

Date 13 October 2014

ALEX MIDGEN
DL SHAW CONSTRUCTION LIMITED

DESIGN AND BUILD AGREEMENT

relating to the carrying out of full demolition and the construction of
a brand new self-contained residential house
at 18 Redington Road, London NW3 7RG

MACFARLANES

Macfarlanes LLP
20 Cursitor Street
London EC4A 1LT

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DATE

2014

PARTIES

- 1 **DL SHAW CONSTRUCTION LIMITED** incorporated and registered in England and Wales with company number 08589791 whose registered office is at Flat D, 3 Frognal, London NW3 6AL (the "**Main Contractor**"); and
- 2 **ALEX MIDGEN** of 18 Redington Road, NW3 7RG, London (the "**Owner**").

AGREEMENT

1 **Definitions**

In this Agreement unless the context otherwise requires the following expressions have the following meanings:

Agreement: this Agreement and all documents expressed to be supplemental to it;

Budget: the budget for the Works including those sums payable under any sub-contracts entered into in connection with the Works and the fees payable to the Project Team pursuant to the Professional Appointments and as may be revised from time to time by the Owner or by the Main Contractor in accordance with this Agreement;

Contract Administrator: EC Harris LLP or such person as may be appointed as the Contract Administrator by the Main Contractor for the Works;

Commencement Date: the date when the Main Contractor first commenced work and/or services on the Project being 1 July 2013;

Competent Authority: any local authority or any other body exercising powers under statute, regulations, directives or bye-laws or any utility service or supply company;

Completion Date: 1 September 2015 as such date may be extended pursuant to the provisions of this Agreement;

Consents: all permissions licences and approvals (including of reserved matters) for the Works required under the Planning Acts the building regulations and under any other statute bye-law or regulation of any Competent Authority;

Date of Practical Completion: the date which the Contract Administrator certifies as being the date of practical completion of the Works;

Development Period: the period from the Commencement Date until the Works Completion Date;

Main Contractors Overhead & Profit: the overhead and profit payable to the Main Contractor in accordance with clause 9 and Schedule 2 of this Agreement;

Interest: Interest at the rate of three per centum above the base rate from time to time of Barclays Bank Plc during the period from the date on which the payment became due to the date of payment as well before as after any judgment;

Non-Discretionary: a matter in respect of which there is a then existing contractual commitment or a statutory or other legal liability which in the case of an amount is a known amount due to be paid by or on a date which may be reasonably estimated;

Professional Appointments: the appointments of the Project Team which have been or will be entered into by the Main Contractor;

Programme: the programme for the carrying out of the Works as may be revised from time to time by the Owner or the Main Contractor;

Project Team: the Contract Administrator, Design Solutions, Michael Alexander Limited, Barry Griffin Associates, BTP Group and such other consultants as may be appointed by the Main Contractor for the Works;

VAT: value added tax as provided for in the VAT Act and any tax or duty of a similar nature substituted for or in addition to it;

VAT Act: the Value Added Tax Act 1994;

Valuation Date: means the due dates for interim payment by the Main Contractor under its sub-contracts;

Works: the works to be carried out and completed in accordance with this Agreement being demolition of the existing building, the design, procurement, installation, execution and completion of a prime quality residential house as more particularly described in the documents specified at Schedule 1;

Works Completion Date: the date of issue of a certificate signed by the Contract Administrator that the works are practically complete;

Works Costs: the costs due and payable in connection with the carrying out of the Works including for the avoidance of doubt a Non-Discretionary increase to the Budget.

2 General provisions

- 2.1 In this Agreement unless the context otherwise requires references to clauses and schedules are to clauses of and schedules to this Agreement.
- 2.2 Any reference in this Agreement to any enactment (whether generally or specifically) will be construed as a reference to that enactment as amended re-enacted consolidated or applied by or under any other enactment and will include any enactment from time to time replacing such enactment and all instruments orders plans regulations permissions and directions made or issued under or deriving validity from such enactment.
- 2.3 The headings to clauses and other parts of this Agreement do not affect its construction.
- 2.4 This Agreement may only be varied in writing signed by or on behalf of all the parties.
- 2.5 Nothing in this Agreement is to be read or construed as excluding any liability or remedy resulting from fraudulent misrepresentation.
- 2.6 Nothing herein contained shall constitute or be deemed to constitute a partnership between the Owner and the Main Contractor.
- 2.7 Where the Owner's approval is required in respect of any matter pursuant to this Agreement, such approval shall not be unreasonably withheld or delayed whether it is expressed to be so qualified or not.

