

# Scope of Services for the Monitoring Surveyor to the Homes & Communities Agency

## Instruction Brief to Panel Appointees

1. Pursuant to the Finance Documents, the Agency intends to make available to the Borrower the Facility for the Project on the Site as further described in Schedule 1 and 2.
2. Further to panel agreement made between (1) the Agency and the (2) the Consultant (the "Panel Appointment" as defined in the Project Information Sheet that accompanies this instruction), the Agency has issued the instruction in accordance with the Panel Appointment and this Scope of Services for the Monitoring Surveyor (the "Scope") to appoint the Consultant as the Agency's monitoring surveyor for the Project and to provide the monitoring surveyor services as detailed in Schedule 2 of this Scope.
3. The Agency and the Consultant hereby agree that this Scope incorporates (i) the terms of the Panel Appointment; (ii) the definitions and interpretation set out at Schedules 1 and 2 herein; (iii) the terms of this Scope; (iv) the terms of the Instruction and (v) the definitions contained within the attached Project Information Sheet. If there is any inconsistency, disputes, differences or questions between the provisions of any of these documents, then the provisions Panel Appointment shall prevail. Any disputes, differences or questions arising out of or relating to the Scope are to be resolved in accordance with the provisions of the Panel Appointment.
4. The Consultant agrees to perform the Services in accordance with the Agency's instructions and directions and upon the terms and conditions set out in this Scope. All work undertaken by the Consultant in relation to the Project shall be deemed to have been undertaken pursuant to the terms of this Scope, including any and all work which precedes the completion of this Instruction.
5. Pursuant to Clause 2 of the Panel Appointment, the Consultant may be required to provide Collateral Warranties. The Consultant will provide such Collateral Warranties in accordance with the terms of the Panel Appointment.
6. The Consultant shall monitor and confirm that at all times:
  - 6.1. the undrawn balance of the Facility together with Permitted Revenues received from others (if applicable) must not be less than the cost required to complete the Project;
  - 6.2. any Cost Overruns (and potential Cost Overruns once identified to the Agency by the Consultant) are funded immediately by the Borrower; and
  - 6.3. the Project proceeds in accordance with the Development Appraisal, Cash Flow Statement, Build Programme and the Completion Date and the Sectional Completion Dates or such other date notified to the Consultant by the Agency in writing.
7. Should the Consultant, during the course of providing the MS Services to the Agency:
  - 7.1. consider that a potential breach of paragraph 6 above (in whole or part) by the Borrower may arise; and/or
  - 7.2. discover or become aware of any material issue that may be contrary to the Agency's understanding of the Project as set out in the Development Appraisal, the Initial Report, the Monthly Progress Reports, the Facility Agreement and/or the Finance Documents which may be prejudicial to the Agency's interests;

the Consultant will notify the Agency immediately by telephone, followed by written notice within 3 business days of such notification, and in relation to paragraph 7.1 above such notification will include recommendations to the Agency for managing the risk presented by the potential breach;

8. Pursuant to Clause 5 (Conflicts of Interest) of the Panel Appointment, the Consultant warrants that as at the date of this Instruction, there is no conflict between the respective interests of (i) the Consultant and the Agency; and (ii) the Consultant and the Borrower or any affiliated or management entity of the Borrower or any employee, director or shareholder thereof. If a conflict does or may arise, the Consultant shall notify the Agency immediately in writing (and provide all relevant information).
9. The Consultant shall, subject to the provisions of this Scope, use reasonable skill care and diligence to provide the MS Services within the timescales for the Project. The Consultant shall notify the Agency in writing as soon as it becomes aware of any matter which could prevent or delay the Consultant from performing the whole or any part of the MS Services for any reason (whether arising out of delay on the part of the Agency or the Borrower and whether amounting to force majeure or otherwise) . Such notice will include the specific reason for the delay or prevention together with the Consultant's best estimate of its effect on the Project's timescales and the Consultant shall use its best endeavours as soon as practicable to resume and expedite the performance of the MS Services so as to complete the same with all reasonable speed.
10. The Consultant's duties and obligations under this Instruction shall not be released, diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by the Agency or by any firm, company or party on the Agency's behalf nor by any action or commission of any such firm, company or party whether or not such action or commission might give rise to an independent liability of such firm, company or party to the Agency.
11. The Consultant shall actively source information necessary to perform the MS Services and the Agency shall, if so requested by the Consultant, supply in such time as may be reasonable having regard to the time and nature of any such request, any necessary and relevant data and information in the possession of the Agency or which may only be obtained by the Agency.
12. In relation to the Agency's advisors (including but not limited to solicitors and valuers) for the Project ("Agency Advisors") and the Borrower:
  - 12.1. the Agency will use all reasonable endeavours to procure suitable access for the Consultant to the Agency's Advisors and the Borrower to assist the Consultant in the performance and provision of the MS Services.
  - 12.2. the Consultant will:
    - 12.2.1. not engage or instruct any Agency Advisors to undertake any work at any time.
    - 12.2.2. notify the Agency in advance of any contact it will have with any Agency Advisors in relation to the Project.
  - 12.3. the Parties acknowledge that the services to be provided by the Agency's Advisors including the Consultant, on a collaborative basis will only be provided pursuant to instructions issued by the Agency.

