

**Dated**

**2015**

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**THE MAYOR AND BURGESSES OF THE LONDON  
BOROUGH OF BARNET**

**(EMPLOYER)**

**-and-**

**[ ] LIMITED**

**(CONTRACTOR)**

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**Pre-Construction Services Agreement in relation to  
[ ]  
Incorporating the conditions of the JCT Pre-Construction  
Services Agreement 2011**

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**BETWEEN**

- (1) **The Mayor and Burgesses of the London Borough** of Barnet of Building 4, North London Business Park, Oakleigh Road South, London, N11 1NP (**Employer**); and
  
- (2) [ ] **Limited** (company registered number [number]) and whose registered office is at [address] (**Contractor**)

**RECITALS**

**WHEREAS**

First the Employer wishes to have the following work carried out:

[ ]

at

[ ]

("the Project"), as described in greater detail in the document(s) identified in the Particulars, that work to be carried out under the main contract ("the Main Contract") provisions details of which are also given or referred to in the Particulars in accordance with the JCT Pre-Construction Services Agreement (2011 edition) and including Sections 1 to 10 and the Annexes thereto subject to the further amendments set out in Appendix 1 to this agreement;

Second the Employer's Agent for the pre-construction phase of the Project ("the Pre-Construction Period") is

[ ]

of

[ ]

or such other person as the Employer shall nominate and notify to the Contractor;

Third prior to the execution of this Agreement, the Contractor has submitted to the Employer a first stage tender/the initial proposal document(s) identified in the Particulars, on the basis of which the Employer has requested that, for the fee specified in **Annex A ("the Fee")** and other payments in accordance with this Agreement, the Contractor should during the Pre-Construction Period provide the pre-construction services listed in **Annex B**;

Fourth it is intended that work on the Construction Phase of the Project shall commence on site on [ ] ("**the Date of Possession**") with a duration initially estimated at [ ] weeks and that for the purposes Main Contract, not later than [ ] weeks prior to the Date of Possession:

- the Contractor should submit his Second Stage Tender and, where applicable, the Contractor's Proposals, and
- the Contract Sum should be agreed between the Parties

in conformity with the requirements (the "**Second Stage Tender Requirements**") identified in the Particulars;

## APPENDIX 1

### Schedule of Amendments to the JCT (2011) Pre-Construction Services Agreement

#### SECTION 1 – Definitions and Interpretation

##### Definitions

1.1 In the definition section, add at the following definitions at the appropriate alphabetical point:

""**Consultants**" means:

- [ ] as architect;
- [ ] as mechanical and electrical engineer;
- [ ] as structural engineer;
- [ ] as fire engineer; and
- [ ] as landscape architect"<sup>1</sup>

""**Notice to Proceed**" means a notice issued by the Employer to the Contractor stating its intention to proceed with the construction of the Works;"

#### SECTION 3 – Employer's General Obligations

##### Notice to Proceed

3.4 INSERT new clause 3.4:

"3.4.1 The Employer shall have sole discretion to decide whether it wishes to proceed with the Project.

3.4.2 If the Employer wishes to proceed with the Project, it shall issue a Notice to Proceed to the Contractor, attaching the Main Contract.

3.4.3 Upon receipt of a Notice to Proceed in respect of the Project, the Contractor shall:

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<sup>1</sup> To be tailored to the Contractor's design team

- (a) execute the Main Contract (in a form to be agreed between the parties) in respect of the Project and return the executed Main Contract to the Employer;
- (b) commence, carry out and complete the Project in accordance with the Main Contract;  
and
- (c) comply in all respects with the Building Contract.

3.4.4 The parties acknowledge and agree that unless the Employer has issued a Notice to Proceed the Employer shall be under no obligation to the Contractor other than as set out in this agreement (including being under no obligation with respect to any tender, further contract or other appointment to carry out part or all of the Project) and the Contractor shall have no claim against the Employer for:

- (a) loss of profit, loss of contract, loss of business, loss of chance or other similar loss;  
and/or
- (b) any indirect or consequential loss."

### **Employer's limitation of liability**

3.5 INSERT new clause 3.5:

"3.5 For the avoidance of doubt, the Employer's maximum liability under this agreement, however that liability arises (including a liability arising by breach of contract, arising by tort, including the tort of negligence, or arising by breach of statutory duty), shall be limited to the Fee provided that this clause 3.5 shall not exclude or limit any liability of the Employer for death or personal injury caused by the Employer's negligence."