3 The Works Obligations

- 3.1 The Owner appoints the Main Contractor to carry out the design and construction of the Works and in consideration of payment of the Works Costs and the Overhead and Profit the Main Contractor accepts such appointment and covenants with the Owner to carry out the Works in accordance with and comply with its obligations in this Agreement and the Owner covenants with the Main Contractor to comply with its obligations in this Agreement including those in any of the schedules.

- 3.2 The Main Contractor will manage the negotiation of and enter into the Professional Appointment and any sub-contracts to be entered into in connection with the Works. The Budget shall include all Works Costs expected to be incurred with respect to the Works. The Owner and the Main Contractor will revise the Budget to reflect any changes to the Works and obtain the approval of the Owner.
- 3.3 The Main Contractor will promptly advise the Owner if anticipated Works Costs are expected to exceed the Budget (including all contingencies). The Main Contractor will prepare for the Owner approval procedures for the review and processing of applications for payment by the Main Contractor and make recommendations to the Owner concerning payment.
- 3.3.1 The Main Contractor will:
- 3.3.1.1 promptly enter into the Professional Appointments and any sub-contracts to be entered into in connection with the Works following agreement by the Owner;
- 3.3.1.2 procure the due performance and observance of the obligations and duties of the sub-contractors and the Project Team under their individual appointments;
- 3.3.1.3 not waive release vary nor stop itself from enforcing or seeking redress for any such obligation or duty in any material respect unless the Main Contractor considers it reasonable to do so.
- 3.3.2 The Main Contractor will recommend the approval or not (to the extent approval is needed from the Owner under this Agreement, and advise if they fall within the Budget and the Programme) and coordinate the processing of applications under any sub-contracts and negotiate for approval by the Owner where required under this Agreement, all variations under the relevant sub-contracts. The Budget and Programme will be revised to reflect approved variations.
- 3.3.3 The Main Contractor will
- 3.3.3.1 execute and complete the Works:
- (i) in a good and substantial and workmanlike manner and in accordance with good current building practice so that practical completion occurs no later than the Completion Date;
- (ii) using materials which are appropriate to the Works and to the reasonable satisfaction of the Owner;
- (iii) in accordance with any performance requirements or standards reasonably required by the Owner;
- 3.3.3.2 schedule and conduct meetings periodically to discuss construction procedures, progress and scheduling;
- 3.3.3.3 promptly notify the Owner and recommend corrective action when the Main Contractor has knowledge of any material delays increasing costs in excess of the Budget or deficiencies in construction being brought to the Main Contractor's attention that could adversely affect the Works;
- 3.3.3.4 procure the making good of defective work pursuant to the provisions of its sub-contracts.