# Scope of Services for the Monitoring Surveyor

## Schedule 1

### Definitions and Interpretation

**Please note that for the purposes of the HCA's the Scope of Services for the Monitoring Surveyor the definitions for the following terms; Panel Appointment, Agency's Legal Advisors, Agency's Valuers, Agency, Monitoring Surveyor Start Date, Consultant, Borrower, Facility Agreement, Facility, Project, Site, Fee, Target Completion Date and Target Sectional Completion Date(s) are contained within the Project Information Sheet to the extent that they are applicable.**

In this Scope the following words and expressions shall be deemed, where the context so admits, to have the following meanings:

"Agreed Plans" means the detailed architect's drawings and buildings specifications for the Project in form and content acceptable to the Agency.

"Actual Cumulative Spend" means the expenditure on the Project in monetary terms in each period.

"Beneficiaries" means any:

- transferees, successors, or assignees of the Agency;
- any Public Sector Body identified by the Agency to the Consultant;
- person providing or intending to provide finance for the Project;
- person taking or intending to take a lease or under-lease of Agency land and/or property or a part thereof and/or any person providing or intending to provide finance to any such lessee or under lessee;
- person purchasing or intending to purchase Agency land and/or property or a part thereof and/or any person providing or intending to provide finance to any such purchaser; or
- the Agency.

"Building Contract" means the agreement or agreements for the execution of the Works.

"Building Technology" means design, structure (including foundations, cladding, structural frame and support), structural design as a genus, method of construction and materials used.

"Cash Flow Statement" means a statement incorporating a month by month cash flow forecast prepared by the Borrower, addressed to the Agency and approved by the Agency (in consultation with the Consultant) showing, at the date of its delivery to the Agency (i) the anticipated costs of the Project broken down by purpose, including purchase of the Site (if applicable), building costs, licence fees, interest, commission, void costs, professional fees, letting and sales costs and VAT, (ii) the timetable for the Project and the expenditure of such anticipated costs and expenditure and (iii) income (if any) anticipated during the course of the Project.

"CDM Regulations" means the Construction (Design and Management) Regulations 2015 as updated.

"Collateral Warranties" warranties in favour of the Agency (and any Beneficiary as may be notified to the Consultant by the Agency from time to time) from the Contractor(s) and the Professional Team in a form substantially the same as that set out in the Facility Agreement and in such form as the Agency may require.

"Completion Date" means the date on which the Project specifications and primary objectives have been met by way of unit numbers, capital spend, quality and finish.

“Completion, Handover and Snagging Process” means the process proposed by the Borrower, Contractor(s) and Sub-contractors where applicable and presented to the Consultant for inclusion of commentary within the Initial Report.

“Consultant’s Estimate of Re-forecast Build Programme” means the Consultant’s issued report advising of the likely time lost and costs caused in the event of a delay or variation leading to a Contractor’s Re-forecast Build Programme being issued.

“Contractor(s)” means the companies or persons undertaking the construction, demolition and other activities or providing other services to the Borrower relating to the Project.

“Contractor’s Re-forecast Build Programme” means in the event of delays or variations, the Contractor’s proposed revised build programme.

“Cost Overruns” means expenditure incurred or to be incurred over and above what has been projected in the Cash Flow Statement including any potential costs or claims that come to the attention of the Consultant.

“Current Cost-Per-Unit” means the total Project cost approved by the Consultant and the Agency divided by the number of units completed and agreed as completed by the Agency (excluding all infrastructure and enabling costs funding via the Project).

“Current Total Cost-Per-Unit” means the total Project cost approved by the Consultant and the Agency divided by the number of units completed and agreed as completed by the Agency (including all infrastructure and enabling costs funding via the Project).

“Defects” means any defective workmanship by act or omission or any defective materials or inconsistency in design that has created the possibility of a claim against any subcontractor or their insurer or the need for rectification.

“Design Process” means the timetable for design development and the process for achieving sign off where designs are not settled and finalised before the start of the Project or where the designs may be subject to review and variation.

“Development Appraisal” means the appraisal including the Cash Flow Statement showing income and costs, prepared by the Borrower and approved by the Agency (in consultation with the Consultant) containing, amongst other things:

- (a) the Agreed Plans;
- (b) the Build Programme;
- (c) the Cash Flow Statement;
- (d) the amount of any costs of the Project incurred and paid to the date of such appraisal (if any);
- (e) the amount of the Development Costs required to complete the Project estimated as at the date of such appraisal; and
- (f) the contingency;

“Development Costs” means the total of all development costs and expenses incurred by the Borrower and/or any party working with respect to the Project, and/or which the Borrower or any of the Professional Team should have reasonably estimated will be incurred in relation to the Project.

“Development Cost Reconciliation” is the analysis of the Target Project Spend, Target Cumulative Spend, Actual Total Spend and Cumulative Spend for the Project and per Unit as set out in the format at Appendix 1.

“Development Security Documents” means the Building Contract, the Professional Team appointments, the Collateral Warranties and any duty of care agreements or guarantees.

“Disputes and Potential Disputes” means any contested claim for payment or damages, any adjudication, court process or formal legal action for recovery of payment or damages, any payments of damages, claims against guarantees or similar and any claim for payment or damages (including insurance claims) not yet agreed or formalised.

“Dispute Resolution Process” means any agreed process to agree disputes or other such contractual deadlock proposed by the Borrower, Contractor(s) and Sub-contractors and presented to the Consultant for inclusion of commentary within the Initial Report.

“Employer’s Agent” means a person or company acting on behalf of the Borrower with authority to contractually bind the Borrower in dealings with the Contractor(s) or Sub-contractors.

