Other Consultants and pre-construction sub-contractors.
  - 1.4. Finalise design proposals for handing over a defects free building at practical completion and demonstrate how this will be achieved.
  - 1.5. Establishing gross to net floor areas and ratios and agree schedules with the Employer.

#### **Cost Management**

2. Immediately upon appointment agree with the Cost Consultant a cost limit for the project.
3. Agree the cost limit for each work package.
4. In conjunction with the Cost Consultant maintain a live Cost Plan during the development phase and Stage 2, incorporating cost savings and showing the predicted Contract Sum and the procedure for managing risk in relation thereto; and
5. Investigate precasting/preforming and off-site construction techniques with a view to reducing costs, improving quality and reducing construction timescales.
6. Examine the Cost Plan in detail using all reasonable skill and care and confirm to the Employer that the Cost Plan represents a reasonably sufficient estimate of the total cost to the Employer of executing and completing the various identified elements of the Works and achieve such cost savings as are achievable. Where the Contractor considers that the Cost Plan does not represent such an estimate of the total cost of the Works, raise any such concerns with the Employer, and offer proposals for addressing these to maintain the budget at the earliest opportunity.
7. Carry out, on a fully open-book basis, all discussions and negotiations with the Employer, with the Cost Consultant and with both prospective and appointed sub-contractors and

suppliers in relation to the finalisation of the Contract Sum for incorporation in the Building Contract.

8. So that the Employer may progressively manage the risk profile of the Project during the detailed design and procurement stage, the Contractor shall lead with regular meetings with the Employer to discuss Project risks and actively to manage the process so as to assist in eliminating risks progressively during this stage.

### **Programming**

9. Develop and regularly update and maintain the master programme, and offer proposals to maintain key milestone dates.
10. Identify any long lead items that require advance ordering in order to maintain key milestone dates.
11. Prepare material and component flows, and identify those that require advance ordering.
12. Identify requirements for temporary works, and the programming, execution and cost proposals for such works.
13. Identify any phasing requirements.
14. Advise on programme implications as the design progresses.
15. Establish liaison with third parties and adjacent property/land owners regarding access, egress, security, restrictions, working hours and other factors relevant to the execution of the Works, both onsite and off-site.
16. Develop a construction strategy for minimising disruption to surrounding business operations and the public during the Works.
17. Advise on alternative site-set-up locations and facilities, common user services and preliminary items in order to achieve best value.
18. Place pre-order agreements with approved sub-contractors or suppliers; obtain formal acknowledgement of orders, obtain collateral warranties as required.

### **Planning, Policies, Site Logistics**

19. Lead with discharging the planning conditions during the pre-construction period. Assist the Employer in obtaining any further consents, approvals, licenses, agreements or other matters as are necessary to implement fully the planning permission.
20. Prepare and agree with the Employer procedures for consulting with City of Sheffield Council so as to satisfy any planning conditions in relation thereto.
21. Carry out regular inspections of the site during the pre-construction period, so that the Contractor is fully satisfied prior to access to the site being given that he is able to accept full responsibility for the condition of the existing building which is still to be fully defined and agreed as required under the Building Contract.
22. Inspect the Site and the locality and research the likelihood of impact on and interest by third parties. Assist the Employer and the Other Consultants to establish a strategy for the management of these third party issues arising as a result of the Works.
23. Lead with scheduling the condition of buildings, highways and the like that may be affected by the Works. Assist the Employer's party wall surveyor in assessing the effect the Works will have on adjacent premises.

24. Prepare and agree with the Employer project specific policies relating to safety, training and industrial relations and regularly report on compliance including providing statistical records.
25. Provide logistics advice, prepare and agree with the Employer a logistics statement and method statement for the Works that addresses specific details relating to the common services and the provision of the site establishment (to comprise inter alia, access provision, security, cleanliness, logistics and material handling, rubbish removal, waste management, craneage, horizontal and vertical distribution, scaffolding, site hoarding, fire control, means of escape, temporary mechanical electrical and plumbing services, the provisions of setting out benchmarks and the site accommodation and welfare provisions). Set criteria for the availability of such services.
26. Produce a project specific fire safety manual.
27. Assist the Employer with the preparation of a Project Execution Plan.
28. Comply with all construction method statements.
29. Lead in developing a risk register for the Project to be agreed with the Employer. Actively manage and regularly update the risk register.

#### **Package Procurement**

30. Provide guidance, direction and advice to the Other Consultants on the consequences of the design in terms of:
  - 30.1. packaging works and interface management
  - 30.2. ease of construction including tolerances, sequencing etc
  - 30.3. availability of materials, labour etc
  - 30.4. durability and maintenance
  - 30.5. programme and costs
31. Lead and manage the progress of the design on behalf of the Employer to meet the package strategy and procurement programme, advising the Other Consultants and subcontractors on information release dates. Only invite tenders for packages when design information in relation to any such packages is complete and where through programme pressures this is not possible seek agreement with the Employer upon the most appropriate procurement route, the content of the package and a risk profile developed to capture missing scope.
32. Notify the Employer of any failure by the Other Consultants or sub-contractors to perform their services or to co-operate with the Contractor where such failure to co-operate affects the Contractor's ability to perform the Pre-Construction Period Services.
33. Prepare and agree with the Employer, in compliance with the milestone dates set out in the Programme, a detailed package procurement programme. This shall include initial dates for the production of drawings, specifications, pricing schedules and all other relevant information including dates for preparation and dispatch of tender documents. The tender period, a period for evaluation of tenders and target dates for the placement of each sub-contract order and execution of the sub-contract documents should also be included.
34. Investigate and report on the capabilities and financial standing of proposed tendering sub-contractors; organise and attend selection interviews.
35. Recommend the most effective bidding procedures having regard to the time available, the required quality and cost and procurement objectives.