- 3.4 The Main Contractor will not do any of the following otherwise than with the Owner's approval (which approval shall be in the Owner's absolute discretion):
- 3.4.1 incur any new financial commitment (unless such commitment is Non-Discretionary) not expressly provided for in the Budget;
 - 3.4.2 issuing any material instruction under any sub-contract which would constitute a material increase in the Budget unless such instruction is Non-Discretionary;
 - 3.4.3 issuing proceedings, defending proceedings, or compromising any claims, adjudication, arbitration or litigation with any third party of a material nature (but excluding the collection of debts arising in the ordinary course of business);
 - 3.4.4 expenditure of sums reserved as Main Contractor's contingency sums in the Budget unless it is an Emergency Expense as defined in clause 8.2.
- 3.5 The Main Contractor shall:
- 3.5.1 Design and carry out the Works with the reasonable skill and care expected of a competent and prudent developer experienced in carrying out services and works similar to its obligations under this Agreement for projects of a similar size, scope, complexity and purpose to the Works;
 - 3.5.2 co-operate and liaise where necessary with the other professional advisers appointed by the Owner;
 - 3.5.3 advise the Owner how the Main Contractor proposes to deal with or how the Owner should deal with any material problems or disputes which arise in connection with the Works; and
 - 3.5.4 advise the Owner on any anticipated Non-Discretionary updating of the Programme and/or the Budget as circumstances may require.
- 3.6 All the Main Contractor's obligations shall be performed with a view, so far as is within the remit of its obligations under this Agreement, to achieve the results set out in the Budget and the Programme. All Non-Discretionary modifications or additions to the Budget or Programme shall be identified by the Main Contractor and the Budget and Programme shall be appropriately amended.
- 3.7 The Main Contractor shall hold regular progress meetings with the Project Team relating to the Project and shall inform the Owner and allow the Owner to attend such progress meetings. Should the Owner have any representations to make as a result of any such meetings it shall make such representations direct to the Main Contractor at the meeting or if the Owner needs further time to make such representations they shall be made in writing to the Main Contractor within two (2) working days of the relevant meeting. The Main Contractor shall take into account all representations of the Owner.
- 3.8 The Owner gives licence to the Main Contractor to enter the site of the Works for the Main Contractor and all persons authorised by the Main Contractor to enable the Main Contractor to carry out its obligations pursuant to this Agreement.
- 3.9 Notwithstanding anything to the contrary contained elsewhere in this Agreement, the Main Contractor shall:
- 3.9.1 procure that the Project Team employed by the Main Contractor shall carry out and complete their obligations under the terms of the Professional Appointments strictly in accordance with the terms of the Professional Appointments;
 - 3.9.2 procure that any sub-contractors or suppliers employed by the Main Contractor in connection with the Works shall carry out and complete their respective

obligations under the terms of their respective contracts strictly in accordance with the terms of such contracts;

- 3.9.3 not be entitled to payment or reimbursement of any costs and expenses whether or not set out in the Budget and whether or not Non-Discretionary to the extent that the same arise by reason of any negligence, omission or default of any of the Project Team, any sub-contractor, and/or other contractors or suppliers as referred to in this clause 3.9;
 - 3.9.4 indemnify the Owner and keep the Owner indemnified against each and every liability which the Owner may incur to any person whatsoever and against all damage, expense, loss, cost, claim or proceedings suffered or incurred by the Owner to the extent that the same arises out of or in connection with any negligence or breach of duty by the Project Team, a sub-contractor and/or contractors and suppliers, their respective servants, agents, subcontractors, suppliers or other persons engaged in respect of the Works or any breach by the Main Contractor of any of its obligations under this Agreement.
- 3.10 The Main Contractor shall be granted an extension of time for completion of the Works where its sub-contractors have been granted an extension of time in accordance with the terms of their sub-contracts and provided that such extension has not arisen out of or was not caused by any negligence, omission or default on the part of the Main Contractor, the Project Team or by the sub-contractors.
- 3.11 The Main Contractor shall:
- 3.11.1 immediately upon it becoming reasonably apparent that the completion of the Works or any part of the Works is being or is likely to be delayed or prevented, submit to the other a notice specifying the circumstances;
 - 3.11.2 as soon as possible thereafter, submit full and detailed particulars of the expected effects of those circumstances and of the extension of time to which its sub-contractors are likely to be entitled; and
 - 3.11.3 shall keep such particulars up-to-date.
- 3.12 If the Main Contractor fails to achieve practical completion by the Completion Date subject to any extension pursuant to clause 3.10, it shall be liable to pay the Owner liquidated damages calculated at the rate of £13,000 per week or part thereof for the period from the Completion Date to the date of practical completion of the Works. Where liquidated damages have been paid to the Owner and the Completion Date is subsequently adjusted in accordance with the provisions of this Agreement, the Owner shall be liable to repay to the Main Contractor any liquidated damages to which the Owner is no longer entitled.

4 **Term**

This Agreement starts on the Commencement Date and unless otherwise terminated in accordance with the provisions of this Agreement or otherwise this Agreement shall continue for the Development Period or if earlier the date on which this Agreement is properly terminated in accordance with clause 11.