“Finance Documents” Means the suite of documents relating to the financing of the Project including and not limited to the Facility Agreement, inter-creditor deeds or assignment of rights between the funding parties and related security documents.

“HSE” means the Health and Safety Executive.

“Infrastructure” means any works to prepare the site for the development of the Project and any existing structures that must be renewed or adapted to facilitate the use of any site relating to the Project including all intermediate access works and ground preparations for the development of the site, structural foundations and works to facilitate longer term utilities connections to the Project sites, not limited to public sewers, water and other utilities including adopted structural foundations and ground conditions treatments.

“Initial Build Programme” means the programme of development activities as approved by the Agency for that purpose at the commencement of the Project.

“Initial Cash Flow Statement” means the Cash Flow Statement at the time of signing the Facility Agreement that provides the starting point for the cash expenditure analysis of the Project. The Consultant will ensure that analysis of the cost and programme will use the same base date and the Initial Cash Flow Statement will be appropriate and correspond to the construction outputs in the Initial Build Programme.

“Initial Cost-per-Unit” means the total Project cost as depicted in the Cash Flow Statement divided by the number of units completed (excluding all infrastructure and enabling costs funding via the Project).

“Initial Drawdown” means the first drawing of secured funds from the Agency’s facilities or any Co-lenders.

“Initial S-Curve” means an S-Curve depicting the Target Cumulative Spend up to the Target Project Spend as depicted in the Initial Cash Flow Statement and the Initial Build Programme. Where the Agency is lending both to Infrastructure elements and housing units this should be presented as (i) a combined S-Curve representing total costs (Infrastructure and housing units), (ii) housing units excluding infrastructure costs and (iii) infrastructure only – any classification of what constitutes Infrastructure to be clearly set out in the Consultants reports. At the discretion of the Consultant or under the express direction of the Agency the Consultant may depict Mechanical & Electrical works as a separated S-Curve where that element makes a significant proportion of the Target Project Spend.

“Initial Total Cost-per-Unit” means the total Project cost as depicted in the Cash Flow Statement divided by the number of units completed (including all infrastructure and enabling costs funding via the Project).

“Initial Unit Chart” means a depiction of the Initial Build Programme demonstrating as a chart or list of the units that are expected to be completed at each stage of the Project (format to be agreed between the Agency and the Consultant).

“Monthly Progress Meeting” a monthly meeting to discuss the progress of the Project, at which the Consultant will be in attendance, and to review and collect any documentary evidence required to fulfil

the obligations within this Instruction and Scope and as could otherwise be expected to fulfil the on-going monitoring role.

“Monthly Progress Reports” means a report in the format as set out in Schedule 2.

“Monthly Site Visit” a monthly visit to the construction sites that make up the Project.

“Monthly Unit Chart” means a depiction of the Initial Build Programme demonstrating as a chart or a list of the units that are expected to be completed at each stage of the Project as updated to show the monthly progress (format to be agreed between the Agency and the Consultant).

“MS Services” means those listed in the Panel Appointment and as more specifically described in Schedule 2 of this Scope and as may be varied by agreement between the Agency and the Consultant from time to time.

“On-going S-Curve” means an update to Initial S-Curve showing the actual cumulative spend against the target cumulative spend as depicted in the Cash Flow Statement and the Initial Build Programme.

“Permitted Revenues” means income received by the Borrower, including but not limited to housing association monies, grant monies and sale completion monies, and approved by the Agency for use in meeting Development Costs.

“Professional Team” means the architect, quantity surveyor, employer’s agent, structural and any other engineers, cost consultants and other professional persons engaged by the Borrower in connection with the Project.

“Refurbishment Works” means the plans, proposal and execution of refurbishment activities including but not limited to renewal, making good, partial re-construction or remedial works to an existing structure or Infrastructure that is part of the Project including associated Infrastructure Works.

“Refurbishment Estate” means a number of properties or Infrastructure Works that will be subject to the Refurbishment Works.

“Refurbishment Objectives” means the standards and objectives that are to be attained by the Refurbishment Works in relation to outputs, design standards, contractual terms and regulatory and statutory compliance.

“Revised Build Programme” means the most recent construction programme as approved by the Agency for that purpose.

“S-Curve” means a depiction of the Project representing the Target Cumulative Spend against the Actual Cumulative Spend where the horizontal axis is time and the vertical axis is monetary cost to be issued to the Agency in accordance with this Scope in the Monthly *Progress Report*.

“Sectional Completion Date” means the date on which a certificate of practical completion is issued in respect of that phase, aspect or part of the Project.

“Snagging” means the process of identifying and listing any deviation from the agreed standard of build and finish anticipated in the contractor proposals or subcontracts for the Project or any deviation from any statutory or regulatory requirement for building finish.

“Stock Condition Survey” means the surveys of the Refurbishment Estate that informed the scope and extent of the Refurbishment Works.

“Sub-contractors” means any subcontractors to the Contractor(s) undertaking activities relating to the Project.

“Target Project Spend” means the total in monetary terms to be expended on the Project as depicted in the Initial Budget.

“Target Cumulative Spend” means the total, in monetary terms, to be expended on the Project as depicted in the Initial Budget for each period of Project until the target completion date.

“Units” mean individual dwellings that are capable of independent sale from each other when complete (for the avoidance of doubt in blocks of apartments this means each apartment, in houses it is each separate dwelling, and in semi-detached houses containing two dwellings would equal two units).

