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Major Projects Framework 2

SBCC Pre-Construction Services Agreement



PROCUREMENT



This Agreement is made between

PARTIES

- (1) **[EMPLOYER]** incorporated and registered in Scotland [with company number []] whose [registered office/main place of business] is at [address TBC] ("**the Employer**") and
- (2) [] OF [] ("**the Contractor**").

for the Services of Pre-construction, Design and other Professional Services to complete RIBA Stage **[insert stage here]**.

Whereas:

This Delivery Agreement is made pursuant to the Framework Agreement dated [] made between **PLACES FOR PEOPLE GROUP LTD** and the Contractor (the 'Framework Agreement').

BACKGROUND

- (A) The Employer wishes to carry out the Project.
- (B) The Employer wishes to engage the Contractor to carry out the Pre-Construction Services.
- (C) 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

1 Interpretation

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

1.1 Definitions:

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:

- (a) posing a threat to the health and safety of any person; or
- (b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
- (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Works; or
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agrément; or
- (e) 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 0, 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 Part 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 Part 3 to be paid in accordance with the schedule of payments set out in Part 1 of Schedule Part 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 0.

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 0.

Proposed Contract Documents: the SBCC Design and Build Contract for use in Scotland 2016 incorporating a schedule of amendments in the form agreed between the Employer and the Contractor (the “**SBCC Contract**”), the Employer’s Requirements and such other documents specified in the definition of Contract Documents (as defined in the SBCC Contract) as completed with the further details agreed as part of the Pre-Construction Services including the Contract Sum.

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

Self Proving Manner: such a manner that it is presumed to have been subscribed by the granter and that any annexations to it have been incorporated in it, in accordance with Sections 3, 7 and 8 and Schedule 2 of the Requirements of Writing (Scotland) Act 1995 or, if agreed by the Employer that the documents can be electronically signed, validly signed

electronically on Docusign or such other electronic signing platform as is agreed by the Employer.

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 servitudes) prior to the date of this agreement.

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

- 1.2** Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
 - 1.3** A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - 1.4** 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.
 - 1.5** A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
 - 1.6** Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
 - 1.7** Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
 - 1.8** 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 assignees, and references to a party shall include that party's personal representatives, successors and permitted assignees.
 - 1.9** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
 - 1.10** A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
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- 1.11** 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.
- 1.12** Any obligation on a party not to do something includes an obligation not to agree that thing to be done.
- 1.13** A reference to **writing** or **written** includes fax but not email.
- 1.14** 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.
- 1.15** Unless this agreement expressly provides otherwise, a reference to the Property or the Project is to the whole and any part of it.
- 1.16** 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.
- 1.17** 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.

2 Duration and effect of this agreement

- 2.1** The parties' obligations under this agreement start on the last date of execution of this agreement (or the date of delivery if the agreement is executed in counterpart) or, if earlier, the date on which the Contractor commenced performance of the Pre-Construction Services until the earlier of:
 - 2.1.1** the execution and completion of the Contract; or
 - 2.1.2** the Contractor or Employer issuing a notice of termination of this agreement under clause 0.
 - 2.2** 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.
 - 2.3** On the execution and completion of the Contract, the parties' respective rights and liabilities in respect of all matters with which this agreement is
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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.

3 Pre-Construction Period

- 3.1** The Contractor warrants and undertakes that it shall:
 - 3.1.1** comply with this agreement and the Proposed Contract Documents;
 - 3.1.2** carry out and fulfil, in all respects, the duties of a principal contractor under the CDM Regulations;
 - 3.1.3** ensure that the Key Personnel maintain a material involvement in the Pre-Construction Services;
 - 3.1.4** 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 Part 2;
 - 3.1.5** 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;
 - 3.1.6** not specify for use anything Deleterious at the time of specification;
 - 3.1.7** when performing the Pre-Construction Services have due regard to any Third Party Agreements and the Project Cost Plan.
 - 3.2** The Contractor warrants and undertakes that it shall exercise the Standard of Care when performing the Pre-Construction Services.
 - 3.3** 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).
 - 3.4** The Employer shall within a reasonable time:
 - 3.4.1** 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
 - 3.4.2** 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).
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4 Additional Services, works and orders

- 4.1** 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.
- 4.2** 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.
- 4.3** 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.
- 4.4** Any order or item of work referred to in clause 4.3 shall be carried out in accordance with the Proposed Contract Documents.
- 4.5** Without affecting the Contractor's obligations under the Proposed Contract Documents, the Contractor shall:
- 4.5.1** 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;
 - 4.5.2** 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;
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4.5.3 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.

5 Pre-Construction Fee and payment

5.1 The Employer shall pay the Contractor the Pre-Construction Fee.

5.2 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.

5.3 If the Employer issues a Notice to Proceed under clause 6.1:

5.3.1 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

5.3.2 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.

5.4 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.

6 Notice to Proceed and Contract

6.1 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:

- 6.1.1** execute (or procure the execution of) in a Self-Proving Manner 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);
 - 6.1.2** commence, carry out and complete the Works in accordance with the Proposed Contract Documents and, when executed and completed, the Contract; and
 - 6.1.3** comply in all respects with the Proposed Contract Documents and, when executed and completed, the Contract.
- 6.2** If the Employer issues a Notice to Proceed, the Contract will be on the terms of the Proposed Contract Documents, incorporating the Contract Sum.

