

DATED

23 December

2021

PEELERS YARD LIMITED
and
MULBURY HOMES LIMITED

Contract Agreement - JCT 2016 DB
relating to a development on land at Peelers Yard, Goulden Street



THIS AGREEMENT is made

23 December

2021

BETWEEN:

- (1) **PEELERS YARD LIMITED** (Company number 13552246) whose registered office is at Hilton House, 26-28 Hilton Street, Manchester M1 2EH ("**the Employer**" which expression shall include his successors in title, permitted assignees and Connected Company); and
- (2) **MULBURY HOMES LIMITED** (Company number 07185858) whose registered office is at Great Oak Farm, Mag Lane, Lymm WA13 0TF ("**the Contractor**")

BACKGROUND:

- | | |
|----------------|--|
| First recital | The Employer wishes to have the design and carrying out and completion of the construction of 73 apartments with all associated works at land on the north east side of Goulden Street, Manchester (known as Peelers Yard) all together with requisite external works as are more particularly defined and described in this Contract (" the Works ") and the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements which incorporate the proposals made by the Contractor in the Second recital below (" the Employer's Requirements "). |
| Second recital | <p>In response to the Employer's Requirements the Contractor has supplied to the Employer:</p> <ul style="list-style-type: none"> • documents showing and describing the Contractor's proposals for the design and construction of the Works to meet the Employer's Requirements and which are incorporate into the Employer's Requirements (as set out at the First recital above) and • an analysis of the Contract Sum ("the Contract Sum Analysis") <p>which he will require for carrying out and completing the Works in accordance with the JCT Design and Build Contract 2016 (DB) including its conditions in Sections 1 to 9 and subject to the additional clauses and further amendments and documents incorporated by and/or attached to the Schedule of Amendments annexed hereto (together "the Conditions").</p> |
| Third recital | The Contractor has examined the Employer's Requirements and has agreed to accept full responsibility for all and any design contained in them. |
| Fourth recital | For the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars. |
| Fifth recital | Not used. |

Sixth Recital	Where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars.
Seventh Recital	The Supplemental Provisions identified in the Contract Particulars apply as provided for in the Schedule of Amendments.

IT IS NOW AGREED THAT:

Article 1: Contractor's Obligations

Upon and subject to the Conditions, the Contractor shall carry out and complete the design for the Works and carry out and complete the construction of the Works in accordance with the Contract Documents.

Article 2: Contract Sum

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of (£12,200,000.00) ("**the Contract Sum**") or such other sum as shall become payable under this Contract.

Article 3: Employer's Agent

For the purposes of this Contract the Employer's Agent is Stuart Taylor of Artal The XYZ Building, Spinningfields, Manchester M3 3AQ or such other person as the Employer shall nominate in his place. Save to the extent that the Employer may otherwise specify by notice to the Contractor, the Employer's Agent shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and otherwise to act for the Employer under any of the Conditions.

Article 4: Employer's Requirements and Contractor's Proposals

The Employer's Requirements, the Contractor's Proposals and the Contract Sum Analysis are those referred to in the Contract Particulars.

Article 5: Principal Designer

The Principal Designer for the purposes of the CDM Regulations is Rawlings Safety & Training Consultancy Services Ltd of 46 Roby Road, Huyton, Liverpool L36 4HF or, if he ceases to be the CDM Co-ordinator, such other person as the Employer shall appoint to fulfil that role.

Article 6: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or, if he ceases to be the Principal Contractor, such other contractor as the Employer shall appoint to fulfil that role.

Article 7: Adjudication

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.

Article 8: Not used

Article 9: Legal Proceedings

Subject to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

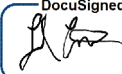
Article 10: Incorporation of Schedule of Amendments

The amendments to the Joint Contracts Tribunal Design and Build Contract 2016 Edition set out in the attached Schedule of Amendments are hereby incorporated into this Contract and the provisions of the Recitals, the Articles of Agreement, the Contract Particulars and the Conditions (including the schedules thereto) shall have effect as so amended. If there is any discrepancy or conflict between the Recitals and/or the Articles of Agreement and/or the Contract Particulars and/or the Conditions and the Schedule of Amendments the wording of the Schedule of Amendments shall prevail.

Annex – Schedule of Amendments

IN WITNESS OF WHICH the parties have executed this Deed the day and year first before written

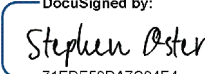
Executed as a deed by
PEELERS YARD LIMITED
 acting by a Director
 in the presence of a witness:

DocuSigned by:

 31736F988A3E430...

Director

I confirm that I was physically present when Howard Lord signed this document.

Witness
 Signature
 Name (print)
 Address
 Occupation
 Head of
 development

DocuSigned by:

 71EDE59DA7C94E4...

Executed as a deed by
MULBURY HOMES LIMITED
acting by a Director
in the presence of a witness:

)
)
)
)

I confirm that I was physically
present when Greg Mulligan
signed this document.

DocuSigned by:
Greg Mulligan
80ACF54A5E014D4...
Director

Witness
Signature
Name (print)
Address
Occupation
Great Oak Farm
Offices, Mag
Lane, Lymm
Director
WA13 0TF

DocuSigned by:
Elisabeth Williams
46CE61A97D264DA
Elisabeth Williams

DATED

2021

PEELERS YARD LIMITED

(1)

and

MULBURY HOMES LIMITED

(2)

Schedule of Amendments - JCT 2016 DB
relating to land on the north east side of Goulden Street,
Manchester (Peelers Yard)



**PRIMAS
LAW**

Schedule of Amendments (as incorporated at Article 10 thereof) to the JCT 2016 DB form of building contract (a copy of which appears at ANNEX A) for works at land on the north east side of Goulden Street, Manchester (Peelers Yard) entered into between (1) PEELERS YARD LIMITED (Employer) and (2) MULBURY HOMES LIMITED (Contractor) and dated 22 December 2021.

Recitals

1. First Recital

1.1 Complete the First Recital with this description of the Works:

"The design, carrying out and completion of the construction of 73 apartments with all associated works at land on the north east side of Goulden Street, Manchester (known as Peelers Yard)."

2. Third Recital

2.1 Delete the existing Third Recital and replace with:

"the Contractor has examined the Employer's Requirements and has agreed to accept full responsibility for all and any design contained in them."

Articles

1. Article 2: Contract Sum

1.1 Complete Article 2 with this Contract Sum:

Twelve million two hundred thousand pounds (£12,200,000.00)

2. Article 3: Employer's Agent

2.1 Complete Article 3 with this Employer's Agent:

Stuart Taylor of Artal The XYZ Building, Spinningfields, Manchester M3 3AQ

3. Article 5: Principal Designer

3.1 Complete Article 5 with this Principal Designer:

Rawlings Safety & Training Consultancy Services Limited of 46 Roby Road, Huyton, Liverpool L36 4HF

4. Article 6: Principal Contractor

4.1 Complete Article 6 with this Principal Contractor:

5. The Contractor

6. Article 8: Arbitration

7. Delete the text of Article 8 and insert, "Article 8 does not apply."

8. Article 10: Incorporation of the Schedule of Amendments

9. The amendments to the Joint Contracts Tribunal Design and Build Contract 2016 Edition set out in the attached Schedule of Amendments are hereby incorporated into this Contract and the provisions of the Recitals, the Articles of Agreement, the Contract Particulars and the Conditions (including the schedules thereto) shall have effect as so amended. If there is any discrepancy or conflict between the Recitals and/or the Articles of Agreement and/or the Contract Particulars and/or the Conditions and the Schedule of Amendments the wording of the Schedule of Amendments shall prevail.

[Article 10 is to be endorsed following Article 9 on the relevant page of the printed JCT 2016 DB booklet]

Contract Particulars

1. The JCT Contract Particulars shall be amended as set out below in this paragraph 1.

(a) Complete the entries of the JCT Contract Particulars relating to the Seventh Recital and Part 1 of Schedule 2 to the JCT Conditions as follows:

(i) Named Sub-Contractors: Supplemental Provision 1 does not apply.

(ii) Valuation of Changes - Contractor's estimates: Supplemental Provision 2 applies.

(iii) Loss and expense - Contractor's estimates: Supplemental Provision 3 applies.

(b) Complete the entries of the JCT Contract Particulars relating to the Seventh Recital and Part 2 of Schedule 2 to the JCT Conditions as follows:

(i) Acceleration Quotation: Supplemental Provision 4 applies.

- (ii) Collaborative working: Supplemental Provision 5 does not apply.
 - (iii) Health and safety: Supplemental Provision 6 applies.
 - (iv) Cost savings and value improvements: Supplemental Provision 7 does not apply.
 - (v) Sustainable development and environmental considerations: Supplemental Provision 8 applies.
 - (vi) Performance indicators and monitoring: Supplemental Provision 9 does not apply.
- (c) Notification and negotiation of disputes: Supplemental Provision 10 applies and the respective nominees of the Parties are Stephen Oster (Employer's nominee) and Greg Mulligan (Contractor's nominee) or such replacement as each Party may notify to the other from time to time.
- (d) Delete the whole entry of the JCT Contract Particulars relating to clause 2.17.3.
- (e) In the entry for clause 2.35, in both the second and third sets of brackets, delete "6 months" and replace with:
"12 months".
- (f) Delete the whole entry of the JCT Contract Particulars relating to clause 4.2, 4.12 and 4.13.
- (g) Delete the whole entry of the JCT Contract Particulars relating to clause 6.15.
- (h) Delete the whole entry of the JCT Contract Particulars relating to clause 7.2.
- (i) Delete the whole entry of the JCT Contract Particulars relating to clause 7.3 (identified as referring to clauses 7.3.1 and 7.3.2).
- (j) Delete the whole entry of the JCT Contract Particulars relating to clause 7.4.
- 1.2 The remaining Contract Particulars are attached to this Schedule of Amendments at Annex A.

Conditions

1. Clause 1.1

- 1.1 Amend these definitions:

- (a) Contract Sum Analysis: add at the end of the definition, "...and ANNEX D"
- (b) Consultant: delete the existing definition text and replace with:
"a professional consultant named or identified in Part 1 of Schedule 4 to the Schedule of Amendments, originally appointed by the Employer or appointed by the Contractor on terms approved by the Employer, and any replacement of a Consultant."
- (c) Funder: delete the existing definition text and replace with:
"a person that has provided, or is to provide, finance in connection with the whole or any part of the Works or the completed Works; or the site of the Works, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise."
- (d) Purchaser: delete these words from the definition: "named or otherwise sufficiently..." to "...Rights Particulars" (inclusive).
- (e) Tenant: delete these words from the definition: "named or otherwise sufficiently..." to "...Rights Particulars" (inclusive).

1.2 Add these definitions:

"Beneficiary: a Funder, Purchaser and/or , a Tenant and/or a Funder.

"Construction Products Regulations: UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (*SI 2013/1387*)."

"Design Documents": all drawings, calculations, specifications and / or all other documents containing any designs produced under this Contract for any purpose connected with the Works and / or Project

"Key Sub-contractor: a sub-contractor named or identified in Part 1 of Schedule 5 to the Schedule of Amendments and any replacement of a Key Sub-contractor."

"Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement[, extension], building information modelling and repair of the Works (and the completed Works)."

"Prohibited Materials": any materials which (a) by their nature or application contravene any British Standard or EU equivalent (b) contravene the recommendations of the British Council for Offices' publication *Good Practice in the Selection of Construction Materials (2011)* or (c) are generally

accepted or considered to be deleterious within the building design professions in the United Kingdom.

"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."

"UK Construction Products Regulation 2011: the UK version of Regulation (EU) No. 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018."

1.3 Delete these definitions:

- (a) Employer Rights;
- (b) Fluctuation Provision;
- (c) Funder Rights;
- (d) P&T Rights; and
- (e) Rights Particulars.

2. Clause 1.3

2.1 In clause 1.3:

After "other Contract Document" delete: "or any Framework Agreement," and after "irrespective of" delete "their" and replace with:

"its"; and

After "override or modify" add:

"the Schedule of Amendments.

3. Clause 1.4

3.1 In clause 1.4.5:

Delete "a statute, statutory instrument or other" and replace with:

"legislation or a legislative provision or"

After "subordinate legislation" add:

"made under that legislation or legislative provision".

3.2 Insert an optional new clause 1.4.7:

"1.4.7 References to the "reverse charge applying" (or similar) mean any case where the recipient of a supply for VAT purposes, or a member of a VAT group of which the recipient of the supply is a member, is required to account to the relevant tax authority for the VAT chargeable in respect of the supply."

4. Clause 1.6

4.1 Delete clause 1.6, but not its heading, and replace with:

"Other than any rights as take effect pursuant to section 7 of these Conditions, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it."

5. Clause 1.8

5.1 Add to the end of clause 1.8.3:

"If neither Party commences arbitration or legal proceedings within the period referred to in clause 1.8.2, the Parties agree that any Adjudicator's decision referred to in that clause shall be conclusive on the matters with which it deals and finally binding on them."

6. Clause 1.10

6.1 Delete from the end of the clause:

"except in the case of either Party's" to "whom it is sought" (inclusive).

Add to the end of the clause:

"Notwithstanding any other provision of this Contract, the term **approval**, when used in the context of any approval to be given by the Employer or the Employer's Agent, shall have the meaning 'acceptance of general principles only', and no such approval or any consent given by the Employer or the Employer's Agent nor any inspection of, or failure to inspect, the Works shall diminish or relieve the Contractor from any of his obligations or liabilities under this Contract."

7. Clause 1.12

7.1 Insert new clause 1.12, including its title:

"Interest on late payment

1.12 Subject to clause 4.9.6:

.1 where any amount payable by one Party to the other Party becomes overdue, that Party shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from when payment became overdue until payment is made;

.2 acceptance of a payment of interest under this clause 1.11 shall not in any circumstances be construed as a waiver either of any right to proper payment of the principal amount due or to suspend performance under clause 4.11 or to terminate the Contractor's employment under section 8; and

.3 interest under this clause 1.11 shall be a debt due from the payer to the other Party."

8. New clause 1.12

8.1 Add a new clause 1.12:

"Liability period

Neither Party shall commence any action or proceedings against the other under this Contract after 12 years from the date of practical completion of the Works."

9. Clause 2.1

9.1 Delete sub-clause 2.1.2 and replace with:

"Number not used."

10. Clause 2.2

10.1 In sub-clause 2.2.1, after "so far as procurable, be" add:

"at least of equivalent quality to the standards required in the Employer's Requirements and"

10.2 Add a new sub-clause 2.2.6:

"The Contractor shall use the Standard of Care not to specify to be used in the Works any Prohibited Materials."

10.3 Add a new sub-clause 2.2.7:

"Without prejudice to clause 2.2.6, the Contractor shall use the Standard of Care not to suffer or permit to be used in the Works any Prohibited Materials. The Contractor shall immediately notify the Employer if he becomes aware of any such use of Prohibited Materials."

11. Clause 2.7

11.1 At the start of sub-clause 2.7.1, delete "The" and replace with:

"Unless the Employer has supplied the Contractor with one original executed and completed part of this Contract (incorporating the Schedule of Amendments and the Contract Documents), the"

11.2 In sub-clause 2.7.2, after "provide him with" add:

"one original executed and completed part of this Contract (incorporating the Schedule of Amendments and the Contract Documents) or"

11.3 In sub-clause 2.7.4, after sub-clause 2.7.4.2, after "save that the Employer may" add:

"use any documents supplied by the Contractor in accordance with clause 2.38 and".

12. Clause 2.8

12.1 Delete from the start of clause 2.8: "Save for any" to "Contractor's Proposals, the" (inclusive) and replace with:

"The"

13. Clause 2.10.1

13.1 Line 3 after "shall" insert "not".

14. Clause 2.11

14.1 Delete clause 2.11 and its heading and replace with:

"Number not used."

15. Clause 2.12

15.1 Delete clause 2.12 and its heading and replace with:

"Number not used."

16. Clause 2.13

16.1 Delete the opening paragraph of the clause (before sub-clause 2.13.1) and replace with:

"If the Contractor becomes aware of any inadequacy, discrepancy or divergence in or between the following, namely:"

17. Clause 2.14

17.1 Delete clause 2.14 and replace with:

"Where there is a discrepancy within the Employer's Requirements or the Contractor's Proposal's and/or other Contractor's Design Documents (including any non-compliance with the Statutory Requirements and including a discrepancy that results from a Change), or a divergence between the Employer's Requirements and the Contractor's Proposals and/or other Contractor's Design Documents (including a divergence that results from a Change), the Contractor shall notify the Employer of the discrepancy or divergence and of its proposed amendments to correct or remove it (as the case may be). Subject always to compliance with the Statutory Requirements, the Employer shall decide between the discrepant or divergent items (as the case may be) or otherwise may accept the Contractor's proposed amendments or decide how the discrepancy or divergence shall be dealt with. Subject to condition 2.15 the Contractor shall be obliged to comply with the decision or acceptance by the Employer without any adjustment of the Contract Sum or extension of time for completion and without affecting in any way or to any degree the responsibility of the Contractor under this Contract."

18. Clause 2.15

18.1 In sub-clause 2.15.2.1, after "change in Statutory Requirements" add:

"that was not foreseen by the Contractor at the Base Date and could not reasonably have been foreseen by a competent contractor at the Base Date".

18.2 Delete sub-clause 2.15.2.3.

19. Clause 2.17

19.1 Delete clause 2.17 and its heading, and replace with a new heading:

"Design Work - liabilities"

(a) Add new sub-clause 2.17.1:

"Without derogating from any other provision in this Contract, the Contractor shall be fully responsible in all respects for the design of the Works including all design work proposed by or on behalf of the Employer on or before the date of this Contract forming part of the Employer's Requirements."

(b) Add new sub-clause 2.17.2:

"Without prejudice to clause 2.17.1, the Contractor shall be fully responsible in all respects for any design work carried out by a Consultant or specialist designer or sub-contractor that the Contractor has employed or will employ (including a person employed at the Employer's request), whether such design work is carried out before, on or after the date of this Contract."

(c) Add new sub-clause 2.17.3:

"Without derogating from any other provision in this Contract, the Contractor warrants to the Employer that it shall use the Standard of Care when:

.1 designing the Works; and

.2 selecting goods, materials, plant and equipment for incorporation in the Works."

(d) Add new sub-clause 2.17.4:

"Without prejudice to clauses 2.1.1 and 2.17.3, the Contractor warrants that it shall use the Standard of Care to see that its design complies with Statutory Requirements."

(e) Add new sub-clause 2.17.5:

"The Contractor's liability in respect of the design of the Works shall be limited to the Standard of Care. Notwithstanding any other provision of this Contract, the Contractor shall have no responsibility or liability to ensure that the design of the Works when complete are fit for the purpose provided always that it is acknowledged and agreed by the Contractor that nothing in this condition 2.17.5 shall

have the effect of limiting, diminishing or negating the legal force and effect of any other express provision of this Contract."

20. Clause 2.25

20.1 Delete "and" from the end of sub-clause 2.25.6.3.

20.2 Delete the full stop at the end of sub-clause 2.25.6.4 and replace with:

" ; and "

20.3 Add a new sub-clause 2.25.6.5:

"(save where the Relevant Event is as defined in clause 2.26.9 and provided, in that case, that the Contractor has complied fully with any obligation upon the Contractor to maintain insurance against Specified Perils under this Contract) the Contractor shall not be entitled to any extension of time on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

21. Clause 2.26

21.1 In sub-clause 2.26.2.1, after "clause 2.13" add:

"(subject always to clause 2.14)"

21.2 In sub-clause 2.26.7 add at the end of the sub-clause and before the semicolon:

"provided that the Contractor has given reasonable notice to the Statutory Undertaker of the dates on which the work the Statutory Undertaker is to undertake is required to commence and be completed and has used all reasonable endeavours to secure the agreement of the Statutory Undertaker to such dates".

21.3 In sub-clause 2.26.11 add at the end of the sub-clause and before the semicolon:

21.4 "provided that such strike, lockout or local combination of workmen is of a national or regional nature, does not affect the site of the Works alone and is not restricted to the employees of the Contractor or any sub-contractor".

21.5 Insert new clause 2.26.15:

"delay to the completion of the works resulting from any national, regional or local lockdown imposed by the UK Government (or any other competent local authority) or any public health measures whether by the enactment of any statutory legislation or guidance issued by the UK Government (provided that this shall not include any such statutory legislation or guidance which was in force and which the Contractor ought to have known at the Base Date) in connection with the Coronavirus ("COVID19") pandemic."

22. Clause 2.32

22.1 Add to the end of clause 2.32, before the full stop:

", provided that the Employer shall not be required to issue that notice earlier than the expiry of the Rectification Period for the Relevant Part"

23. Clause 2.35

23.1 Delete from the start of clause 2.35.2:

"prior to the issue of that schedule, "

24. Clause 2.36

24.1 Add to the end of the first sentence in clause 2.36, before the full stop:

", provided that the Employer shall not be required to issue any Notice of Completion of Making Good earlier than the expiry of the Rectification Period"

25. New clause 2.36A

25.1 Add a new clause 2.36A after clause 2.36:

"Snagging list and defects, shrinkages or other faults remaining at practical completion

Clauses 2.35 and 2.36 shall apply, all other things being equal, to:

.1 any items identified on any snagging list issued by or on behalf of the Employer at or around practical completion or attached to a Practical Completion Statement or Section Completion Statement;

.2 any defects, shrinkages or other faults in the Works at practical completion; and

.3 any incomplete work, forming part of the Works, remaining at practical completion."