“Variant S-Curve” means as defined in Schedule 2 as an update to Initial S-Curve showing the actual cumulative spend against the target cumulative spend as depicted in the Cash Flow Statement and the Initial Build Programme as well as the new cash flow or build programme as confirmed by the Agency.

“Works” means those construction activities (including where relevant their design and/or the selection of materials and goods therefore) described in and to be executed under the Building Contract or any other construction, civil or structural engineering and services required to complete the project.

The interpretation and construction of this Scope shall be subject to the following provisions:

1. capitalised words not defined in this brief shall take the meaning as defined in the Panel Appointment;
2. the clause headings in this brief are for the convenience of the parties only and do not affect its interpretation;
3. words importing the singular meaning include where the context so admits the plural and vice versa;
4. where the context so admits words denoting the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably in that manner;
5. when the context so requires and where the Consultant is a partnership, the term “Consultant” shall be deemed to include any additional partner(s) who may be admitted into the partnership of the Consultant during the currency of this brief. This Scope and its associated Instruction under the Panel Agreement shall not automatically terminate upon the death retirement or resignation of one or more members of such partnership;
6. references to a paragraph or a schedule are to a paragraph or a Schedule to this Scope unless otherwise identified.

# Schedule 2

## The Scope

### 2.1 The Initial Report

As part of the preparation of the Agency's funding approval the Consultant will prepare a report (the "Initial Report") and will be required to attend meetings with the Borrower, Contractor(s), Sub-contractors, Professional Team or other advisors.

This Scope of Services for the Monitoring Surveyor (the "Scope") is designed to cover the key risks of typical concern to the Agency and instruct the Consultant to review and notify the Agency of other risks not expressly stated in this Scope. Ultimately it is for the Consultant to decide on the makeup of the final reports issued to the Agency using the Consultant's professional judgement.

**For the avoidance of doubt it is the duty of the Consultant to request information from the Agency and the Borrower as the Consultant considers necessary in order to prepare the Initial Report. The Consultant must notify the Agency if the lack of information is causing difficulties in preparation of the Initial Report.**

**For the avoidance of doubt where construction activities have commenced on the Site the Consultant will undertake as many site visits as it considers necessary to complete the Initial Report. It is mandatory for the Consultant to attend the Site in preparation of the Initial Report.**

The Agency takes no responsibility for the accuracy of the Consultants reports or correspondence. The Agency acknowledges that the procurement strategy and the procurement process of the Works will differ project-to-project and to the extent that the Consultant wishes to dis-apply parts of this scope due to the element not being relevant on the facts of the project the Agency would ask that the Consultant state in writing what parts it wishes to disregard and the reason(s) for doing so and in advance of Instruction.

To be set out in substantially in the form set out in Appendix 3 (Template for Reporting) of Schedule 2; and

- i. in both hard copy, with a sufficient number of copies reasonably requested by the Agency, and an electronic or PDF scanned copy;
- ii. prior to the execution of the funding documents the Consultant will provide the Agency with the Initial Report.

The Consultant should send a sample or specimen report to the Agency in order to agree the final format which is to be used.

**Where, in completing the Initial Report, the Consultant raises issues of concern that the Consultant feels strongly should be brought to the attention of the Agency. The Consultant will prepare a list or schedule of these issues that the Consultant will submit to the Agency as soon as reasonably practicable. This is to avoid the raising of issues immediately prior to signing the Facility Agreement.**

## 2.2 Assessment of general feasibility

### 2.2.1 Introduction

The Consultant will review the proposed Works that make up the Project making specific comment on the development risk that may impact on the likely success of the Project and the measures that are available to mitigate these. Additionally the Consultant will review the appropriateness of the scope of the Works, development plans and the Development Appraisal for the Project.

The Consultant will commence its review from the Monitoring Surveyor Start Date as instructed by the Agency.

The Consultant will also consider the practical aspects or technical complications in the manner in which the Borrower is proposing to develop the Project which could fetter, negate or prohibit the ability of the Agency to step-in to the Project or transfer the Project, site, remaining sub-contracts and warranties to a replacement contractor.

Working with the Agency's Valuer, the Consultant will also consider any elements of the proposed Works and Development Appraisal that may lead to a new purchaser or a replacement developer adjusting the valuation of the site including, but not limited to, specific economies of scale that may be enjoyed by the incumbent Contractor(s) or Borrower.

In conjunction with the Agency's Legal Advisors the Consultant may be asked to assist in the reviews of any agreements for lease, report on title or other project documents where a monitoring surveyor's opinion is required.

The Consultant will also comment on the project management systems proposed by the Borrower and his project team including the property / construction management, risk management, change management and quality management processes.

The Consultant will advise on any works that may be required in order to comply with the statutory consents, development agreements and/or agreements for lease and how they have been or are proposed to be subcontracted or undertaken.

### 2.2.2 Descriptive Introduction

***For the avoidance of doubt this section is required for refurbishment works as well as "new build" projects.***

The Consultant will provide a short introductory description of the Building Technology proposed to be built or refurbished within the Project and Works. This description may be brief, but should be comprehensive and mention material characteristics of the scheme.