36. Propose and agree with the Employer any requirement for Third Party Rights, collateral warranties and/or assignments to third parties, and product/professional indemnity insurances and incorporate these into the sub-contracts.
37. Advise and agree with the Employer any requirements for bonds, parent company guarantees and legal opinion letters and incorporate these into the sub-contract tender packages.
38. From its knowledge of the industry, produce a long list of potential bidders for each package. Request and receive input from the Employer and the Other Consultants in relation to such bidders. With the assistance of the Employer and the Other Consultants, take the lead in and manage the process of interviewing the potential bidders to explain the needs of the Project and to secure the interest of a short list of sub-contractors for each sub-contract. Offer the short list to the Employer for approval.
39. With the assistance of the Employer and the Other Consultants, produce bid documentation for each sub-contract. Review documentation with the Employer and sign off prior to bidding for adequacy, consistency and completeness. Review bid documentation interfaces with other package bid documentation and advise of any gaps between packages. A minimum of 3 bids will be sought for each sub-contract package unless agreed otherwise with the Employer.
40. Open all bids in the presence of relevant members of the Other Consultants and the Employer's representative and provide immediately a tabulation of the bids received. Copy all bids received to the Employer's representative.
41. Analyse and compare all bids with the assistance of the Cost Consultant.
42. With the assistance of the Cost Consultant, prepare a comprehensive list of risks and exclusions which require resolution prior to completing the sub-contract recommendations. Where the Contractor agrees any such risks and exclusions with a sub-contractor, the same shall not be reflected in the terms of the Building Contract with the Employer.
43. With the assistance of the Employer and the Other Consultants, interview as many bidders as may be appropriate to resolve any queries identified by the analysis and explore how economies can be found. Conduct any negotiations that may be appropriate to ensure a compliant bid. All bids should be considered, not just the lowest.
44. With the assistance of the Other Consultants, provide to the Employer a bid placing report recommending which sub-contractor should be selected and under which terms.
45. Prepare for the placing of sub-contracts and place letters of intent or pre-construction services agreements with sub-contractors where necessary to enable the Contractor to place sub-contracts upon entering into the Building Contract.
46. Manage any preliminary agreements with sub-contractors for design services.
47. Institute a system of documentation and records for recording the performance of all subcontractors in a form acceptable to the Employer.
48. Verify on site the survey control and setting out information. Bring any discrepancies to the attention of the Employer.
49. Verify the scope of any site investigation and existing underground utility services information provided by the Employer. Identify and recommend further survey works to be undertaken during the pre-construction period. Verify the location of all logged underground utilities adjacent to or crossing the Site. Bring any discrepancies or clashes with the Project and/or temporary works to the attention of the Employer. Advise on the need for diversion, protection and remedial works to these underground utilities services. Assist the Employer in its negotiations with the utility companies in this regard.

50. Prepare with the Other Consultants the Proposals, which shall include all design information developed by the Other Consultants, the Contractor and/or any subcontractors after the date of this Agreement. The Proposals shall also include a detailed schedule of all samples, mock ups, tests and product guarantees required.

### **Health and Safety**

51. Develop specific policies for ensuring a safe project site, including:

- 51.1. The implementation of the CDM Regulations
- 51.2. Identification of individuals who enforce statutory safety regulation and/or define and implement special safety precautions for the project.
- 51.3. Identification of a company-wide safety officer.
- 51.4. The steps the Contractor would take should a sub-contractor or operative ignore safety regulations or otherwise perform in an unsafe manner.

52. Finalise proposals for an industrial relations policy for the site.

### **Capital Allowances**

53. Provide information for the purposes of the Employer claiming capital allowances on plant and machinery expenditure. Obtain and provide on request such further details and information as may be necessary to enable the Employer to claim enhanced capital allowances under the enhanced capital allowances scheme.

### **Further Requirements**

54. **Surveys:** Take responsibility for identifying, arranging, co-ordinating and managing surveys, advising the Professional Design Team of the results of surveys and ensuring that design information reflects the recommendation of survey outputs. Refer to Sixth Recital and Clause 2.1 of the Employers Requirements.

### **Sub-Contractor Selection Procedure**

#### **1. Packaging Strategy**

- 1.1. Having reviewed the design, the Contractor must prepare a packaging strategy in line with the Cost Plan. Against each package, a brief description of the broad scope will be produced and formatted together into an outline scope document by the Contractor.
- 1.2. The Outline Scope Document will be issued to the Employer's representative, the Other Consultants and the Cost Consultant and with input from all will be expanded into a detailed scope document. This document will contain details on such things as tolerance regimes, design responsibility, contracted deliverables, etc, and not just the scope of works of the package.

#### **2. Procurement Principles**

##### **2.1. Design**

The packaging and design strategies are closely aligned, overlapping in many areas to achieve their common project objectives which include:

- 2.1.1. the limits of design required of the Other Consultants prior to tender must be clearly defined to ensure that both they and the sub-contractor are in no doubt of the extent of their respective responsibilities;

- 2.1.2.the Other Consultants must prepare designs to the pre agreed level required prior to award which include early defined specifications. At this point the Other Consultants must be aware that their design development has finished and that their designs are frozen.

## 2.2. Tender Event

The Programme will identify the design programme with dates by which the design programme stages must be achieved.

## 2.3. Buying

The work will be packaged and put out to tender. Sub-contractors should provide a supporting schedule of rates at the same time as they submit their lump sum prices. In order to ensure that the buy adequately reflects the package, the following criteria are essential:

- 2.3.1.100% design information at tender stage;
- 2.3.2.each package scope document describes the work covered by the package to which it relates;
- 2.3.3.scope definitions should clearly define the limits of the scope in terms of work and responsibility and should recognise the interfaces with other packages and activities;
- 2.3.4.the scope needs to be logical and should adequately reflect the design process, the sub-contractor's specialist skills of expertise and the market needs and capabilities at the time the tender is required. Sub-contractors must not be asked to tender for work they do not normally execute, as this results in risk and resultant cost penalties;
- 2.3.5.where 100% design information is not available then a decision must be made whether to continue the tender process or wait for the information. If it is decided to go ahead with the tender process then a more detailed schedule may be included for pricing, upon which the final value of the package may be calculated.

## 2.4. Tender Procedure

- 2.4.1.The possibility of direct purchase of materials, later novated to the subcontractor for fixing will be considered only if required to secure delivery of long lead-in items or if this approach offers buying economies by avoiding multiple mark ups.
- 2.4.2.Detailed studies of alternative methods of construction will be sought from tenderers to establish economic practical solutions which optimise value and programme savings whilst conforming to the overall quality standards specified in the tender documents. These alternatives will be tendered as alternatives in addition to the specified requirements of the tender documents.
- 2.4.3.Encourage research and development within the industry regarding off site fabrication wherever practical to enhance quality and help secure programme time (subject to quality, maintenance, etc).
- 2.4.4.The subject of materials management will be dealt with by investigating all aspects of available transportation and hoisting facilities. A materials handling policy will be established for the project.