26. Clause 2.38

26.1 Delete sub-clause 2.38.2 and replace with sub-clauses 2.38.2.1 to 2.38.2.2:

".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 Design Documents prepared by or on behalf of Contractor for any purpose relating to the Works (and the completed Works) including any of the Permitted Uses.

.2 This licence allows the Employer to use the Design Documents in connection with any extension of the Project, but not to reproduce the designs contained in the Design Documents in any such extension.

26.2 Delete sub-clause 2.38.3 and replace with:

"This licence carries the right to grant sub-licences in respect of the Design Documents and is transferable to the owner of part or all of the Works from time-to-time without the Contractor's consent."

26.3 Delete sub-clause 2.38.4 and replace with:

"The Contractor shall have no liability for use of the Design Documents for any purpose other than that for which it was prepared and/or provided."

27. Not Used

28. Clause 3.4

28.1 In sub-clause 3.4, after "Design and Build Sub-Contract." add:

"The Contractor shall notify the Employer and the Employer's Agent if it appoints a Key Sub-contractor using a different form of sub-contract and shall, on request, provide a full copy of that different form of sub-contract to the Employer's Agent."

28.2 In sub-clause 3.4.2.5 delete "the Rights Particulars provide" and replace with:

"this Contract provides"

28.3 In sub-clause 3.4.2.5.2 delete "14 days" and replace with:

"10 Business Days"

- 28.4 In sub-clause 3.4.2.5.3 delete from "clauses 2.26 and 2.27" to the end of the sub-clause (inclusive) and replace with:

"the requirements for any sub-contractor collateral warranty or third party rights set out in this Contract;"

29. Clause 3.16

- 29.1 [Delete sub-clause 3.16.1 and replace with:

"Number not used."

- 29.2 Replace the full stop at the end of sub-clause 3.16.5 with a semi-colon and add new sub-clause 3.16.6:

"where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer's appointment concludes before practical completion of the Works, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations at no cost to the Employer and which shall not entitle the Contractor to an extension of time."

30. Clause 4.2

- 30.1 Delete clause 4.2.3 and replace with:

"Number not used."

31. Clause 4.4

- 31.1 Delete clause 4.4.1 and replace with:

"The Contract Sum is exclusive of VAT and, in relation to each payment to the Contractor for any supply made under this Contract:

.1 the Contractor shall within two Business Days following the issue by the Employer of a Payment Notice issue to the Employer an appropriate VAT invoice in respect of such supply, indicating whether or not the reverse charge applies to the supply; and

.2 subject to the Contractor complying with clause 4.4.1.1 and unless the reverse charge applies, the Employer shall in addition pay to the Contractor the amount of any VAT properly chargeable in respect of such supply."

- 31.2 Insert new clauses 4.4.3 to 4.4.5:

"4.4.3 The Contractor shall include within each Interim Payment Application a request for the Employer to confirm in writing whether the reverse charge applies to the supply to which the Interim Payment Application relates. The Employer shall provide such confirmation with, or not later than the issue of, the Payment Notice relating to such supply. In the event that the Employer fails to provide such confirmation by the date the Payment Notice is issued, the Contractor shall be entitled to proceed on the basis that the reverse charge applies.

4.4.4 If the paying party for the final payment under clause 4.8 is the Employer, the Contractor shall not later than the due date fixed under clause 4.24.5 request the Employer to confirm in writing whether the reverse charge applies to the supply to which the final payment relates. The Employer shall provide such confirmation with, or not later than the issue of, the Final Payment Notice.

4.4.5 The Employer is registered for VAT in the United Kingdom under registration number [REDACTED]¹."

32. Clause 4.10

32.1 Delete from the start of sub-clause 4.10.4 "The Employer's fiduciary" to "prevent him exercising" (inclusive) and replace with:

"The Employer may exercise".

33. Clause 4.11

33.1 In sub-clause 4.11.1, after "7 days after the Contractor has given notice to the Employer of his intention to suspend the performance of" add:

"any or all of".

33.2 In sub-clause 4.11.3, delete:

"or on request"

and, at the end of the sub-clause, add a new sentence:

"The Contractor shall, on request, submit such further details as are reasonably requested by or on behalf of the Employer."

¹ PYL to confirm.

34. Clause 4.12

34.1 Delete sub-clause 4.12.1.4 and replace with:

"Number not used."

and, in the sentence that follows deleted sub-clause 4.12.1.4, delete "any applicable Fluctuations Provision or"

34.2 Delete sub-clause 4.12.2.5 and replace with:

"Number not used."

34.3 In sub-clause 4.12.3.2 delete:

"or under any applicable Fluctuations Provision,".

35. Clause 4.13

35.1 In clause 4.13.1, in the sentence that follows sub-clause 4.13.1.3, delete "any applicable Fluctuations Provision or".

35.2 Delete sub-clause 4.13.2.5 and replace with:

"Number not used."

35.3 In clause 4.13.3.2 delete:

"or under any applicable Fluctuations Provision,".

36. Clause 4.16

36.1 Delete clause 4.16 and replace with:

"With regard to the Retention, which the Employer may deduct and retain as referred to in clause 4.14, the Employer shall be:

.1 under no fiduciary obligation to the Contractor or any third party;

.2 under no obligation to set aside in a separate bank account any amount representing the Retention; and

.3 entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no obligation to account to the Contractor for any such interest."

37. Clause 4.17

37.1 In sub-clause 4.17.5, delete "7.3.1" and replace with:

"7.3"

38. Clause 4.19

38.1 In clause 4.19.1 after "subject to clause 4.19.2" add:

", 4.19.3"

and add a new sub-clause 4.19.3:

"Without affecting clause 4.19.2, no such entitlement arises and the Contractor shall not claim that such an entitlement arises where any such loss and/or expense arises by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons (other than any amount that is recoverable by the Employer under a policy of insurance maintained in accordance with Insurance Option B or Insurance Option C, if applicable)."

39. Clause 5.6

39.1 At the end of clause 5.6 before the full stop, add:

", provided always that the substantial change in the conditions does not arise by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons"

40. Clause 6.1

40.1 In clause 6.1, after "caused by the carrying out of the Works" add:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

41. Clause 6.2

41.1 In clause 6.2, after "by reason of the carrying out of the Works" add:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

42. New clause 6.3A

42.1 Add new clause 6.3A after clause 6.3:

"Contractor to prevent nuisance and indemnify Employer

6.3A.1 Subject to condition 6.3A.2 below, the Contractor shall prevent any nuisance (including any noisy working operations) or other interference with the rights of any nearby owner, tenant or occupier or any Statutory Undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Works or out of any other obligation pursuant to Section 2 or Section 3 of the Conditions. The Contractor shall assist the Employer in defending any action or proceedings in relation to any such nuisance or interference. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 6.3A.

6.3A.2 The Contractor shall be relieved of liability under condition 6.3A.1 above where and to the extent (but not further or otherwise) that any such nuisance or other interference is the direct consequence of a Change or other instruction by or on behalf of the Employer (which is itself not the result of any negligence, default or breach of contract by or on behalf of the Contractor or the Contractor's Persons)."

43. New clause 6.3B

43.1 Add new clause 6.3B after new clause 6.3A:

"Contractor to prevent trespass to neighbours

Without prejudice to clauses 6.1, 6.2 and 6.3A, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of a tower crane jib or the erection of a scaffold or hoarding) on or over any nearby property arising out of the Works or out of any other obligation pursuant to Section 2 or Section 3 of the Conditions and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of nearby property and members of the public. If carrying out the Works or any other obligation pursuant to Section 2 or Section 3 of the Conditions would otherwise be an act of trespass, the Contractor shall, at no cost to the Employer, obtain the prior written agreement of the owners or occupiers of any nearby property to that act. That agreement shall be subject to the Employer's approval before its completion. The Contractor shall comply with any condition or obligation contained in that agreement, at no cost to the Employer and shall not be entitled to any extension of time as a result of any condition or obligation contained in that agreement."

44. Clause 6.4

44.1 In sub-clause 6.4.1, after "effect and maintain insurance", add:

"(with the names of the Employer and the Funder shown as additional insureds)"

44.2 In sub-clause 6.4.1.2, after "Employer" (both times it is used), add:

"and the Funder"

and after "of this Contract" before the bracket add:

"including under any third party rights or collateral warranty between the Contractor and the Funder provided for in this Contract"

45. Clause 6.5

45.1 In sub-clause 6.5.1, after "a policy of insurance in the" delete "names of the Employer and the Contractor" and replace with:

"joint names of the Employer, the Contractor and the Funder"

46. Clause 6.8

46.1 In the definition of "Joint Names Policy" delete "the Employer and the Contractor" and replace with:

"the Employer, any person acquiring the Employer's interest in the whole or part of the Works, the Contractor and the Funder"

47. Clause 6.15

47.1 Delete clause 6.15 and replace with:

"Obligation to insure

The Contractor shall maintain professional indemnity insurance for an amount of at least £10,000,000.00 for any one claim for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Works. The Contractor shall maintain that professional indemnity insurance:

.1 with reputable insurers lawfully carrying on insurance business in the UK;

.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and

.3 on terms that do not require the Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010."

48. New clause 6.15

48.1 Add new clause 6.15A:

"Evidence of professional indemnity insurance

The Contractor shall at the Employer's request send the Employer evidence that the Contractor's insurance referred to in clause 6.15 is in force, including, if required by the Employer, an original letter from the Contractor's insurers or brokers confirming:

.1 the Contractor's then current professional indemnity insurance; and

.2 that the premiums for that insurance have been paid in full at the date of that letter."

49. New clause 6.16A

49.1 Add a new clause 6.16A , after clause 6.16:

"Key Sub-contractors' professional indemnity insurance

The Contractor shall procure that the Key Sub-contractors shall maintain professional indemnity insurance in accordance with the required form of sub-contractor's deed of collateral warranty or schedule of third party rights and Part 2 of Schedule 6 to the Schedule of Amendments. On or before the date of this Contract (or, if later, within 15 Business Days of the appointment of a Key Sub-contractor), the Contractor shall procure and shall send to the Employer evidence that the Key Sub-contractors' insurance referred to in this clause is in force, including, if required by the Employer, an original letter from each Key Sub-contractor's insurers or brokers confirming:

.1 the Key Sub-contractor's then current insurance, as referred to in this clause; and

.2 that the premiums for that insurance have been paid in full at the date of that letter."

50. New clause 6.16B

50.1 Add a new clause 6.16B , after clause 6.16A:

"Consultants' professional indemnity insurance

The Contractor shall procure that the Consultants shall maintain professional indemnity insurance in accordance with the agreed form of professional consultant's deed of collateral warranty appended at Schedule 2 and referred to at Part 2 of Schedule 4 to the Schedule of Amendments. On or before the date of this Contract (or, if later, within 14 Business Days of the appointment of a Consultant), the Contractor shall procure and shall send to the Employer evidence that the Consultant's insurance referred to in this clause is in force, including, if required by the Employer, an original letter from each Consultant's insurers or brokers confirming:

- .1 the Consultant's then current insurance, as referred to in this clause; and
- .2 that the premiums for that insurance have been paid in full at the date of that letter."

51. New clause 6.16C

51.1 Add new clause 6.16C, after clause 6.16B:

"Contractor to co-operate with Employer's reasonable insurance requirements

The Contractor shall fully co-operate with any measures reasonably required by the Employer, including:

- .1 completing any proposals for insurance and associated documents; or
- .2 maintaining insurance at rates above commercially reasonable rates."

52. Clause 7.1

52.1 Delete clause 7.1 and replace with:

"General right to assign

7.1.1 The Employer's rights under this Contract may be:

- .1 charged and/or assigned by way of security, and may be re-assigned by way of release from or upon discharge of the security;

.2 assigned absolutely to any of the Employer's own group of companies; and

.3 assigned absolutely on two other occasions only.

.4 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under this clause 7.1 may not recover any sum under this Contract because that person is an assignee and not a named Party to this Contract.

.5 The Contractor shall not assign or charge the benefit of this Contract or any right arising under it without the Employer's prior consent, which the Employer may withhold at its absolute discretion."

53. Clause 7.2

53.1 Delete the whole of clause 7.2 and its heading and replace with:

"Number not used."

54. Not Used

55. Clauses 7.4 to 7E (inclusive)

55.1 Delete existing clauses 7.4 to 7E (inclusive).

55.2 Replace clause 7.4 with:

"Contractor's collateral warranty

.1 Within 10 Business Days of a request from the Employer, the Contractor shall execute and deliver a deed or deeds of collateral warranty in favour of any Funder, any Purchaser and any Tenant and any management company in the agreed form of the contractor's deed of collateral warranty contained in Schedule 3 to the Schedule of Amendments.

.2 If the Contractor does not execute and deliver a contractor's deed of collateral warranty in accordance with this Contract, the Contractor hereby acknowledges and agrees that the Employer may, following service of any required payment notice under and in accordance with this contract, withhold any sum otherwise due and payable to the Contractor until the date upon which such executed and delivered deed of collateral warranty is provided by the Contractor to the Employer."

55.3 Add new sub-clauses 7.4.3 and 7.4.4:

".3 Where the Employer has given notice to the Contractor under clause 7.4.1 then, notwithstanding clause 7.4.2, the Employer and the Contractor may not (without the persons referred to in those notices' consent) amend or vary clauses 7.4.1 to 7.4.4 (inclusive) or the relevant part of parts of Schedule 8.

.4 Without prejudice to clause 7.4.3, where the Employer has given notice to the Contractor under clause 7.4.1 that refers to a Funder, neither the Employer nor the Contractor shall agree to rescind this Contract, and the rights of the Contractor to terminate his employment under this Contract or to treat it as repudiated shall be subject to the applicable provisions of Schedule 8 to the Schedule of Amendments but, unless and until the Funder gives notice the Employer and the Contractor may not (without the consent of the Funder) agree to amend, vary or waive any term of this Contract."

56. New clause 7.5

56.1 Add a new clause 7.5:

"Consultants - appointment

Within 10 Business Days of the date of this Contract, the Contractor shall appoint the Consultants on the agreed forms of appointment appended at Schedule 1 to this Contract.

57. New clause 7.6

57.1 Add new clause 7.6:

"Consultants - collateral warranties

.1 The Contractor shall ensure that forthwith on the date of this Contract each Consultant already identified by the Contractor to the Employer as such has executed and delivered deeds of collateral warranty in favour of the Employer and the Funder in the agreed form(s) appended at Schedule 2 to this Contract and as referred to at Part 3 of Schedule 4 to the Schedule of Amendments. Within 15 Business Days of a request from the Employer, the Contractor shall procure a deed of collateral warranty from any Consultant then appointed in favour of any Purchaser or Tenant or management company in the agreed form appended at Schedule 2 to this Contract and as referred to at Part 3 of Schedule 4 to the Schedule of Amendments. If any deed of collateral warranty provided by a Consultant requires execution by the Contractor, the Contractor shall execute and deliver the collateral warranty to the Employer within the time limits set out in this clause.

.2 If the Contractor does not so procure any Consultant deed of collateral warranty in accordance with this Contract, the Contractor hereby acknowledges and agrees that the Employer may, following service of any required payment notice under and in accordance with this contract, withhold the sum proportionate to the value of the services carried out by the Consultant and claimed in the Contractor's Interim Payment Application which is due and payable to the Contractor until the date upon which such executed and delivered deed of collateral warranty is provided by the Contractor to the Employer."

58. New clause 7.7

58.1 Add new clause 7.7:

"Consultants - Contractor's duty not to terminate or vary appointments

The Contractor shall not terminate or vary the appointment of any Consultant without the Employer's prior written consent, which shall not be unreasonably withheld or delayed."

59. New clause 7.8

59.1 Add new clause 7.8:

"Sub-contractor collateral warranties

.1 On or before the date of this Contract (or, if later, within 20 Business Days of the appointment of a Key Sub-contractor), the Contractor shall ensure that each Key Sub-contractor has executed and delivered a deed of collateral warranty in favour of the Employer and the Funder in the agreed form appended at Schedule 6 of this Contract and referred to at Part 3 of Schedule 5 to the Schedule of Amendments. Within 20 Business Days of a request from the Employer, the Contractor shall procure a deed of collateral warranty from any Key Sub-contractor then appointed in favour of any Purchaser or Tenant or management company in the agreed form appended at Schedule 6 to this Contract and referred to in Part 3 of Schedule 5 to the Schedule of Amendments. If any deed of collateral warranty provided by a Key Sub-contractor requires execution by the Contractor, the Contractor shall execute and deliver the collateral warranty to the Employer within the time limits set out in this clause."

.2 If the Contractor does not so procure any Key Sub-Contractor deed of collateral warranty in accordance with this Contract, the Contractor hereby acknowledges and agrees that the Employer may, following service of any required payment notice under and in accordance with this contract, withhold

the sum proportionate to the value of the works carried out by the Key Sub-Contractor and claimed in the Contractor's Interim Payment Application which is due and payable to the Contractor until the date upon which such executed and delivered deed of collateral warranty is provided by the Contractor to the Employer.

60. Section 8 Termination

61. Clause 8.1

61.1 In sub-clause 8.1.4.1 delete "he enters into an arrangement, compromise or composition in satisfaction of its debts" and replace with:

"it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors".

61.2 At the end of sub-clause 8.1.4.2, delete the full stop and replace with ";or".

61.3 Insert a new sub-clause 8.1.4.3:

"it applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986."

62. Clause 8.4

62.1 In sub-clause 8.4.1.3 after "requiring him to remove" add:

"or rectify"

63. Clause 8.5

63.1 In sub-clause 8.5.3.3, after "the Employer may", add:

", at the Contractor's expense,"

64. Clause 8.6

64.1 In clause 8.6, after "acting or his behalf", add:

"or associated with him",

and at the end of the clause, after the full stop, add:

"For the purpose of this clause 8.6, whether a person is associated with another person shall be determined in accordance with section 8 of the

Bribery Act 2010 and a person associated with the Contractor includes, but is not limited to, any of the Contractor's Persons."

65. Clause 8.7

65.1 In sub-clause 8.7.2 after "the Contractor shall" and before the colon, add:

" , at the Contractor's expense"

65.2 At the end of sub-clause 8.7.4, before the colon, add:

" , at the Contractor's expense"

66. Clause 8.11

66.1 In sub-clause 8.11.3, after "regulation 73(1)(a)", delete:

"or regulation 73(1)(c)"

67. Not Used

68. Clause 9.2

68.1 Add new sub-clauses in clause 9.2:

".3 The Adjudicator shall give reasons for his decision and shall deliver his decision to the Parties as soon as practicable and within 2 Business Days of making his decision.

.4 The Adjudicator shall notify the Contractor and the Employer as soon as practicable, if he becomes aware that he has any interest in the Works, the subject matter of the adjudication, or the Parties."

69. JCT Design and Build Contract, 2016 Edition, Schedule 1: Design Submission Procedure

69.1 This agreement incorporates Schedule 1 to the JCT Conditions.

70. JCT Design and Build Contract, 2016 Edition, Schedule 2: Supplemental Provisions

70.1 This agreement incorporates Schedule 2 to the JCT Conditions.

71. JCT Design and Build Contract, 2016 Edition, Schedule 3: Insurance Options

71.1 This agreement incorporates Schedule 3 to the JCT Conditions.

72. JCT Design and Build Contract, 2016 Edition, Schedule 4: Code of Practice

72.1 This agreement incorporates Schedule 4 to the JCT Conditions.

73. JCT Design and Build Contract, 2016 Edition, Schedule 5: Third Party Rights

73.1 Delete Schedule 5 to the JCT Conditions and replace with:

"Schedule 5 not used."

74. JCT Design and Build Contract, 2016 Edition, Schedule 6: Forms of Bonds

74.1 This agreement incorporates Schedule 6 to the JCT Conditions.

75. JCT Design and Build Contract, 2016 Edition, Schedule 7: Fluctuations Option

75.1 Delete Schedule 7 to the JCT Conditions and replace with:

"Schedule 7 not used."

Schedule 1 Agreed form(s) of Consultant Appointment



DATED

2021

(1) MULBURY HOMES LIMITED
(as Contractor)

and

(2) TIM GROOM ARCHITECTS LIMITED
(as Consultant)

LETTER OF APPOINTMENT OF ARCHITECT

In respect of the development relating to land on the north east side of Goulden Street,
Manchester (Peelers Yard)

LETTER OF APPOINTMENT

From: **Mulbury Homes Limited** (No. 07185858) whose registered office is at Great Oak Farm, Mag Lane, Lymm, Cheshire, WA13 0TF (**Contractor**)

To: **Tim Groom Architects Limited** (No.05639668) whose registered office is at Eastgate, 2 Castle Street, Manchester, England, M3 4LZ (**Consultant**)

Date: 2021

Dear Sirs

Development relating to land on the north east side of Goulden Street, Manchester (Peelers Yard)

This letter sets out the terms of your appointment (**Appointment**) to provide the architectural consultancy services required for the construction of the above development (**Development**). This letter constitutes the entire agreement between us and replaces any previous agreement between us respecting the Development. Any services already provided by you relating to the Development are to be treated as having been provided under the terms of this Appointment.