## **SECTION 4 – Representatives and Contractor's Key Personnel**

### **Contractor's Representative and the Contractor's Key Personnel - changes**

4.2.1 In line 2, after "Key Personnel" INSERT the following text:

"or any of the Consultants"

4.2.2 In line 1 after "Contractor's Personnel" INSERT the following text:

"or any of the Consultants"

### **Removal and replacement of Contractor appointees**

4.3 In line 2, after "Key Personnel" INSERT the following text:

"or any of the Consultants"

## **SECTION 7 - Insurance**

### **Professional Indemnity and Public Liability insurance**

7.1A INSERT new clause 7.1A:

"7.1A The Contractor shall during the Pre-Construction Period ensure that the Consultants maintain with reputable insurers that have a place of business in the United Kingdom:

- (a) Professional Indemnity insurance with limits of indemnity of the types and in amounts not less than those stated in the Particulars; and
- (b) Public Liability insurance in respect of death and personal injury or damage to property in a sum not less than the amount stated in the Particulars for any one occurrence or series of occurrences arising out of one event,

provided in the case of any renewal of Professional indemnity Insurance that it remains available at commercially reasonable rates."

## **SECTION 8 – Use of Contractor's Information, Confidentiality etc.**

8.1 DELETE clause 8.1 and SUBSTITUTE:

"8.1.1 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other documents and information prepared by or on behalf of the Contractor in connection with the Pre-Construction Services (together referred to in this Clause 8.1.1 as "**the Documents**") shall remain vested in the Contractor but the Contractor hereby grants to the Employer and its appointees an irrevocable non terminable and royalty free licence to copy and use the Documents and to reproduce the designs and contents of them for any purpose relating to the Pre-Construction Services or the Project including but without limitation the construction, completion, maintenance, letting, promotion, advertisement, reinstatement and

repair of the Project. Such licence shall enable the Employer and its appointees to copy and use the Documents for any extension of the Project but shall not include a licence to reproduce the designs contained in them for any extension of the Project. The Employer and its appointees shall be entitled to assign the licence or grant sub-licences to any persons without the consent of the Contractor being required. The Contractor shall not be liable for any such use by the Employer or its appointees of any of the Documents for any purpose other than that for which the Documents were prepared or provided by the Contractor.

8.1.2 The licence referred to in clause 8.1.1 shall include the right to grant sub-licences and shall continue in force notwithstanding the expiry or termination of the Contractor's employment under this Agreement.

8.1.3 As contemplated by the Copyright Act 1956 and/or the Copyright, Designs and Patents Act 1988:

(a) to the extent that the Contractor is author of the Documents the Contractor waives; and

(b) to the extent that the Documents are prepared by others on behalf of the Contractor, the Contractor shall procure that such authors waive the rights as against the Employer, its successors in title, assignees and licensees to the extent that the exercise of such rights would prevent or impede the reproduction and use of the Documents and the designs contained in them for the purposes referred to in clause 2.9.1 hereto.

8.1.4 The Contractor shall, upon the written request of the Employer (but subject to reimbursement of the Contractor's reasonable photocopying charges) provide to the Employer and its appointees a copy of the Documents and such other information in relation to the Works as the Contractor can reasonably supply. The Contractor shall at any time on request allow the Employer and its appointee's access to the Documents.

8.1.5 The Employer grants to the Contractor a non-exclusive royalty free licence (or, as the case may be sub-licence) to make use of such documents and designs and other material produced by any consultant appointed by the Employer for the purpose of performing the Pre-Construction Services."

## **SECTION 9 – Assignment & Novation**

### **Restrictions on assignment**

9.1 DELETE Clause 9.1 and SUBSTITUTE:

"9.1.1 The Employer may at any time assign and/or charge the benefit of this agreement and shall give written notice of such assignment to the Contractor. The Contractor shall not assign and/or charge the benefit of this agreement without the prior written consent of the Employer.

9.1.2 The Contractor shall not be entitled to contend that any person to whom this agreement is assigned or novated shall be precluded from recovering under this agreement any loss incurred (whenever happening) by reason that such person is an assignee and not a named promisee hereunder."

### **Novation**

9.2 DELETE Clause 9.2 and SUBSTITUTE:

"9.2 In the event that the Employer decides not to issue a Notice to Proceed the Contractor shall, promptly on notice from the Employer given in accordance with Clause 1.4.2, ensure that each Consultant enters into a novation agreement with the Employer in the form of novation agreement specified in the Particulars or otherwise agreed."

### **Collateral Warranties**

9.3 INSERT new Clause 9.3:

"9.3 Within 14 days from a request by the Employer, the Contractor shall ensure that each of the Consultants shall provide collateral warranties in favour of the Employer. Such warranty shall be in the form of that attached to the Main Contract subject to amendment to refer to this agreement in place of the Main Contract."



