*The following Delivery Agreement template is drafted on the basis that the law of England and Wales applies.*

DATED 202()

**[EMPLOYER]**

and

**WILLMOTT DIXON CONSTRUCTION LIMITED**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**PRE-CONSTRUCTION SERVICES AGREEMENT**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This Agreement is dated 202()

**PARTIES**

1. **[EMPLOYER]** incorporated and registered in England and Wales with company number [ ] whose registered office is at [address TBC] ("**the Employer**").
2. **Willmott Dixon Construction Limited** incorporated and registered in England and Wales with company number 00768173 whose registered office is at Suite 201, The Spirella Building, Bridge Road, Letchworth Garden City, Hertfordshire, SG6 4ET ("**the Contractor**").
3. for the Services of Pre-construction, Design and other Professional Services to complete RIBA Stage **[insert stage here]**.
4. Whereas:
5. This Delivery Agreement is made pursuant to the Framework Agreement dated 4th April 2022 made between **PLACES FOR PEOPLE GROUP LTD** and the Contractor (the ‘Framework Agreement’).
6. When using this Pre-construction Services Agreement, the Contractor (as stated in the Framework Agreement) is the party named as ‘*Consultant’.*

**BACKGROUND**

1. The Employer wishes to carry out the Project.
2. The Employer wishes to engage the Contractor to carry out the Pre-Construction Services.
3. The Employer may wish to appoint the Contractor to carry out the Works and wishes to secure agreement on the terms on which that appointment may be made.

**AGREED TERMS**

Interpretation

The following definitions and rules of interpretation apply in this agreement.

* + 1. Definitions:

**Fire Safety Strategy:**

means the specifications and drawings setting out the detailed design for the Works and specifying all systems, methods, products and materials to be used in the construction and delivery of the external walls of the Works including for the avoidance of doubt the insulation materials, cladding materials, methods of fixing cavity barriers and other fire protection measures as comprised in and forming part of the Contractor’s Proposals.

**Additional Services:** services performed by the Contractor under this agreement, in connection with the Project or the Works, that are additional to the Pre-Construction Services.

**CDM Regulations:** the Construction (Design and Management) Regulations 2015 (SI 2015/51).

**Construction Products Regulations:** the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

**Contract:** the final contract (if any) to be entered into between the Employer and the Contractor in relation to the Works and the Project in the form of (or based on) the Proposed Contract Documents.

**Contract Sum: [**the amount of £[ ] agreed] [such sum as shall be agreed] between the Employer and the Contractor in relation to the Works which is to be included as the contract sum in the Contract.

**Deleterious:** materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

1. posing a threat to the health and safety of any person; or
2. posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
3. reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Works; or
4. not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
5. having been supplied or placed on the market in breach of the Construction Products Regulations.

**Employer's Agent:**  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.

**Employer's Requirements:** the drawings, Project Cost Plan, details and specifications of materials, goods and workmanship and other related documents that have been prepared or will be prepared by or on behalf of the Employer in relation to the requirements of the Works.

**Key Personnel:** the persons identified in paragraph 3 of Schedule 1, or as otherwise agreed under clause 3.3.

**Material:** all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets, surveys and any other materials provided in connection with the Pre-Construction Services, the Project and the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Pre-Construction Services, the Project and the Works.

**Notice to Proceed:** a notice to proceed issued by the Employer to the Contractor under clause 6.1 in the form set out in Schedule 4.

**Permitted Uses:** the tendering, re-tendering, design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of the Works (and the completed Works), whether or not those Works are carried out by the Contractor.

**Pre-Construction Fee:** the sum set out in Part 1 of Schedule 3 to be paid in accordance with the schedule of payments set out in Part 1 of Schedule 3.

**Pre-Construction Period:** that period of the Project up to and including the date of issue of any Notice to Proceed.

**Pre-Construction Services:** the services required to be performed by the Contractor as set out in

**Principal Designer:** the Contractor or such other person as may be appointed by the Employer to act as principal designer under the CDM Regulations.

