

**Pyramid Schools (Tameside) Limited**

**Albany SPC Services Ltd  
3<sup>rd</sup> Floor  
3 – 5 Charlotte Street  
Manchester  
M1 4HB**



**THE PYRAMID CONSORTIUM**

Ref: Pyramid Schools (Tameside) Ltd 137

TAMESIDE METROPOLITAN BOROUGH COUNCIL  
Dukinfield Town Hall  
King Street  
Dukinfield  
Tameside  
SK16 4LA

Dear Sirs

**Tameside Schools (the "Project")**

We refer to the project agreement dated 19th June 2002 entered into between Pyramid Schools (Tameside) Limited (the **Contractor**) and Tameside Metropolitan Borough Council (the **Council**) as amended from time to time (**Project Agreement**).

Save where the context requires otherwise or where otherwise defined in this letter, capitalised terms defined in the Project Agreement shall have the same meaning in this letter.

**1 DEFINITIONS**

In this letter the following terms shall have the meaning given to them below:

**Elite Insolvency Event** means if:

- (a) the Modular Contractor enters into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction);
- (b) without a declaration of solvency, the Modular Contractor passes a resolution or makes a determination that it be wound up;
- (c) the Modular Contractor has a winding up order or bankruptcy order made against it;
- (d) the Modular has appointed to it an administrator or administrative receiver; or
- (e) the Modular Contractor is the subject of any analogous arrangement, event or proceedings in any other jurisdiction;

**Letter of Intent** means the letter of intent issued by the Council to the Modular Contractor dated 15th July 2019;

**Modular Contractor**, means Elite Systems (GB) Limited, company registered number 02583744 and having its registered office at Bedford Street, Westgate, Cleckheaton, West Yorkshire, BD 19 5EA;

**Modular Classrooms** means the four modular classrooms which are being delivered by the Modular Works on the Modular Works Site;

**Modular Panel Construction** means the construction of the panels which form part of the Modular Works;

**Modular Services** means the Services to be provided to the Modular Classrooms;

**Modular Works** means all of the design and works to be carried out pursuant to the Modular Works Contract;

**Modular Works Contract** means the contract entered into on or after the date of this letter of indemnity between the Contractor and the Modular Contractor;

**Modular Works Site** means Site Plan – Rev A at Alder Community High School, Mottram Old Road, Hyde, Tameside SK14 5NJ; and

**Planning Permission** means the application in relation to the 17/01006/full planning application amended to incorporate the Modular Classrooms.

## 2 **ACKNOWLEDGEMENT**

### 2.1 The Parties acknowledge:

- 2.1.1 in accordance with Schedule 5 of the Project Agreement, the Council intends to issue the Contractor with a Council Variation Notice in relation to the provision of the Modular Classrooms;
- 2.1.2 the Contractor wishes to appoint the Modular Contractor to undertake the Modular Works in accordance with the Modular Works Contract but as at the date of this letter, does not have consent from the Agent and Security Trustee to enter into the Modular Works Contract;
- 2.1.3 the Council has issued the Letter of Intent to Modular Contractor to ensure that the Modular Contractor will procure that the Modular Panel Construction will continue while the Contractor seeks consent to enter into the Modular Works Contract;
- 2.1.4 as a consequence of the Council requiring the Modular Works, the parties intend to enter into a deed of variation to the Project Agreement to incorporate the Modular Works at Alder Community High School and for the provision of Modular Services and will use reasonable endeavours to do so as soon by 31 December 2019 ("**Deed of Variation**");
- 2.1.5 the Contractor and the FM Subcontractor will need to enter into a deed of variation to the FM Subcontract to incorporate the Modular Works at Alder Community High School and for the provision of Modular Services ("**FM Deed of Variation**");
- 2.1.6 Clause 4 of the Project Agreement provided for Leases and Underleases to be entered into pursuant to the Agreement for Lease. The Leases and Underleases do not appear to have been entered into. Until such time as the Deed of Variation is entered into and in accordance with the licence provisions contained within Clause 4 of the Project Agreement, the Council confirms that the Contractor and all others

authorised by the Contractor are entitled to access to and have the exclusive right to occupy the Sites;