## THE PARTICULARS

<p><b>Documents and Listings</b></p> <p>The following terms used in the Agreement refer to (or are defined by) the following documents and listings (as altered and updated from time to time in accordance with this Agreement).</p> <p><i>(Where the relevant document(s) or listing(s) form an Annex to this Agreement insert a reference to that Annex; in other cases, give the document title, reference number and date or other identifier (or where convenient and practicable, insert details here).)</i></p>		
<i>Clause etc.</i>	<i>Term/subject</i>	<i>Document/Listing</i>
First Recital	Project (detailed description)	[ ]
First Recital	Main Contract (type, conditions, amendments and other details of the proposed contract)	The JCT Design & Build Contract (2011) incorporating Amendment 1 dated March 2015 (CDM Regulations) and as further amended by schedule of special conditions as appended to this Agreement at <b>Annex C</b>
Third Recital	First Stage tender/Contractor's initial proposals	See document reference: [ ] appended to this Agreement at <b>Annex D</b>
Fourth Recital	Second Stage Tender Requirements (identify the Instructions to Tenderers and/or other relevant document(s).)	See document reference: [ ] appended to this Agreement at <b>Annex B</b>
2.1	Cost Plan	See document reference: [ ] appended to this Agreement at <b>Annex E</b>
2.1	Employer's Requirements	See document reference: [ ] appended to this Agreement at <b>Annex F</b>
2.1	Programme	See project programme appended to this Agreement at <b>Annex B</b>
2.1	Project Team	See Project Contact List – appended to this Agreement at

		<b>Annex G</b>
2.1	Third Party Agreements	[to confirm if applicable]
2.1.2	Contractor's Key Personnel  [Name]	[Function]
2.1.2	Contractor's Representative (as at the date of this Agreement)	[ ]
<b>Insurances</b>		
7.1.1	Professional Indemnity Insurance	£10,000,000 any one claim or series of claims arising out of one event
7.1.2	Public Liability insurance	Is required with a limit of indemnity of £[20,000,000]
7.1A	Professional Indemnity insurance	[to include levels in respect of the Consultants]
<b>Assignment and Novation</b>		
9.2	The form of Novation	Novation Agreement CIC/NovAgr first edition 2004 – published by the Construction industry
<b>Suspension</b>		
10.2	Period (if other than 6 months)	6 months
<b>Adjudication</b>		
10.7	Adjudication	The Adjudicator shall be nominated by the Technology & Construction Solicitor's Association

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

Executed as a Deed by the **Employer**

by affixing hereto the common seal of

**The Mayor and Burgesses of the London**

**Borough of Barnet**

In the presence of:

\_\_\_\_\_

Signature

Executed as a Deed by the **Contractor**

acting by a Director and the Company Secretary/Director

of [            ] **Limited**

Director: \_\_\_\_\_

Signature

Director/

Company Secretary: \_\_\_\_\_

Signature

**ANNEX A Fee, Rates, Additional Payments and Reimbursable Expenses**

\* Delete as appropriate

**The Fee**

1.

\* The Fee is the fixed Sum of £[ ]

\* The Fee comprises the fixed Sum of £[ ] together with [ ]

\* The Fee is to be calculated as follows:

[ ]

Additional terms relating to the amount of calculation of the Fee are:

[ ]

**Payment of the Fee etc.**

2.

The Fee shall become due and payable in accordance with section 6 at the following dates/stages/milestones and the following amounts or percentages

[Application date/or stage/milestone at which due]	[Percentage of Fee or amount]

**Contractor's Project Staff- Applicable rates**

3.

The \*daily/weekly all-in rate for necessary extension of the Pre-Construction Services works (and for the purposes of any apportionment under clause 10.6.2.1) is

£[ ] based on the Contractor's Project Staff of:

No	[Persons/Grade]	Rate per hour/day
		£[ ] per

**Additional Services**

4.

The rates specified above shall apply (so far as properly applicable) for the purposes of any Additional Services (or events or causes with clause 5.2) \*subject to the following:

[ ]

**Reimbursable Expenses**

5.

Subject to their being properly and necessarily incurred for the purposes of the Project, the following expenses/disbursements of the Contractor shall be reimbursable by the Employer up to the maximum amount or rate specified below or as otherwise agreed in writing from time to time:

Type	Maximum amount/rate
[ ]	[ ]
[ ]	[ ]

Save as otherwise agreed in writing, all other expenses and disbursements shall be deemed to be included in the Fee.

**Supporting Documents**

6.

Each application that includes any of the following types of charges or expenditure should be accompanied by the following documents:

Charge/Expenditure	Documentation
[ ]	[ ]
[ ]	[ ]

**VAT**

7.

All amounts and rates shown above are exclusive of VAT.

## **ANNEX B**

### **Pre-Construction Services<sup>2</sup>**

Programme preparation

Construction advice (including value engineering/buildability advice)

Cost advice

Procurement and specialist design development services

Establishment of management and communications systems for the Construction Phase

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<sup>2</sup> Indicative list only – to be reviewed

**ANNEX C**

**Schedule of Contract Amendments and Contract Particulars**

**ANNEX D**

**First stage tender / Contractor's Initial Proposals**

**Ref: [ ]**



**ANNEX E**

**Cost Plan**

**Ref: [ ]**

**ANNEX F**

**Employer's Requirements**

**Ref: [ ]**

**ANNEX G**

**Project Team**

**Ref: [ ]**