**Project:** the development of the Property for the purposes identified in paragraph 2 of Schedule 1.

**Project Cost Plan:** the budget for the Project prepared by the quantity surveyor and agreed by the Employer.

**Property:** the property identified in paragraph 1 of Schedule 1.

**Proposed Contract Documents:** the JCT Design and Build Contract 2016 incorporating a schedule of amendments in the form agreed between the Employer and the Contractor (the “**JCT Contract**”), the Employer’s Requirements and such other documents specified in the definition of Contract Documents (as defined in the JCT Contract).

**Relevant Consents:** any approval, permission or consent required under Statutory Requirements in order to undertake and complete the Project.

**Standard of Care:** all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Works.

**Third Party Agreements:** any agreement or licence between the Employer and any person that relates to the Project, the Property or the use of it and of which the relevant details have been given to the Contractor (including, without limitation, agreements with actual or prospective purchasers, tenants and funders and those relating to planning, highways, rights of way, light, oversailing or other easements) prior to the date of this agreement.

**Works:** the works and the services required for the design, construction, completion and commissioning of the Project.

* + 1. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
    2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
    3. The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
    4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
    5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
    6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
    7. This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to a party shall include that party's personal representatives, successors and permitted assigns.
    8. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
    9. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
    10. Any reference to a party's **consent** or **approval** being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.
    11. Any obligation on a party not to do something includes an obligation not to agree that thing to be done.
    12. A reference to **writing** or **written** includes fax but not email.
    13. References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
    14. Unless this agreement expressly provides otherwise, a reference to the Property or the Project is to the whole and any part of it.
    15. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
    16. Terms defined in the Proposed Contract Documents have the same meaning in this agreement as in the Proposed Contract Documents unless the meaning given in the Proposed Contract Documents is different from, or conflicts with, the meaning given in this agreement, in which case the meaning given in this agreement prevails.

Duration and effect of this agreement

* + 1. 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. the execution and completion of the Contract; or
       2. the Contractor or Employer issuing a notice of termination of this agreement under clause 11.
    2. Before execution and completion of the Contract, the rights and obligations of the Employer and the Contractor in relation to the Works shall be governed by the provisions of this agreement supplemented by the Proposed Contract Documents. If there is any conflict or difference between this agreement and the Proposed Contract Documents, this agreement prevails.
    3. On the execution and completion of the 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 under clause 4.4) shall be subsumed into and be subject to the Contract.

Pre-Construction Period

* + 1. The Contractor warrants and undertakes that it shall:
       1. comply with this agreement and the Proposed Contract Documents;
       2. carry out and fulfil, in all respects, the duties of a principal contractor under the CDM Regulations;
       3. ensure that the Key Personnel maintain a material involvement in the Pre-Construction Services;
       4. allocate personnel of sufficient numbers and qualifications to perform the Pre-Construction Services, deploying as a minimum the personnel and resources listed in Part 2 of Schedule 2;
       5. provide to the Employer and the Employer’s Agent upon the submission of the reserved matters planning application copies of all design and survey information issued with the planning submission;
       6. not specify for use anything Deleterious at the time of specification;
       7. when performing the Pre-Construction Services have due regard to any Third Party Agreements and the Project Cost Plan.
    2. The Contractor warrants and undertakes that it shall exercise the Standard of Care when performing the Pre-Construction Services.
    3. So far as is reasonably possible, the Contractor shall not change the identity of the Key Personnel without the Employer's prior consent (such consent not to be unreasonably withheld or delayed).
    4. The Employer shall within a reasonable time:
       1. comply with any reasonable request from the Contractor for information in the Employer's possession or control, which is relevant to the Contractor's obligations under this agreement (including the Pre-Construction Services) and which has not previously been provided to the Contractor; and
       2. give instructions or approvals and make decisions (or procure that the Employer's Agent give instructions or approvals and make decisions) as reasonably requested by the Contractor, to allow the Contractor to comply with its obligations under this agreement (including performing the Pre-Construction Services).