1. SCOPE OF APPOINTMENT

We have been appointed to design and build the Development pursuant to a contract (**Building Contract**) with Peelers Yard Limited (**Developer**). The Building Contract incorporates a version of the JCT Design and Build Contract 2016. This Appointment relates to the Architect's services in relation to the proposed site (**Site**) where the works (**Works**) under the Building Contract and any roadworks, services installations and other enabling works adjacent to the Site which are required for the purposes of the Development are to be carried out.

2. SERVICES

- 2.1 You are to provide the services in schedule 1 (the **Services**).
- 2.2 Subject to the standard of Skill and Care, you are to provide such additional services within your discipline and competence as we may reasonably request in writing, relating to the Development.
- 2.3 You are to obtain our written authority before initiating any work stage specified in schedule 1. Such consent shall not be unreasonably withheld or delayed.
- 2.4 Subject to the standard of Skill and Care, you are to comply with all reasonable instructions given by us in writing in connection with this Appointment.

3. DESIGN CHANGES

- 3.1 You shall have no authority without our written consent to make or permit any material change in the designs or specifications for the Development, after they have been settled or approved.
- 3.2 You are to use reasonable endeavours to keep us and our other consultants fully informed on a day to day basis of all changes in design or specification made or authorised by you.

4. BUDGET AND PROGRAMME

- 4.1 Subject to the standard of Skill and Care, you are to have due regard in the performance of your Services to our budget and programme requirements for the Development (this includes regard to the Contractor's latest agreed information release schedule). If you become aware of circumstances which may prevent us from carrying out the Development in accordance with our budget or programme, you are to inform us without delay.
- 4.2 Subject to the standard of Skill and Care, you are to collaborate with us and our other consultants to establish a co-ordinated programme for the production of the design and are to monitor progress against the design programme.

5. DUTY OF CARE

- 5.1 You are to use Skill and Care in the performance of your Services under this Appointment.
- 5.2 You are to use Skill and Care to see that the design of all elements of the Development for which you are responsible comply with the Building Regulations and other applicable statutory and regulatory requirements.
- 5.3 You are to use Skill and Care to comply with your statutory duties under the CDM Regulations.
- 5.4 No inspection or approval or review on our part or on our behalf, and no omission to inspect or review or to disapprove shall negate or diminish any duty of care on your part under or in connection with this Appointment. Provided always that nothing in this clause shall affect your right to argue contributory negligence in relation to any claim or dispute which may arise or bring a contribution claim (either under the Civil Liability (Contribution) Act 1978 or otherwise) against any third party.

6. LIABILITY

- 6.1 Notwithstanding any other provision in this Appointment your liability under or in connection with this Appointment (other than in respect of personal injury or death) shall not exceed ten million pounds (£10,000,000) in respect of each and every claim or a series of claims arising from the same original cause.
- 6.2 No action or proceedings for any breach of this Appointment shall be commenced against the Consultant after 12 years from the date of practical completion (or equivalent) of the Works under the Building Contract (or the last date on which you carried out the Services, whichever is the earliest).

7. PROHIBITED MATERIALS

You are to use Skill and Care not to specify for use, and not to expressly approve the use in the Development of any materials:

- 7.1 which by their nature or application contravene any British Standard or EU equivalent;
- 7.2 which contravene the recommendations of the British Council for Offices' publication *Good Practice in the Selection of Construction Materials* (2011); or

- 7.3 which are generally considered to be deleterious within the building design professions in the UK.

You will immediately give notice to us if you become aware that any materials have been specified for use or approved for use in the Development otherwise than in accordance with this clause 7.

8. PROJECT LEADER

You are to appoint the person named as project leader in the Project Data to take responsibility for the overall management, supervision and co-ordination of the performance of your Services. The project leader is not to be replaced save with our consent or save for unavoidable necessity, and any replacement is to be subject to our prior approval.

9. REMUNERATION

- 9.1 Your remuneration under this Appointment:

- 9.1.1 shall be provided in this clause 9 and the Project Data; and

- 9.1.2 shall be payable in accordance with schedule 3 (Construction Act 1996).

- 9.2 If for any reason we do not proceed with the Development, or if your employment is terminated or suspended other than for your breach, you will be entitled (in addition to any fee instalments which are then due in full) to a fair and reasonable proportion of any fee instalments in respect of which your Services are part-performed at the date of termination, but not to compensation for loss of profit, loss of opportunity, consequential loss or other similar losses.

- 9.3 If at our request you undertake any additional services, or if by reason of any design changes requested by us or any other circumstances beyond your control you are required to undertake extra work, then provided you notify us in writing before undertaking such work or additional services or as soon as reasonably practical following such request that you may require an additional fee, an additional fee will be payable. Such additional fee shall be calculated at the applicable hourly rates specified in the Project Data, or if no hourly rates are specified in the Project Data, shall be such amount as is fair and reasonable.

- 9.4 The specified fee in the Project Data is exclusive of VAT and inclusive of all your office, staff, travel, reproduction and incidental costs and inclusive of disbursements. However, you will be reimbursed any third party charges incurred at our request, such as survey fees or statutory fees or the cost of any models or any specialist presentational artwork, provided the amount of such charges is agreed with us before they are incurred.

- 9.5 If the amount of any fees or disbursements is wrongfully withheld after the relevant final date for payment, such amount shall bear simple interest at the rate of 5% over Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.

10. PROFESSIONAL INDEMNITY INSURANCE

- 10.1 You warrant that you have professional indemnity insurance conforming to the relevant requirements specified in the Project Data. You are to maintain such insurance at all times until 12 years after the practical completion of the Works under the Building Contract (or, if sooner, until

12 years after the completion or termination of your services), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and the policy terms obtainable provided that any effect of your own claims record shall be disregarded in determining whether premiums and policy terms are commercially reasonable.

- 10.2 If for any period such insurance is not obtainable on commercially reasonable terms, you are to inform us forthwith and are to obtain in respect of that period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for you to obtain.
- 10.3 When reasonably requested by us you are to provide documentary evidence that the insurance required under this Appointment is being maintained.

11. COLLATERAL WARRANTIES

- 11.1 Subject to a maximum limit of 4 warranties, you are to provide, as we may at any time or times reasonably require, a deed or deeds of warranty respecting your duties hereunder in favour of the Developer and/or Funder and/or the first Purchaser of the whole of the Development and/or the Management Company, in terms of the draft contained in Appendix 1.
- 11.2 If you are in breach of your obligations under this clause 11 then no payment shall be due to you while such breach remains to be rectified.

12. DOCUMENTS

- 12.1 You hereby grant to us an irrevocable, non-exclusive, royalty free, assignable licence to use and reproduce all drawings, calculations, specifications and/or other documents produced by you pursuant to this Appointment and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development), and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in yourselves. You shall not be liable for the use of any of the Documents for any purpose other than those for which you produced them.
- 12.2 The fee specified in the Project Data is inclusive of the cost of supplying us with copies of the Documents up to the number of copies specified in the Project Data. You are to supply us with any additional copies of the Documents we may reasonably request (whether before or after the termination or conclusion of this Appointment), for which we shall pay your reasonable reproduction costs.
- 12.3 You warrant to the best of your knowledge that the use of the Documents for the purposes of the Development will not infringe the rights of any third party.

13. ASSIGNMENT AND SUB-LETTING

- 13.1 Neither party hereto shall be entitled to assign or charge the benefit of this Appointment.
- 13.2 You may not delegate or sub-let the whole or any part of your duties without our written consent, (such consent not to be unreasonably withheld or delayed) and you acknowledge that notwithstanding any proper delegation or sub-letting of such duties you shall remain liable for the same.

14. SUSPENSION

- 14.1 We may suspend your Services by written notice of not less than 28 days. If a suspension lasts more than 6 months, you may make a written request for your Services to be resumed, and if no instructions to resume are given within 28 days after your request, your employment shall then terminate.
- 14.2 Without prejudice to your statutory rights, you will be entitled to suspend your Services if you have given 14 days written notice of a material breach of the terms of this Appointment by us and we have not remedied such breach within that 14 day notice period. If we fail to remedy such breach within six months of suspension you shall be entitled to terminate this Appointment.
- 14.3 No valid suspension or termination of your engagement under this Appointment shall render us liable to you for any claim for loss of profit, loss of fees or other similar losses.
- 14.4 Your right to suspend performance shall cease when we pay the amount properly due. Such payment shall be your sole compensation for suspension of your Services and obligations under this Appointment.

15. TERMINATION AND REMEDIES

- 15.1 We may at any time by service of written notice, terminate your employment under this Appointment.
- 15.2 If we terminate your employment on account of your Insolvency or (acting reasonably) on account of your breach of any term of this Appointment, we shall be entitled to recover from you the reasonable, reasonably foreseeable and fully mitigated costs and losses we incur by reason of the termination.
- 15.3 If we are materially in breach of our obligations under this Appointment in any respect that would reasonably justify your terminating your employment, you may serve 28 days' written notice of your intention to terminate, stating the grounds for termination, and if in such 28 day period we fail to rectify our breach, you may at the expiry of that period serve further written notice terminating your employment with immediate effect.
- 15.4 Termination does not determine the operation of any provisions of this Appointment that are capable of operation after termination and is without prejudice to any rights and remedies accrued by either party prior to any such termination or suspension.

16. CONFIDENTIALITY

Save as may be necessary for the performance of your Services, or as required by law, or as we may allow in writing, you are to treat as confidential all information relating to this Appointment and to the Development, and are to take all reasonable steps to see that your employees are bound by and adhere to the same duty of confidentiality.

17. BRIBERY ACT 2010

- 17.1 You warrant to the best of your knowledge that no offence under the Bribery Act 2010 (**the Act**) has been or will be committed by you or any person associated with you, in connection with the procurement or implementation of this Appointment.
- 17.2 For the purposes of and without derogation from clause 17.1, an offence is committed under any provision of the Act before such provision is in force, if such offence would have been committed, had such provision then been in force.
- 17.3 If at any time you have knowledge of, or have reasonable grounds to suspect the occurrence of, a breach of the warranty in clause 17.1, you shall promptly notify us in writing of such matters within your knowledge, or of such grounds for suspicion, and shall co-operate with us in the investigation of such breach or suspected breach of warranty.
- 17.4 For the purposes of clause 17.1, the definition of associated person in section 8 of the Act applies.

18. CONSTRUCTION ACT 1996

Schedule 3 (Construction Act 1996) has effect.

19. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Appointment is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

20. SERVICE OF NOTICE

20.1 Any notice to be given under this Appointment:

20.1.1 if given for the purposes of schedule 3 (Construction Act 1996), must be:

- (a) delivered by hand; or
- (b) sent by e-mail and on the same day, sent by pre-paid first class post,

20.1.2 to the relevant addressee, addressed in accordance with the applicable details in the Project Data, or such other details as the relevant party (or specified person as defined in schedule 3) notifies to the other in writing from time to time; or

20.1.3 if given for any other purpose, may be given by any effective means.

20.2 Any notice delivered or sent in accordance with clause 20.1 takes effect as being given and served:

20.2.1 if delivered by hand by 4.00 pm on a Working Day, on the day of delivery; but otherwise

20.2.2 on the first Working Day after it is delivered or sent.

21. OTHER AGREEMENTS

21.1 The Developer has entered into or may enter into agreements with third parties including (but not limited to) in relation to the finance, sale or lease of the Development or the Site or any part thereof

and copies of the whole or parts of those agreements have been or will be provided to you and which agreements or parts are referred to in this clause 21 as the “**Third Party Agreements**”.

- 21.2 Subject to the standard of Skill and Care, you shall have regard to any obligations owed by us under the Third Party Agreements.
- 21.3 Subject to the standard of Skill and Care, you shall perform your duties and obligations under this Appointment in such manner and at such times that no act, omission or default of you shall constitute, cause or contribute to any breach by us of any of our duties and obligations under the Third Party Agreements.
- 21.4 Subject to the standard Skill and Care, you shall comply with any procedures in the Third Party Agreements including (without limitation) those relating to provision of information and documentation, the approval of changes in design, specifications or materials, notices and inspections prior to any certificate of practical completion (or equivalent), certificate of sectional completion (or equivalent), certificate of making good defects (or equivalent) and for similar matters.
- 21.5 Provided always that in respect of any Third Party Agreements, the relevant agreements parts and obligations are brought to your attention prior to the date of this Appointment.

22. GOVERNING LAW AND INTERPRETATION

- 22.1 This Appointment shall be governed by English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.
- 22.2 In this Appointment:
 - 22.2.1 **person** includes any firm and any entity having legal capacity;
 - 22.2.2 any term importing gender includes any gender;
 - 22.2.3 any term importing the singular includes the plural and vice versa;
 - 22.2.4 unless the context requires otherwise, any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Appointment;
 - 22.2.5 any reference to any enactment includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
 - 22.2.6 **Bank Holiday** means a Christmas Day, Good Friday or day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales;
 - 22.2.7 **Building Regulations** means the Building Act 1984 and all relevant subordinate legislation made under the Act;
 - 22.2.8 **CDM Regulations** means the Construction (Design and Management) Regulations 2015;
 - 22.2.9 **Construction Act 1996** means Part II, Housing Grants, Construction and Regeneration Act 1996;

- 22.2.10 **Developer** means Peelers Yard Limited (no.13552246) registered office at Hilton House, 26-28 Hilton Street, Manchester, M1 2EH;
- 22.2.11 **Development** means the Site and/or the Works;
- 22.2.12 **Funder** means a person having or acquiring a mortgage interest or charge over the Development or any part of it;
- 22.2.13 **Group Company** means any subsidiary or holding company of ours or of another subsidiary or holding company of ours, as **subsidiary** and **holding company** are understood within section 1159, Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a);
- 22.2.14 **Insolvent** and related terms derive their meaning from section 113, Construction Act 1996;
- 22.2.15 **Management Company** means the company appointed to undertake the management and maintenance services at the Development;
- 22.2.16 **Project Data** means the project data in schedule 2;
- 22.2.17 **Purchaser** means a person having or acquiring a freehold interest in the Development or a purchaser for a capital consideration of a leasehold interest;
- 22.2.18 **Skill and Care** means the reasonable skill and care reasonably to be expected of duly qualified and experienced architects undertaking services and other duties similar to those to be performed under this Appointment in relation to projects similar in scale and character to the Development;
- 22.2.19 **Site** means the site of the Development;
- 22.2.20 **Unit** means a unit of residential accommodation constructed on the Site as part of the Development.
- 22.2.21 **Working Day** means any day other than a Bank Holiday;

22.3 Clause headings do not form part of or affect the interpretation of this Appointment.

23. LIMITATION

- 23.1 The liability of the Consultant under or in connection with this Appointment, whether for breach of contract, in tort or for breach of statutory duty or otherwise, shall be limited to the sum of £10,000,000 each and every claim. This clause shall not affect the Consultant's liability for personal injury or death.

EXECUTED as a **DEED** by **MULBURY HOMES LIMITED** acting
by a director in the presence of:

.....
Signature of director

Signature of witness

Print name

Address

.....

.....

Occupation

EXECUTED as a **DEED** by **TIM GROOM ARCHITECTS**
LIMITED acting by a director in the presence of:

.....
Signature of director

Signature of witness

Print name

Address

.....

.....

Occupation

SCHEDULE 1

Services

1. Appraisal/Strategic Brief

- 1.1 Discuss our requirements with us and our other consultants, including programme and budget; assess these and give general advice on how to proceed.
- 1.2 Consider information provided by us and other Consultants with regard to ownership and any lessees of the Site, any existing buildings on the Site, boundaries, any known easements, underground services, rights of way, rights of support and other relevant matters.
- 1.3 Obtain information as to the status of the Site and its locality under the Town and Country Planning Acts 1971-84.
- 1.4 Visit the Site and carry out an initial appraisal.
- 1.5 Advise on the need for other consultants' services and on the scope of those services.
- 1.6 Prepare a timetable for further services for our consideration as reasonably requested.
- 1.7 Participate in the preparation of an outline programme for design and construction.
- 1.8 Formulate a strategic brief for our approval, reporting as to the above matters and setting out and comparing the available options. Incorporate in the strategic brief the input of our other consultants.

2. Outline Proposals

- 2.1 Carry out such studies as may be necessary to determine the feasibility of our requirements; prepare in outline for discussion with us alternative design concepts and layouts; advise as to approaches to design and construction and their cost and time implications; revise and develop one or more of such schemes until our approval of a scheme is obtained.
- 2.2 Provide to our quantity surveyor sufficient information to enable him to produce an approximate costing of your several design schemes.
- 2.3 Liaise as necessary with our other consultants in connection with any matters arising during this work stage.
- 2.4 In conjunction with our other consultants, submit a report as reasonably requested in relation to the above matters.

3. Detailed Proposals

- 3.1 With our other consultants develop a scheme design from the outline proposals.
- 3.2 In developing the scheme design consider the impact on the architectural design of information produced by others in respect to issues such as gross and net lettable areas, floor loadings,

column spacings, fire protection, means of escape and thermal, air-tightness, acoustic and vibration factors.

- 3.3 Give consideration to matters of security and the need to design to minimise opportunities for crime.
- 3.4 Have regard to the need to avoid congestion of vehicular and pedestrian traffic in the completed Development.
- 3.5 Prepare performance specifications for materials, forms of construction and constructional standards which form part of the architectural design.
- 3.6 Obtain from and discuss with our other consultants proposals, designs and specifications as to structural, mechanical, electrical and public health elements and requirements as to and location and dimensions of plant rooms, ducts and risers. Co-ordinate these requirements with the overall design.
- 3.7 Consider and advise as to the environmental implications of the Development during and after construction. If required, prepared an environmental impact assessment report.
- 3.8 Fully consider issues relating to life cycle costings, including cost in use, maintenance and renewal requirements.
- 3.9 If instructed and with other consultants make reasonable adjustments to the scheme design and advise us of the implications of any such changes on the cost of the project and on the overall programme. If necessary revise your designs to meet the requirements of the planning authorities.
- 3.10 In conjunction with our other consultants, agree a programme for the completion of subsequent design stages.
- 3.11 In conjunction with our other consultants, prepare a report in respect of the final scheme design, illustrating the scheme in scale plans, sections and elevations and specifications in sufficient detail to enable us to approve spatial arrangements, materials and appearance, and reporting as to all the above issues required to be dealt with under this work stage.
 - 3.11.1 Produce Stage design reports to allow review and comment by the client.

4. Employer's Requirements

- 4.1 Develop sufficient architectural design and specifications from the approved scheme design to enable the quantity surveyor to compile an Employer's Requirements document; co-ordinate the designs of our other consultants.
- 4.2 As reasonably requested, participate in discussions about appropriate provisions to be included in the Employer's Requirements for the Contractor to prevent or minimise inconvenience, danger, disturbance or nuisance to third persons who are likely to be adversely affected by the carrying-out of the Works.
- 4.3 Provide sufficient design information to the quantity surveyor to enable him to produce an accurate cost plan for the Works.

- 4.4 Carry out any reasonable amendments to the design we may request or as may be necessary to bring the estimated cost of the Works within an acceptable budget.
- 4.5 Calculate the floor areas of the scheme design, as required.
- 4.6 Prepare any necessary room data sheets.
- 4.7 Assist in the preparation of a timetable for construction.
- 4.8 Prepare and provide to the principal designer such information as may be required relating to general and architectural matters for inclusion in the construction phase plan.

5. Tendering

As reasonably requested:

- 5.1 Advise as to the tendering process.
- 5.2 Assist in compiling a list of tenderers.
- 5.3 Assist in reviewing tender documentation.
- 5.4 With our other consultants, appraise and report on tenders.
- 5.5 Assist us in negotiating prices and architectural and contractual matters with contractors.
- 5.6 Make reasonable adjustments to the architectural design as may be required to adjust the tender sum.
- 5.7 Once we are ready to enter into the Building Contract, confirm to us in writing if requested that so far as concerns matters within your responsibility or knowledge, a state of readiness has been achieved for construction to commence and to proceed in accordance with the proposed construction programme, or notify us of any respects in which that is not the case.

6. Construction

- 6.1 Provide such further detailed architectural design and production information as are necessary, for the purposes of the Building Contract.
- 6.2 Attend periodic project meetings.
- 6.3 If reasonably requested to do so, review materials delivered to the Site for the purpose of establishing compliance with design intent.
- 6.4 If reasonably requested to do so, make recommendations for the carrying out of tests of materials and examine the conduct and results of such tests whether on or off-site.
- 6.5 As appropriate, make recommendations for the opening up of work to determine that it is generally in accordance with design intent.

