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Major Projects Framework 2

Vesting Agreement

AGREEMENT FOR PURCHASE OF OFF SITE MATERIALS FROM CONTRACTOR

between

XXXXXXXXXX

and

XXXXXXXXXX

in relation to Mini-tender for XXXXXX Works under XXXXXX Contract

AGREEMENT**BETWEEN:**

- (1) **XXXXXXXX** incorporated under **XXXX**, having its principal office at **XXXXXX** (the “**Employer**”, which expression shall include their successors and permitted assignees) **OF THE FIRST PART**
- and
- (2) **XXXXXX**, a company incorporated in Scotland under the Companies Acts with Registered Number **XXXXXX**, having its registered office at **XXXXXXXXXXXX** (the “**Contractor**”) **OF THE SECOND PART**

WHEREAS:

- (A) By the Contract, the Contractor has agreed with the Employer to carry out the Works upon and subject to the terms and conditions set out therein;
- (B) This Agreement is supplemental to the Contract;
- (C) The Contractor wishes to be paid in respect of certain off-site materials specified in the schedule annexed and identified as relative hereto (the “Schedule”) before delivery to or adjacent to the Site; and
- (D) In accordance with Clause 70.4 of the Contract, the Employer has agreed to purchase the Goods from the Contractor on the terms and conditions set out in this Agreement.

IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:**1. DEFINITIONS**

In this Agreement the words and expressions shall have the meanings ascribed to them under the Contract except for the following expressions, which shall have the meanings hereinafter respectively ascribed to them unless the context otherwise requires:

“**Activity Schedule**” means the Activity Schedule as defined within the Contract;

“**Contract**” means the call-off contract dated **XXXXXX** entered into between the Employer and the Contractor under the **XXXXXX** Agreement in respect of the Works dated **XXXXXX**, as may be varied from time to time;

“**Goods**” means the plant, equipment, materials and/or goods to be supplied by the Contractor for use in the Works, as more particularly described in the schedule annexed hereto;

“**Location**” means **xx** being the agreed premises where the Goods have been manufactured, assembled or are stored;

“**Site**” means the Site as defined within the Contract;

“**Total Off-Site Payment**” means the sum of £**XXXXX.XX** (less the amount of £**XXXXX.XX** which has already been paid by the Employer and received by the Contractor) as the same may be adjusted pursuant to the Contract;

“**Total XXXXX Type Value**” means the sum set out in column **XX** of the schedule being the value of the total number of windows relative to each **XXXX Type** set out in column **XX** of the schedule annexed hereto as the same may be adjusted pursuant to the Contract; and

“**Works**” means the Works as defined within the Contract.

2. INTERPRETATION

In this Agreement, unless the context otherwise requires:

- 2.1 Words importing the neuter gender only shall include the masculine or feminine gender (as the case may be) and words importing the masculine gender only shall include the feminine gender and *vice versa*.
- 2.2 Words importing the singular number shall include the plural number and *vice versa*.
- 2.3 Words importing persons shall include Government Departments, firms, companies, corporations and other bodies corporate and *vice versa*.
- 2.4 The clause headings in this Agreement are for reference only and shall not affect the construction hereof.

3. CONTRACTOR UNDERTAKING

By its entry into this Agreement, the Contractor confirms and undertakes to the Employer that:

- 3.1 at the relevant assessment date the Goods are included a payment certificate, the Contractor is the legal owner of and has full unencumbered title to the Goods;
- 3.2 the Goods have been manufactured or prepared and are substantially ready for incorporation in the Works;
- 3.3 the Goods are set apart at the Location, and have been clearly and visibly marked, individually or in sets either by letters or figures or by references to a pre-determined code (as detailed above), so as to identify:
 - (i) to the Employer where they are stored on premises of the Contractor or
 - (ii) where they are not stored on premises of the Contractor, the person to whose order they are held, andin either case, their destination as being the Works;
- 3.4 the Goods are in accordance with the Contract and comply with the relevant standards or requirements set out in the Contract; and
- 3.5 the Goods shall be used by the Contractor in the execution of the Works.