*Example....."this is a scheme of 800 houses of which there are 450 new build and 350 to be refurbished. Refurbishment includes 200 houses being stripped back to their structural frame, renewed and re-roofed and 150 houses being decorated, kitchen and bathroom renewal 80 of the 150 refurbishments will be re-roofed. All 350 houses will require boiler replacement".*

### 2.2.3 Health & Safety

The Consultant will confirm that they have reviewed information necessary to assess the compliance of the Borrower with the Health & Safety provisions of the Facility Agreement. The Consultant will confirm that in their opinion the Borrower has taken all necessary steps required to comply with the Health & Safety obligations imposed on them within the Facility Agreement, including but not limited to;

- Where there is more than one contractor working on the project confirming, that the Principal Designer and Principal Contractor (as defined in the Facility agreement and the CDM Regulations) have been appointed;

- Confirming that the Borrower has provided the Consultant with a copy of the F10 notification to the HSE of the particulars specified in schedule 1 of the CDM Regulations;
- Confirming that the Contractor or Principal Contractor (where appointed) has prepared a written construction phase health and safety plan prior to construction commencement and provide commentary as to the adequacy of the plan.
- Notifying whether there has been any incident that could in the opinion of the Consultant or has attracted the attention of the Police and the media in addition to any incident occurring that is to be reported under the Facility Agreement;
- Providing comment on the compliance with the Health & Safety at Work etc. Act 1974 and the CDM Regulations.

The points detailed above should be specifically mentioned in the Initial report and retained in each monthly report and updated as necessary over the duration of the project.

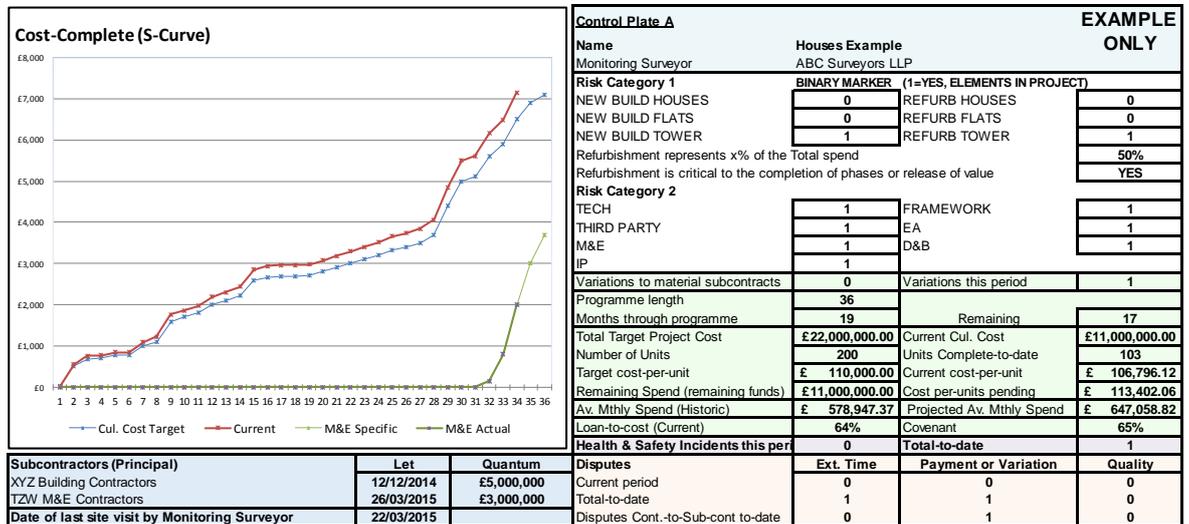
### 2.2.4 Refurbishment

Where refurbishment is a feature in the Project the Consultant will respond to Appendix 2 of this Scope of Services for the Monitoring Surveyor.

### 2.2.5 Portfolios

Where the Consultant is instructed to monitor a portfolio of properties, then the Consultant will issue reports on each site separately unless agreed otherwise agreed with the Agency.

### 2.2.6 Metrics



PLEASE PRESENT THE PLATE AS ONE TABLE. BREAKING IT DOWN PER CHAPTER IS ACCEPTABLE, BUT IT MUST BE PRESENTED AT LEAST ONCE AS A COMPLETE TABLE SOMEWHERE IN EACH REPORT.

- All graphs used by the Consultant will be presented with inputs tables set out in an Excel spread-sheet. The Consultant will be responsible for the accuracy of all charts & tables.
- The Consultant will set out the following metrics and these will set the base comparator for the Monthly Progress Report.
- The S-curve depicting the Initial Build Programme must be retained within the graph irrespective of any approved variation, any approved variations should be depicted in an identical fashion demonstrating the cost to complete for the for the new build programme

and added to the chart. Each subsequent variation to the build programme should be added to the chart in the same manner. A Consultant should only acknowledge a variation to the Initial Build Programme where they have received a written instruction from the Agency.

#### **2.2.7 Cost-per-Unit**

The Consultant will estimate the Initial Cost-per-Unit and the Initial Total Cost-per-Unit and state it in a table at the front of your report.

#### **2.2.8 Sources & Uses**

The Consultant will present a sources and uses table, updated as the Project progresses and showing the planned sources and uses as confirmed by the Agency at the commencement of the Instruction.

#### **2.2.9 Cost-to-complete (S-Curve)**

The Consultant will include the Initial S-Curve (a graphical depiction of the target cumulative spend against the Initial Build Programme) and the Initial Unit Chart in a table at the front of the Initial Report.

*The metrics and in particular the S-Curve will be central to the presentation of the Consultant's findings and will be submitted with the underlying inputs in an Excel file.*

#### **2.2.10 Programme & Contractual Targets**

The Consultant will set out the contractual targets, long-stop dates and phasing dates that make-up the Project timetable setting the basis for the targets for monthly progress the Consultant will report upon in the Monthly Progress Report.