- 6.6 If reasonably requested to do so, visit the sites of the extraction of materials or assembly of components to inspect materials or workmanship before delivery to Site.
- 6.7 The Consultant will make site visits appropriate to the stage of works and shall be available upon reasonable request. At such site visits, the Consultant will review the quality of the works and review they are generally in accordance with its detailed design. Whilst on site, the Consultant shall bring to the attention of the Contractor any reasonably observable architectural elements of the works which are not being executed in accordance with the Consultant's intended design or specification.
- 6.8 Attend Site whenever reasonably requested to do so to assist in resolving architectural design difficulties.
- 6.9 Provide information to the Contractor relating to architectural matters to enable him to prepare a monthly report for discussion at project meetings, including information as to the release of design information, any variations and their effect on budget and programme.
- 7. Completion and commissioning**
- 7.1 Provide architectural services required in connection with the rectification period under the Building Contract and the making good of defects.
- 7.2 Provide record drawings of the Architectural Works.
- 7.3 Provide to the principal designer such architectural design information as may be required for inclusion in the health and safety file.

Part 2– General services

1. Lead consultant

- 1.1 Act as lead consultant in connection with the Development. Give direction to our other consultants as to the co-ordination of the design process in conjunction with the contractor.
- 1.2 Comment on as requested and review the overall design with the purpose of establishing compliance with design intent, including the input of our other consultants and that of specialist suppliers and sub-contractors.

2. Design services

Subject to the terms of this Appointment, prepare the detailed architectural design of the Development and prepare all detailed architectural drawings and other information required for the construction and completion of the Development.

3. Document management

Together with our other consultants, draw up to our reasonable satisfaction and comply with common standards and procedures for the production and format of drawings and documents, the use of CAD and electronic data transfer and similar arrangements for document management.

4. Demolition

Provide architectural services in connection with any necessary demolition works.

5. Planning applications etc

- 5.1 Advise as to the need for planning approvals and, if applicable, listed building consents and conservation area consents.
- 5.2 Discuss planning considerations with the planning authorities.
- 5.3 Prepare and submit an application for outline planning permission and for any necessary listed building consents or conservation area consents.
- 5.4 Assist Planning Consultant in applying for full planning permission and take all appropriate steps within the scope of this Appointment to obtain clearance of reserved matters.
- 5.5 If required, conduct any necessary negotiations with the planning and highways authorities.
- 5.6 If necessary, revise designs to seek planning permission or other necessary statutory consents.
- 5.7 Contribute to the submission of relevant information to facilitate planning condition discharge.

6. Party walls

Assist and provide information to any other consultant we may appoint to deal with party wall issues.

7. Rights of light

Assist and provide information to the same to any other consultant we may appoint to deal with rights of light issues.

8. Diversion of footpaths etc

Provide reasonable assistance in procuring footpath diversions, diversion of services, wayleaves and similar matters.

9. Not Used.

10. Net lettable areas

Ensure that the net lettable areas set out in the approved Detailed Proposals are not compromised by any subsequent design changes or detailing.

11. Shopfitting or thematic design

Advise as to and integrate into the architectural design any relevant shopfitting or fitting-out design or thematic design.

12. Building Regulations

- 12.1 With our other consultants, prepare and make submissions under the Building Regulations and other applicable statutory provisions.
- 12.2 Review and comment on the strategy prepared by the M&E consultant in respect of ensuring that the design and construction of the Development complies with Part L of the Building Regulations with particular regard to thermal, ventilation and air-tightness requirements, and for ensuring that such compliance can be demonstrated to the building control authorities for the purpose of obtaining a Completion Certificate or Final Certificate.
- 12.3 In conjunction with the Contractor, conduct any negotiations required under the Building Regulations, and if necessary, make reasonable adjustments to production information in order to obtain approvals.

13. Cost control

Throughout the project, provide our quantity surveyors with information to enable them to cost proposals and designs and to prepare valuations under the Building Contract.

14. Changes in legislation

So far as is reasonably practicable, take account of any proposals for legislation published by government or the European Union or legislation which is enacted but not yet brought into force, insofar as it is likely to affect the architectural design of the Development or the cost in use of the Development. Consult with us as to whether and if so how such prospective legislative change should be taken into account in the architectural design of the Works.

15. Services in connection with design by sub-contractors

- 15.1 Comment on the need for specialist sub-contractors or suppliers if requested by the Contractor to design and execute parts of the architectural Works.
- 15.2 Prepare performance specifications for use where architectural elements of the Works are to be designed by specialists; assist in obtaining quotations and other information in connection with specialist work as reasonably requested.
- 15.3 Advise and assist in the selection of any specialist sub-contractors or suppliers to be appointed, nominated or specified by us as reasonably requested.
- 15.4 Where required, with our other consultants, appraise and report upon tenders received from specialist sub-contractors or suppliers.
- 15.5 Comment on and review designs and specifications provided by specialist sub-contractors or suppliers.

16. Inherent defects insurance

Provide any assistance reasonably required to obtain quotations and cover for inherent defects insurance or similar insurance in respect of the Development.

17. Monthly report

Prepare a monthly report in a form to be agreed with us for discussion at project meetings. Prepare and circulate minutes of the meetings.

18. Marketing and letting services

18.1 Attend initial meetings to brief Tenants' consultants and provide sufficient information to enable the Tenants' consultants to prepare their proposals.

18.2 Review proposals for Tenants' works as to their compatibility with the architectural design of the Works.

18.3 Assist in compiling a code of management for the running of the completed Development.

18.4 Supply plans required for the sale or lease of the Development.

19. General Exclusions and Assumptions

19.1 In the case of variation between this Schedule of Services and any other document detailing services to be performed by the Consultant, the Schedule of Services shall take precedence.

19.2 Co-ordination by the Consultant shall entail reviewing and commenting on the design of others with the purpose of establishing compliance with design intent.

19.3 The Consultant will make reasonable adjustments to the scheme design to support design development. Significant design changes instructed by the Employer or amendments to construction issue drawings will incur an additional fee in line with Clause 9.3 of the Appointment provided that such design changes or amendments was not caused or significantly contributed to by the Consultant's negligence, default or breach of this Appointment.

19.4 References requiring referral to specialist sub-contractor/consultant design elements (e.g. façade) will be made on the Consultant's production information and such details will not be transposed or re-drawn by the Consultant as these specialist design details are excluded from the Consultant's scope.

19.5 A performance specification will be produced by the Consultant recognising that the Contractor or their chosen sub-contractor will select individual products and suppliers according to buildability.

19.6 Workmanship is specified to the extent set out in the Consultant's performance specification.

19.7 The overall scheme design is produced with reference to the red-line site boundary as approved by the Employer. It is the responsibility of the Employer to inform the Consultant of any restrictive covenants, inconsistencies in OS data or any other site boundary issues that may impact the design.

19.8 The purpose of the Consultant's site visits are to confirm general compliance with design intent. The Consultant will not undertake building inspections or supervise site works.

19.9 The Consultant will not be responsible for co-ordinating or leading negotiations with third party construction warranty providers.

19.10 All M&E information contained within the Consultant's production information is to be used for

design intent only. All information should be checked against statutory regulations by the Contractor and/or a specialist.

- 19.11 The Consultant is not responsible for producing calculations relating to thermal modelling and ventilation, however, the Consultant will have due regard to thermal reports produced by the M & E Engineer when including relevant items in the architectural performance specification. The architectural performance specification will provide evidence (e.g. by providing an indicative supplier) that the Consultant's design intent is viable.
- 19.12 The Architect will use fire compartmentation drawings produced by the fire engineer to produce plans and elevations suitable for construction issue. Any fire compartmentation details included within the Architect's production information are for design intent only. M&E service penetrations will be excluded altogether from the Architect's information.
- 19.13 Interior Design is excluded from the Consultant's scope of services. In the case of any interior design elements which require spatial co-ordination within the overall design, the Consultant must be provided with drawings of appropriate detail and quality in a compatible file format (RVT/IFC) of each and every room type and of common areas in order to co-ordinate the design.
- 19.14 The Consultant is not responsible for producing detailed builder's work drawings (e.g. indicating holes required through internal and external building fabric and approximate setting out from grid). The Consultant will assist with spatial co-ordination of such works but will not lead design works by specifying size, number or locations of penetrations which, instead, should be led by an M&E specialist.
- 19.15 The Consultant is not responsible for landscaping elements including but not limited to soft landscaping, gullies/drains at external door thresholds or surface water calculations. Any hard landscaping elements detailed by the Consultant are for design intent only.

SCHEDULE 2

Project Data

Clause 8: (Project leader)

Tim Groom

Clause 9: (Remuneration)

A lump sum, inclusive of expenses and disbursements and exclusive of VAT and statutory fees of £200,000.

The fee may be invoiced in the following instalments:

January 2021	£20,000;
February 2021	£20,000;
March 2021	£20,000;
April 2021	£20,000;
May 2021	£10,000;
June 2021	£10,000;
July 2021	£10,000;
August 2021	£10,000;
September 2021	£10,000;
October 2021	£10,000;
November 2021	£10,000;
December 2021	£10,000;
January 2022	£10,000;
February 2022	£10,000;
March 2022	£5,000;
April 2022	£5,000;
May 2022	£5,000;
June 2022	£5,000;
July 2022	£5,000;

August 2022	£5,000;
September 2022	£5,000; and
October 2022	£5,000;

The fee drawdown shall be as set out in Appendix 2 and all payments shall be made by BACS or similar electronic transfer.

Clause 10: (Professional indemnity insurance)

Limit of indemnity: not less than £10,000,000.00 for any one claim or series of claims arising from one originating or underlying cause.

Clause 12: (Documents)

Number of copies to be supplied without additional charge:

hard copies: 3

CD format: 1

Clause 21.1.1: (Service of notice)

Notices to the Contractor are to be addressed to Jamie Sutton at Great Oak Farm, Mag Lane, Lymm, Cheshire, WA13 0TF; e-mail address Jamie.Sutton@mulbury.co.uk

Notices to the Consultant are to be addressed to Tim Groom at 7 Constance St, Manchester, M15 4JQ e-mail address tim@timgroomarchitects.com

SCHEDULE 3

Construction Act 1996

Part 1: Payment

1. General

1.1 In this schedule:

instalment means any instalment, stage payment or other periodic payment to be made under this Deed

notified sum means, in respect of an instalment, the sum notified in:

- (a) the payment notice given in accordance with paragraph 5, but if no such notice is given,
- (b) the payment application given in accordance with paragraph 4

payer and **payee** mean respectively the person from whom and the person to whom an instalment is due.

1.2 Where an act is required under this schedule to be done within a specified period after or from a specified date, the period begins immediately after that date.

1.3 Where a period specified in this schedule would include a Bank Holiday, that day is excluded.

2. Specified person

The payer may give notice to the payee from time to time nominating a person (**specified person**) to give and receive any other notice to be given by or to the payer under this part of this schedule, supplying with such notice postal and an e-mail addresses for service upon the specified person, or revoking any such nomination, and in that case any such notices under this part of this schedule must be served accordingly.

3. Due and final dates for payment

3.1 Payments are to be made in instalments, each calculated to the end of the period (**relevant period**) in which the instalment becomes eligible for payment, as such instalments and relevant periods are specified in, or may be ascertained in accordance with, the Project Data.

3.2 The **payment due date** of each payment is the 10th day after the date of service of the relevant payment application under paragraph 4.

3.3 The **final date for payment** of each instalment is the 20th day after the payment due date of that payment.

4. Payment applications

4.1 In relation to each instalment, the payee must give the payer (or the specified person, if any) a notice (**payment application**) of:

- 4.1.1 the sum that the payee considers will become due on the payment due date; and
- 4.1.2 the basis on which that sum is calculated.

5. Payment notices

In relation to each instalment, the payer (or specified person, if any) must give a notice (**payment notice**) to the payee not later than five days after the payment due date, specifying:

- 5.1 the sum that, in the opinion of the payer (or specified person), is (or was) due at the payment due date; and
- 5.2 the basis on which that sum is calculated,
- 5.3 it being immaterial that such sum may be zero.

6. Payments

Subject to paragraphs 7.4 and 8, the payer must pay the payee the notified sum (to the extent not already paid) no later than the final date for payment of that sum.

7. Payment reduction notice

- 7.1 The payer (or specified person, if any) may give the payee notice of the payer's intention to pay less than the notified sum (**payment reduction notice**) and such notice must specify:
 - 7.1.1 the sum (**adjusted sum**) the payer considers to be due on the date the payment reduction notice is served; and
 - 7.1.2 the basis on which that sum is calculated.
- 7.2 A payment reduction notice may not be given:
 - 7.2.1 before the notice by reference to which the notified sum is determined; nor
 - 7.2.2 any later than five days before the final date for payment.
- 7.3 It is immaterial that the sum referred to in paragraph 7.1 may be zero.
- 7.4 If the payer (or a specified person) serves a payment reduction notice in accordance with this paragraph 7, the amount the payer must pay under paragraph 6 is the adjusted sum.

8. Insolvency

- 8.1 Paragraph 8.2 applies if:
 - 8.1.1 the payee is or becomes insolvent; and
 - 8.1.2 the payee's employment is therefore terminated.
- 8.2 Where this paragraph 8.2 applies:

8.2.1 the payer need not pay any sum that he would otherwise have to pay in accordance with this schedule, provided:

- (a) he (or the specified person, if any) gives a payment reduction notice in respect of that sum in accordance with paragraph 7, invoking this paragraph 8; or
- (b) the insolvency post-dates the latest date for service of a payment reduction notice in respect of that sum; and

in such case, no further payment need be made by the payer until he has been able to ascertain the costs and losses he will incur by reason of the termination.

Part 2: Adjudication

1. Adjudication

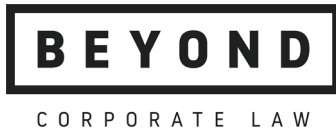
Either party may give notice at any time of his intention to refer any dispute under this Appointment to adjudication under and in accordance with the Scheme for Construction Contracts in place for the time being under the Construction Act 1996, subject as follows:

- 1.1 the adjudicator nominating body is the Royal Institution of Chartered Surveyors;
- 1.2 an adjudicator may determine more than one dispute between the parties at the same time and (if required to do so by the respondent party to a claim or counterclaim) shall determine any matter in the nature of set-off, abatement or counterclaim at the same time as he determines any dispute referred to him;
- 1.3 at the same time as he gives a decision, an adjudicator must give written reasons; and
- 1.4 the burden of proof in legal proceedings is unaltered by an adjudicator's decision.

Appendix 1 – Draft Deed of Warranty

Appendix 2 – Fee Drawdown Schedule

Month	Amount
January 2021	£20,000
February 2021	£20,000
March 2021	£20,000
April 2021	£20,000
May 2021	£10,000
June 2021	£10,000
July 2021	£10,000
August 2021	£10,000
September 2021	£10,000
October 2021	£10,000
November 2021	£10,000
December 2021	£10,000
January 2022	£10,000
February 2022	£10,000
March 2022	£5,000
April 2022	£5,000
May 2022	£5,000
June 2022	£5,000
July 2022	£5,000
August 2022	£5,000
September 2022	£5,000
October 2022	£5,000



DATED

2021

(1) MULBURY HOMES LIMITED
as Contractor

and

(2) HYDROCK CONSULTANTS LIMITED
as Consultant

**LETTER OF APPOINTMENT OF
FIRE STRATEGY CONSULTANT**

In respect of the development relating to land on the north east side of
Goulden Street, Manchester (Peelers Yard)

Letter of Appointment

From: **Mulbury Homes Limited** (No. 07185858) whose registered office is at Great Oak Farm, Mag Lane, Lymm, Cheshire, WA13 0TF (**Contractor**)

To: **Hydrock Consultants Limited** (no.03118932) Over Court Barns, Over Lane, Almondsbury, Bristol, Avon, BS32 4DF (**Consultant**)

Date: 2021

Dear Sirs

Development relating to land on the north east side of Goulden Street, Manchester (Peelers Yard)

This letter sets out the terms of your appointment (**Appointment**) to provide the fire strategy services required in connection with the construction of the above development (**Development**). This letter constitutes the entire agreement between us and replaces any previous agreement between us in respect of the Development. Any services already provided by you relating to the Development are to be treated as having been provided under the terms of this Appointment.

1. SCOPE OF APPOINTMENT

We have been appointed to design and build the Development pursuant to a building contract (**Building Contract**) with Peelers Yard Limited (**Developer**). The Building Contract incorporates a version of the JCT Design and Build Contract 2016. This Appointment relates to the proposed site (**Site**) of the works (**Works**) under the Building Contract and to any roadworks, services installations and other enabling works adjacent to the Site which are required for the purposes of the Development.

2. SERVICES

- 2.1 You are to provide the services specified in Schedule 1 (**Services**).
- 2.2 You are to provide such additional services within your discipline and competence as we may reasonably request in writing, relating to the Development.
- 2.3 We may give you instructions to omit any of the Services.
- 2.4 You are to obtain our written authority before initiating any work stage specified in Schedule 1.
- 2.5 You are to comply with all reasonable instructions given by us in writing in connection with this Appointment during the performance of your Services.

3. DESIGN CHANGES

- 3.1 You may not without our written consent make or permit any material change in the designs or specifications for the Development, after they have been settled or approved.
- 3.2 You are to keep us and our other consultants fully informed on a day to day basis of all changes in design or specification made or authorised by you.

4. BUDGET AND PROGRAMME

- 4.1 Subject to you being provided with copies and / or relevant extracts by us within a reasonable time from the date of this Appointment, you are to have regard in the performance of your Services to our budget and programme requirements for the Development. If you become aware of circumstances which may prevent us from carrying out the Development in accordance with our budget or programme, you are to inform us without delay.
- 4.2 You are to collaborate with us and our other consultants to establish a co-ordinated programme for the production of the design and are to monitor progress against the design programme.

5. DUTY OF CARE

- 5.1 You are to use Skill and Care in the performance of your Services under this Appointment.
- 5.2 You are to use Skill and Care to see that the design of all elements of the Development for which you are responsible complies with the Building Regulations, the requirements of British Standard 9991 and other applicable statutory and regulatory requirements.
- 5.3 You are to comply with your statutory duties under the CDM Regulations.
- 5.4 No inspection or approval or review on our part or on our behalf, and no omission to inspect or review or to disapprove shall negate or diminish any duty of care on your part under or in connection with this Appointment.

6. PROHIBITED MATERIALS

You are to use Skill and Care not to specify for use, and not to approve the use in the Development of any materials:

- 6.1 which by their nature or application contravene any British Standard or EU equivalent; or
- 6.2 which are considered to be deleterious within the fire engineering professions in the UK.

You will immediately give notice to us if you become aware that any materials have been specified for use or approved for use in the Development otherwise than in accordance with this clause 6.

7. PROJECT LEADER

You are to appoint the person named as project leader in the Project Data to take responsibility for the overall management, supervision and co-ordination of the performance of your Services. The project leader is not to be replaced save with our consent or save for unavoidable necessity, and any replacement is to be subject to our prior approval.

8. REMUNERATION

- 8.1 Your remuneration under this Appointment:
- 8.1.1 shall be provided in this clause 8 and the Project Data; and
- 8.1.2 shall be payable in accordance with schedule 3 (Construction Act 1996).

- 8.2 If for any reason we do not proceed with the Development, or if your employment is terminated or suspended other than for your breach, you will be entitled (in addition to any fee instalments which are then due in full) to a fair and reasonable proportion of any fee instalments in respect of which your Services are part-performed at the date of termination, but not to compensation for loss of profit loss of opportunity, consequential loss or other similar losses.
- 8.3 If at our request you undertake any additional services, or if by reason of any design changes requested by us or any other circumstances beyond your control you are required to undertake significant extra work, then provided you notify us in writing before undertaking such work or additional services that you may require an additional fee, an additional fee will be payable. Such additional fee shall be calculated at the applicable hourly rates specified in the Project Data, or if no hourly rates are specified in the Project Data, shall be such amount as is fair and reasonable.
- 8.4 If we give instructions for you to omit any Services we shall be entitled to a suitable reduction in your remuneration.
- 8.5 The specified fee in the Project Data is exclusive of VAT and inclusive of all your office, staff, travel, reproduction and incidental costs and inclusive of disbursements. However, you will be reimbursed any third party charges incurred at our request, such as survey fees or statutory fees or the cost of any models or any specialist presentational artwork, provided the amount of such charges is agreed with us before they are incurred.
- 8.6 If the amount of any fees or disbursements is wrongfully withheld after the relevant final date for payment, such amount shall bear simple interest at the rate of 5% over Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.

9. PROFESSIONAL INDEMNITY INSURANCE

- 9.1 You warrant that you have professional indemnity insurance conforming to the relevant requirements specified in the Project Data. You are to maintain such insurance at all times until 12 years after the practical completion of the Works under the Building Contract (or, if sooner, until 12 years after the completion or termination of your services), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and the policy terms obtainable, provided that any effect of your own claims record shall be disregarded in determining whether premiums and policy terms are commercially reasonable.
- 9.2 If for any period such insurance is not obtainable on commercially reasonable terms, you are to inform us forthwith and are to obtain in respect of that period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for you to obtain.
- 9.3 When reasonably requested by us you are to provide documentary evidence that the insurance required under this Appointment is being maintained.