## 3. Sub-Contract Sourcing and Appraisal

### 3.1. Initial Tender List

Provide an initial tender list to the Employer's Representative, the Other Consultants and the Cost Consultant. The initial list is circulated for addition/exclusion of potential tenderers.

### 3.2. Prequalification Interviews – Company Profiles

Information about the scope of the works, programme and design of the package will be sent to the pre-qualifying tenderers by the Contractor, inviting them to an interview to discuss their interest in tendering and to review their capability.

A company profile pre-qualification document is to be completed by the prospective Sub-Contractors prior to the prequalification interview.

This document shall contain the following information:

3.2.1. Company title, address and contact numbers;

3.2.2. Parent company details;

3.2.3. Registered address;

3.2.4. Senior management structure;

3.2.5. Company turnover;

3.2.6. Parent company turnover;

3.2.7. Parent Company guarantee on offer;

3.2.8. Performance bond no offer;

3.2.9. Quality management system/registration;

3.2.10. Number of employees;

3.2.11. Design capability;

3.2.12. Professional indemnity insurance;

3.2.13. Previous similar projects;

3.2.14. References/referees;

3.2.15. Last three years' audited accounts.

The Employer's Representative, the Other Consultants and the Cost Consultant will be notified of the interview times on an open invite basis by the Contractor. References given by the sub-contractor should subsequently be taken up.

### 3.3. Financial Checks

The Contractor will initiate a financial appraisal on all selected tenderers and the main suppliers of goods and materials, from a recognised agency, if deemed necessary by the Employer's Representative.

The agency will require the full title and the registered address of the sub-contractor or manufacturer/supplier, and the information sought will include the following:

3.3.1.Capability of the sub-contractor/manufacturer/supplier to meet the obligations implied by the above criteria.

3.3.2.Details of associated and ultimate holding companies of the sub-contractor/ manufacturer/supplier.

3.3.3.Summary of the last 3 years' accounts.

Financial checks will also cover any parent companies.

Foreign companies may require 5 days' notice to check out.

Should the financial check uncover any causes for concern they should be reviewed with the Employer to see if the issues can be resolved.

If the financial report looks poor then financial checks should also be made with the sub-contractor's main suppliers and their bank.

#### 3.4. Final Tender List

The final tender list of companies, which will contain a minimum of 3 tenderers, is then sent to the Employer's Representative, Other Consultants and the Cost Consultant.

The Contractor must obtain the Employer's Representative's approval to the list in writing before releasing the document to tender.

#### 3.5. Contract Conditions

3.5.1.All tenders will be based on the principals of the main contract conditions.

At pre-qualification stage, all tenderers will be expected to review the contract documentation available, including warranties, third party rights, bonds etc, and confirm their acceptance to the conditions contained therein. Failure to comply with this requirement will exclude the tenderer from any further involvement with this project.

#### 4. Sub-Contract Tender

4.1. It is the responsibility of the Contractor to assemble the sub-contract tender documents to meet the dates set out in the programme.

The Cost Consultant will issue to the Contractor a content page listing the documents that will be provided for each package and from which source those documents will be provided.

The tender contents are to be agreed with the Employer's Representative, the Other Consultants and the Cost Consultant.

4.2. The sub-contract agreement, terms and conditions of contract are standard for this project and may only be varied by prior written agreement with the Employer. Companies registered outside the United Kingdom may require different terms and conditions.

4.3. Draft tender documentation should be issued to the Employer's Representative, the Other Consultants and the Cost Consultant prior to a formal review meeting at which all parties should "sign off" the tender documents.

An appropriate allowance of time should be made between the review and the out to tender date on the tender event schedule in case of the need for modifications or additional information. All written communications with the tenderers during the tender

period should be accompanied by an addendum and should be copied to the Employer's Representative, the Other Consultants and the Cost Consultant.

- 4.4. The Contractor will meet with the Other Consultants, in advance of the date required for issue of the design information to discuss and agree the level of detail required as set out in the detailed package scope document.

The dates shown on the tender event schedule for agreement and issue of required information should be given careful consideration with regard to the design programme.

- 4.5. For each package a short meeting will take place to review the documentation. This is to ensure that all parties are satisfied that the total package scope is being purchased, with sufficient information and clarity to gain truly competitive tenders. The tender documentation will then be modified to suit and signed off by the Employer's Representative, the Other Consultants and the Cost Consultant. When sign off has been given, a set of documents is given to each of the approved tenderers together with the drawings and specifications under cover of a standard letter. Standard tender instructions are given in the tender form and addressed labels for tender submission are sent out with each enquiry.

## 5. Sub-Contract Tender Reporting

- 5.1. Tenders shall only be opened at tender opening meetings to which the Employer's Representative, the Other Consultants and the Cost Consultant are invited. Opening shall not proceed unless at least the Employer's Representative or the Cost Consultant are in attendance.
- 5.2. The tender tabulation report is completed by the Contractor during the tender opening meeting and signed by all present. The report indicates prices against those sections of the work itemised in the tender form and should clearly show the package budget.

The tender tabulation report is a highly confidential document and should be treated as such.

All the tenders should be evaluated technically and commercially with the Other Consultants in order to determine the best tenders.

- 5.3. The post tender/pre award meetings are to be arranged by the Contractor and held with the lower tenderers and those favoured technically, or, if the results are all close, with each of the submitting tenderers. The Employer's Representative, the Other Consultants and the Cost Consultant will attend the meetings as necessary. The aim is to obtain clean and complete submissions from the tenderers by the removal of technical and contractual qualifications and by the supply of information which may be missing from the tender.

The minutes of the meeting are to be taken by the Contractor and circulated to the subject company, the Employer and the Other Consultants.

- 5.4. The tender placing report is prepared by the Contractor and is the document for gaining the Employer's authorisation to commit to a recommended sub-contractor. It is important to note that the Other Consultants and the Cost Consultant make the recommendation. The report must be discussed and agreed with all parties before submission to the Employer's representative.

## 6. Sub-Contract Award

- 6.1. On receipt of the signed tender placing report from the Employer's representative, the Contractor calls in the successful sub-contractor and advises the unsuccessful tenderers. The tender values are never discussed.