5 **Third Party Advice**

Notwithstanding clause 13, where the Main Contractor needs specialist advice to enable it to carry out its obligations under this Agreement it shall be entitled with the prior consent of the Owner to appoint such other reputable professional advisers as may be necessary to assist it to carry out its obligations, the cost of which for the avoidance of doubt shall be borne by the Owner,

6 The Owner's Obligations

- 6.1 The Owner shall, on request by the Main Contractor, provide the Main Contractor without charge and within a reasonable period of time with all relevant information within the Owner's possession or control (save in so far as is already within the possession or control of or otherwise available to the Main Contractor) in order to assist the Main Contractor in the carrying out or procuring the carrying out its obligations under this Agreement.
- 6.2 Where the Main Contractor seeks approval of or a decision from the Owner such approval (or rejection) or decision shall be given as promptly as reasonably practicable after receipt of a written request having regard to the nature of the decision.
- 6.3 The Owner shall instruct its solicitors and any other professionals appointed by it in respect of the Works to co-operate with and liaise with the Main Contractor so far as is consistent with the provisions of this Agreement.
- 6.4 Without prejudice to any other remedy available to the Main Contractor the Owner shall pay Interest on any sums due to the Main Contractor under this Agreement not paid within five (5) working days of the relevant date on which it is due in respect of each such sum until the date on which the relevant sum is received by the Main Contractor.
- 6.5 The Owner will enter into any agreement with any statutory or relevant authority or any other service supplier or third party as may be recommended by the Main Contractor and required in its capacity as landowner to enable the Main Contractor to comply generally with its obligations under this Agreement.
- 6.6 The Owner will ensure vacant possession is available at all times and the Owner will take any actions or proceedings against trespassers at the Main Contractor's reasonable request.
- 6.7 The Owner will give any notices or take any other action reasonably required by the Main Contractor by virtue of its ownership of the Site of the Works interest in the Property where the same cannot be given or taken by the Main Contractor to enable the Main Contractor to fulfil its obligations under this Agreement.
- 6.8 The Owner shall not without the consent of the Main Contractor (such consent not to be unreasonably withheld or delayed) create suffer or permit to be created any easements rights interest or encumbrances of whatsoever nature or in respect of the Site which would hinder delay or prejudice the Main Contractor's ability to carry out its obligations.

7 Third parties

The Owner shall take all necessary steps to procure that rights in respect of work already carried out in respect of the Works are vested in the Main Contractor so far only as this may be necessary for the Main Contractor to carry out its obligations and comply with this Agreement.

8 Works Costs

- 8.1 The Main Contractor will have the right without further consent or approval by the Owner to carry out the Works (except where consent is required under clause 3.4) in accordance with the Budget and pay all the costs and expenses associated therewith as set out in the Budget in accordance with its obligations in this Agreement. Save as provided for in clause 8.2 and in relation to Non-Discretionary sums the Main Contractor may not without the Owner's consent pay any expense save as provided for in the Budget.
- 8.2 Without prejudice to clause 8.1, if, in the reasonable opinion of the Main Contractor any expense must be incurred immediately in order to protect the Works or to avoid accident or injury to individuals or cure any breach of statute, then the Main Contractor may incur such expense in accordance with this clause. If any such expense (an "**Emergency Expense**")

shall be expected to exceed £5,000 the Main Contractor will not incur it without giving prior written notice to the Owner. If it shall be reasonably expected to exceed £5,000 the Main Contractor may not incur the Emergency Expense without the Owner's approval. If the Main Contractor's request for consent specifically states that it must be made in order to deal with an emergency then the Owner will be deemed to have consented if it does not respond for consent within two (2) working days after receipt of request. Notices for an Emergency Expense may be communicated by telephone provided that a confirmatory notice is sent on the same day.