10. COLLATERAL WARRANTIES

- 10.1 You are to provide, as we may at any time or times require, a deed or deeds of warranty respecting your duties hereunder in favour of the Developer and/or Funders and/or Purchasers and/or Tenants, in terms of the draft contained in the Appendix.

11. DOCUMENTS

- 11.1 You hereby grant to us an irrevocable, non-exclusive, royalty free, assignable licence to use and reproduce (excluding any internal memoranda and documents, working orders and templates) all drawings, calculations, specifications and/or other documents produced by you pursuant to this Appointment and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development), and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in yourselves. You shall not be liable to any party for the use of any of the Documents for any purpose other than those for which you produced them.
- 11.2 Such licence granted to us, and any such sub-licence, shall be irrevocable and royalty free.
- 11.3 You agree to waive any right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 80 of that Act as against us or any licensee or assignee of ours.
- 11.4 The fee specified in the Project Data is inclusive of the cost of supplying us with copies of the Documents up to the number of copies specified in the Project Data. You are to supply us with any additional copies of the Documents we may request (whether before or after the termination or conclusion of this Appointment), for which we shall pay your reasonable reproduction costs.
- 11.5 You warrant that, to the best of your knowledge, the use of the Documents for the purposes of the Development will not infringe the rights of any third party.

12. ASSIGNMENT AND SUB-LETTING

- 12.1 Neither party hereto shall be entitled to assign the benefit of this Appointment.
- 12.2 You may not delegate or sub-let the whole or any part of your duties without our written consent. You shall remain fully responsible for any of your duties which are delegated or sub-let, as if such duties had been undertaken directly by you.

13. SUSPENSION

We may suspend your Services in whole or part by written notice. If a suspension lasts more than 6 months, you may make a written request for your Services to be resumed, and if no instructions to resume are given within 28 days after your request, your employment shall then terminate.

14. TERMINATION AND REMEDIES

- 14.1 We may at any time by service of written notice, terminate your employment under this Appointment.
- 14.2 If we terminate your employment on account of your Insolvency or (acting reasonably) on account of your breach of any term of this Appointment, we shall be entitled to recover from you the costs and losses we reasonably or necessarily incur by reason of the termination.
- 14.3 If you fail to comply with any requirement of clause 9 (Professional indemnity insurance) or fail to comply with clause 10 (Collateral warranties) or if you become Insolvent, we shall be entitled

to recover from you any premiums we reasonably incur to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection, but this clause 14.3 does not exclude any other remedy we might have for breach of clause 9 or clause 10.

14.4 If we are materially in breach of our obligations under this Appointment in any respect that would reasonably justify your terminating your employment, you may serve 28 days' written notice of your intention to terminate, stating the grounds for termination, and if in such 28 day period we fail to rectify our breach, you may at the expiry of that period serve further written notice terminating your employment with immediate effect.

14.5 Termination does not determine the operation of any provisions of this Appointment that are capable of operation after termination and is without prejudice to any rights and remedies accrued by either party prior to any such termination.

15. CONFIDENTIALITY

Save as may be necessary for the performance of your Services, or as required by law, or as we may allow in writing, or where your legal and professional advisors reasonably require details relevant to this Appointment, you are to treat as confidential all information relating to this Appointment and to the Development and are to take reasonable steps to see that your employees are bound by and adhere to the same duty of confidentiality.

16. BRIBERY ACT 2010

16.1 You warrant that no offence under the Bribery Act 2010 (**the Act**) has been or will be committed by you or any person associated with you, in connection with the procurement or implementation of this Appointment.

16.2 For the purposes of and without derogation from clause 16.1, an offence is committed under any provision of the Act before such provision is in force, if such offence would have been committed, had such provision then been in force.

16.3 For the purposes of clause 16.1, the definition of associated person in section 8 of the Act applies.

16.4 If at any time you have knowledge of, or have reasonable grounds to suspect the occurrence of, a breach of the warranty in clause 16.1, you shall promptly notify us in writing of such matters within your knowledge, or of such grounds for suspicion, and shall co-operate with us in the investigation of such breach or suspected breach of warranty.

17. CONSTRUCTION ACT 1996

Schedule 3 (Construction Act 1996) has effect.

18. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Appointment is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

19. SERVICE OF NOTICE

19.1 Any notice to be given under this Appointment:

19.1.1 if given for the purposes of schedule 3 (Construction Act 1996), must be:

(a) delivered by hand; or

(b) sent by e-mail and on the same day, sent by pre-paid first class post,

to the relevant addressee, addressed in accordance with the applicable details in the Project Data, or such other details as the relevant party (or specified person as defined in schedule 3) notifies to the other in writing from time to time; or

19.1.2 if given for any other purpose, may be given by any effective means.

19.2 Any notice delivered or sent in accordance with clause 19.1 takes effect as being given and served:

19.2.1 if delivered by hand by 4.00 pm on a Working Day, on the day of delivery; but otherwise

19.2.2 on the first Working Day after it is delivered or sent.

20. OTHER AGREEMENTS

20.1 The Developer has entered into or may enter into agreements with third parties including (but not limited to) in relation to the finance, sale or lease of the Development or the Site or any part thereof and copies of the whole or parts of those agreements have been or will be provided to you and which agreements or parts are referred to in this clause 20 as the **"Third Party Agreements"**.

20.2 You shall have regard to any obligations owed by us under the Third Party Agreements.

20.3 You shall perform your duties and obligations under this Appointment in such manner and at such times that no act, omission or default of you shall constitute, cause or contribute to any breach by us of any of our duties and obligations under the Third Party Agreements.

20.4 You shall comply with any procedures in the Third Party Agreements including (without limitation) those relating to provision of information and documentation, the approval of changes in design, specifications or materials, notices and inspections prior to any certificate of practical completion (or equivalent), certificate of sectional completion (or equivalent), certificate of making good defects (or equivalent) and for similar matters.

20.5 If required by any Third Party Agreements, you shall be responsible for the issue of certificates as to the state of completion or readiness of any building works for completion or for the start of tenants' fitting-out works, or value of any building works, or as to similar matters required under the Third Party Agreements

21. GOVERNING LAW AND INTERPRETATION

21.1 This Appointment shall be governed by English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.

21.2 In this Appointment:

21.2.1 **person** includes any firm and any entity having legal capacity;

21.2.2 any term importing gender includes any gender;

- 21.2.3 any term importing the singular includes the plural and vice versa;
- 21.2.4 unless the context requires otherwise, any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Appointment;
- 21.2.5 any reference to any enactment includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 21.2.6 **Bank Holiday** means a Christmas Day, Good Friday or day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales;
- 21.2.7 **Building Regulations** means the Building Act 1984 and all relevant subordinate legislation made under the Act;
- 21.2.8 **CDM Regulations** means the Construction (Design and Management) Regulations 2015;
- 21.2.9 **Construction Act 1996** means Part II, Housing Grants, Construction and Regeneration Act 1996;
- 21.2.10 **Developer** means Peelers Yard Limited (no.13552246) registered office at Hilton House, 26-28 Hilton Street, Manchester, M1 2EH;
- 21.2.11 **Development** means the Site and/or the Works;
- 21.2.12 **Funder** means a person having or acquiring a mortgage interest or charge over the Development or any part of it
- 21.2.13 **Group Company** means any subsidiary or holding company of ours or of another subsidiary or holding company of ours, as **subsidiary** and **holding company** are understood within section 1159, Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a);
- 21.2.14 **Insolvent** and related terms derive their meaning from section 113, Construction Act 1996;
- 21.2.15 **Project Data** means the project data in schedule 2;
- 21.2.16 **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;
- 21.2.17 **Skill and Care** means the reasonable skill and care and diligence to be expected of duly qualified and experienced fire engineers undertaking services and other duties similar to those to be performed under this Appointment in relation to projects similar in scale and character to the Development;
- 21.2.18 **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser);
- 21.2.19 **Working Day** means any day other than a Bank Holiday.
- 21.3 Clause headings do not form part of or affect the interpretation of this Appointment.

EXECUTED as a **DEED** and delivered by **MULBURY LIMITED** acting by a director in the presence of:

.....
Signature of director

Signature of witness

Print name:

Address:

Occupation:

EXECUTED as a **DEED** and delivered by **HYDROCK CONSULTANTS LIMITED** acting by two directors:

.....
Signature of director

.....
Signature of director

SCHEDULE 1

Services

1. Detailed Fire Safety Strategy (Riba Stage 3)

- 1.1 The objective of the detailed fire safety strategy is to demonstrate how the design for the development achieves an acceptable level of fire safety. The report will act to support the building regulations application. The proposed scope of services to be provided to the scheme is outlined below.
- 1.2 You will provide a detailed fire safety engineering report with calculations and drawings for the building(s). The report will demonstrate fire safety in accordance with the functional requirements of Part B of the Building Regulations. The report will address, but not be limited to:
 - 1.2.1 B1 Means of Escape;
 - (a) Travel distances including number, location and width of exits;
 - (b) Stair sizing;
 - (c) Maximum room occupancies;
 - (d) Protection of escape routes;
 - (e) Strategic advice relating to the most appropriate fire detection and alarm systems.
 - 1.2.2 B2 to B3 Internal Spread of Fire;
 - (a) Classification required for internal linings;
 - (b) Level of compartmentation required to mitigate internal fire spread;
 - (c) Level of structural fire protection.
 - 1.2.3 B4 External Spread of Fire
 - (a) Measures to prevent external fire spread between buildings;
 - (b) Classification required for external wall materials and surfaces.
 - 1.2.4 B5 Firefighting Access;
 - (a) Provisions for fire service access and firefighting;
 - (b) Strategic advice relating to firefighting shafts within the buildings;
 - (c) Performance specification of smoke ventilation and clearance systems for the fire brigade.
 - 1.2.5 Strategic Advice on Design Standards for Active Systems including;
 - (a) Smoke management systems within building;

- (b) Detection and alarm systems;
- (c) Extent of sprinkler protection;
- (d) Advice for emergency lighting and power supply systems.

1.2.6 A set of fire strategy drawing markups will be produced in PDF, to support the detailed fire strategy report and allow the architect to develop formal fire strategy drawings for the Building Regulations application. These drawings will include the following elements if/where they form part of the fire strategy:

- (a) Floor and general arrangement layouts (provided by the architect);
- (b) Fire compartmentation and fire resistance periods;
- (c) Fire door requirements;
- (d) Indicative disabled refuge locations;
- (e) Fire Service access and provisions;
- (f) Smoke ventilation;
- (g) Sprinkler coverage;
- (h) Indicative dry/wet rising main inlet and outlet locations;
- (i) Means of escape provisions (i.e. key travel distances and critical escape widths);
- (j) Allowance of a maximum of 2 report/drawing revisions due to architectural alterations, but no limit on updates to satisfy the approving authorities for Stage 3 design.

1.2.7 Support the architect in the submission of an agreed fire strategy to Building Control for comment;

- (a) Attend all reasonable design team workshops and meetings with the approving authorities at this stage. These are assumed to be in the North West of England.

2. Technical Design (Riba Stage 4)

2.1 Key Objectives

- (a) Approval in principle of the fire strategy with Building Control;
- (b) Coordinated architectural Stage 4 pack (in relation to the fire strategy);
- (c) Coordinated M&E Stage 4 pack (in relation to fire strategy).

2.2 During these works provide:

- (a) Provide continued support to the design team to integrate the recommendations of the detailed fire safety strategy into their technical design information;
- (b) Provide alternative solutions where required to address issues raised by design team members or sub-contractors;

- (c) Review, negotiate and agree the fire strategy and any alternative proposals with the approving authorities, to help gain formal Building Regulations approval, and support Building Control in the Fire Service consultation process;
- (d) Identify value engineering opportunities;
- (e) Provide advice to the design team on items relating to the fire safety design of the building. This is to be provided primarily via overmarked drawings;
- (f) Update the fire strategy in line with the technical design;
- (g) Comment on the principles of the external wall package for fire safety;
- (h) Attend all reasonable design team workshops and meetings with the approving authorities at this stage.

2.3 Following the completion of the fire strategy undertake a full desktop review of the Stage 4 architectural package in relation to coordination of the fire strategy to check accurate adoption of the fire strategy within the Stage 4 architectural package. This will include:

- (a) GA's;
- (b) Wall types;
- (c) Wall details;
- (d) Door schedule & details;
- (e) Fire stopping details;
- (f) Façade details;
- (g) Specification documents.

2.4 Undertake a full desktop review of the M&E package in relation to coordination of the fire strategy to check accurate adoption of the fire strategy within the M&E package. This will include:

- a) Fire alarm drawings;
- b) Emergency lighting drawings;
- c) Fire collar layouts/details;
- d) Ductwork and extract layouts;
- e) Dampers;
- f) External lighting;
- g) Hydrant proposals;
- h) Alarm auto-dialler details (e.g. Redcare).

3. Construction & As-built Design (Riba Stages 5 & 6)

- 3.1 Following the issue of the RIBA Stage 4 fire strategy, the technical fire strategy will be developed into a construction stage fire strategy, with the following to be undertaken at this stage:
- (a) Assist the client, design team and contractor with regards to their interpretation and understanding of the fire safety strategy, responding with ad-hoc advice, fire strategy design notes and marked up drawing comments with regards to design alterations that are made during the construction stage.
 - (b) Respond to queries from the approving authorities, local Fire Service and insurers.
 - (c) Assist in providing information to satisfy Regulation 38 and the handover of information to the responsible persons (NB: Hydrock will provide relevant fire strategy information where requested, with collation of the information undertaken by others).
- 3.2 At the end of each stage produce the following:
- (a) Stage 5 Fire Strategy and drawings;
 - (b) Stage 6 (As built) Fire Strategy and drawings.
 - (c) Attend all reasonable design team workshop and meetings with the approving authorities at this stage, with site visits to be subject to additional instruction/fees.

4. Common Corridor CFD Modelling

- 4.1 Based on the design of the common corridors, CFD modelling may be required. This is subject to the design of the smoke control system, and is only a requirement if common corridor travel distances recommended by guidance are exceeded. If required, the following will be undertaken:
- (a) Following an appraisal of the common corridor arrangements, outline the modelling proposals within an external memo to the design team and approving authorities. This will include the number of common corridor arrangements to be modelled, the number of fire scenarios, fire properties (heat release rate, fire growth rate, soot yield), sprinkler specification (Spacing, positions, RTI, c-factor, flow rate etc), tenability criteria to be used and all assumptions (NB: whilst it is only proposed to model a single common corridor arrangements due to being considered the worst case, the number of assessments will require agreement with the approving authorities;
 - (b) Create detailed model geometry for each assessment/scenario;
 - (c) Run the simulations for each fire scenario;
 - (d) Summarise the results within a standalone report, outlining modelling assumptions, results, diagrams, CFD images, and a discussion of whether the results are within the tenability criteria;
 - (e) The Computational Fluid Dynamic modelling (CFD) assessment of the common corridor smoke control ventilation systems will assess conditions for both means of escape and firefighting stages;

- (f) Seek to gain approval from the approving authority (Building Control or Approved Inspector) for the proposed system, and attend MS Teams meeting(s) to discuss the findings;

SCHEDULE 2

Project Data

Clause 7: (Project leader)

Darren Agnew

Clause 8: (Remuneration)

- (a) A lump sum, inclusive of expenses and disbursements and exclusive of VAT and statutory fees, of £21,000.

The fee may be invoiced in the following instalments:

- | | | |
|-------|--------------------------------|-------------|
| (i) | RIBA Stage 3: | £4,200; |
| (ii) | RIBA Stage 4: | £5,500; |
| (iii) | RIBA Stages 5 and 6: | £6,800; and |
| (iv) | Common Corridor CFD Modelling: | £4,500 |

Clause 9: (Professional indemnity insurance)

- (a) Limit of indemnity: not less than £1,000,000 in the aggregate in respect of fire, pollution, asbestos and silica, fungi or microbes.

Clause 11: (Documents)

Number of copies to be supplied without additional charge:

hard copies: 3

CD format: 1

Clause 19.1.1: (Service of notice)

- (a) Notices to the Contractor are to be addressed to Nick Leggett at Mulbury Homes Limited, Great Oak Farm, Mag Lane, Lymm, Cheshire, WA13 0TF; e-mail address nick@mulbury.co.uk
- (b) Notices to the Consultant are to be addressed Darren Agnew at Hydrock Consultants Limited (no.03118932) Over Court Barns, Over Lane, Almondsbury, Bristol, Avon, BS32 4DF at; e-mail address darrenagnew@hydrock.com

SCHEDULE 3

Construction Act 1996

Part 2: Payment

1. General

1.1 In this schedule:

instalment means any instalment, stage payment or other periodic payment to be made under this Deed

notified sum means, in respect of an instalment, the sum notified in:

- (a) the payment notice given in accordance with paragraph 5, but if no such notice is given,
- (b) the payment application given in accordance with paragraph 4

payer and **payee** mean respectively the person from whom and the person to whom an instalment is due.

1.2 Where an act is required under this schedule to be done within a specified period after or from a specified date, the period begins immediately after that date.

1.3 Where a period specified in this schedule would include a Bank Holiday, that day is excluded.

2. Specified person

The payer may give notice to the payee from time to time nominating a person (**specified person**) to give and receive any other notice to be given by or to the payer under this part of this schedule, supplying with such notice postal and an e-mail addresses for service upon the specified person, or revoking any such nomination, and in that case any such notices under this part of this schedule must be served accordingly.

3. Due and final dates for payment

3.1 Payments are to be made in instalments, each calculated to the end of the period (**relevant period**) in which the instalment becomes eligible for payment, as such instalments and relevant periods are specified in, or may be ascertained in accordance with, the Project Data.

3.2 The **payment due date** of each payment is the 10th day after the date of service of the relevant payment application under paragraph 4.

3.3 The **final date for payment** of each instalment is the 20th day after the payment due date of that payment.

4. Payment applications

4.1 In relation to each instalment, the payee must give the payer (or the specified person, if any) a notice (**payment application**) of:

4.1.1 the sum that the payee considers will become due on the payment due date; and

4.1.2 the basis on which that sum is calculated.

4.2 A payment application in respect of an instalment may not be given until after the end of the relevant period.

5. Payment notices

In relation to each instalment, the payer (or specified person, if any) must give a notice (**payment notice**) to the payee not later than five days after the payment due date, specifying:

5.1 the sum that, in the opinion of the payer (or specified person), is (or was) due at the payment due date; and

5.2 the basis on which that sum is calculated,
it being immaterial that such sum may be zero.

6. Payments

Subject to paragraphs 7.4 and 8, the payer must pay the payee the notified sum (to the extent not already paid) no later than the final date for payment of that sum.

7. Payment reduction notice

7.1 The payer (or specified person, if any) may give the payee notice of the payer's intention to pay less than the notified sum (**payment reduction notice**) and such notice must specify:

7.1.1 the sum (**adjusted sum**) the payer considers to be due on the date the payment reduction notice is served; and

7.1.2 the basis on which that sum is calculated.

7.2 A payment reduction notice may not be given:

7.2.1 before the notice by reference to which the notified sum is determined; nor

7.2.2 any later than five days before the final date for payment.

7.3 It is immaterial that the sum referred to in paragraph 7.1 may be zero.

7.4 If the payer (or a specified person) serves a payment reduction notice in accordance with this paragraph 7, the amount the payer must pay under paragraph 6 is the adjusted sum.

8. Insolvency

8.1 Paragraph 8.2 applies if:

8.1.1 the payee is or becomes insolvent; and

8.1.2 the payee's employment is therefore terminated.

8.2 Where this paragraph 8.2 applies:

8.2.1 the payer need not pay any sum that he would otherwise have to pay in accordance with this schedule, provided:

- (a) he (or the specified person, if any) gives a payment reduction notice in respect of that sum in accordance with paragraph 7, invoking this paragraph 8; or
- (b) the insolvency post-dates the latest date for service of a payment reduction notice in respect of that sum; and

8.2.2 in such case, no further payment need be made by the payer until he has been able to ascertain the costs and losses he will incur by reason of the termination.

Part 2: Adjudication

9. Adjudication

9.1 Either party may give notice at any time of his intention to refer any dispute under this Appointment to adjudication under and in accordance with the Scheme for Construction Contracts in place for the time being under the Construction Act 1996, subject as follows:

- 9.1.1 the adjudicator nominating body is the Royal Institution of Chartered Surveyors;
 - 9.1.2 an adjudicator may determine more than one dispute between the parties at the same time and (if required to do so by the respondent party to a claim or counterclaim) shall determine any matter in the nature of set-off, abatement or counterclaim at the same time as he determines any dispute referred to him;
 - 9.1.3 at the same time as he gives a decision, an adjudicator must give written reasons;
 - 9.1.4 no legal proceedings to finally determine a dispute that is referred to adjudication may be commenced after the date (relevant date) which is 90 days after the date of issue of the adjudicator's decision;
 - 9.1.5 if neither party commences such legal proceedings before the expiry of the applicable time limit under paragraph 9.1.4, the adjudicator's decision shall be final and conclusive between the parties;
 - 9.1.6 for the purposes of the adjudication and any such legal proceedings commenced after the date of referral of the dispute to adjudication, the referral to adjudication stops the running of time under the Limitation Act 1980 in respect of the dispute; and
 - 9.1.7 the burden of proof in legal proceedings is unaltered by an adjudicator's decision.
- 9.2 The time limit in paragraph 9.1.4 above does not apply to any appeal from the judgment of a court of law and does not run from the date of issue of an adjudicator's decision that is declared by the court or agreed by the parties to have been invalid; upon such declaration or agreement, the running of time under the Limitation Act 1980 resumes.