- 6.2. The process of awarding sub-contracts is monitored on the sub-contracts placing log. The log is prepared by the Contractor and kept up to date on a fortnightly issue basis. Key information is inserted between issues.
- 6.3. The Contractor retains a signed copy of the tender placing report and the contract documentation.
- 6.4. On receipt of the signed tender placing report, the Contractor prepares the subcontract for exchange.
- 6.5. The receipt of a performance bond, warranties, guarantees, etc, from the subcontractor is logged.
- 6.6. When all of the legal instruments have been obtained, the Contractor carries out a final audit of the sub-contract.
- 6.7. The Contractor is to arrange the execution of the sub-contract as a deed by the subcontractor.

**INSERT new “Annex C: Collateral Warranties”**

**ANNEX C – Collateral Warranties**

**Part 1 – Sub-Contractor Warranty in favour of Employer**

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

[SUB-CONTRACTOR]

and

[EMPLOYER]

and

[CONTRACTOR]

DUTY OF CARE DEED

relating to [ ]]

THIS DEED is dated  
BETWEEN:-

20[ ]

- (1) [SUB-CONTRACTOR] (Company Number [ ]) whose registered office is at [ ] (the "**Sub-Contractor**");
- (2) [EMPLOYER] of [ ] (the "**Employer**"), which expression includes its permitted successors in title and assigns; and
- (3) [CONTRACTOR] (registered in England and Wales under Company Number [ ]) whose registered office is at [ ] (the "**Contractor**").

#### BACKGROUND

- (A) By a pre-construction services agreement dated [ ] (the "**PCSA**") the Employer has appointed the Contractor to carry design and construction services as more particularly set out in the PCSA.
- (B) The Sub-Contractor has been appointed by the Contractor under a subcontract (the "**Subcontract**") in relation to the [ ] element of the Works (the "**Subcontract Works**").<sup>1</sup>
- (C) The Sub-Contractor is obliged under the Subcontract to enter into this Deed in favour of the Employer.
- (D) The Sub-Contractor and the Contractor have agreed to duly execute and deliver this Deed in favour of the Employer.

#### 1. DEFINITIONS AND INTERPRETATIONS

In this Deed unless the context otherwise requires, any defined term in this Deed shall have the same meaning given to such term in the PCSA.

#### 2. OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Employer to the Sub-Contractor, receipt of which the Sub-Contractor acknowledges:-

#### 3. SUB-CONTRACTOR'S WARRANTY AND LIABILITY

3.1 The Sub-Contractor warrants to the Employer that:

- 3.1.1 it has carried out and completed and will continue to carry out and complete its duties and obligations under the Subcontract in accordance with the Subcontract;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in the design of the Subcontract Works the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer of the appropriate discipline(s) for such design experienced in carrying out works of a similar size, scope, nature, complexity, location, timescale and value to the Subcontract Works in relation to:
  - (a) any design of the Works;

---

<sup>1</sup> Insert details of relevant subcontract package.

- (b) the selection and standards of all goods, materials, equipment or plant for the Subcontract Works;
- 3.2 subject to the standard of skill, care and diligence set out in clause 3.1.2, it has not and shall not permit, specify or approve for use in connection with the Subcontract Works or use any materials which at the time of use:
  - (a) are known to be deleterious (either to health and safety or to the durability of the Works); or
  - (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
  - (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use;
- 3.3 The Sub-Contractor shall have no liability under this clause 3 that is greater or of longer duration that it would have had and shall be entitled in any action or proceedings by the Employer to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Employer had been a party to the Subcontract as joint employer.
- 3.4 For the avoidance of doubt the Sub-Contractor warrants to the Employer that the Sub-Contractor shall not raise any defence to a claim by the Employer under this Deed on the grounds that the losses in respect of which the Employer seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Sub-Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Subcontract.

#### 4. **INTELLECTUAL PROPERTY**

- 4.1 In this clause 4 “**Sub-Contractor’s Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Sub-Contractor in relation to the Subcontract Works (including any updates, amendments, additions and revisions), together with any other design documents or information to be provided by it under the BIM Protocol.
- 4.2 The Intellectual Property Rights in the Sub-Contractor’s Design Documents prepared by or on behalf of the Sub-Contractor in relation to the Subcontract and the work executed by it remains the property of the Sub-Contractor. The Sub-Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Sub-Contractor’s Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Sub-Contractor shall not be liable to any licensee for any use of the Sub-Contractor’s Design Documents or the use of the Intellectual Property Rights in the Sub-Contractor’s Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Sub-Contractor.
- 4.3 The Employer may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions

and/or activities that previously had been performed and/or carried on by the Employer.

- 4.4 In the event that the Sub-Contractor does not own the copyright or any Intellectual Property Rights in any of the Sub-Contractor's Design Documents the Sub-Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Employer to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Sub-Contractor is unable to procure the right to grant to the Employer in accordance with the foregoing the Sub-Contractor shall use all reasonable endeavours to procure that the third party grants a direct licence to the Employer on industry acceptable terms.
- 4.5 The Sub-Contractor waives any moral right to be identified as author of the Sub-Contractor's Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Sub-Contractor's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Employer or any licensee or assignee of the Employer.
- 4.6 In the event that any act unauthorised by the Employer infringes a moral right of the Sub-Contractor in relation to the Sub-Contractor's Design Documents the Sub-Contractor undertakes, if the Employer so requests and at the Employer's expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Sub-Contractor warrants to the Employer that he has not granted and shall not (unless authorised by the Employer) grant any rights to any third party to use or otherwise exploit the Sub-Contractor's Design Documents.
- 4.8 The Sub-Contractor shall supply copies of the Sub-Contractor's Design Documents to the Employer upon paying a reasonable copying charge.
- 4.9 In carrying out the Subcontract Works the Sub-Contractor shall not infringe any Intellectual Property Rights of any third party. The Sub-Contractor shall indemnify the Employer against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

## **5. PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Sub-Contractor hereby covenants with the Employer to:-

- 5.1.1 take out and maintain professional indemnity insurance covering all of its design and professional obligations under the Subcontract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) with a limit of indemnity that shall be a minimum of [five million pounds (£5,000,000)] [ten million pounds (£10,000,000)] [on an each and every claim basis<sup>2</sup>] upon customary and usual terms and conditions prevailing for the time being in the insurance market and that it will maintain such insurance with reputable insurers carrying on business in the United Kingdom from the date hereof until twelve (12) years after practical completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or

---

<sup>2</sup> Where the Sub-Contractor is unable to obtain professional indemnity insurance on an each and every claim basis, in the aggregate with one automatic full reinstatement in any one (1) year of insurance would be acceptable as a fall back position.

any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

- 5.1.2 provide evidence (as and when reasonably required by the Employer) satisfactory to the Employer of the professional indemnity insurance (referred to in clause **Error! Reference source not found.**) being in full force and effect from the date of the Subcontract (such evidence to include details of the cover).
- 5.2 Any increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Sub-Contractor shall be deemed to be within commercially reasonable rates.
- 5.3 The Sub-Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates or is no longer and/or if for any other reason the Sub-Contractor is unable to maintain and/or is not maintaining such insurance in which case the Sub-Contractor shall take out and maintain a professional indemnity insurance policy having the maximum limit of indemnity and the widest cover which is available to the Sub-Contractor upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Employer and shall further discuss means of best protecting the respective positions of the Employer and the Sub-Contractor in respect of the Subcontract Works.