Additional Services, works and orders

* + 1. In placing orders, executing work, delegating or sub-contracting the Pre-Construction Services or the Works, 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 Pre-Construction Services and the Proposed Contract Documents.
    2. The Employer may instruct the Contractor to carry out Additional Services. Subject to the Contractor making a reasonable objection to performing any Additional Services, the Contractor shall perform those Additional Services. As a condition precedent to the Contractor's entitlement to any additional payment in connection with those Additional Services, the Contractor shall notify the Employer if it will require additional payment for those services within ten Business Days of receipt of the Employer's notice. That notice shall state the total sum the Contractor requires to perform those Additional Services. On receiving such a notice from the Contractor, the Employer may within a further five Business Days cancel its instruction, at no cost to the Employer (who shall not pay the Contractor for those Additional Services), and the Contractor shall not perform those Additional Services.
    3. The Contractor may (with the prior consent of the Employer) and shall (if so instructed by the Employer or the Employer's Agent) place a specific order or perform a specific item of work comprising part of the Works (including any design of the Works) before the issue of any Notice to Proceed provided that, unless the Employer expressly so directs, the Contractor shall not place an order or commence any item of work until the sum forming part of the Contract Sum in respect of that order or item has been agreed in writing between the Employer and the Contractor.
    4. Any order or item of work referred to in clause 4.3 shall be carried out in accordance with the Proposed Contract Documents.
    5. Without affecting the Contractor's obligations under the Proposed Contract Documents, the Contractor shall:
       1. be responsible for the acts and activities of its sub-contractors and suppliers, 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, sub-contractor or supplier;
       2. ensure that any sub-contract or supply agreement entered into in relation to the Works during the Pre-Construction Period contains a clause that permits its termination at will if the Employer does not issue a Notice to Proceed;
       3. give the Employer a copy of any sub-contract, supply agreement, order and any other similar document within three Business Days of the Employer's request to do so.

Pre-Construction Fee and payment

* + 1. The Employer shall pay the Contractor the Pre-Construction Fee.
    2. If the Contractor has notified the Employer that it will require additional payment for Additional Services under clause 4.2 and the Employer has not cancelled its instruction to carry out those Additional Services under clause 4.2, the Employer shall pay the Contractor the sum set out in the Contractor's notice or such other sum agreed between the parties for those Additional Services. If the parties do not agree a sum, the Employer shall pay the Contractor a fair and reasonable sum taking into account any rates and prices agreed between the parties for any Additional Services and any rates and prices used to calculate the Pre-Construction Fee. The due date for payment of any such sum shall be the next payment date, following completion of those Additional Services, for payment of an instalment of the Pre-Construction Fee, as referred to in Part 1 of Schedule 3.
    3. If the Employer issues a Notice to Proceed under clause 6.1:
       1. the Employer's obligations to pay the Contractor under this agreement (including its obligations under clause 5.1 to clause 5.3 inclusive) shall be replaced by an obligation to pay the Contractor the sums due under the Proposed Contract Documents and all payments under this agreement (including the Pre-Construction Fee) shall be included within and treated as paid on account of the Contract Sum under the Proposed Contract Documents; and
       2. for the avoidance of doubt, when the Contract has been executed and completed the Employer shall make no further payments under this agreement and all payments made under this agreement (including the Pre-Construction Fee) shall be included within and treated as paid on account of the Contract Sum under the Contract.
    4. If the Employer does not pay a sum due under this agreement on or before the final date for payment the Employer shall pay interest on that sum to the Contractor as if that sum was due under the Proposed Contract Documents.