Appendix

Draft Deed of Warranty

Schedule 2 Agreed form(s) of Consultant Collateral Warranty



C O R P O R A T E L A W

DATED

2021

(1) TIM GROOM ARCHITECTS LIMITED
as Consultant

(2) MULBURY HOMES LIMITED
as Contractor

and

(3) [•] LIMITED
as Beneficiary

CONSULTANT'S DEED OF WARRANTY

In respect of the development relating to land on the north east side
of Goulden Street, Manchester (Peelers Yard)

Date of this Deed	[•]
Developer	Peelers Yard Limited (No.13552246), registered office Hilton House, 26-28 Hilton Street, Manchester, M1 2EH.
Consultant	Tim Groom Architects Limited (No. 05639668), registered office Eastgate, 2 Castle Street, Manchester, England, M3 4LZ.
Contractor	Mulbury Homes Limited (No. 07185858), registered office Great Oak Farm, Mag Lane, Lymm, WA13 0TF.
Beneficiary	[•] (No. [•]), registered office [•].
Consultant's profession	Architect
Development	Development relating to land on the north east side of Goulden Street, Manchester (Peelers Yard)
Site	Goulden Street, Manchester
Date of Appointment	[•]
Date of Building Contract	[•]
Beneficiary's interest	[Funder] [Purchaser of the Development] [Developer] [Management Company]
Clause 2: (Professional indemnity insurance)	Limit of indemnity: not less than £10,000,000.00 each and every claim or series of claims arising from one originating or underlying cause.

THIS DEED is made the _____ day of _____ 2021

PARTIES:

- (1) The **Consultant**
- (2) The **Beneficiary**
- (3) The **Contractor**

WHEREAS:

- (A) The Contractor and the Developer have entered into a building contract (Building Contract) under which the Contractor has agreed to design and complete the construction of the Works.
- (B) The Contractor and the Consultant have entered into an appointment (**Appointment**) under which the Consultant has agreed to perform certain services (**Services**) and to perform certain other obligations in connection with the Development (which expression includes the Site and the works (**Works**) constructed or to be constructed on or adjacent to the Site or either of them as the case requires).

IT IS AGREED in consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Consultant acknowledges, as follows:

1. **DUTY OF CARE**

The Consultant warrants to the Beneficiary that it has performed and/or subject to the terms of the Appointment shall perform the Services and its other obligations under the Appointment, and that in doing so it has used and/or shall use all the reasonable skill and care reasonably to be expected of suitably qualified and experienced architects undertaking duties similar to the Services in relation to projects similar to the Development.

2. **PROFESSIONAL INDEMNITY INSURANCE**

- 2.1 The Consultant warrants to the Beneficiary that there is in force a policy of professional indemnity insurance, conforming to the relevant requirements specified in the Project Data. The Consultant agrees to maintain such insurance at all times until 12 years after the practical completion of the Development under the Building Contract (or if sooner until 12 years after the termination of the employment of the Consultant under the Appointment), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable provided that any effect of the Consultant's own claims record shall be disregarded in determining whether premiums and policy terms are commercially reasonable.
- 2.2 If for any period such insurance is not available on commercially reasonable terms, the Consultant shall forthwith inform the Beneficiary, and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.
- 2.3 Whenever reasonably required to do so by the Beneficiary, the Consultant shall provide to the Beneficiary documentary evidence that the insurance required under this Deed is being maintained.

3. **[SUBSTITUTION PROVISIONS]**

3.1 The Consultant shall not:

3.1.1 terminate its employment;

3.1.2 treat its employment as having been terminated; or

3.1.3 suspend the performance of the Services,

under the Appointment (Discontinue) without first giving to the Beneficiary not less than 28 days' notice of the Consultant's intention to Discontinue, specifying the grounds for the discontinuance.

3.2 If the Beneficiary gives the Consultant notice requiring it to accept the instructions of the Beneficiary or its appointee under the Appointment, to the exclusion of the Contractor (**Step-in Notice**), the Consultant:

3.2.1 shall not Discontinue; and

3.2.2 shall comply with the Step-in Notice.

3.3 A Step-in Notice may be served, whether or not the Consultant has previously served notice under clause 3.1, but not after the notice period under clause 3.1 has expired.

3.4 As against the Contractor and the Beneficiary, the Consultant shall be entitled and obliged to rely upon and to comply with any Step-in Notice, and shall not make any enquiry into the entitlement of the Beneficiary as against the Contractor to serve the Step-in Notice.

3.5 As from the date of service of a Step-in Notice (**Step-in Date**), the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Contractor under the Appointment, provided that this shall not affect or derogate from any right of action the Contractor may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening before the Step-in Date.

3.6 Within 21 days after the Step-in Date, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under the Appointment.

3.7 Service of a Step-in Notice does not affect the right of the Consultant to Discontinue on account of any breach of duty of the Beneficiary or its appointee after the Step-in Date.

3.8 If the employment of the Consultant under the Appointment is terminated before service of any Step-in Notice, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary or Consultant shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under the Appointment.

3.9 The Beneficiary guarantees to the Consultant the performance of the obligations of any appointee of the Beneficiary nominated under clause 3.2 or 3.8.

3.10 The Contractor agrees to the provisions of this clause 3.

- 3.11 Where the Consultant has given rights similar to those contained in this clause 3 to any third party then if both the Beneficiary and any such third party serve notice the deemed order of priority shall be:]

[Note: Clause 3 shall be included in the warranty in favour of the Developer and/or any Funder and/or any Purchaser, if the Developer shall so require.]

4. DEEDS OF WARRANTY

- 4.1 Subject to a maximum limit of 4 warranties, the Consultant and the Contractor shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of the Developer and/or Funder and/or the first Purchaser of the whole of the Development and/or the Management Company, in the terms of this Deed.

5. ASSIGNMENT

- 5.1 The Beneficiary may assign all of its rights under this Deed:
- 5.1.1 to any Funder and by way of re-assignment on redemption;
 - 5.1.2 by absolute assignment to any Group Company of the Beneficiary; and
 - 5.1.3 by absolute assignment on two other occasions only.
- 5.2 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 5.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed, (whenever happening) by reason that such person is an assignee and not the named promisee hereunder.
- 5.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 5.1.3.

6. COPYRIGHT

- 6.1 The Consultant grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Consultant under the Appointment and any designs contained in them (Documents) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Consultant.
- 6.2 The Consultant will not be liable for any use of the Documents for any purposes other than those for which they are or were produced.
- 6.3 The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Consultant with one full and proper copy of the Documents.
- 6.4 The Consultant warrants to the Beneficiary that to the best of its knowledge the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

7. EXTRANEIOUS RIGHTS

- 7.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Consultant to the Beneficiary.

- 7.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty of care of the Consultant arising under this Deed. Provided always that nothing in this clause shall affect the Consultant's right to argue contributory negligence in relation to any claim or dispute which may arise or bring a contribution claim (either under the Civil Liability (Contribution) Act 1978 or otherwise) against any third party.

8. DEFENCES AND EXCLUSIONS

- 8.1 In proceedings for breach of this Deed, the Consultant may:
- 8.1.1 rely on any limit of liability or other term of the Appointment; and
- 8.1.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Contractor under the Appointment,
- in each case excluding counterclaim and set-off.
- 8.2 [The exclusion of set-off or counterclaim effected by clause 8.1 shall not apply if the Beneficiary has served a Step-in Notice under clause 3 (Substitution provisions).]

[Clause 8.2 applies only if the substitution provisions are included]

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

10. LIABILITY & EXPIRY OF WARRANTY

- 10.1 No proceedings shall be commenced against the Consultant under this Deed more than 12 years after the practical completion (or equivalent) of the Development under the Building Contract (or, if earlier, more than 12 years after the employment of the Consultant under the Appointment is terminated).
- 10.2 For the avoidance of doubt, notwithstanding any other provision in this Deed, the Consultant's liability under or in connection with the Appointment (other than in respect of Personal Injury or Death) shall not exceed ten million pounds (£10,000,000) in respect of each and every claim or a series of claims arising from the same original cause.

11. SERVICE OF NOTICE

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

12. PROHIBITED MATERIALS

- 12.1 The Consultant must use the skill and care referred to in clause 1 not to specify for use, and not to expressly approve the use in the Development of any materials:

- 12.1.1 which by their nature or application contravene any British Standard or EU equivalent;
- 12.1.2 which contravene the recommendations of the British Council for Offices' publication Good Practice in the Selection of Construction Materials (2011); or
- 12.1.3 which are generally considered, at the time of specification, to be deleterious within the building design professions in the UK.

The Consultant will immediately give notice to the Beneficiary if the Consultant becomes aware that any materials have been specified for use or approved for use in the Development otherwise than in accordance with this clause 12.

13. **GOVERNING LAW AND INTERPRETATION**

- 13.1 The law of this Deed is English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.
- 13.2 The Project Data are part of this Deed and the definitions given in the Project Data and in the Recitals apply to this Deed.
- 13.3 In this Deed:
 - 13.3.1 **Developer** means Peelers Yard Limited (no.13552246) registered office at Hilton House, 26-28 Hilton Street, Manchester, M1 2EH;
 - 13.3.2 **Development** includes part of the Development;
 - 13.3.3 **Funder** means a person having or acquiring a mortgage interest or charge over the Development or any part of it;
 - 13.3.4 **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as subsidiary and holding company are defined in s1159, Companies Act 2006, (as amended);
 - 13.3.5 **Management Company** means the company appointed to undertake the management and maintenance services at the Development
 - 13.3.6 **person** includes a firm and any entity having legal capacity;
 - 13.3.7 **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;
 - 13.3.8 any term importing gender shall include any gender;
 - 13.3.9 any term importing the singular includes the plural and vice versa; and
 - 13.3.10 any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Deed.
- 13.4 For the purposes of clause 1 (Duty of care), references to the Appointment include any previous appointment of the Consultant by the Developer (whether or not in writing) to provide services of the kind mentioned in the Appointment in connection with the Development.
- 13.5 Clause headings do not affect the interpretation of this Deed.

EXECUTED as a **DEED** by **TIM GROOM ARCHITECTS LIMITED** acting by **[FULL NAME OF DIRECTOR]**, a director in the presence of:

.....
Signature of director

Signature of witness
Print name
Address
.....
.....
Occupation

EXECUTED as a **DEED** by **[THE BENEFICIARY]** acting by **[FULL NAME OF DIRECTOR]**, a director in the presence of:

.....
Signature of director

Signature of witness
Print name
Address
.....
.....
Occupation

EXECUTED as a **DEED** by **MULBURY HOMES LIMITED** acting by **[FULL NAME OF DIRECTOR]**, a director in the presence of:

.....
Signature of director

Signature of witness

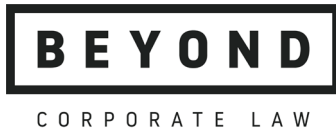
Print name

Address

.....

.....

Occupation



DATED

2021

(1) HYDROCK CONSULTANTS LIMITED

as Consultant

(2) [REDACTED]

as Beneficiary

and

(3) MULBURY HOMES LIMITED

as Contractor

CONSULTANT DEED OF WARRANTY

In respect of the development relating to land on the north east side of
Goulden Street, Manchester (Peelers Yard)

PROJECT DATA

Date of this Deed

Developer

Peelers Yard Limited (no.13552246) registered office at Hilton House, 26-28 Hilton Street, Manchester, M1 2EH.

Consultant

Hydrock Consultants Limited (no.03118932) Over Court Barns, Over Lane, Almondsbury, Bristol, Avon, BS32 4DF.

Contractor

Mulbury Homes Limited (No. 07185858) whose registered office is at Great Oak Farm, Mag Lane, Lymm, Cheshire, WA13 0TF.

Beneficiary

[•] (No. [•]), registered office [•].

Beneficiary's interest

[]

Development

Development relating to land on the north east side of Goulden Street, Manchester (Peelers Yard)

Site

Goulden Street, Manchester (Peelers Yard)

Date of Appointment

[]

Date of Building Contract

[]

Clause 2: (Professional indemnity insurance)

- (a) Limit of indemnity: not less than £ not less than £1,000,000 in the aggregate in respect of fire, pollution, asbestos and silica, fungi or microbes.

THIS DEED is made the _____ day of _____ 2021

PARTIES:

- (1) The **Consultant**;
- (2) The **Beneficiary**;
- (3) The **Contractor**;

WHEREAS

- (A) The Developer and the Contractor have entered into a building contract (**Building Contract**) under which the Contractor has agreed to design or complete the design of and to construct the Works.
- (B) The Contractor and the Consultant have entered into an appointment (**Appointment**) under which the Consultant has agreed to perform certain services (**Services**) and to perform certain other obligations in connection with the Development (which expression includes the Site and the works (**Works**) constructed or to be constructed on or adjacent to the Site or either of them as the case requires).

IT IS AGREED in consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Consultant acknowledges, as follows:

1. DUTY OF CARE

The Consultant warrants to the Beneficiary that it has performed and/or subject to the terms of the Appointment shall perform the Services and its other obligations under the Appointment, and that in doing so it has used and/or shall use all the reasonable skill and care and diligence to be expected of suitably qualified and experienced fire strategy consultants undertaking duties similar to the Services in relation to projects similar to the Development.

2. PROFESSIONAL INDEMNITY INSURANCE

- 2.1 The Consultant warrants to the Beneficiary that there is in force a policy of professional indemnity insurance, conforming to the relevant requirements specified in the Project Data. The Consultant agrees to maintain such insurance at all times until 12 years after the practical completion of the Development under the Building Contract (or if sooner until 12 years after the termination of its employment under the Appointment), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable, provided that any effect of the Consultant's own claims record shall be disregarded in determining whether premiums and policy terms are commercially reasonable.
- 2.2 If for any period such insurance is not available on commercially reasonable terms, the Consultant shall forthwith inform the Beneficiary, and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.
- 2.3 Whenever reasonably required to do so by the Beneficiary, the Consultant shall provide to the Beneficiary documentary evidence that the insurance required under this Deed is being maintained.

3. [SUBSTITUTION PROVISIONS]

3.1 The Consultant shall not:

3.1.1 terminate its employment;

3.1.2 treat its employment as having been terminated; or

3.1.3 suspend the performance of the Services,

under the Appointment (**Discontinue**) without giving the Beneficiary not less than 28 days' notice of the Consultant's intention to Discontinue, specifying the grounds for the discontinuance.

3.2 If the Beneficiary gives the Consultant notice requiring it to accept the instructions of the Beneficiary or its appointee under the Appointment, to the exclusion of the Contractor (**Step-in Notice**), the Consultant:

3.2.1 shall not Discontinue; and

3.2.2 shall comply with the Step-in Notice.

3.3 A Step-in Notice may be served, whether or not the Consultant has previously served notice under clause 3.1, but not after the notice period under clause 3.1 has expired.

3.4 As against the Contractor and the Beneficiary the Consultant shall be entitled and obliged to rely upon and to comply with any Step-in Notice, and shall not make any enquiry into the entitlement of the Beneficiary as against the Contractor to serve the Step-in Notice.

3.5 As from the date of service of a Step-in Notice (**Step-in Date**), the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Contractor under the Appointment, provided that this shall not affect or derogate from any right of action the Contractor may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening before the Step-in Date.

3.6 Within 21 days after the Step-in Date, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under the Appointment.

3.7 Service of a Step-in Notice does not affect the right of the Consultant to Discontinue on account of any breach of duty of the Beneficiary or its appointee after the Step-in Date.

3.8 If the employment of the Consultant under the Appointment is terminated before service of any Step-in Notice, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary shall reasonably require to reflect altered circumstances. On the execution of such new agreement, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under the Appointment.

3.9 The Beneficiary guarantees to the Consultant the performance of the obligations of any appointee of the Beneficiary nominated under clause 3.2 or 3.8.

3.10 The Contractor agrees to the provisions of this clause 3.

- 3.11 Where the Consultant has given rights similar to those contained in this clause 3 to any third party then if both the Beneficiary and any such third party serve notice the deemed order of priority shall be: XXXX]

[Note: clause 3 shall be included in the warranty in favour of the Developer and/or any Mortgagee and/or any Purchaser, if the Developer shall so require.]

4. DEEDS OF WARRANTY

- 4.1 The Consultant and the Contractor shall, as the Beneficiary may at any time or times require, each promptly execute and deliver a deed or deeds of warranty in terms of this Deed, mutatis mutandis, in favour of:

- 4.1.1 the Developer and/or the Funder and/or Purchasers; and
- 4.1.2 Tenants, but excluding clause 3 (Substitution provisions) and this clause 4.

[Note: Clause 4 is not applicable to warranties in favour of Tenants.]

5. ASSIGNMENT

- 5.1 The Beneficiary may assign all of its rights under this Deed:
- 5.1.1 to any Mortgagee and by way of re-assignment on redemption; and
- 5.1.2 by absolute assignment to any Group Company of the Beneficiary; and
- 5.1.3 by absolute assignment on two other occasions only.
- 5.2 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 5.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed, (whenever happening) by reason that such person is an assignee and not the named promisee hereunder.
- 5.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees.

6. COPYRIGHT

- 6.1 The Consultant grants to the Beneficiary an irrevocable, non-exclusive, royalty-free and freely transferrable licence to use and reproduce all documents produced by the Consultant pursuant to the Appointment and any designs contained in them (**Documents**) for any purpose connected with the Development and to grant sub-licences in terms of this licence, but copyright in the Documents shall remain vested in the Consultant.
- 6.2 The Consultant will not be liable to any party for any use of the Documents for any purposes other than those for which they are or were produced.
- 6.3 The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Consultant with full and proper copies of the Documents.]
- 6.4 The Consultant warrants to the Beneficiary that, to the best of its knowledge, the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

- 6.5 The Consultant agrees to waive any right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 80 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.

7. EXTRANEOUS RIGHTS

- 7.1 This Deed shall not negate or diminish any duty of care otherwise owed by the Consultant to the Beneficiary.
- 7.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Deed.

8. DEFENCES AND EXCLUSIONS

- 8.1 In proceedings for breach of this Deed, the Consultant may:
- 8.1.1 rely on any limit of liability or other term of the Appointment; and
- 8.1.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Contractor under the Appointment,
- in each case excluding counterclaim and set-off.
- 8.2 [The exclusion of set-off or counterclaim effected by clause 8.1 shall not apply if the Beneficiary has served a Step-in Notice under clause 3 (Substitution provisions).]

[Clause 8.2 applies only if the substitution provisions are included]

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

10. EXPIRY OF WARRANTY

No actions or proceedings shall be commenced against the Consultant under this Deed more than 12 years after the practical completion of the Development under the Building Contract (or, if earlier, more than 12 years after the employment of the Consultant under the Appointment is terminated).

11. SERVICE OF NOTICE

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

12. PROHIBITED MATERIALS

- 12.1 The Consultant must use the skill and care referred to in clause 1 not to specify for use, and not to approve the use in the Development of any materials:

- 12.1.1 which by their nature or application contravene any British Standard or EU equivalent; or
- 12.1.2 which are considered, at the time of specification, to be deleterious within the fire engineering professions in the UK.

The Consultant will immediately give notice to the Beneficiary if the Consultant becomes aware that any materials have been specified for use or approved for use in the Development otherwise than in accordance with this clause 12.

13. GOVERNING LAW AND INTERPRETATION

- 13.1 The law of this Deed is English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.
- 13.2 The Project Data are part of this Deed and the definitions given in the Project Data and in the Recitals apply to this Deed.
- 13.3 In this Deed:
 - 13.3.1 **Development** includes part of the Development;
 - 13.3.2 **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in s1159, Companies Act 2006, (as amended);
 - 13.3.3 **Funder** means a person having or acquiring a mortgage interest or charge over the Development or any part of it;
 - 13.3.4 **person** includes a firm and any entity having legal capacity;
 - 13.3.5 **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;
 - 13.3.6 **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser);
 - 13.3.7 any term importing gender shall include any gender;
 - 13.3.8 any term importing the singular includes the plural and vice versa; and
 - 13.3.9 any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Deed.
- 13.4 For the purposes of clause 1 (Duty of care), references to the Appointment include any previous appointment of the Consultant by the Contractor (whether or not in writing) to provide services of the kind mentioned in the Appointment in connection with the Development.
- 13.5 Clause headings do not affect the interpretation of this Deed.

EXECUTED as a **DEED** and delivered by **HYDROCK CONSULTANTS LIMITED** acting by two directors:

.....
Signature of director

.....
Signature of director

EXECUTED as a **DEED** by **[THE BENEFICIARY]** acting by a director in the presence of:

.....
Signature of director

Signature of witness

Print name

Address

.....