2.1.7 pursuant to the Modular Works Contract, the anticipated date for completion of the Modular Works is 1<sup>st</sup> September 2019 ("Completion Date"). The Council acknowledges that the Contractor shall not be held liable for any delays to the Completion Date; and

2.1.8 as at the date of this letter, the Agent and the Security Trustee have not reviewed nor granted formal consent to the Modular Works Contract, this letter nor any Deed of Variation, FM Deed of Variation and any associated documentation.

### **3 MODULAR WORKS**

3.1 Notwithstanding the provisions of Clause 2.1.6 of this letter, both the Council and the Contractor shall procure access to the Modular Works Site by the Modular Contractor in accordance with the access arrangements.

3.2 The Parties agree and acknowledge that until the Deed of Variation is entered into the Modular Contractor shall be deemed to be a Council Party and shall not be a Contractor Related Party for the purposes of the provisions and obligations contained both within this letter and the Project Agreement.

3.3 The Parties agree that each party shall not and shall use reasonable endeavours to procure that any Contractor Party and any Council Party (excluding the Modular Contractor) shall not interfere with or impede the progress of the Modular Works.

3.4 The Contractor shall and shall procure that any Contractor Party shall provide all reasonable co-operation and assistance to the Council and the Modular Contractor to facilitate the performance of the Modular Works provided that in complying with this clause the Contractor and Contractor Related Parties shall not be required to incur any material additional cost unless the Council provides an undertaking in respect of payment of such costs in a form which is reasonably acceptable.

3.5 The Contractor shall procure that the Modular Works are covered by appropriate insurance policies and comply with their obligations in accordance with the CDM Regulations 2015.

3.6 On completion of the Modular Works the Contractor shall procure that the Modular Classrooms are covered by the Contractor Insurances which the Contractor is required to maintain pursuant to Clause 13 and Schedule 7 of the Project Agreement and the Council shall be liable to the Contractor in respect of any increase in insurance premium and/or any deductibles arising as a direct consequence.

3.7 In consideration of the sum of one pound (£1) sterling (if demanded) and the Contractor entering into the Modular Works Contract, the Council confirms and undertakes to indemnify the Contractor against all costs incurred in connection with the Modular Works Contract within 20 Working Days of demand from the Contractor.

3.8 [insert details in relation to purchase order]

### **4 PROTECTIONS IN RESPECT OF MODULAR WORKS**

4.1 Subject to paragraph 4.3 and paragraph 4.4 of this letter the Council shall indemnify the Contractor on demand from and against all liability for Direct and Indirect Losses suffered or

incurred by the Contractor which arise out of or in connection with the performance of the Modular Works and/or the breach by the Council of its undertakings under this letter.

4.2 Subject to paragraph 4.3 and paragraph 4.4 of this letter the Council shall indemnify the Contractor from and against all liability for Direct and Indirect Losses arising from, inter alia:

- 4.2.1 death or personal injury;
- 4.2.2 loss or damage to property;
- 4.2.3 any Elite Insolvency Event;
- 4.2.4 any failure to have secured Planning Permission for the Modular Classrooms; and/or
- 4.2.5 third party actions, claims and/or demands brought against the Contractor or any Contractor Party;

which may arise out of or in connection with the performance of the Modular Works, the presence on the Site of any person in relation to the performance of the Modular Works and/or the breach by the Council or any Council Party of any of the undertakings contained in this letter.

4.3 The Council shall not be responsible or be obliged to indemnify the Contractor for any damages, losses, liabilities, claims, actions, costs, expenses proceedings, demands or charges:

- 4.3.1 suffered or incurred by the Contractor under any Financing Agreement arising out of or in connection with the performance of the Modular Works; and
- 4.3.2 caused by the negligence or wilful misconduct of the Contractor or any Contractor Related Party or by the breach of the Contractor of its obligations under this letter.