## 6. **NOTICES**

- 6.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:
  - 6.1.1 Sub-Contractor: [e-mail address]<sup>3</sup>
  - 6.1.2 Employer: [e-mail address]<sup>4</sup>
  - 6.1.3 Contractor: [e-mail address]<sup>5</sup>

or as otherwise specified by the relevant party by notice in writing to the other party.
- 6.2 Any notice sent by hand or by post in accordance with clause 6.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

## 7. **ASSIGNMENT**

- 7.1 The benefit of and the rights of the Employer under this Deed may be assigned without the consent of the Sub-Contractor on two (2) occasions only and the Employer will notify the Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.
- 7.2 The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary

---

<sup>3</sup> Insert e-mail address

<sup>4</sup> Insert e-mail address

<sup>5</sup> Insert e-mail address

escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

#### 8. **EMPLOYER'S REMEDIES**

The rights and benefits conferred upon the Employer by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

#### 9. **INSPECTION OF DOCUMENTS**

The Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of any documents prepared by the Sub-Contractor or provided to the Employer or attendance at site meetings or other enquiry or inspection which the Employer may make or procure to be made for its benefit or on its behalf.

#### 10. **STEP-IN RIGHTS IN FAVOUR OF THE EMPLOYER**

10.1 Without prejudice to the Sub-Contractor's statutory rights the Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to:

10.1.1 terminate or treat as terminated or repudiated the Subcontract or its engagement under it without first giving to the Employer not less than 30 Business Days' prior written notice; or

10.1.2 discontinue or suspend the performance of any duties or obligations under the Subcontract without first giving to the Employer not less than 7 Business Days' prior written notice.

10.2 Any notice given by the Sub-Contractor pursuant to clause 10.1 above shall:

10.2.1 specify the Sub-Contractor's ground for terminating or treating as terminated or repudiated the Subcontract or its engagement under it or for discontinuing or suspending its performance under it (as applicable);

10.2.2 specify any other breaches by the Contractor; and

10.2.3 state the amount (if any) of monies outstanding under the Subcontract (whether or not such amounts result from a breach entitling the Sub-Contractor to terminate or treat as terminated or repudiated the Subcontract or to discontinue or suspend the performance of any duties or obligations under the Subcontract (as applicable)).

10.3 Within the period of any notice given by the Sub-Contractor pursuant to clause 10.1:

10.3.1 the Employer may give written notice to the Sub-Contractor that the Employer will henceforth become the client under the Subcontract to the exclusion of the Contractor and thereupon the Sub-Contractor will admit that the Employer is its client under the Subcontract and the Subcontract will be and remain in full force and effect notwithstanding any of the said grounds but subject always to clause 10.3.2 below;

- 10.3.2 if the Employer has given such notice as aforesaid or under clause 10.5 below, the Employer shall accept liability for the Contractor's obligations under the Subcontract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor which is properly specified and which is capable of remedy by the Employer; and
- 10.3.3 if the Employer has given such notice as aforesaid or under clause 10.5, the Employer will from the service of such notice become responsible for all sums properly payable to the Sub-Contractor under the Subcontract accruing due after the service of such notice but the Employer will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Subcontract.
- 10.4 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Employer to the Sub-Contractor, the Employer will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Sub-Contractor pursuant to clause 10.3.1 or clause 10.5 of this Deed.
- 10.5 The Sub-Contractor further covenants with the Employer that if employment of the Contractor under the PCSA is determined or the PCSA is terminated, the Sub-Contractor, if requested by the Employer by notice in writing and subject to clause 10.3.2 and clause 10.3.3, will accept the instructions of the Employer to the exclusion of the Contractor in respect of its duties under the Subcontract upon the terms and conditions of the Subcontract and will if so requested in writing to enter into a novation agreement whereby the Employer is substituted for the Contractor under the Subcontract.
- 10.6 If the Sub-Contractor is requested to enter into a novation agreement pursuant to clause 10.5 above, the Contractor agrees to enter into the same at the request of the Employer.
- 10.7 The Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor and the Contractor by the Employer under clause 10.5 as conclusive evidence that the employment of the Contractor under the PCSA has been determined or the PCSA is terminated.
- 10.8 The Employer may by notice in writing to the Sub-Contractor and the Contractor appoint another person to exercise its right under this clause 10 subject to the Employer remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 10.9 Upon request by the Employer the Sub-Contractor agrees to co-operate with the Employer in determining the duties performed or to be performed by the Sub-Contractor and to provide a copy of the Subcontract and any variations thereto and details of all monies paid and due under the Subcontract and the PCSA.
- 10.10 As from the date of service of notice under clause 10.3.1 or 10.5 to the extent that the Subcontract operates by reference to the existence and application of the PCSA, the Subcontract shall be administered and construed as though the PCSA was continuing and the Subcontract shall therefore continue, subject to amendment only as necessary to reflect the fact that the PCSA has in fact terminated and the Employer has undertaken the obligations set in clause 10.3.2.

## 11. **SUB-CONSULTANTS**

Following a written request from the Employer the Sub-Contractor will (unless it has already done so) procure that its sub-consultants execute a deed of collateral warranty

in the relevant form specified in the Subcontract in favour of any person in whose favour the Subcontract obliges the Sub-Contractor to give or procure the giving of such a warranty.

12. **SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provision of or any other documents referred to in this Deed.

13. **WAIVER**

13.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

13.2 No waiver under clause 13.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

14. **THIRD PARTY RIGHTS**

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed.

15. **GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

16. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.