.....

Occupation

EXECUTED as a **DEED** by **MULBURY LIMITED** acting by a director in the presence of:

.....
Signature of director

Signature of witness

Print name

Address

.....

.....

Occupation

Schedule 3 Agreed form(s) of Contractor Collateral Warranty



DATED

20[•]

(1) [•] LIMITED

(2) [•] LIMITED

and

(3) [•] LIMITED

CONTRACTOR'S WARRANTY

Project Data

Date of this Deed ◆

Developer ◆ (No. ◆), registered office ◆.

Contractor ◆ (No. ◆), registered office ◆.

Beneficiary ◆ (No. ◆), registered office ◆.

Development ◆

Site ◆

Date of Construction Contract ◆

Form of Construction Contract [Design & Build]

Beneficiary's interest [Mortgagee]

[Employer Group Company]

[Management Company]

[Purchaser of [◆ forming part of] the Development]

[Tenant of [◆ forming part of] the Development]

[◆]

Clause 2: ([Professional indemnity (a) insurance) Limit of indemnity: not less than £◆,000,000.00 for any claim or claims arising out of each originating cause, provided that such limit of indemnity may be in the aggregate for each year of insurance in respect of claims for pollution, contamination and date recognition.

(b) Excess: not exceeding £◆,000.00.

Parties

- (1) The Contractor
- (2) The Beneficiary
- (3) [The Developer]

Whereas the Developer and the Contractor have entered into a construction contract (Construction Contract), under which the Contractor has agreed to design, carry out and complete the works (Works) required for the purposes of the Development (which expression includes the Site and the Works or either of them as the case requires).

It is agreed in consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Contractor acknowledges, as follows:

CLAUSE**1. Construction obligations**

- 1.1 The Contractor warrants to the Beneficiary that the Contractor has carried out and completed or will carry out and complete the Works with all due diligence, in accordance with and subject to the terms of the Construction Contract, and has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Construction Contract and (without qualification to or derogation from the foregoing) has exercised and will exercise all reasonable skill and care and diligence in and about the construction of the Works.
- 1.2 Without derogation from clause 1.1, to the extent that under the Construction Contract the Contractor takes responsibility for the design of the Works or for the selection of goods, materials, plant or equipment for incorporation in the Works the Contractor warrants that the same have been or will be designed or selected with all the reasonable skill and care of a Contractor experienced in the design of works similar in scope and content to the Works and fully in accordance with the Construction Contract.

2. [Professional indemnity insurance]

- 2.1 The Contractor warrants to the Beneficiary that there is in force a policy of professional indemnity insurance covering the liabilities of the Contractor under the Construction Contract and under this Deed for negligent design or specification, or negligent performance of other professional or managerial services, conforming to the relevant requirements specified in the Project Data. The Contractor agrees to maintain such insurance at all times until 12 years after the practical completion of the Development under the Construction Contract (or if sooner until 12 years after the termination of the employment of the Contractor under the Construction Contract), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable.
- 2.2 If for any period such insurance is not available on commercially reasonable terms, the Contractor shall forthwith inform the Beneficiary, and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Contractor to obtain.

- 2.3 Whenever reasonably required to do so by the Beneficiary, the Contractor shall provide to the Beneficiary documentary evidence that the insurance required under this Deed is being maintained.]

3. [Substitution provisions [to be included in a Funder warranty]

- 3.1 The Contractor shall not:

- (a) terminate its employment;
- (b) treat its employment as having been terminated; or
- (c) suspend the carrying out of the Works,

under the Construction Contract (Discontinue) without giving the Beneficiary not less than 28 days' notice of the Contractor's intention to Discontinue, specifying the grounds for the discontinuance.

- 3.2 If the Beneficiary gives the Contractor notice requiring it to accept the instructions of the Beneficiary or its appointee under the Construction Contract, to the exclusion of the Developer (**Step-in Notice**), the Contractor:

- (a) shall not Discontinue; and
- (b) shall comply with the Step-in Notice.

- 3.3 A Step-in Notice may be served, whether or not the Contractor has previously served notice under clause 3.1, but not after the notice period under clause 3.1 has expired.

- 3.4 As against the Developer and the Beneficiary the Contractor shall be entitled and obliged to rely upon and to comply with any Step-in Notice, and shall not make any enquiry into the entitlement of the Beneficiary as against the Developer to serve the Step-in Notice.

- 3.5 As from the date of service of a Step-in Notice (**Step-in Date**), the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Developer under the Construction Contract, provided that this shall not affect or derogate from any right of action the Developer may have against the Contractor in respect of any breach of duty of the Contractor under or in connection with the Construction Contract happening before the Step-in Notice.

- 3.6 Within 21 days after the Step-in Date, the Beneficiary shall pay to the Contractor an amount equal to the sum (if any) due and payable to the Contractor under the Construction Contract.

- 3.7 Service of a Step-in Notice does not affect the right of the Contractor to Discontinue on account of any breach of duty of the Beneficiary or its appointee after the Step-in Date.

- 3.8 If the employment of the Contractor under the Construction Contract is terminated before service of any Step-in Notice, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Contractor shall enter into a new construction contract with the Beneficiary or its appointee on the same terms as the Construction Contract but with such revisions as the Beneficiary shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Contractor an amount equal to the sum (if any) due and payable (excluding cancellation fees) to the Contractor under the Construction Contract.

- 3.9 The Beneficiary guarantees to the Contractor the performance of the obligations of any appointee of the Beneficiary nominated under clause 3.2 or 3.8.
- 3.10 If, before the service of any Step-in Notice under this Deed, any other person exercises any similar right to step into the Construction Contract to the exclusion of the Developer, in accordance with any other agreement entered into pursuant to any term of the Construction Contract, this clause 3 shall cease to have effect.¹
- 3.11 The Developer agrees to the provisions of this clause 3.]

[Clause 3 shall be included in warranties in favour of a Mortgagee and/or a Purchaser if the Developer shall so require]

4. [Deeds of warranty]

- 4.1 The Contractor shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of Purchasers and/or Tenants in the terms of this Deed, mutatis mutandis, but excluding the terms of clause 3 (Substitution provisions) and of this clause 4.
- 4.2 If the Contractor fails to execute and deliver any such deed pursuant to clause 4.1 within 7 days of the Beneficiary's written request the Beneficiary may execute such deed on the Contractor's behalf and the Contractor hereby appoints the Beneficiary as the Contractor's attorney for the purpose of executing any such deed. The Contractor agrees to ratify and confirm any act done by the Beneficiary pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4 of the Powers of Attorney Act 1971.]²

[Clause 4 shall be included in warranties in favour of Mortgagees and/or Purchasers if the Developer shall so require]

5. Assignment

- 5.1 The Beneficiary may assign all of its rights under this Deed:
- (a) to any Mortgagee and by way of re-assignment on redemption; and
 - (b) by absolute assignment to any Group Company of the Beneficiary; and
 - (c) by absolute assignment on two other occasions only.
- 5.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Deed to another trustee of the same trust.
- 5.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees, (but not so as to permit more than two assignments under clause 5.1(c)).

6. Copyright

- 6.1 The Contractor grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by or on behalf of the Contractor for the purposes of the Works and any designs contained in them

¹ Warranties must confer priority of Funder Step-in ahead of other Beneficiaries rights.

² A provision interrupting or preventing payment to the Contractor would be preferred.

(**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence but copyright in the Documents shall remain vested in the Contractor.

- 6.2 The Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced.
- 6.3 The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Contractor with full and proper copies of the Documents.
- 6.4 The Contractor warrants to the Beneficiary that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.]

7. Extraneous rights

- 7.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Contractor to the Beneficiary.
- 7.2 No approval or inspection of the Works or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Contractor arising under this Deed.

8. Defences and exclusions

- 8.1 In any claim under this Deed for breach of clause 1 (Construction obligations) there shall be available to the Contractor any defence that:
 - (a) arises from or in connection with the Construction Contract; and
 - (b) would have been available if the claim had been brought by the Developer under the Construction Contract,

excluding any set-off or counterclaim available against the Developer.

- 8.2 The Contractor shall not be entitled to rely under this Deed upon any set-off or counterclaim available against the Developer, that does not arise from or in connection with the Construction Contract.
- 8.3 [The exclusion of set-off or counterclaim effected by clause 8.1 shall not apply if the Beneficiary has served a Step-in Notice under clause 3 (Substitution provisions).]

[Clause 8.3 applies only if the substitution provisions are included]

9. Contracts (Rights of Third Parties) Act 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

10. Expiry of warranty

No proceedings shall be commenced against the Contractor under this Deed² more than 12 years after the practical completion of the Works under the Construction Contract (or, if earlier, more than 12 years after the employment of the Contractor under the Construction Contract is terminated).

11. Service of notice

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

12. Governing law and interpretation

12.1 The law of this Deed is English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.

12.2 The Project Data are part of this Deed and the definitions given in the Project Data and in the Recitals apply to this Deed.

12.3 In this Deed:

- (a) **Development** includes part of the Development;
- (b) **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in s 1159, Companies Act 2006, (as amended);
- (c) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it;
- (d) **person** includes a firm and any entity having legal capacity;
- (e) **Purchaser** includes a person having or acquiring a freehold interest in the Development or any part of it, and includes a purchaser for a capital consideration of a leasehold interest;
- (f) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser);
- (g) any term importing gender shall include any gender;
- (h) any term importing the singular includes the plural and vice versa; and
- (i) any reference to any clause or schedule is a reference to such clause or schedule of or to this Deed.

12.4 Clause headings do not form part of nor affect the interpretation of this Deed.

Executed and delivered as a deed:

EXECUTED as a **DEED** by **[CONTRACTOR]** acting by a director
and in the presence of:

.....
Signature of director

Signature of witness.....

Print name.....

Address.....

.....

.....

Occupation.....

EXECUTED as a **DEED** by **[BENEFICIARY]** acting by a director
and in the presence of:

.....
Signature of director

Signature of witness.....

Print name.....

Address.....

.....

.....

Occupation.....

EXECUTED as a **DEED** by **[DEVELOPER]** acting by a director
and in the presence of:

.....
Signature of director

Signature of witness.....

Print name.....

Address.....

.....

.....

Occupation.....

Schedule 4 Consultants insurance and Consultant's deed of collateral warranty

Part 1 Consultants

The Consultants are:

Acoustic Consultant – DBX Acoustics Limited

Architect – Tim Groom Architects Limited

Civil and Structural Engineer – Ridge & Partners LLP

Fire Engineer – Hydrock Consultants Limited

Interior Designer – Youth Studio Limited

Landscape Architect - Layer Landscape Architecture Limited

Future Serv Limited – Mechanical and Electrical Engineer

Part 2 Consultants' professional indemnity insurance

Each Consultant shall maintain professional indemnity insurance in the following amounts:

Acoustic Consultant – £5m

Architect – £10m

Civil and Structural Engineer – £10m

Fire Engineer – £1m

Interior Designer – £1m

Landscape Architect - £1m

Mechanical and Electrical Engineer - £10m

Part 3 Consultant's collateral warranty

The Parties have attached the agreed form(s) of Consultants deed of collateral warranty in favour of the Employer and in favour of a Funder, Purchaser or Tenant at Schedule 2 to this Agreement.

Part 4 Consultant's Appointments

The Parties have attached the agreed form(s) of Consultants appointment at Schedule 1 to this Contract.

Schedule 5 Key Sub-contractors, Key Sub-contractors' insurance and Key Sub-contractor's deed of collateral warranty

Part 1 Key Sub-contractors

The Key Sub-contractors are:

[]²

Part 2 Key Sub-contractors' professional indemnity insurance

Each Key Sub-contractor shall maintain professional indemnity insurance in the amount of £[]³.

Part 3 Key Sub-contractor's deed of collateral warranty

The Parties have attached the form of Key Sub-contractor's deed of collateral warranty in favour of the Employer and in favour of a Funder, Purchaser or Tenant at Schedule 6 to this Contract.

² TBC.

³ TBC.

Schedule 6 Agreed form of Subcontractor Collateral Warranty



DATED

2021

(1) [.....] **LIMITED**
as Sub-Contractor

(2) [.....] **LIMITED**
as Beneficiary

and

(3) **MULBURY HOMES LIMITED**
as Main Contractor

SUB-CONTRACTOR'S DEED OF WARRANTY

In respect of the development relating to land on the north east side of Goulden Street,
Manchester (Peelers Yard)

PROJECT DATA

Date of this Deed [•]

Developer **Peelers Yard Limited** (No. 13552246), registered office Hilton House, 26-28 Hilton Street, Manchester, M1 2EH

Main Contractor **Mulbury Homes Limited** (No. 07185858), registered office Great Oak Farm, Mag Lane, Lymm, WA13 0TF

Sub-Contractor [•] (No. [•]), registered office [•].

Beneficiary [•] (No. [•]), registered office [•].

Development and Site Development relating to land on the north east side of Goulden Street, Manchester (Peelers Yard)

Date of Main Contract [•]

Date of Sub-Contract [•]

Sub-Contract Works [•]

Beneficiary's interest [Mortgagee]

[Purchaser of [[•] forming part of] the Development]

[Tenant of [[•] forming part of] the Development]

[[•]]

Clause 3: Insurance

Professional indemnity insurance

- (a) Limit of indemnity: not less than £[X] for any claim or claims arising out of each originating cause, provided that such limit of indemnity may be in the aggregate for each year of insurance in respect of claims for pollution, contamination and date recognition.
- (b) To be maintained until 12 years after the practical completion of the whole of the Works.

Prohibited Materials

Any materials:

- (a) which by their nature or application contravene any British Standard or EU equivalent;
- (b) which contravene the recommendations of the British Council for Offices' publication Good Practice in the Selection of Construction Materials (2011); or
- (c) which are generally considered to be deleterious within the construction design professions in the UK.

PARTIES

- (1) The Sub-Contractor
- (2) The Beneficiary
- (3) The Main Contractor

WHEREAS

- (A) The Developer and the Main Contractor have entered into a construction contract (**Main Contract**), under which the Main Contractor has agreed to carry out and complete the works (**Works**) required for the purposes of the Development (which expression means the Site and the Works or either of them as the case requires).
- (B) The Main Contractor and the Sub-Contractor have entered into a sub-contract (**Sub-Contract**), under which the Sub-Contractor has agreed to design or complete the design of and to supply and erect or install the Sub-Contract Works as part of the Works.

IT IS AGREED in consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Sub-Contractor acknowledges:

1. PRIMARY OBLIGATIONS

Performance of the Sub-Contract

- 1.1 The Sub-Contractor warrants to the Beneficiary that the Sub-Contractor has carried out or will carry out and complete the Sub-Contract Works in accordance with and subject to the terms of the Sub-Contract and has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Sub-Contract and (without qualification to or derogation from the foregoing) has exercised and will exercise all reasonable skill and care and diligence in and about the performance of the Sub-Contract Works.

Design warranty

- 1.2 The Sub-Contractor warrants that all reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other professional designer) undertaking works similar in scope and character to the Sub-Contract Works has been and will be exercised in the following, to the extent of the Sub-Contractor's responsibility for the same:
 - 1.2.1 the design of the Sub-Contract Works;
 - 1.2.2 the selection of goods, materials, equipment or plant for the Sub-Contract Works; and
 - 1.2.3 the satisfaction of any performance requirement or specification of or for the Sub-Contract Works,

and for this purpose, the Sub-Contractor is responsible for any design or the selection of any goods, materials, equipment or plant, whether such design or selection is produced or made by the Sub-Contractor or by another person on the Sub-Contractor's behalf.

Prohibited materials

- 1.3 The Sub-Contractor warrants that it has not specified and shall not specify for use and has not used and shall not use in the Development any Prohibited Materials. The Sub-Contractor will immediately give notice to the Beneficiary if the Sub-Contractor becomes aware that any Prohibited Materials have been specified or used in the Development otherwise than in accordance with this clause 1.3.

2. COPYRIGHT

- 2.1 The Sub-Contractor grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Sub-Contractor under the Sub-Contract and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Sub-Contractor.
- 2.2 The Sub-Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced.
- 2.3 The Sub-Contractor warrants that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.
- 2.4 The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Sub-Contractor with full and proper copies of the Documents.
- 2.5 The Sub-Contractor agrees to waive any right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 80 of that Act as against us or any licensee or assignee of ours.

3. INSURANCE

- 3.1 The Sub-Contractor warrants that there is in force a policy of insurance covering the liabilities of the Sub-Contractor under the Sub-Contract and under this Deed in respect of the risks usually covered by such insurance, conforming to the relevant requirements specified in the Project Data.
- 3.2 The Sub-Contractor agrees to maintain such insurance continuously in place for the relevant period specified in the Project Data, provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable, provided that any effect of the Sub-Contractor's own claims record shall be disregarded in determining whether premiums and policy terms are commercially reasonable.
- 3.3 Whenever required to do so, the Sub-Contractor shall provide to the Beneficiary documentary evidence that such insurance is being maintained.

4. [SUBSTITUTION PROVISIONS]

- 4.1 If the employment of the Main Contractor under the Main Contract is terminated, the Beneficiary may within 28 days after the date of termination give notice requiring the Sub-Contractor to enter into a new contract (**New Contract**) with the Beneficiary or its appointee on the same terms as the Sub-Contract, executed as a deed, but with such revisions as the Beneficiary may reasonably

require to reflect altered circumstances, for the continuation and completion of the Sub-Contract Works; and the Sub-Contractor shall comply with such notice.

- 4.2 Upon the execution of the New Contract the Beneficiary shall pay to the Sub-Contractor a sum equal to the amount due to the Sub-Contractor under the Sub-Contract (less any retention, which shall be payable under the New Contract as if the work or materials to which such retention relates had been supplied under the New Contract).
- 4.3 Upon the execution of the New Contract, the Beneficiary shall pay the Sub-Contractor (to the extent not included in the sum payable under clause 4.2) the amount of any:
 - 4.3.1 demobilisation costs incurred in consequence of the termination of the Main Contract; and
 - 4.3.2 remobilisation costs incurred in consequence of the Beneficiary's notice given under clause 4.1, to the extent reasonably or necessarily incurred by the Sub-Contractor.
- 4.4 Where the Sub-Contractor has given rights similar to those contained in this clause 4 to any third party then if both the Beneficiary and any such third party serve notice the deemed order of priority shall be: the Developer; [XXXX] and any other party to whom this clause 4 applies.

[Note: Clause 4 shall be included in the warranties in favour of any Mortgagee and/or any Purchaser, if the Developer shall so require.]

5. [DEEDS OF WARRANTY]

- 5.1 The Sub-Contractor and the Contractor shall, as the Beneficiary may at any time or times require, each promptly execute and deliver a deed or deeds of warranty in terms of this Deed, mutatis mutandis, in favour of:
 - (a) the Developer and/or Mortgagee and/or Purchasers; and
 - (b) Tenants, but excluding clause 4 (Substitution provisions) and this clause 5.
- 5.2 Any New Contract under clause 4 (Substitution provisions) shall incorporate the terms of this clause 5.

[Note: Clause 5 shall be included in warranties in favour of the Developer and/or Owner and/or any Mortgagee and/or any Purchaser]

6. ASSIGNMENT

- 6.1 The Beneficiary may assign all of its rights under this Deed:
 - 6.1.1 to any Mortgagee and by way of re-assignment on redemption; and
 - 6.1.2 by absolute assignment to any Group Company of the Beneficiary; and
 - 6.1.3 by absolute assignment on two other occasions only.

6.2 In this Deed references to the Beneficiary include where the context admits its permitted assignees.

6.3 The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 6.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

7. DEFENCES AND EXCLUSIONS

7.1 In proceedings for breach of this Deed, the Sub-Contractor may:

7.1.1 rely on any limit of liability or other term of the Sub-Contract; and

7.1.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Contractor, under the Sub-Contract,

in each case excluding counterclaim and set-off.

8. EXTRANEOUS RIGHTS

8.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor to the Beneficiary.

8.2 No approval or inspection of the Development or of any designs or specifications nor the testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Sub-Contractor arising under this Deed.

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

10. EXPIRY OF WARRANTY

No proceedings shall be commenced against the Sub-Contractor under this Deed more than 12 years after the practical completion of the Works under the Main Contract (or, if earlier, more than 12 years after the employment of the Sub-Contractor under the Sub-Contract is terminated).

11. SERVICE OF NOTICE

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

12. GOVERNING LAW AND INTERPRETATION

12.1 The law of this Deed is English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.

12.2 The Project Data are part of this Deed and the definitions given in the Project Data and in the Recitals apply to this Deed.

12.3 In this Deed:

12.3.1 **Development** includes part of the Development;

12.3.2 **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in s1159 Companies Act 2006, (as amended);

12.3.3 **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it;

12.3.4 **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;

12.3.5 **person** includes a firm and any entity having legal capacity;

12.3.6 **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser);

12.3.7 any term importing gender shall include any gender;

12.3.8 any term importing the singular includes the plural and vice versa; and

12.3.9 any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Deed.