Notice to Proceed and Contract

* + 1. The Employer may, by issuing a Notice to Proceed, at its sole option and discretion appoint the Contractor to perform the Works and the Contractor agrees to accept that appointment on the basis set out in this agreement. On receipt of the Notice to Proceed, the Contractor shall:
       1. execute (or procure the execution of) the Proposed Contract Documents and return the executed Proposed Contract Documents to the Employer (without amendment other than the correction of errors in a manner agreed between the parties);
       2. commence, carry out and complete the Works in accordance with the Proposed Contract Documents and, when executed and completed, the Contract; and
       3. comply in all respects with the Proposed Contract Documents and, when executed and completed, the Contract.
    2. If the Employer issues a Notice to Proceed, the Contract will be on the terms of the Proposed Contract Documents, incorporating the Contract Sum.

Copyright

* + 1. The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by or on behalf of the Contractor for any purpose relating to the Works and the Project including any of the Permitted Uses.
    2. This licence allows the Employer to use the Material in connection with any extension of the Works or the Project, but not to reproduce the designs contained in the Material in any such extension.
    3. This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent.
    4. The Contractor shall have no liability for use of the Material for any purpose other than that for which it was prepared and/or provided.
    5. The Employer may, at any time (whether before or after completion of the Pre-Construction Services, or after termination of this agreement), request one or more copies of some or all of the Material from the Contractor. On the Employer's payment of the Contractor's reasonable charges for providing those copies, the Contractor shall provide those copies to the Employer.

Limit of Employer's liabilities

* + 1. Unless the Employer has issued a Notice to Proceed, 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), shall be limited to the following:
       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 in any event 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 Part 1 of Schedule 3;
       2. the value of work actually executed and orders actually placed under clause 4.4, calculated in accordance with the Proposed Contract Documents (as referred to in clause 5.3); and
       3. any interest due under clause 5.4,
    2. The parties acknowledge and agree that unless the Employer has issued a Notice to Proceed 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:
       1. loss of profit, loss of contract, loss of business, loss of chance or other similar loss; or
       2. any indirect or consequential loss.
    3. Nothing in this clause 9 or elsewhere in this agreement shall exclude or limit either party's liability for death or personal injury caused by that party's negligence.

Suspension

* + 1. The Employer may, at any time, suspend performance of part or all of the Pre-Construction Services, any Additional Services and any order or item of work referred to in clause 4.4 by giving notice to the Contractor. Subject to clause 9.2, the Contractor shall resume performance of that part or all of the Pre-Construction Services, any Additional Services and any order or item of work referred to in clause 4.3 as soon as reasonably practicable after receiving a notice from the Employer to do so.
    2. If the Employer does not pay a sum due under this agreement on or before the final date for payment the Contractor may suspend the performance of any or all of its obligations under this agreement as if the Employer had not paid a sum due under the Proposed Contract Documents, by giving notice as required by the Proposed Contract Documents.
    3. In the event of a suspension under clause 9.1, subject to clause 8, the Employer shall pay the Contractor any sums due under clause 5 and such payment shall be the Contractor's sole compensation for suspension of the Pre-Construction Services, any Additional Services and any order or item of work referred to in clause 4.3.
    4. In the event of a suspension under clause 9.1, subject to clause 8, the Employer shall pay the Contractor any sums due under clause 5 and any other sum due and not otherwise provided for in this agreement, which is required to be paid under section 112 of the Housing Grants, Construction and Regeneration Act 1996, and such payment shall be the Contractor's sole compensation for suspension of the Pre-Construction Services, any Additional Services and any order or item of work referred to in clause 4.3.

Termination

* + 1. The Employer may terminate this agreement at any time by giving the Contractor notice to that effect and such termination shall be effective from the date of issue of that notice.
    2. The Contractor may terminate this agreement if:
       1. the Employer is Insolvent; or
       2. a suspension of all of the Pre-Construction Services under clause 9.1 continues for a continuous period of six months and the Employer does not instruct the Contractor to resume those Pre-Construction Services within ten Business Days of receiving a notice from the Contractor requiring it to do so,

by giving notice to the Employer to that effect and such termination shall be effective from the date of issue of that notice.