- 8.3 Without prejudice to the indemnity in clause 3.9.4, the Owner is responsible for the Works Costs including the Main Contractors Overhead and Profit and shall promptly pay or provide the Main Contractor with funds to pay the Works Costs requested by the Main Contractor in connection with the Works as provided for in clause 8.4, provided that the Owner shall not be responsible for any costs arising out of any breach by the Main Contractor of its obligations in this agreement including where the provisions of clause 3.9.3 apply.
- 8.4 The Main Contractor shall no later than 1 working day after each Valuation Date under a relevant sub-contract supply a statement with details to the Owner of the Works Costs incurred in respect of which it is applying to the Owner for payment together with a copy of any payment certificate from the Contract Administrator for payments due to such sub-contractor.
- 8.5 The Owner shall pay all Works Costs shown in the statement provided under clause 8.4 no later than the Final Date for Payment (as set out in clause 8.10).
- 8.6 The Main Contractor will as soon as practicable provide to the Owner invoices showing the amounts properly payable as Works Costs (and the person or company to whom payment is due) by the Owner. The date of such invoice shall be the due date for payment.
- 8.7 In relation to any interim or final application by a sub-contractor for payment pursuant to its sub-contract, the Main Contractor will support the invoices by delivery to the Owner of a payment certificate issued by the Contract Administrator to the effect that the sums are properly payable in respect of the works under the provisions of the relevant sub-contract. In relation to any other invoices the Main Contractor will support the same by the production of the relevant certificate invoice account voucher and of such other information including full details of amounts due to it or to any third party as the Owner may reasonably require with a view to satisfying itself that the invoice is properly payable.
- 8.8 The Owner shall make payments in settlement of invoices pursuant to this clause 8 by making a credit transfer to such account as shall be designated by the Main Contractor in each case for an amount equal to the amount then due.
- 8.9 The Owner acknowledges that the Main Contractor will be obliged to make payments to the sub-contractor consequent upon the issue of certificates under its sub-contract and accordingly the Main Contractor will require the payments to be made pursuant to this clause 8 to enable it to ensure so far as is practicable that there is no delay to the Works. The Final Date for Payment shall be ten days after the due date.
- 8.10 The Main Contractor will keep full and complete books of accounts including draw requests and paid invoices in such form as the Owner requires. All books and records will be the property of the Owner and the Owner may inspect them and copy them at any time during business hours.

9 Main Contractors Overhead and Profit

- 9.1 The Owner shall pay to the Main Contractor the Overhead and Profit in accordance with this clause and Schedule 2.
- 9.2 The final date for payment of each invoice submitted in accordance with Schedule 2 shall be ten days after the due date as described in Schedule 2.

- 9.3 The Overhead and Profit is exclusive of VAT.
- 9.4 Not later than five Working Days after the due date in respect of an invoice, the Owner may give the Main Contractor written notice stating the amount that the Owner proposes to pay and the basis on which that amount is calculated. The Owner shall not withhold payment in respect of any invoice unless the Owner complies with clause 9.5.
- 9.5 Where the Owner intends to withhold payment of some or all of an amount payable in respect of an invoice, the Owner shall give written notice to the Main Contractor of the amount that it intends to withhold and the ground(s) for withholding it ("Notice of Intention to Withhold Payment"). In respect of any amount referred to in a Notice of Intention to Withhold Payment, that amount shall not be deemed to be due to the Main Contractor.

10 Insurance

The Main Contractor shall procure that the appropriate insurance for the Works is maintained in accordance with the provisions of any relevant sub-contracts.

11 Termination

11.1 Termination

- 11.1.1 The Owner shall be entitled to terminate this Agreement by notice in writing to the Main Contractor in the following events:
- 11.1.1.1 upon the Main Contractor failing to take proper steps to commence to remedy a material breach by it of any material provision of this Agreement within thirty (30) days of notice of breach from the Owner, or such shorter time as is reasonable and specified in a notice given by the Owner to the Main Contractor given the nature of the breach;
 - 11.1.1.2 upon the Main Contractor suffering an insolvency event;
 - 11.1.1.3 upon the Main Contractor committing an act of fraud.
- 11.1.2 The Main Contractor shall be entitled to terminate this Agreement by notice in writing to the Owner in the following events:
- 11.1.2.1 upon the Owner failing to take proper steps to commence to remedy a material breach by it of any material provision of this Agreement within thirty (30) days of notice of breach from the Main Contractor, or such shorter time as is reasonable and specified in a notice given by the Main Contractor to the Owner given the nature of the breach;
 - 11.1.2.2 upon the Owner suffering an insolvency event;
 - 11.1.2.3 upon the Owner committing an act of fraud.
- 11.1.3 For the purposes of clauses 11.1.1 and 11.1.2 an insolvency event occurs when:
- 11.1.3.1 a party enters into any arrangement or composition for the benefit of the party's creditors or convenes a meeting of the party's creditors (or a nominee calls such a meeting);
 - 11.1.3.2 a party (being an individual or if more than one individual then any one of them):