#### **2.2.11 Loan-to-Cost**

The Consultant will comment on the profile of loan-to-cost and the assumptions made that underpin the view that the Borrower can comply with this covenant.

#### **2.2.12 Building type, Lifecycle & Design Life**

The Agency considers that it is of paramount importance to ensure a proper and fair value to be created by way of the Works in return for the money distributed to the Project. The Consultant will be expected to offer an opinion on the Building Technology used where there are known failings, cost implications or lifecycle and renewal problems with elements of the proposed building structure, internal fittings or apparatus that are to be included within the Project and Works.

The Consultant will provide commentary on the Building Technology used and any implications it might have in terms of timescales, cost, regulations and permissions or any other matter relating to the completion of the Project to budget.

The Consultant will provide commentary on the expected life-span of the Units (individually and as a collective whole where appropriate) within the Project and Infrastructure as presented by the Borrower and the likely lifecycle costs implications or on-going maintenance issues that could be consequent to the selected Building Technology, parts or components. This review would be in conjunction with the Agency's Valuer and sufficient to provide commentary or a basis for checking the assumptions used in the valuation of the Units. Where the Agency requires a full lifecycle review or programmed maintenance plan this will be additional to this Scope and the terms will be agreed between the Consultant and the Agency.

Where it is reasonable for the Consultant to be aware that a Building Technology proposed has suffered instances of premature failure or carry a high risk of failing to meet the standards and objectives of the Project then this should be noted to the attention of the Agency upon the Consultant becoming aware of the intention of the Borrower to use such technology.

### **2.2.13 Planning**

In conjunction with the Agency's Valuers and the Agency's Legal Advisors, advise on the practical implications of any planning conditions required to complete the Project. This includes any cost implications or complications that could reduce the value or quality of the security interest the Agency holds in the Project, by way of increased costs or particular benefits held by the Contractor(s) or the Borrower including by way of example, but not limited to the costs of complying with the section 106 of the Town and Country Planning Act 1990 (as amended).

### **2.2.14 Cash-flow & Programme**

The Consultant will review the Cash Flow Statement and the adequacy of the cash, revenue and costing information to carry out the Project.

The Consultant will provide a specific review of the adequacy of construction cost estimates given the aims and objectives of the Project and the Works including providing commentary on contingency allowances.

### **2.2.15 Design**

The Consultant will review the Agreed Plans, confirming their appropriateness for the aims of the Project including making comment on the suitability of the Agreed Plans, the quality of the anticipated end product and the practicality of the construction and fit-out proposed with particular reference to the cost allocation and the method statement and plans set out by the Borrower to develop in accordance with the Agreed Plans, Development Appraisal and the Agency's Valuers Initial Valuation.

The Consultant will also make a specific review of the proposed Design Process and its appropriateness given the contracting structure including review of, but not limited to, the possibility for delay being a consequence of the Design Process or the Design Process making the Project predisposed to dispute due to there being many unconfirmed design elements that could be open to challenge by the parties to the Project.

### **2.2.16 Design & the supply chain**

The Consultant will report on the allocation of design responsibility and the provision of warranties and other such support by the Professional Team.

### **2.2.17 Design & Valuation**

Working with the Agency's Valuer the Consultant will confirm that the Design Process, Project output and Works are in line with the assumptions within the Agency Valuer's valuation including rental income.

### **2.2.18 Health & Safety**

The Consultant will comment upon the adequacy of health and safety proposals proposed by the Borrower and the Contractor(s) or, where applicable, the Sub-contractors.

### **2.2.19 Build programme**

The Consultant will provide review the adequacy of the Initial Build Programme and the projected time period for completion of the Project. The Consultant will comment on any key milestones, including but not limited to; practical completion, sectional completions and pre-sale and/or pre-let longstop dates, delivery of marketing suites and show accommodation, any key risks which can affect the critical path and any contingency provided within the programme.

### **2.2.20 Site Enabling and Structural Works**

The Consultant will comment upon the structural works including any site enabling, demolition, foundations (including works to buttress and shore up, reinforce or anchor the Project site as a whole), retaining walls, sidings or reinforced embankments, drainage conduits, road or other transportation connections and where applicable, sewage, water, telecoms or other utilities required in order for the Works and Project to progress and how they will be programmed into the initial build programme.

Where these works require a review by a civil engineer or other appropriately qualified professional that cost must be set out in the fee proposal where possible. Where it is not possible to agree this in advance of the instruction under this Scope any consequent instruction of additional professional support will be by agreement with the Agency.

For the avoidance of doubt where the Agency is funding enabling works and Infrastructure this will require drawdown analysis and signing-off of payments as it would for any other element of the Works.

#### **2.2.21 Procurement strategy**

The Consultant will review the method of procurement and the tendering arrangements being proposed by the Borrower and whether or not the Building Contract and the procurement of the Works is in the opinion of the Consultant adequate to achieve the Agreed Plans and the Project.

Procurement strategy will be subject to the on-going monthly reviews of the Consultant.

#### **2.2.22 Timing of the Initial Report**

The Agency acknowledges that the procurement strategy and the procurement process of the Works will differ project-to-project. Where the Consultant does not feel that they can fulfil the requirement of this Initial Report the Consultant will state so, clearly explaining at what stage in the procurement process the Borrower be at by the date of issuance of the Initial Report.