* + 1. If this agreement is terminated, the parties shall co-operate to bring the Pre-Construction Services, any Additional Services and any order or item of work referred to in clause 4.3 to an orderly conclusion and to allow the parties to comply with their remaining obligations under this agreement.
    2. If this agreement is terminated, subject to clause 8, the Employer shall pay the Contractor any sums due under clause 5, and that payment shall be the Contractor's sole compensation for termination.

Insurance

* + 1. The Contractor shall maintain:
       1. professional indemnity insurance;
       2. employer's liability insurance; and
       3. public liability insurance,

as required by the overarching Framework Agreement

* The amounts of insurance and the periods for which the *Contractor* maintains insurance are

|  |  |  |
| --- | --- | --- |
| **event** | **Cover** | **period following Completion of the whole of the *services* or earlier termination** |
| Professional Indemnity Insurance - failure of the *Consultant* to use the skill and care normally used by professionals providing services similar to the *services* | **£5,000,000** in respect of each claim, without limit to the number of claims **or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar where such limited cover is the norm (all claims relating to fire safety are limited to £5,000,000 in the aggregate)** | 12years |
| death or bodily injury to a person (not an employee of the *Consultant* ) or loss of or damage to property resulting from an action or failure to take action by the *Consultant* | **£10,000,000** in respect of each claim, without limit to the number of claims | 12 years |
| death or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract | **£10,000,000** in respect of each claim, without limit to the number of claims | 12 years |

* The *Employer* provides the following insurances
* Insurance for all existing buildings and property existing within the Site or at the sole discretion of the *Employer* he may elect to ‘self-insure’ such existing buildings and property and in doing so accepts all of the *Employer’s* associated risks arising out of or in relation to such ‘self-insurance’. In accordance with an Employer’s decision to ‘self-insure’ they do not accept any additional insurance premium/cost from the *Contractor*.

…………………………………………………………………………………………………

…………………………………………………………………………………………………

* The *Consultant’s* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters is limited to

£5,000,000

* provided that notwithstanding the above or any other provision of this contract, in the event of any claim arising as result of any failure to comply with building regulations and/or any other statutory requirements relating to the works and method, system, design products and materials detailed in the Fire Safety Strategy then (provided the Contractor has delivered the works in compliance with the Fire Safety Strategy) the Contractor shall have no liability to the Employer for any indirect or consequential loss arising as a result of any breach and any other liability of the Contractor shall be limited to £1,000,000.00 million pounds in aggregate.
  + 1. Before it carries out any of the Works at the Property, the Contractor shall ensure that it maintains:
       1. any insurance required by the Proposed Contract Documents under Insurance Option A subject to the requirements of the overarching Framework Agreement as above

Notices

Any notice required under this agreement shall be sent in accordance with the requirements for notices in the Proposed Contract Documents.

Assignment

* + 1. The Employer may assign or otherwise transfer the benefit of this agreement to any person.
    2. Without prejudice to clause 13.1, the Employer may charge, or assign by way of security, the benefit of this Contract to any Funder (as defined in the Proposed Contract Documents) (and the Funder may reassign the benefit of this Contract to the Employer on redemption of that security).
    3. The Employer shall notify the Contractor of any assignment within ten Business Days. If the Employer fails to do this, the assignment shall still be valid.
    4. The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under this clause 13 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.
    5. The Contractor shall not assign or charge the benefit of this agreement or any right arising under it without the Employer's prior consent, which the Employer may withhold at its absolute discretion.

Disputes

* + 1. Notwithstanding any other provision of this agreement either party may refer a dispute arising under this agreement to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998/649).

Liability period

The Employer may not commence any legal action against the Contractor under this agreement after 12 years from the date of practical completion of all of the Works under the Contract.

Third party rights exclusion

* + 1. A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
    2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

Entire agreement

* + 1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
    2. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement.
    3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
    4. Nothing in this clause 17 or elsewhere in this agreement shall limit or exclude either party's liability for fraud or fraudulent misrepresentation.