- (i) is the subject of an interim order under Part VIII Insolvency Act 1986 or makes application to the Court for such an order;
- (ii) convenes a meeting of or enters into any arrangement, scheme, compromise, moratorium or composition with any of her/his creditors (whether under Part VIII Insolvency Act or otherwise); or
- (iii) has a bankruptcy petition presented against her/him which is not withdrawn within 14 days or is adjudged bankrupt or has a receiver appointed in respect of all or any of her/his assets;

11.1.3.3

a party (being a company or partnership):

- (i) submits to its creditors or any of them a proposal under Part I Insolvency Act 1986;
- (ii) enters into or proposes any arrangement, scheme, compromise, moratorium or composition with any of its creditors (whether under Part I Insolvency Act 1986 or otherwise);
- (iii) is the subject of a moratorium under Schedule A1 Insolvency Act 1985;
- (iv) makes an application to the Court in respect of a proposed compromise or arrangement with its creditors or any class of them under Part 26 Companies Act 2006 or resolves to make such an application;
- (v) is the subject of an administration order (whether interim or otherwise) or is subject to a resolution passed by the directors or shareholders for the presentation of an application for such an order or has an application for such an order presented or such an order comes into force or if a notice of intention to appoint an administrator or a notice of appointment of an administrator is filed with the court or if a resolution is passed by the directors or shareholders for the filing of either such notice;
- (vi) presents a winding up petition or has a petition for winding up presented against it which in either case is not withdrawn within 14 days or has a winding up order made against it or a provisional liquidator is appointed;
- (vii) is the subject of a resolution for voluntary winding up (other than a voluntary winding up while solvent for the purposes of an amalgamation or reconstruction which has the prior written approval of the other party) or a meeting of its shareholders is called to consider a resolution for winding up or notice is given to any person of the intention to propose such a resolution;
- (viii) has an administrative receiver or receiver appointed in respect of all or any of its assets or the assets of any guarantor;

- (ix) has a written demand for the payment of sums due served upon it in accordance with section 123(1)(a) Insolvency Act 1986 which is not settled or disputed; or
- (x) is struck off the register of companies or otherwise ceases to exist.

11.1.4 a party suffers any distress attachment or execution to be levied on or in respect of any of its assets or is or becomes unable to pay its debts as and when they become due within the meaning of section 123(1)(e) or 123(2) Insolvency Act 1986 (omitting the words "it is proved to the satisfaction of the Court that");

11.1.5 any order is made for or there occur proceedings constituting main proceedings in any member state of the European Union;

11.1.6 a party enters into or suffers or there occur any analogous proceedings or events to those specified in this clause; or

11.1.7 analogous proceedings or events to those specified in this clause are instituted or occur in relation to a party elsewhere than in England and Wales.

11.2 Payment consequences

Where this Agreement is terminated by the Owner pursuant to clause 11.1.1.1 or 11.1.1.2 or is terminated under clause 11.1.2 by the Main Contractor, the Owner shall pay to the Main Contractor upon notice of termination any sums which have already fallen due under this Agreement.

12 Termination Consequences

12.1 Procedure

The Main Contractor undertakes that following service of a proper notice to terminate this Agreement by the Owner and payment of all sums which have become due under clause 12.2 the Main Contractor will take all proper steps to facilitate the handover of its obligations to the Owner. The Main Contractor will comply with the reasonable instructions of the Owner but at the cost of the Owner as to the orderly delivery to the Owner or as either as applicable shall direct of all originals and copies of documents, papers, files (other than the personal files of the Main Contractor), bank accounts and project plans and project computer files relating thereto or otherwise relating to the Project and which are in its possession or under its control, including any correspondence or other papers (other than personal correspondence, papers and files, or any legal papers) received after termination and not to seek to exercise any lien which the Main Contractor may have in relation to such documents.