7 Copyright

- 7.1** 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.
- 7.2** 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.
- 7.3** This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent.
- 7.4** 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.
- 7.5** 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.

8 Limit of Employer's liabilities

- 8.1** 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 delict, arising by negligence, or arising by breach of statutory duty), shall be limited to the following:
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- 8.1.1** 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 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 Part 3;
 - 8.1.2** the value of work actually executed and orders actually placed under clause 4.3, calculated in accordance with the Proposed Contract Documents (as referred to in clause 5.3); and
 - 8.1.3** any interest due under clause 5.4,
- 8.2** 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:
 - 8.2.1** loss of profit, loss of contract, loss of business, loss of chance or other similar loss; or
 - 8.2.2** any indirect or consequential loss.
- 8.3** Nothing in this clause 8 or elsewhere in this agreement shall exclude or limit either party's liability for death or personal injury caused by that party's negligence.

9 Suspension

- 9.1** 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 4.3 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.
 - 9.2** 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.
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9.3 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.

9.4 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.

10 Termination

10.1 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.

10.2 The Contractor may terminate this agreement if:

10.2.1 the Employer is Insolvent; or

10.2.2 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.

10.3 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.

10.4 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.

11 Insurance

11.1 The Contractor shall maintain:

11.1.1 professional indemnity insurance;

11.1.2 employer's liability insurance; and

11.1.3 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 Pre-Construction Services or earlier termination
Professional Indemnity Insurance - failure of the Contractor 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	12 years
death or bodily injury to a person (not an employee of the Contractor) or loss of or damage to property resulting from an action or failure to take action by the Contractor	£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 Contractor 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.

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11.2 Before it carries out any of the Works at the Property, the Contractor shall ensure that it maintains:

11.2.1 any insurance required by the Proposed Contract Documents under Insurance Option A subject to the requirements of the overarching Framework Agreement as above

12 Notices

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

13 Assignment

13.1 The Employer may assign or otherwise transfer the benefit of this agreement to any person.

13.2 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).

13.3 The Employer shall notify the Contractor of any assignment within ten Business Days. If the Employer fails to provide such notice within the foregoing timescale, the assignment shall still be valid.

13.4 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.

13.5 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.

14 Disputes

14.1 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 (Scotland) Regulations 1998 (SI 1998/687).

15 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 or if a contract is not entered into within 12 years from completion of the Services hereunder.

16 Third party rights exclusion

16.1 A person who is not a party to this agreement shall not have any rights under the Contract (Third Party Rights) (Scotland) Act 2017 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.

16.2 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.

17 Entire agreement

17.1 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.

17.2 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.

17.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

17.4 Nothing in this clause 17 or elsewhere in this agreement shall limit or exclude either party's liability for fraud or fraudulent misrepresentation.

18 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 Scots law.

19 Jurisdiction

Each party irrevocably agrees that the courts of Scotland 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).¹

IN WITNESS WHEREOF this agreement consisting of this and the preceding [] pages and the Schedule of [4] parts annexed has been executed as follows:

EXECUTED for and on behalf of)
[EMPLOYER] LIMITED)
acting by two directors or a director and secretary)

at on20[22]

.....

Director (Signature)

.....

Director (Name)

at on20[22]

.....

Director/Secretary (Signature)

.....

Director/Secretary (Name)

¹ Clause 19 requires to be on the same page as the first execution block as Scots law requires there to be operative text on the same page that the first party has signed in order for the document to be validly executed. The execution block for a party cannot be split over 2 pages (it is fine for 1 party's execution block to be on one page and the other execution block on the following page)

EXECUTED for and on behalf of _____)
[])
acting by two directors or a director and secretary)

at on20[21]

.....
Director (Signature)

.....
Director (Name)

at on20[21]

.....
Director/Secretary (Signature)

.....
Director/Secretary (Name)

This is the Schedule of [4] parts referred to in the foregoing pre-construction services agreement between [Employer] and [Contractor]

Schedule Part 1 - Project Particulars

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

Part 1 – Pre-Construction Services

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]

]

Schedule Part 3 - Payments

Part 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.

Part 2 - Payment terms of this agreement

- 1 This agreement and the Proposed Contract Documents
 - 1.1 The payment terms in this Part 2 of Schedule Part 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.
 - 1.2 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
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2.1 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

3.1 The final date for payment shall be 14 Business Days from the due date for payment.

3.2 The due date is 7 days after the Contractor submits an application for payment in accordance with this contract.

4 Payment notice

4.1 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

5.1 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

6.1 In this Part 2 of Schedule Part 3, **notified sum** means:

- (a) the sum referred to in a payment notice given under paragraph 4, or, if such notice is not given;
- (b) the sum referred to in a payment notice given under paragraph 5.

7 Pay less notice

7.1 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**).

8 Employer to pay on or before final date for payment

Subject to paragraph 7, the Employer shall pay the notified sum on or before the final date for payment.

9 Delay Damages

Delay damages for Completion of the whole of the Pre-Construction Services are £[] per day

Schedule Part4 - 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]