#### **2.2.23 Borrower's representatives**

Where it is proposed that the Borrower will not directly manage the development activities and instead will utilise an Employer's Agent or other such project manager with devolved powers and authorities to contract on the Borrower's behalf, the agreement between the Employer's Agent and the Borrower should be reviewed in final form by the Consultant.

The Consultant will monitor such relationships throughout the currency of this instruction.

#### **2.2.24 Building contract(s)**

*This may not be finalised by the point of signing the funding documents and consequently will be undertaken as part of the On-going Monitoring obligations of the Consultant.*

The terms, conditions and adequacy of the Building Contract(s) required to expedite the Project and Works, warranties, bonds, guarantees, or reports on contracts by the legal advisors to the Borrower or the Agency and other related contractual documents, will be reviewed by the Consultant from a commercial and technical perspective, such review to be in conjunction with the Agency's Legal Advisors (where necessary).

The Consultant will provide commentary on whether the terms of any agreements with the Borrower are on third party arms-length terms, and in relation to agreements for the forward purchase of goods reviewing the application of procedures and processes, confirming that such forward purchase is appropriate and that appropriate provisions dealing with vesting certificates, labelling, insurance and supplier insolvency are included.

#### **2.2.25 Variations**

Variations to existing contracts may already have occurred prior to the Agency supporting a Project and the cost and programme implications of variations issued or anticipated fall within or out-with the

parameters of the Agreed Plans, Building Contract and any other contracts in relation to the Project will need to be noted to the Agency by the Consultant. The Consultant will inform the Agency immediately they are advised or become aware of any material changes and shall obtain written consent from the Agency before confirming the Agency's approval.

#### **2.2.26 Insurance**

*The full suite of insurance policies may not be ready by the point of signing the funding documents and in such circumstances would be noted in the Initial Report and undertaken as part of the On-going Monitoring obligations of the Consultant in accordance with the conditions precedent drawn up by the Agency.*

In conjunction with the Agency's Legal Advisors (where necessary), the Consultant will comment on the adequacy, compared against schemes of a similar size and nature, of the insurance provisions contained within the Building Contract, Professional Team appointments and other documents relating to the Project and the Works. The Consultant will offer commentary on type and quantum of cover of the policies and whether they are usual for a development of this size and confirm the nature of the insurance provisions.

#### **2.2.27 Contractor(s) & Sub-contractor suitability**

*This may require on-going commentary in the Monthly Progress Report as the procurement process develops (subject to contracting framework).*

The Consultant will provide commentary on the proposed Contractor(s) and Sub-contractors, their suitability, relevant experience and any substantiated or unsubstantiated (insofar as it may be disclosed) information which the Consultant is aware of and free to disclose in respect of each proposed Sub-contractors including in relation to performance on other developments.

#### **2.2.28 Professional team suitability**

The Consultant will review and comment on the relevant experience and, in conjunction with the Agency's Legal Advisors (where necessary), terms of appointment of the members of the Professional Team.

#### **2.2.29 Interface risk**

*This may require on-going commentary in the Monthly Progress Report as the development progresses.*

Throughout the period of this engagement the Consultant will pay particular attention to any commercial or technical interface risks between the Borrower, its Sub-contractors and any other agent of the Borrower or person engaged in the Project that may have consequences for the undertaking of the Works as part of the Project.

#### **2.2.30 Compliance with regulations & consents**

*This will require on-going commentary in the Monthly Progress Report as the development progresses.*

The Consultant will provide commentary on whether the Borrower can demonstrate satisfactory compliance with all applicable statutory, laws, regulations and approvals, including but not limited to, planning approvals, environmental approvals, building regulations approvals, listed building consents, right-to-light agreements or claims (in conjunction with the Agency's Legal Advisors), all agreements and arrangements with neighbouring sites for the facilitation or ease of the development activities that form part of the Works and the Project, public health act approvals and fire authority approvals. The Consultant will also provide commentary on the strategy and programme for obtaining any further statutory approvals (if any) and the risks associated with procuring these future approvals.

The Consultant will provide commentary on whether the NHBC (or similar) has confirmed that it will provide a warranty for the Project and, in conjunction with the Agency's Legal Advisors, comment upon

whether the Borrower and Project is and will be in compliance with superior landlord consent (if applicable).

The Consultant will provide commentary on the NHBC registration status of the Borrower and the Contractor(s).

#### **2.2.31 Dispute resolution process**

To the extent that there is a bespoke Dispute Resolution Process(es) within any development agreement, subcontract and/or procurement framework for Contractors, Sub-contractors and the Borrower, the Consultant will provide commentary as to its appropriateness given the nature of the contracting arrangements on the scheme.

Where the contractual framework proposed by the Borrower follows a standard form (such as the JCT) a basic reminder of the process and delay caused when such a default dispute process is used will suffice. Noting any disputes that may have already commenced or any arrangements the Consultant considers could predispose the Borrower to disputes with other parties associated with the Project.

Where the construction activities have already commenced prior to the Agency supporting the Project the Consultant will inquire and notify the Agency of any dispute between any parties to the Project.

#### **2.2.32 Ground investigation**

The Consultant will review and comment on any ground investigation reports relating to the Project, their adequacy for the Project and whether the implications of any such ground investigations have been satisfactorily incorporated into the Project proposals.