4.4 The Council shall be responsible for the acts, omissions, default or neglect of any Council Related Party, their appointed consultants and contractors and any other person on the Site in relation to the Modular Works as if they were the acts an omission of the Council.

4.5 Any damage caused to the Site as a result of the carrying out of the Modular Works shall be deemed to be damage caused by the Council and, for the avoidance of doubt, the Council shall be liable for:

- 4.5.1 any excess or deductible (up to the amount of any maximum deductible specified in the Contractor Insurances) which is payable as a result of such damage; and
- 4.5.2 any increase in insurance premium payable in respect of the Contractor Insurances arising as a consequence of such damage.

4.6 No Contractor Default Events, Event of Default or Potential Event of Default shall arise as a consequence of the carrying out of the Modular Works.

4.7 No Deductions, Service Failure Event, Formal Warning Notices, Final Warning Notices or other penalty under the Project Agreement shall be incurred by the Contractor to the extent arising as a consequence of the performance of the Modular Works in respect of any areas of the Site affected by the Modular Works from the date of commencement of the Modular Works until the date of entry into the Deed of Variation.

## **5 THE SERVICES**

5.1 During the carrying out of the Modular Works, the Contractor shall not be required to provide the Services to the Modular Works Site or any area of the Site which is impacted on by the performance of the Modular Works nor shall the Contractor have any other obligations under the Project Agreement in relation to the Modular Works.

- 5.2 Following completion of the Modular Works, the Contractor shall not be required to provide the Services to the Modular Classrooms and the Modular Classrooms shall not form part of the Project unless and until agreed in writing by the Parties.
- 5.3 It is acknowledged that agreement of the Parties in respect of the provision of the Services to the Modular Classrooms will be dependent *inter alia* on agreement with the FM Subcontractor of the scope of services and costs in respect of such Services. In respect of agreeing terms of provision of Services to the Modular Classrooms, the Contractor agrees:
- 5.3.1 to co-operate with the Council in good faith;
  - 5.3.2 to provide information in respect of the replacement FM Subcontractor's costs for provision of Services to the Council on an open book basis; and
  - 5.3.3 that any increase in the Unitary Charge shall relate only to the provision of Services to the Modular Classrooms.

## **6 GENERAL**

- 6.1 The provisions of this letter shall commence on the date on which it is signed by both Parties and unless otherwise agreed in writing shall terminate on the earlier of:
- 6.1.1 the date of entry into the Deed of Variation; and
  - 6.1.2 the expiry or early termination of the Project Agreement.
- 6.2 The Council shall be liable for all reasonable and direct costs to the Contractor, the Agent, the Security Trustee and the FM Subcontractor of entering into this letter, the Deed of Variation, the FM Deed of Variation and all ancillary documentation required to facilitate the entry into of the Deed of Variation and FM Deed of Variation.
- 6.3 Save where explicitly stated, this letter shall be without prejudice to both Party's rights and remedies under the Project Agreement.
- 6.4 No amendment to this letter shall be effective unless in recorded writing and signed by both Parties.
- 6.5 Any dispute arising under or in connection with this letter shall be resolved in accordance with Clause 20 of the Project Agreement.
- 6.6 This letter constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this letter.
- 6.7 A person who is not a party to this letter shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this letter.
- 6.8 This letter may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.
- 6.9 This letter and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contracted disputes and claims) shall be governed by and construed in accordance with English law.

Please sign and return the enclosed copy of this letter to acknowledge your agreement to its terms.

Yours faithfully

.....  
for and on behalf of Pyramid Schools

Date .....

We confirm acceptance of the terms of this letter.

.....  
for and on behalf of Tameside Borough Metropolitan Council

Date .....

DRAFT