EXECUTED AS A DEED by  
[SUB-CONTRACTOR] acting by  
a Director and its Secretary/two Directors:-

Director  
Director/Secretary

[THE CORPORATE SEAL of the SECRETARY )  
OF STATE FOR EDUCATION herewith affixed )  
is authenticated by:- )

.....  
Authorised by the Secretary of State

.....  
Full name (BLOCK CAPITALS)

**OR**

[EXECUTED AS A DEED (but not delivered  
until the date hereof) by affixing the Common  
deal of [EMPLOYER] in the presence of:-

Authorised Signatory]

**OR**

EXECUTED AS A DEED by [EMPLOYER]  
acting by a Director and its Secretary/two  
Directors:-

Director

Director/Secretary

EXECUTED AS A DEED by [CONTRACTOR]  
acting by a Director and its Secretary/two  
Directors:

Director

Director/Secretary

**OR**

EXECUTED as a deed by [CONTRACTOR]  
acting by its duly authorised attorneys under a  
power of attorney dated [            ]

.....  
Attorney Signature

.....  
Full name (BLOCK CAPITALS)

.....  
Attorney Signature

.....  
Full name (BLOCK CAPITALS)

**Part 2 – Consultant Warranty in favour of Employer**

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

[CONSULTANT]

and

[EMPLOYER]

and

[CONTRACTOR]

DUTY OF CARE DEED  
relating to [ ]

THIS DEED is dated  
BETWEEN:-

20[ ]

- (1) THE PARTNERS IN [*insert name of partnership*] (being the persons listed in the schedule hereto) whose principal place of business is at [ ] OR [ ] LIMITED/PLC (Company Number [ ]) whose registered office is at [ ] (the "**Consultant**");
- (2) [EMPLOYER] of [ ] (the "**Employer**"), (which expression includes its permitted successors in title and assigns); and
- (3) [CONTRACTOR] (registered in England and Wales under company number [ ]) whose registered office is at [ ] (the "**Contractor**").

#### BACKGROUND

- (A) By a pre-construction services agreement dated [ ] (the "**PCSA**") the Employer has appointed the Contractor to carry design and construction services as more particularly set out in the PCSA.
- (B) The Consultant has been appointed by the Contractor (the "**Appointment**") to provide services in relation to the PCSA (the "**Services**").
- (C) The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Employer.
- (D) The Consultant and the Contractor have agreed to execute this Deed in favour of the Employer.

#### 1. DEFINITIONS AND INTERPRETATIONS

In this Deed unless the context otherwise requires, any defined term in this Deed shall have the same meaning given to such term in the PCSA.

#### 2. OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Employer to the Consultant, receipt of which the Consultant acknowledges:-

#### 3. CONSULTANT'S WARRANTY AND LIABILITY

3.1 The Consultant warrants to the Beneficiary that:

- 3.1.1 it has carried out and completed and will continue to carry out and complete its duties and obligations under the Appointment in accordance with the Appointment;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in the performance of the Services the professional skill, care and diligence to be expected of a properly qualified and competent member of the Consultant's profession experienced in carrying out duties the like of those undertaken by the Consultant under the Appointment for works of a similar size, scope, nature, complexity, location, timescale and value to the Works;
- 3.1.3 subject to the standard of skill, care and diligence set out in clause 3.1.2, it has not and shall not permit, specify or approve for use in connection with the Works any materials which at the time of use:

- (a) are known to be deleterious (either to health and safety or to the durability of the Works); or
  - (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
  - (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use; and
- 3.1.4 if in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Consultant will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.
- 3.2 The Consultant shall have no liability under this clause 3 that is greater or of longer duration that it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Appointment as joint employer.
- 3.3 For the avoidance of doubt the Consultant warrants to the Beneficiary that the Consultant shall not raise any defence to a claim by the Beneficiary under this Deed on the grounds that the losses in respect of which the Beneficiary seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Consultant shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Appointment.

#### 4. **INTELLECTUAL PROPERTY**

- 4.1 In this clause 4 “**Consultant Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Consultant in relation to the Services (including any updates, amendments, additions and revisions), together with any other design documents or information to be provided by it under the BIM Protocol.
- 4.2 The Intellectual Property Rights in the Consultant Design Documents prepared by or on behalf of the Consultant in relation to the Appointment and the work executed by it remains the property of the Consultant. The Consultant hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Consultant’s Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Consultant shall not be liable to any licensee for any use of the Consultant’s Design Documents or the use of the Intellectual Property Rights in the Consultant’s Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Consultant.
- 4.3 The Employer may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions

and/or activities that previously had been performed and/or carried on by the Employer.

- 4.4 In the event that the Consultant does not own the copyright or any Intellectual Property Rights in any of the Consultant's Design Documents the Consultant shall use all reasonable endeavours to procure the right to grant such rights to the Employer to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Consultant is unable to procure the right to grant to the Employer in accordance with the foregoing the Consultant shall procure that the third party grants a direct licence to the Employer on industry acceptable terms.
- 4.5 The Consultant waives any moral right to be identified as author of the Consultant's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Consultant's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Employer.
- 4.6 In the event that any act unauthorised by the Employer infringes a moral right of the Consultant in relation to the Consultant's Design Documents the Consultant undertakes, if the Employer so requests and at the Employer's expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Consultant warrants to the Employer that he has not granted and shall not (unless authorised by the Employer) grant any rights to any third party to use or otherwise exploit the Consultant Design Documents.
- 4.8 The Consultant shall supply copies of the Consultant's Design Documents to the Beneficiary upon paying a reasonable copying charge.
- 4.9 In carrying out the Services the Consultant shall not infringe any Intellectual Property Rights of any third party. The Consultant shall indemnify the Employer against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

## **5. PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Consultant hereby covenants with the Employer to:-
  - 5.1.1 take out and maintain professional indemnity insurance covering all of its design and professional obligations under the Appointment (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) with a limit of indemnity that shall be a minimum of ten million pounds (£10,000,000) [on an each and every claim basis] upon customary and usual terms and conditions prevailing for the time being in the insurance market and that it will maintain such insurance with reputable insurers carrying on business in the United Kingdom from the date hereof until twelve (12) years after practical completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and
  - 5.1.2 provide evidence (as and when reasonably required by the Employer) satisfactory to the Employer of the professional indemnity insurance

(referred to in clause 5.1.1) being in full force and effect from the date of the Appointment (such evidence to include details of the cover);

- 5.2 Any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant shall be deemed to be within commercially reasonable rates.
- 5.3 The Consultant shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates or is no longer and/or if for any other reason the Consultant is unable to maintain and/or is not maintaining such insurance in which case the Contractor shall take out and maintain a professional indemnity insurance policy having the maximum limit of indemnity and the widest cover which is available to the Consultant upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Employer and shall further discuss means of best protecting the respective positions of the Employer and the Consultant in respect of the Works.