Governing law

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

Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**20** **Additional Conditions of Contract**

Notwithstanding any contrary provision in the Contract or any documents forming part of the Contract it is hereby expressly agreed and acknowledged that: -

20.1

1. No fitness for purpose warranty is either given or implied, whether under statute or otherwise, in relation to the works to be delivered under this Contract and/or method, system, design, products and materials provided by the Contractor, and
2. the Contractor in delivering the Works and complying with the requirements of the Contract and any documents forming part of the Contract shall exercise reasonable skill and care and shall have the like liability to the Client, whether under statute, this contract or otherwise, as would an architect or, as the case may be, any other appropriate professional designer holding himself out as competent to take on such work for such design and material selection who, acting independently under a separate contract with the Client, has supplied such design for or in connection with the works to be carried out by a building contractor who is not the supplier of the design.’

20.2 Where and to the extent any method, system, design, product or materials that are expressly set out in the Fire Strategy Document and/or in any Specification, information or Drawings prepared by or on behalf of the Client have been installed and fitted by the Contractor and building regulation approval has been issued then the issue of such building regulation approval on practical completion of the works shall be deemed conclusive evidence that such method, system, design products or materials comply with such requirements of this Contract in respect of all regulations connected with such approval, the Statutory Requirements and, in particular, the Building Control Regulations.

20.3 Any change to the Fire Safety Strategy after the Contract Date required as a result of any direction, interpretation or requirement of any statutory body or relevant third party, including but not limited to any local authority building control or approved inspector and which affects the execution of the Works shall be treated as a variation under the terms of the contract.

20.4 for the avoidance of doubt the impact of the exercise of the UK Government’s powers in relation to further outbreaks of coronavirus after the date of this contract shall be treated as a variation under the terms of the contract

20.5 a delay in the procurement or transportation of any goods or materials which has a direct and adverse effect upon the whole of the Works or a programme critical element of the Works caused as a consequence of any limitation on the free movement of goods and materials to the United Kingdom from the European Union provided that the Contractor has used all practicable steps to minimise and mitigate any delay arising from the events contemplated in this clause 20.5 including placing orders for such goods or materials within a reasonable time based on any relevant lead in times that could be reasonably anticipated at the Contract Date shall be treated as a variation under the terms of the contract

20.6 a shortage in the supply of labour affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works caused as a consequence of legislation limiting the right of European citizens to work, remain or enter the United Kingdom

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

1. - Project Particulars
2. 1. The Property – [ ]
3. 2. The Project
   * 1. The design and construction of [ ]
4. Key Personnel
   1. [KEY PERSON], [ROLE].
   2. [KEY PERSON], [ROLE].
   3. [KEY PERSON], [ROLE].
5. Schedule 2- Pre-Construction Services, personnel and resources

**Part 1 – Pre-Construction Services**

The Pre-Planning Works

* 1. Part 2 - Personnel and resources

[The parties have attached and initialled a schedule of personnel and resources required.

**OR**

|  |  |
| --- | --- |
| **Resource or personnel required** | **Number required** |
| [RESOURCE OR PERSONNEL] | [NUMBER] |
| [RESOURCE OR PERSONNEL] | [NUMBER] |
| [RESOURCE OR PERSONNEL] | [NUMBER] |

]

1. Schedule 3 - Payments
   1. - Pre-Construction Fee

The Pre-Construction Fee shall be the fixed sum of £ (excluding VAT) and shall include the cost of site investigations/ surveys to update previous reports issued regarding existing ground conditions and utilities infrastructure, consultant design fees and the Contractor’s overheads and profit.