4. PAYMENT FOR AND TRANSFER OF TITLE TO THE GOODS

- 4.1 The Contractor shall not include Goods in any payment application, and the Project Manager shall not be required to consider such Goods to be included in the Price for Work Done to Date, where the value of the Goods exceeds either of (a) the relevant Total Window Type Value and (b) the Total Off-Site Payment.
- 4.2 In any one assessment interval the Employer shall pay to the Contractor the Purchase Price (as defined below at clause 4.3), as purchase price for the Goods in accordance with clause 4.3. The Employer shall not be required to pay the Contractor such sums unless and until the Employer has received from the Contractor:
 - (a) evidence, in a form reasonably satisfactory to the Employer, of payment by the Contractor to the party who has sold the Goods to the Contractor of all sums due from the Contractor to such seller in respect of the Goods; and

- (b) evidence that he has affected insurance cover to protect the Employer's interests under Clause 4.7; and
 - (c) reasonable proof that the property in the Goods belongs to the Employer; and
 - (d) evidence that the conditions set out in clauses 3.1 - 3.5 above have been complied with; and
 - (e) evidence that the value of the Goods does not exceed the relevant Total Window Type Value; and
 - (f) evidence that the total value of the Goods included does not exceed the Total Off-Site Payment.
- 4.3 The total purchase price payable by the Employer to the Contractor for the Goods shall be equivalent to the amount apportioned to the Goods within the Activity Schedule and assessed as due by the Project Manager in terms of clause 5 of the Contract (the "Purchase Price") subject to Total Off-Site Payment and shall be paid in terms of the payment process in clause 5 of the Contract following issue of a payment certificate by the Project Manager confirming that payment for the Goods has been certified due in terms of Clause 51.1 of the Contract.
- 4.4 Except as provided for this in this Agreement all clauses of the Contract shall apply to the Goods. When title in the Goods passes to the Employer, the price payable under the Contract shall be reduced by the amount set out in clause 4.3 above.
- 4.5 The title in the Goods shall pass to the Employer on payment of the amount stated in clause 4.2 above by the Employer to the Contractor. The Contractor shall remain responsible for delivering the Goods in accordance with the requirements of the Contract and for ensuring that the Goods are incorporated in the Works in accordance with the provisions of the Contract.
- 4.6 The Contractor shall not except for use in the Works, remove or cause or permit the Goods to be removed from the relevant Location. The Contractor shall permit the Employer and those authorised by the Employer access to the premises in which the Goods are stored in order that they may satisfy themselves that the provisions of this Agreement are being complied with.
- 4.7 The Contractor shall be responsible for any loss or damage to the Goods and for arranging and paying for storage, handling and insurance of the Goods including cover for loss or damage in transit. Such insurance shall be for the full value of the Goods and cover all risks and protect the interest of the Employer and the Contractor until the Goods are delivered to and installed at the Site and such insurance shall indemnify the Employer in like manner to the Contractor and in general shall be in terms acceptable to the Employer (acting reasonably). When requested to do so, the Contractor shall send to the Employer documentary evidence of the insurances required by this clause.
- 4.8 Nothing contained in this Agreement or the Contract or any payment that may be made to the Contractor in respect of the Goods shall be taken as any approval by the Client that the Materials are in accordance with the Contract.

5. ASSIGNATION

- 5.1 The Employer's rights, benefits and obligations under this Agreement shall be capable of assignation, charge or transfer, without the consent of the Contractor at any time or times.
- 5.2 The Contractor shall not be entitled to assign, sub-contract, delegate or in any way transfer its interest in this Agreement or any part thereof without the consent of the Employer and any

purported assignation, sub-contracting, delegation or transfer without consent as aforesaid shall be deemed to be null and void and of no effect.

6. COSTS

Each party shall bear its own costs of and in connection with the preparation, completion and implementation of this Agreement.

7. VALUE ADDED TAX

All payments to be made under this Agreement are so stated exclusive of Value Added Tax which, if due, shall be paid over and above the same.

8. WAIVER

Any failure by either party to seek redress for breaches, or to insist on strict performance, of any terms, conditions or provisions of this Agreement, or the failure by either party to exercise any right or remedy to which it may be entitled in terms of this Agreement shall not constitute a waiver thereof. A waiver of any default shall not constitute a waiver of any subsequent default.

9. LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of Scotland and the parties hereto submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents typewritten on this and the four preceding pages, together with the schedule annexed hereto, are executed as follows:

They are signed for and on behalf of XX

At _____ on the _____ day of _____ 2019

..... Authorised Signatory

..... Print full Name

..... Authorised Signatory/Witness

..... Print full Name

..... (Address of Witness if used)

.....

They are signed for and on behalf of XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

At on the day of 2019

..... Director/Co. Secretary/Authorised Signatory

..... Print full Name

..... Director/Co. Secretary/Authorised Signatory/Witness

..... Print full Name

..... (Address of Witness if used)

.....

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING CONTRACT OF
PURCHASE BETWEEN XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX AND**

XX

TABLE OF GOODS TO BE INCLUDE



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D HERE AND REFERNCED IN CONTRACT ABOVE