## 6. **LIABILITY OF PARTNERS**

Where the Consultant is a partnership, references in this Deed to the "Consultant" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

## 7. **NOTICES**

- 7.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:
- 7.1.1 Consultant: [e-mail address]<sup>6</sup>
- 7.1.2 Employer: [e-mail address]<sup>7</sup>
- 7.1.3 Contractor: [e-mail address]<sup>8</sup>

or as otherwise specified by the relevant party by notice in writing to the other parties.

- 7.2 Any notice sent by hand or by post in accordance with clause 7.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

## 8. **ASSIGNMENT**

- 8.1 The benefit of and the rights of the Employer under this Deed may be assigned without the consent of the Consultant on two (2) occasions only and the Employer will notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.
- 8.2 The Consultant will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary

---

<sup>6</sup> Insert e-mail address

<sup>7</sup> Insert e-mail address

<sup>8</sup> Insert e-mail address

hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

**9. EMPLOYER'S REMEDIES**

The rights and benefits conferred upon the Employer 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 and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

**10. INSPECTION OF DOCUMENTS**

The Consultant's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of any documents prepared by the Consultant or provided to the Employer or attendance at site meetings or other enquiry or inspection which the Employer may make or procure to be made for its benefit or on its behalf.

**11. STEP-IN RIGHTS IN FAVOUR OF THE EMPLOYER**

11.1 Without prejudice to the Consultant's statutory rights the Consultant will not exercise or seek to exercise any right which may be or become available to it to:

- 11.1.1 terminate or treat as terminated or repudiated the Appointment or its engagement under it without first giving to the Employer not less than 30 Business Days' prior written notice; or
- 11.1.2 discontinue or suspend the performance of any duties or obligations under the Appointment without first giving to the Employer not less than 7 Business Days' prior written notice.

11.2 Any notice given by the Consultant pursuant to clause 11.1 above shall:

- 11.2.1 specify the Consultant's ground for terminating or treating as terminated or repudiated the Appointment or its engagement under it or for discontinuing or suspending its performance under it (as applicable);
- 11.2.2 specify any other breaches by the Contractor; and
- 11.2.3 state the amount (if any) of monies outstanding under the Appointment (whether or not such amounts result from a breach entitling the Consultant to terminate or treat as terminated or repudiated the Appointment or to discontinue or suspend the performance of any duties or obligations under the Appointment (as applicable)).

11.3 Within the period of any notice given by the Consultant pursuant to clause 11.1:

- 11.3.1 the Employer may give written notice to the Consultant that the Employer will henceforth become the client under the Appointment to the exclusion of the Contractor and thereupon the Consultant will admit that the Employer is its client under the Appointment and the Appointment will be and remain in full force and effect notwithstanding any of the said grounds but subject always to clause 11.3.2 below;

- 11.3.2 if the Employer has given such notice as aforesaid or under clause 11.5 below, the Employer shall accept liability for the Contractor's obligations under the Appointment and will as soon as practicable thereafter remedy any outstanding breach by the Contractor which is properly specified and which is capable of remedy by the Employer; and
- 11.3.3 if the Employer has given such notice as aforesaid or under clause 11.5, the Employer will from the service of such notice become responsible for all sums properly payable to the Consultant under the Appointment accruing due after the service of such notice but the Employer will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Appointment.
- 11.4 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Employer to the Consultant, the Employer will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Consultant pursuant to clause 11.3.1 or clause 11.5 of this Deed.
- 11.5 The Consultant further covenants with the Employer that if employment of the Contractor under the PCSA is determined or the PCSA is terminated, the Consultant, if requested by the Employer by notice in writing and subject to clause 11.3.2 and clause 11.3.3, will accept the instructions of the Employer to the exclusion of the Contractor in respect of its duties under the Appointment upon the terms and conditions of the Appointment and will if so requested in writing to enter into a novation agreement whereby the Employer is substituted for the Contractor under the Appointment.
- 11.6 If the Consultant is requested to enter into a novation agreement pursuant to clause 11.5 above, the Contractor agrees to enter into the same at the request of the Employer.
- 11.7 The Contractor acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant and the Contractor by the Employer under clause 11.5 as conclusive evidence that the employment of the Contractor under the PCSA has been determined or the PCSA is terminated.
- 11.8 The Employer may by notice in writing to the Consultant and the Contractor appoint another person to exercise its right under this clause 11 subject to the Employer remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 11.9 Upon request by the Employer the Consultant agrees to co-operate with the Employer in determining the duties performed or to be performed by the Consultant and to provide a copy of the Appointment and any variations thereto and details of all monies paid and due under the Appointment and the PCSA.
- 11.10 As from the date of service of notice under clause 11.3.1 or 11.5 to the extent that the Appointment operates by reference to the existence and application of the PCSA, the Appointment shall be administered and construed as though the PCSA was continuing and the Appointment shall therefore continue, subject to amendment only as necessary to reflect the fact that the PCSA has in fact terminated and the Employer has undertaken the obligations set in clause 11.3.2.

## 12. **SUB-CONSULTANTS**

Following a written request from the Employer the Consultant will (unless it has already done so) procure that its sub-consultants execute a deed of collateral warranty in the relevant form specified in the Appointment in favour of any person in whose

favour the Appointment obliges the Consultant to give or procure the giving of such a warranty.

13. **SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provision of or any other documents referred to in this Deed.

14. **WAIVER**

14.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

14.2 No waiver under clause 14.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

15. **THIRD PARTY RIGHTS**

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed.

16. **GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

17. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.