12.2 Existing rights

The termination of this Agreement shall be without prejudice to any rights which have already accrued to either of the parties under this Agreement against the other.

13 No Assignment or Delegation

13.1 The Main Contractor shall not assign, charge or otherwise deal with this Agreement provided that this shall not prevent the Main Contractor from delegating or sub-contracting any duties or obligations as contemplated by this Agreement.

13.2 The Owner may not assign the benefit of this Agreement.

14 VAT and Construction Industry Scheme

- 14.1.1 All sums (including the Main Contractors Overhead and Profit) payable by any party to any other party under the terms of this Agreement are exclusive of any VAT.
- 14.1.2 Where, pursuant to the terms of this Agreement, any party ("the Supplier") makes a supply to any other party ("the Recipient") for VAT purposes and VAT is chargeable on such supply, the Recipient shall pay to the Supplier (in addition to any other consideration for such supply) a sum equal to the amount of such VAT, such payment to be made on the later of:
- 14.1.2.1 the date on which any other consideration is paid or provided for such supply; or
- 14.1.2.2 the provision by the Supplier to the Recipient of a valid VAT invoice in respect of such supply.
- 14.1.3 Where, for the purposes of any provisions of this Agreement (notwithstanding any repetition in any other part of this Agreement and without double counting but save where expressly otherwise provided in this Agreement), any amount is to be determined or calculated by reference to any amount incurred, or to be incurred, by any person, such part of such latter amount as represents VAT in respect of which such person is entitled to credit or repayment from HM Customs & Excise shall be excluded for the purposes of such determination or calculation; In particular, where either party is required by the terms and conditions of this Agreement to reimburse, indemnify or otherwise compensate any person for any cost, expense or other item of expenditure or liability, such party shall not be obliged to reimburse, indemnify or otherwise compensate such person for such part of such cost, expense or other item of expenditure or liability as represents VAT in respect of which such person is entitled to credit or repayment from HM Customs & Excise.
- 14.2 The Main Contractor and the Owner shall take all steps that may be necessary to adhere to the terms of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) and any regulation made under such Chapter ("the CIS") so far as it may apply in connection with this Agreement, the Works and/or any payments by the Owner to the Main Contractor. The Main Contractor shall take all reasonable steps required to be and remain registered for gross payment under section 69 Finance Act 2004 and shall whenever reasonably requested by the Owner provide to the Owner information required to enable the Owner to verify with HMRC the Main Contractor's status under the CIS.
- 14.3 The Owner shall make any deduction provided by Section 61 Finance Act 2004 (or the appropriate rate provided for by any legislation replacing or in addition to Section 61 Finance Act 2004) ("the Statutory Deduction") from payments due under this Agreement to the Main Contractor in accordance with the requirements of the CIS unless the Owner has been able to verify with HMRC that the Main Contractor is registered for gross payment and so entitled to receive such payments without the Statutory Deduction,
- 14.4 The Main Contractor shall provide the Owner with sufficient information to enable the Owner accurately to calculate the Statutory Deduction applicable to each payment due under this Agreement to the Main Contractor or to calculate any over-deduction arising as a result of the Main Contractor's failure to provide such information promptly or to provide sufficient information.
- 14.5 The Main Contractor shall promptly inform the Owner in writing if it is not, or ceases to be entitled to be, registered for gross payment and give the date of such de-registration.
- 14.6 Without prejudice to clauses 14.2 to 14.5, the Main Contractor will pay to the Owner the amount of tax, penalties and related interest which is properly chargeable in connection with any payment made by the Owner to the Main Contractor hereunder to which CIS applies

and which arises as a result of the Main Contractor not being registered for gross payment and payments having been made to the Main Contractor without the requisite CIS deduction within ten (10) days of written demand by the Owner.