The Pre-Construction Fee shall be calculated and paid as set out in this table and under Part 2 of this Schedule 3.

|  |  |  |
| --- | --- | --- |
| **Monthly payment due** | **Monthly sum (£)** | **Cumulative sum (£)** |
| [DATE] |  |  |
| [DATE] |  |  |
| [DATE] |  |  |
| [DATE] |  |  |
| [DATE] |  |  |
| [DATE] |  |  |
| Any further payment shall be due at intervals of [one] month from the final date referred to above. | Not applicable. | Not applicable. The cumulative sum is referred to above. |

* 1. - Payment terms of this agreement
     1. This agreement and the Proposed Contract Documents
        1. The payment terms in this Part 2 of Schedule 3 apply to payments under this agreement, except where a payment under this agreement is required to be made under the Proposed Contract Documents, in which case the Proposed Contract Documents apply.
        2. The amount of retention to be held under this contract is £ Nil
     2. The *interest rate* on late payments is 3% per annum above the base rate in force from time to time of the Bank of England VAT
        1. The Employer shall pay the Contractor any Value Added Tax (VAT) properly chargeable on a sum due under this agreement. Any sum expressed as payable under this agreement is exclusive of VAT unless stated otherwise.
     3. Final date for payment
        1. The final date for payment shall be 14 Business Days from the due date for payment.
        2. The due date is 7 days after the Contractor submits an application for payment in accordance with this contract.
     4. Payment notice
        1. Not later than five days after the due date for payment, the Employer shall give a notice to the Contractor specifying the sum it proposes paying, to what that sum relates, and the basis on which that sum has been calculated (a **payment notice**).
     5. Contractor's default notice
        1. If the Employer has not given notice under paragraph 4, the Contractor may give notice to the Employer specifying the sum the Contractor considers to be or have been due at the payment due date in respect of the payment and the basis on which that sum is calculated (a **payment notice**). If the Contractor serves such a payment notice the final date for payment of the sum specified in that notice shall for all purposes be regarded as postponed by the same number of days after the date the Employer's payment notice should have been served under paragraph 4 that the Contractor's payment notice was given.
     6. Notified sum
        1. In this Part 2 of Schedule 3, **notified sum** means:

the sum referred to in a payment notice given under paragraph 4, or, if such notice is not given;

the sum referred to in a payment notice given under paragraph 5.

* + 1. Pay less notice
       1. Not later than one Business Days before the final date for payment, the Employer may give a notice to the Contractor specifying its intention to pay less than the notified sum. If given, such notice shall specify the sum that the Employer considers to be due on the date the notice is served and the basis on which that sum is calculated (a **pay less notice**).
    2. Employer to pay on or before final date for payment
       1. Subject to paragraph 7, the Employer shall pay the notified sum on or before the final date for payment.
    3. Delay Damages

Delay damages for Completion of the whole of the *services* are £nil per day

1. Schedule 4 - Notice to Proceed

[TO BE TYPED ON THE EMPLOYER'S HEADED PAPER]

To:

[NAME OF CONTRACTOR]

[ADDRESS]

[DATE]

[EMPLOYER'S REFERENCE]

Dear [CONTRACTOR],

[WORKS/PROJECT NAME]

**Notice to Proceed**

We refer to the pre-construction services agreement entered into between us on [DATE] (the **Pre-Construction Services Agreement**).

In accordance with clause 6 of the Pre-Construction Services Agreement, we hereby give you Notice to Proceed with the Works (as defined in the Pre-Construction Services Agreement) in accordance with the Pre-Construction Services Agreement.

Please arrange for the enclosed documents to be executed and delivered to [PERSON] by return.

Yours faithfully

.....................................................

Signed on behalf of [EMPLOYER]

EXECUTED AS A DEED BY )

**[EMPLOYER ]** **LIMITED** )

acting by two directors or a director and secretary)

…………………………………………..

**Director**

…………………………………………..

**Director/Secretary**

EXECUTED AS A DEED BY )

**WILLMOTT DIXON CONSTRUCTION LIMITED** )

acting by two directors or a director and secretary)

…………………………………………..

**Director**

…………………………………………..

**Director/Secretary**