EXECUTED AS A DEED by  
[CONSULTANT] acting by  
a Director and its Secretary/two Directors:-

Director  
Director/Secretary

[THE CORPORATE SEAL of the SECRETARY )  
OF STATE FOR EDUCATION herewith affixed )  
is authenticated by:- )

.....  
Authorised by the Secretary of State

.....  
Full name (BLOCK CAPITALS)

**OR**

[EXECUTED AS A DEED (but not delivered  
until the date hereof) by affixing the Common  
deal of [EMPLOYER] in the presence of:-

Authorised Signatory]

**OR**

EXECUTED AS A DEED by [EMPLOYER]  
acting by a Director and its Secretary/two  
Directors:-

Director

Director/Secretary

EXECUTED AS A DEED by [CONTRACTOR]  
acting by a Director and its Secretary/two  
Directors:

Director

Director/Secretary

**OR**

EXECUTED as a deed by [CONTRACTOR]  
acting by its duly authorised attorneys under a  
power of attorney dated [            ]

.....  
Attorney Signature

.....  
Full name (BLOCK CAPITALS)

.....

Attorney Signature

.....

Full name (BLOCK CAPITALS)

**Certificate Of Completion**

Envelope Id: C5E2D628D7AE49BF8B26DE338FE1BC01

Status: Completed

Subject: DfE - Sheffield St Paul's Place Refurbishment - PCSA

Registered at the Land Registry?: No - Not to be Registered at LR

Source Envelope:

Document Pages: 47

Signatures: 3

Certificate Pages: 4

Initials: 0

AutoNav: Enabled

Envelope Stamping: Enabled

Time Zone: (UTC) Dublin, Edinburgh, Lisbon, London

Envelope Originator:

Sammie Cheung

25 Walbrook

London, London EC4N 8AF

scheung@dacbeachcroft.com

IP Address: 147.161.142.188

**Record Tracking**

Status: Original

20-02-2023 | 12:20

Holder: Sammie Cheung

scheung@dacbeachcroft.com

Location: DocuSign

**Signer Events****Signature****Timestamp**

DocuSigned by:  
*Chris Tapson*  
294673F1192A4C2...

Sent: 20-02-2023 | 12:31

Viewed: 21-02-2023 | 19:12

Signed: 21-02-2023 | 19:14

Security Level: Email, Account Authentication  
(None)Signature Adoption: Pre-selected Style  
Using IP Address: 178.104.0.115**Electronic Record and Signature Disclosure:**

Accepted: 21-02-2023 | 19:12

ID: 3bd99952-3887-4c9f-b152-ff0f2d6b26bc



DocuSigned by:  
*Paula Brown*  
DEEF296E0C9E46C...

Sent: 21-02-2023 | 19:14

Viewed: 22-02-2023 | 11:34

Signed: 22-02-2023 | 11:35

Security Level: Email, Account Authentication  
(None)Signature Adoption: Pre-selected Style  
Using IP Address: 81.145.190.62**Electronic Record and Signature Disclosure:**

Accepted: 22-02-2023 | 11:34

ID: 16eafb42-8f29-4e0f-83f9-c7913f242670



DocuSigned by:  
*Nadeem Nawaz*  
14ABA6FB91324F7...

Sent: 22-02-2023 | 11:35

Resent: 27-02-2023 | 09:55

Viewed: 27-02-2023 | 09:57

Signed: 27-02-2023 | 10:00

Security Level: Email, Account Authentication  
(None)Signature Adoption: Pre-selected Style  
Using IP Address: 208.127.52.237**Electronic Record and Signature Disclosure:**

Accepted: 27-02-2023 | 10:22

ID: 366a3d98-9f48-4ed5-92f5-955b67a13982

**Completed**

Sent: 27-02-2023 | 10:00

Viewed: 27-02-2023 | 10:22

Signed: 27-02-2023 | 10:24

Security Level: Email, Account Authentication  
(None)

Using IP Address: 165.225.196.127

**Electronic Record and Signature Disclosure:**

Accepted: 27-02-2023 | 10:22

ID: d8219e56-6499-4013-afe4-5bb3f0adf8d4

**In Person Signer Events****Signature****Timestamp**

Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	20-02-2023   12:31
Envelope Updated	Security Checked	27-02-2023   09:55
Certified Delivered	Security Checked	27-02-2023   10:22
Signing Complete	Security Checked	27-02-2023   10:24
Completed	Security Checked	27-02-2023   10:24
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## IMPORTANT NOTICE

This email (the “Email”) and embedded link to any document(s) within the virtual envelope (together the “Document(s)”) is sent for and on behalf of DAC Beachcroft.

### What to do if you have received this communication in error

The contents of any Email and Document(s) are confidential and may contain privileged information.

If you are not the named recipient of the Email, you are not permitted to use the Email, access, use in any manner, or download, the Document(s). **If you have received this Email in error, please immediately inform [dataprotectionenquiryteam@dacbeachcroft.com](mailto:dataprotectionenquiryteam@dacbeachcroft.com) of the date and time that you received the Email, delete the Email and do not attempt to access, use or download the Document(s).**

### DAC Beachcroft’s Legal Services

Unless you are a client or an insured of an insurer client of DAC Beachcroft, DAC Beachcroft is not acting for or advising you in relation to the Email and the Document(s), any aspect of the matters to which they relate or the use of DocuSign. If you have any questions or concerns in relation to any of these matters then you should seek independent legal advice before you take any action in relation to the Email and the Document(s).

### DocuSign

DocuSign is a third party platform used by DAC Beachcroft to facilitate the electronic execution of documents. The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>. It is your responsibility to ensure that your computer equipment, computer programs and data are adequately protected against viruses and other technologically harmful material.

### Privilege, confidentiality and data protection

As stated above, the contents of any Email and Document(s) are confidential and may contain privileged information. The content of the Document(s) will be visible to all recipients of the envelope. DocuSign records certain information in relation to signatories (and, where relevant, witnesses) which evidences their identity, including their name, email address, IP address and, where SMS authentication applies, their mobile telephone number. This information will be visible to all signatories (and witnesses) and will be recorded in a “**Certificate of Completion**” which may be downloaded by all signatories.

Recipients may download the completed Document(s) from the DocuSign platform. Recipients wishing to download the completed Document(s) and the Certificate of Completion should do so within 30 days of the Document(s) being completed within DocuSign. After that time, the

Document(s) will be queued for deletion from the DocuSign platform and will no longer be available for download.

DAC Beachcroft will retain copies of the Email, completed Document(s) and Certificate of Completion in accordance with our information retention and destruction policy and any applicable legal or regulatory requirements.

DAC Beachcroft's privacy policy can be viewed [here](#).

DocuSign's privacy policy can be viewed [here](#).