15 **Third party rights**

Nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

16 **Notices**

Unless otherwise specifically provided any notices or other written communications required to be given served or sent under the terms of this Agreement shall be sent by recorded delivery to the address of the relevant person stated in this Agreement and the Owner shall procure that if the Owner shall give any notice or submission to any of the Project Team then a copy of it shall be supplied at the same time to the Main Contractor.

Notices to be served upon the Main Contractor shall be addressed to DL Shaw at Flat D, 3 Frognal, London NW3 6AL or to such other party or parties as the Main Contractor may notify in writing to the Owner.

Notices upon the Owner shall be addressed to him or such other party or parties as the Owner may notify in writing to the Main Contractor.

17 **Disputes**

17.1 Should any dispute or difference arise between the parties in relation to this Project:

17.1.1 where the parties agree to do so, the dispute or difference may be submitted to mediation in accordance with the provisions of clause 17.2 (Mediation);

17.1.2 the dispute or difference may be referred to adjudication in accordance with the provisions of clause 17.3 (Adjudication);

17.1.3 the dispute or difference may be resolved by legal proceedings.

17.2 **Mediation**

17.2.1 Either party may identify to the other any dispute or difference as being a matter that he considers to be capable of resolution by mediation and, upon being requested to do so, the other party shall within seven days indicate whether or not he consents to participate in mediation with a view to resolving the dispute. The objection of mediation under clause 17.2 shall be to reach a binding agreement in resolution of the dispute.

17.2.2 The mediator or selection method for the mediator shall be determined by agreement between the parties.

17.3 **Adjudication**

17.3.1 Either party may at any time refer any dispute or difference arising under this Agreement to adjudication in accordance with the provisions of The Scheme as defined in clause 17.5.

17.3.2 The Adjudicator shall be the person named in clause 17.4. Where no person is named or where the named Adjudicator is unable to act the Adjudicator shall be selected in the manner set out in clause 17.4.

17.4 The Adjudicator shall be a director of Turner & Townsend LLP as nominated by the senior partner/managing director from time to time.

17.5 The Scheme shall be The Scheme for Construction Contracts SI 1998 No. 649 (as amended by the Scheme for Construction Contracts (England & Wales) Regulations 1998 (Amendment) (England) Regulations 2011).

18 **Survival**

Subject to the terms of this Agreement notwithstanding the issue of any certificate under any sub-contract or the performance of any part of this Agreement all of the obligation of the parties to this Agreement shall continue in full force and effect to the extent that they remain unperformed or outstanding.

19 **Good Faith**

The Owner and the Main Contractor shall each act in good faith in their dealings with each other in relation to all matters which are the subject of this Agreement.

20 **Governing Law**

This Agreement is governed by and shall be construed in accordance with the laws of England and (subject to the provisions of this Agreement and clause 17) the parties submit to the exclusive jurisdiction of the English courts in respect of any claim difference or dispute between them.

This Agreement is executed by the parties as a deed and delivered on the date at the beginning of this Agreement.

SCHEDULE 1

The Requirements

Contractor is to develop the attached outline drawings under a full turn key design and build service.

SCHEDULE 2

Main Contractors Overhead and Profit

- 1 The Main Contractors Overhead and Profit is 5% of the Works Costs.
- 2 The Main Contractors Overhead and Profit is exclusive of VAT.

Executed as a Deed by DL SHAW)

CONSTRUCTION LIMITED acting by)

Simon Robert Shaw (director) in the)

presence of:) S. Shaw.

Witness

Signature
Name


Michaela Dalzell,

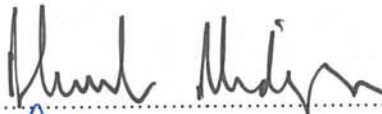
Occupation

Receptionist

Address

University of Kent
Chatham Maritime
Chatham
Kent ME4 4AG.

EXECUTED as a DEED by)
ALEX MIDGEN in the)
presence of:)



Witness:

Signature:



Name:

ALISON HYNES.

Address:

50 GLEN HURST AVE
BEXLEY DAS 3QW.

Occupation:

PA