12.4 Clause headings are of no effect.

Executed and delivered as a deed:

EXECUTED as a **DEED** and delivered by **[THE SUB-CONTRACTOR]** acting by **[FULL NAME OF DIRECTOR]**, a director in the presence of:

.....
Signature of director

Signature of witness

Print name

Address

.....

.....

Occupation

EXECUTED as a **DEED** and delivered by **[THE BENEFICIARY]** acting by **[FULL NAME OF DIRECTOR]**, a director in the presence of:

.....
Signature of director

Signature of witness

Print name

Address

.....

.....

Occupation

EXECUTED as a **DEED** by **MULBURY HOMES LIMITED**
acting by a director in the presence of:

.....
Signature of director

Signature of witness

Print name

Address

.....

.....

Occupation

ANNEX A Contract Particulars

The Parties have initialled and annexed the Contract Particulars:

[JCT2016 DB Contract Particulars – Peelers Yard FINAL]

JCT 2016 DB**CONTRACT PARTICULARS****Part 1: General**

Clause etc.	Subject	
Fourth Recital and clause 4.5	Construction Industry Scheme (CIS)	Employer at the Base Date is a 'contractor' for the purposes of the CIS
Fifth Recital	Description of Sections (if any) <i>(If not shown or described in the Employer's Requirements, state the reference numbers and dates or other identifiers of documents in which they are shown.)</i>	Not applicable
Sixth Recital	Framework Agreement (if applicable) <i>(State date, title and parties.)</i>	Not applicable
Seventh Recital and Part 1 of Schedule 2	Supplemental Provisions – Part 1 <i>(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision does not apply.)</i>	
	Named Sub-Contractors	Supplemental Provision 1 does not apply
	Valuation of Changes - Contractor's estimates	Supplemental Provision 2 applies
	Loss and expense – Contractor's estimates	Supplemental Provision 3 applies
Seventh Recital and Part 2 of Schedule 2	Supplemental Provisions – Part 2 <i>(Where neither entry against one of Supplemental Provisions 4 to 10 below is deleted, that Supplemental Provision applies.)</i>	
	Acceleration Quotation	Supplemental Provision 4 applies
	Collaborative working	Supplemental Provision 5 does not apply
	Health and safety	Supplemental Provision 6 applies
	Cost savings and value	Supplemental Provision 7

[JCT2016 DB Contract Particulars – Peelers Yard FINAL]

Clause etc.	Subject	
	improvements	applies
	Sustainable development and environmental considerations	Supplemental Provision 8 applies
	Performance Indicators and monitoring	Supplemental Provision 9 does not apply
	Notification and negotiation of disputes	Supplemental Provision 10 applies
	Where Supplemental Provision 10 applies, the respective nominees of the Parties are	Employer's nominee Stephen Oster, Peelers Yard Limited Contractor's nominee Nick Leggett, Mulbury Homes Limited or such replacement as each Party may notify to the other from time to time
Article 4	Employer's Requirements <i>(State reference numbers and dates or other identifiers of the relevant documents.)</i>	As per the contract documents Annex B - Employer's Requirements;
Article 4	Contractor's Proposal <i>(State reference numbers and dates or other identifiers of the relevant documents.)</i>	As per the contract documents Annex C - Contractor's Proposals;
Article 4	Contract Sum Analysis <i>(State reference numbers and dates or other identifiers of documents in which these are contained.)</i>	As per the contract documents Annex D - Contract Sum Analysis;
Article 8	Arbitration <i>(If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it <u>must</u> be stated that Article 8 and clauses 9.3 to 9.8 apply.)</i>	Article 8 and clauses 9.3 to 9.8 (Arbitration) do not apply
1.1	Base Date	December 2021
1.1	BIM Protocol (where applicable) <i>(State title, edition, date or other identifiers of the relevant documents.)</i>	Not applicable.
1.1	Date for Completion of the	20 November 2023

[JCT2016 DB Contract Particulars – Peelers Yard FINAL]

Clause etc.	Subject	
	Works <i>(where completion by Sections does not apply)</i>	
	Sections: Dates for Completion of Sections	N/A
1.7	Addresses for service of notices by the Parties <i>(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)</i>	Employer: Peelers Yard Limited, Hilton House, 26-28 Hilton Street, Manchester, United Kingdom, M1 2EH Contractor: Great Oak Farm, Mag Lane, Lymm, Cheshire, WA13 0TF
2.3	Date of Possession of the site <i>(where possession by Sections does not apply)</i>	10 January 2022
	Sections: Dates of Possession of Sections	N/A
2.4 and 2.26.3	Deferment of possession of the site <i>(where possession by Sections does not apply)</i>	Clause 2.4 applies
	Sections: deferment of possession of Sections	N/A
2.17.3	Limit of Contractor's liability for loss of use etc (if any)	Clause 2.17.3 does not apply
2.29.2	Liquidated damages <i>(where completion by Sections does not apply)</i>	£17,500 per ~~day~~ calendar week or pro-rata for part of a week
	Sections: rate of liquidated damages for each Section	N/A
2.34	Sections: Section Sums	N/A
2.35	Rectification Period <i>(where completion by Sections does not apply)</i> <i>(If no other period is stated, the period is 6 months.)</i>	24 Months
	Sections: Rectification Periods <i>(If no other period is stated, the period is 6 months.)</i>	N/A

[JCT2016 DB Contract Particulars – Peelers Yard FINAL]

Clause etc.	Subject	
4.2, 4.12 and 4.13	Fluctuations Provision (unless another option or entry is selected, JCT Fluctuations Option A applies) JCT Fluctuations Option A (paragraph A.12) or Option B (paragraph B.13 – percentage addition JCT Fluctuations Option C (paragraph C.1.2) – Formula Rules (Unless Part II is stated to apply, Part I applies.)	Fluctuations Provisions do not apply.
4.6	Advance payment (Not applicable where the Employer is a Local Authority.)	Clause 4.6 does not apply
4.6	Advance Payment Bond (Not applicable where the Employer is a Local Authority) (Where an advance payment is to be made, an advance payment bond is required unless stated that it is not required.)	An advance payment bond is not
4.7.1	Method of payment - alternatives (If no Alternative is selected, Alternative B applies.)	periodically in accordance with Alternative B (clause 4.13)
4.7.2	Interim Payments – Interim	The first Interim Valuation Date

[JCT2016 DB Contract Particulars – Peelers Yard FINAL]

Clause etc.	Subject	
	Valuation Dates (The dates apply for each Alternative; if no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)	is 10 January 2022 And thereafter the same date in each month or the nearest Business Day in that month
4.15.4	Listed Items - uniquely identified <i>(Delete the entry if no bond is required)</i>	Clause 4.15.4 does not apply
4.15.5	Listed Items - not uniquely identified <i>(Delete the entry if clause 4.15.5 does not apply.)</i>	Clause 4.15.5 does not apply
4.17	Contractor's Retention Bond <i>(Not applicable where the Employer is a Local Authority)</i> <i>(Not applicable unless stated to apply and relevant particulars are given below)</i>	Clause 4.17 does not apply
4.18.1	Retention Percentage <i>(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert "Nil" or "0".)</i>	3 per cent
5.5	Daywork	Not applicable.
6.4.1	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	£10,000,000 <i>for any one occurrence or series of occurrences arising out of one event</i>
6.5.1	Insurance - liability of Employer	Minimum amount of indemnity <i>for any one occurrence or series of occurrences arising out of one event</i> £10,000,000.00
6.7 and Schedule 3	Works Insurance – Insurance Option applicable:	Schedule 3: Insurance Option C applies

[JCT2016 DB Contract Particulars – Peelers Yard FINAL]

Clause etc.	Subject	
	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i> Where Insurance Option C applies paragraph C.1 <i>(unless otherwise stated, paragraph C.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)</i>	15 per cent applies (the 'C.1 Replacement Schedule')
6.10 and Schedule 3	Terrorism Cover – details of the required cover <i>(Unless otherwise stated, Pool Re Cover is required.)</i>	are set out in the following document(s) N/A
6.15	Professional Indemnity insurance Level of cover <i>(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)</i>	Amount of indemnity required <i>relates to claims or series of claims arising out of one event</i>
	<i>(If no amount is stated, insurance under clause 6.11 shall not be required.)</i>	and is £10,000,000
	Sub-limits within the overall level of cover Cover for pollution and contamination claims <i>(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)</i> Cover for asbestos claims <i>(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)</i> Cover for fungal mould claims	is not required is not required is not required

[JCT2016 DB Contract Particulars – Peelers Yard FINAL]

Clause etc.	Subject	
	Expiry of required period of Professional Indemnity insurance is <i>(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works.)</i>	12 years
6.17	Joint Fire Code	The Joint Fire Code does apply
	If the Joint Fire Code applies, state whether the insurer under Insurance Option A, B or C (paragraph C.2) has specified that the Works are a "Large Project":	N/A
6.20	Joint Fire Code - amendments/revisions <i>(The cost shall be borne by the Contractor unless otherwise stated.)</i>	
7.2	Assignment/grant by Employer of rights under clause 7.2 <i>(If neither entry is deleted, clause 7.2 applies.)</i>	Clause 7.2 does not apply
	Sections: rights under clause 7.2 <i>(If clause 7.2 applies, amend the entry if rights under that clause are to apply to certain Sections only.)</i>	Clause 7.2 does not apply
7.3.1	Performance bond or guarantee from bank or other approved surety <i>(if this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)</i> The required form of the bond or guarantee is set out in Initial value Period of validity – in not specified in the required form, the expiry date of the performance bond or guarantee is to be <i>(if no entry is selected, the date shall be</i>	is not required

[JCT2016 DB Contract Particulars – Peelers Yard FINAL]

Clause etc.	Subject	
	the date of practical completion of the Works). Reduction in value – if not specified in the required form and if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is (if no other percentage is stated, it shall be per cent.)	
7.3.2	Guarantee from the Contractor's parent company Parent company's name and registration number The required form of guarantee is set out in	is not required N/A N/A
7.4	Third Party Rights and Collateral Warranties – details of the requirements for the grant by the Contractor and sub-contractors of P&T Rights, Funder Rights and/or (in the case of sub-contractors) Employer Rights in respect of the Works, either as third party rights or by collateral warranties ('Rights Particulars') are set out in the following document (State reference number and date or other identifier of the relevant document.)	Not applicable.
8.9.2	Period of suspension (If none is stated, the period is 2 months.)	2 months
8.11.1.1 to 8.11.1.6	Period of suspension (If none is stated, the period is 2 months.)	2 months

[JCT2016 DB Contract Particulars – Peelers Yard FINAL]

Clause etc.	Subject	
9.2.1	Adjudication	The Adjudicator is as proposed by the Nominating Body
	Nominating body - where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) <i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)</i>	Technology and Construction Solicitors Association
9.4.1	Arbitration – appointor of Arbitrator (and of any replacement) <i>(If no appointor is stated, the appointor shall be the President or a Vice-President of the Royal Institute of British Architects.)</i>	Not applicable

ANNEX B Employer's Requirements

The Employer's Requirements which are set out in the documents agreed by the parties and identified as such in the DropBox folders at the link below:

<https://www.dropbox.com/sh/iv2u28k1579ni1l/AACzkQfhxYKYlvLA2xwdjomWa?dl=0>

copies of which are appended to the hard copy of this document in the form of a USB Drive.

ANNEX C Contractor's Proposals

The Contractor's Proposal which are set out in the documents agreed by the parties and identified as such in the DropBox folders at the link below:

<https://www.dropbox.com/sh/iv2u28k1579ni1l/AACzkQfhxYKYlvLA2xwdjomWa?dl=0>

copies of which are appended to the hard copy of this document in the form of a USB Drive.

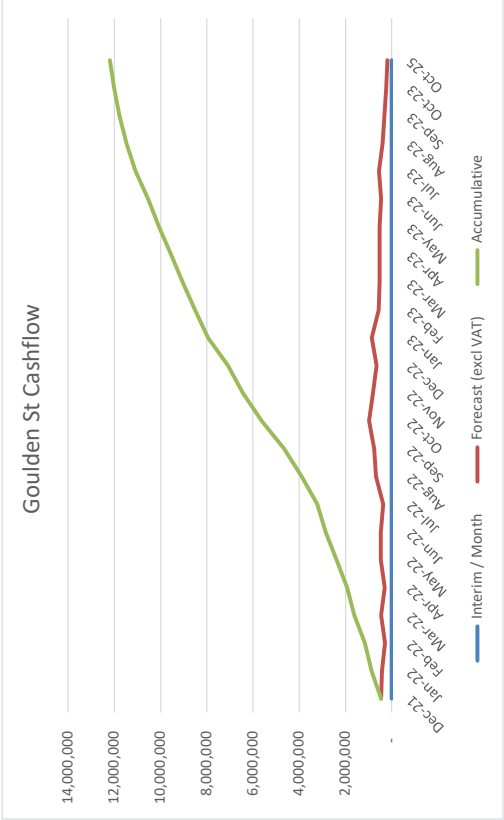
ANNEX D Contract Sum Analysis

The Parties have initialled and annexed the Contract Sum Analysis:

GOULDEN STREET - CASHFLOW PROJECTION

	Interim / Month	Forecast (excl VAT)	Accumulative	VAT	VAT Accumulative
Enabling Works - Phase 1					
Dec-21	1	460,422	460,422	306,429	3,064
Jan-22	2	414,799	875,220	276,066	5,825
	Subtotal	875,220	875,220	5,825	5,825

Contract Works - Phase 2					
Feb-22	3	281,403	1,156,624	1,872,85	7,698
Mar-22	4	460,378	1,617,002	3,064,01	10,762
Apr-22	5	301,025	1,918,028	2,003,45	12,765
May-22	6	470,347	2,388,374	3,130,35	15,896
Jun-22	7	471,482	2,859,856	3,137,90	19,034
Jul-22	8	358,932	3,218,788	2,388,84	21,422
Aug-22	9	674,654	3,893,442	4,490,10	25,912
Sep-22	10	760,152	4,653,594	5,059,13	30,972
Oct-22	11	978,249	5,631,843	6,510,64	37,482
Nov-22	12	807,492	6,439,334	5,374,19	42,856
Dec-22	13	648,402	7,087,737	4,315,38	47,172
Jan-23	14	861,138	7,948,875	5,731,22	52,903
Feb-23	15	560,200	8,509,075	3,728,36	56,631
Mar-23	16	526,198	9,035,272	3,502,06	60,133
Apr-23	17	521,071	9,556,344	3,467,94	63,601
May-23	18	519,096	10,075,440	3,454,80	67,056
Jun-23	19	455,970	10,531,409	3,034,66	70,091
Jul-23	20	556,360	11,087,769	3,702,80	73,794
Aug-23	21	388,034	11,475,803	2,582,52	76,376
Sep-23	22	308,265	11,784,068	2,051,63	78,428
Oct-23	23	232,932	12,017,000	1,550,26	79,978
Oct-25	24	183,000	12,200,000	1,218,00	81,196
	Total	12,200,000	12,200,000	81,196	-



Financial Summary
Goulden St, Manchester



FINAL (DRAFT)

			Residential	6265	m²		Base Date : 3rd Quarter 2021
				67,436	ft2		
Ref.	Element		£	£/m²		£/ft²	Notes
001	Facilitating/Enabling/Restoration Works		£846,210	£135		£13	
002	Substructure		£768,392	£123		£11	
003	Frame and Upper Floors		£1,939,133	£310		£29	
004	Roof		£315,715	£50		£5	
005	Stairs		£76,000	£12		£1	
006	External Walls, Windows and Doors		£1,078,190	£172		£16	
007	Internal Partitions and Doors		£415,115	£66		£6	
008	Internal Finishes		£940,523	£150		£14	
009	Fixtures, Fittings & Furniture		£461,700	£74		£7	
010	Mechanical and Electrical Services		£2,103,354	£336		£31	
011	External works		£192,600	£31		£3	
012	External Services		£155,000	£25		£2	
Total Nett Building Works Cost			£9,291,932	£1,458		£135	
	Main Contractor On Costs		-				
013	Main Contractor Preliminaries		£1,634,074	£261		£24	
014	Main Contractor's Pre-Construction Fees	0.0%	-			£0	
015	Main Contractor's Design Fees		£522,565	£83		£8	as separate schedule
016	Main Contractor Overheads and Profit	5%	£572,429	£91		£8	
Sub-Total			£12,021,000	£1,894		£176	
	Contingency		-				
017	Design Development		£0	£0		£0	
018	Construction		£0	£0		£0	
Sub-Total			£12,021,000	£1,894		£176	
	Contractors Contingency						
019	Building Contingency		£97,804	£16		£1	
020	Inflation During Construction Period		£0	£0		£0	
TOTAL OUT TURN PROJECT COST			£12,118,804	£1,910		£177	
021	VAT Assessment		£81,196				Commercial at 3.35% GIA at 20%
TOTAL OUT TURN PROJECT COST (incl VAT Assessment)			£12,200,000	£0		£0	
Exclusions & Qualifications							
1	Excludes wardrobes						
2	Excludes loose furniture						
3	Excludes fit out to commercial unit, including toilet area (shell and core only - fit out by tenant)						
4							
5							

Mulbury Group Limited**Preliminaries**

Contract Name
Contract Number

Goulden Street, Manchester
C895

Total Prelims Value

£ 1,634,073.88

Construction Period:

Contract Period

85

weeks

		Tender Allowance		Value/Week	Total
Site Supervision and Welfare Personnel					
Up Front Staffing Costs (PRE-CONTRACT)		15	100%	£ 1,850.00	£ 27,750.00
Remediation Works / Demo:					
Site Manager		incl		£ -	
Engineer		incl		£ -	
Main Works:					
Project Manager		88	100%	£ 1,850.00	£ 162,800.00
Site Manager		88	100%	£ 1,200.00	£ 105,600.00
Engineer		20	100%	£ 950.00	£ 19,000.00
Asst Site Manager		88	100%	£ 800.00	£ 70,400.00
Finishes Foreman		20	100%	£ 1,000.00	£ 20,000.00
Health and Safety Manager		0	20%	£ 1,000.00	£ -
Site Co-Ordinator / Banksman		50	100%	£ 850.00	£ 42,500.00
Welfare/Site Labour Nr1		88	100%	£ 650.00	£ 57,200.00
Welfare/Site Labour Nr2		50	100%	£ 650.00	£ 32,500.00
Welfare/Site Labour Nr3		50	100%	£ 650.00	£ 32,500.00
Welfare/Site Labour Nr4		20	100%	£ 650.00	£ 13,000.00
Welfare/Site Labour Nr5		20	100%	£ 650.00	£ 13,000.00
Agency Labour					
Forklift Driver		60	100%	£ 750.00	£ 45,000.00
Forklift Driver 2					
Site OVERHEADS:					
Design Manager				£ -	£ -
Contracts Manager				£ -	£ -
Senior Quantity Surveyor				£ -	£ -
Buying				£ -	£ -
Security					
Cameras		85		£ 350.00	£ 29,750.00
Camera Set-up					
Manned Security (6pm to midnight) (out of hours)		20		£ 710.00	£ 14,200.00
Site access - turnstiles/biometric		85		£ 300.00	£ 25,500.00
Site Accommodation/Welfare Facilities					
OFFICES - incl stairs Single Unit (double)		95		£ 125.00	£ 11,875.00
OFFICES - incl stairs Single Unit		85		£ 60.00	£ 5,100.00
OASIS Unit with integral Generator & Fuel					
Water Bowsers / Tanks / Empty Tank		95		£ 50.00	£ 4,750.00
Office furniture packs		95		£ 40.00	£ 3,800.00
CANTEEN/DRYING/WC ROOMS					
Welfare WC Mess		95		£ 95.00	£ 9,025.00
Storage Containers (2nr)		95		£ 25.00	£ 2,375.00
MISCELLANEOUS					
Delivery & Collection / Set-Up		2		£ 1,015.00	£ 2,030.00
Connection To Drain		1		£ 750.00	£ 750.00
Temporary Compound Areas/Hstands					
Compound Set Up		1		£ 5,000.00	£ 5,000.00
Miscellaneous / Other					
Material Hardstanding areas.		1		£ 5,000.00	£ 5,000.00
Temporary Service Charges To Site Accommodation					
UU Water Standard Connection Charge		1		£ 950.00	£ 950.00
Temporary Plumbing Connections		1		£ 1,250.00	£ 1,250.00
Water Consumption		1		£ 1,500.00	£ 1,500.00
Electric Connection Charge		1		£ 1,950.00	£ 1,950.00
Cabin Wiring		1		£ -	
Electric Consumption		85		£ 55.38	£ 4,706.88
I.T. Services					
Phone Installation		1		£ 195.00	£ 195.00
Line Rental		85		£ 15.00	£ 1,275.00
Calls		85		£ 25.00	£ 2,125.00
Broadband line rental		85		£ 55.00	£ 4,675.00
Photocopier Contribution		85		£ 19.50	£ 1,657.50
Paper & Sundries		85		£ 9.50	£ 807.50
Temporary Electric & Lighting Provision					
Temporary Electrics Allowance		1		£ 45,000.00	£ 45,000.00
Temporary Connection Costs For Generators		1		£ 1,500.00	£ 1,500.00
Bunded Fuel Tank		85		£ 55.00	£ 4,675.00