The Consultant will note and comment upon any reports on ground conditions that could potentially cause delay or increased cost to the Project including but not limited to flooding, land-slip, the historic impact of mineral extraction, land fill or tipping, previous industrial use, Cheshire brine, or reliance for future Units on artesian wells or other natural sources of water.

#### **2.2.33 Site access**

In conjunction with the Agency's Legal Advisors the Consultant will review and comment on the adequacy of legal rights to site access in both physical and practical terms given the scope of the Works and the Borrower's proposed construction and development methods planned to be used to expedite the Works and other activities needed to complete the Project.

In conjunction with the Agency's Valuers and the Agency's Legal Advisors, where those sites are held as security the Consultant will comment upon the adequacy of the access rights for the Agency in the event of step-in by the Agency or other funders to the scheme or the exercising of security over a partial element of the site or the whole site and any implications such actions could have on the access provisions or their omission may have for the value of the site or whether they could inhibit the practical completion of the Project objectives. The Consultant will consider access for deliveries and waste clearance as well as neighbourly issues and any restrictions on delivery times.

#### **2.2.34 Brownfield sites**

The Consultant will assess and provide commentary on the adequacy of cost estimates and proposed means of preparing brownfield sites. This will include commentary on any demolition works and site clearance including commentary on the contracting and procurement of the sub-contractor undertaking this element of the Works.

#### **2.2.35 Phasing and sequential risk**

Where completion of the Initial Build Programme is dependent on sequentially finishing phases of the Works the Consultant will report on the consequences of failing to finishing each critical stage in its anticipated sequence or order.

### 2.2.36 Recycled units

The Consultant will consider the recycling of properties into the funding of the Project. Where Units are being released for sale, lease or other means of generating money as identified in the Development Appraisal, or otherwise by the Agency or the Borrower, the Consultant will comment on the practical implications and risks to such Units failing to be available by the date that they are anticipated in the Development Appraisal and the Initial Build Programme.

### 2.2.37 Completion & Handover

The Consultant will review the completion procedures, handover and snagging & defects processes (the "Completion Protocol") agreed between the Borrower and its Contractor(s) irrespective of whether this is a bespoke agreement between the parties or limited to the language on such matters in standard framework contract (such as the JCT). Where standard terms are to be relied upon the Consultant will flag to the Agency in the Initial Report that the Borrower has not implemented a Completion Protocol or describe the extent to which the Borrower has implemented such a policy.

The Agency will encourage Borrowers to demonstrate processes to ease the completion, handover and defects period with the Agency's aim being to see the Project completed to the expected standard and quality without additional costs, site call-backs, disputes or inconvenience.

The Agency considers it important that, where possible, the Borrower will address as many matters relating to defects before the full de-mobilisation of contractor crews off the Project sites. The Consultant will assist the Agency in this aim during meetings with the Borrower.

The Consultant will consider and comment upon the time available in the programme to undertake the Completion Protocol to ensure rectification of any defects or snagging lists.

### 2.2.38 Other matters

The Agency relies upon the Consultant to advise it as to any other matters that the Consultant considers a risk to the Agency and appropriate to draw to the attention of the Agency.

### 2.2.39 Other risks

The Agency focuses on some core risks and in addition to the Consultant's wider duty to make the Agency aware of risks that the Consultant discovers in addition to those noted in this section, the Consultant will specifically highlight and comment upon the following categories of risk.

- **Technology Risk:** where a project has a more complex technology element, for example, but not limited to, energy efficient heating, water boiler systems with a less proven technology, other energy saving or generating technology (in particular solar panels bolted to the roof), and heating and cooling systems.

The Consultant will also note where the implementation of such technology will have an impact on programme (for example, but not limited to, the implementation of the technology in the structural Design Process) and where there could be a structural impact (noting for example, but not limited to, the loading of roofs with solar panels).

- **Third Party risk:** the risk that completion of the Works or the Project objectives is dependent on the actions of a third party to grant rights to the Project, including but not limited to access agreements or licences or contractual or statutory interfaces with utilities or public authorities or private companies i.e. LUL or a water authority. This risk should be noted, where it comes to the attention of the Consultant, even where the risk does not face the Borrower directly and is contained within the Contractor(s) and Sub-contractors agreements. The Consultant needs to consider the cost implications of such arrangements in the event of a step-in or other such intervention.

- **M&E Risk:** where completion involves a large proportion of mechanical and electrical engineering works for example, but not limited to; lifts, car-ports, escalators, and similar elements procured directly by the Contractors to the Borrower or through any third party contract to supply, the Consultant will comment on how these elements could affect Design Process and the Initial Build Programme and whether the Borrower, Contractor(s) and Professional Team have sufficiently advanced procedures, float or contingency in place to cope with delays in these elements. The Agency will be particularly interested in the reliability and track record of the apparatus to be procured and stated by the Borrower, Contractor(s) and Professional Team and how implementation will affect the Design Process and the Project timetable.

The Agency may request a specific and detailed M&E review which will be an addition to this Scope and based on a scope specific to the Project.

- **Intellectual Property Risk:** where any product licencing, proprietary right (such as ownership of design) or patent or other licencing are required and replacement of this right, if it was revoked will have a cost implication. The Agency is interested in the implications for a Project where it is relying on such a proprietary right and the Consultant will note the existence of such rights to the Agency. The Consultant will consider the mitigation and replacement strategy's presented by the Borrower, Contractor(s) and Professional Team and the cost implications of reliance on such proprietary rights. The Consultant is not expected to take a legal review of rights, but rather to note them to the attention of the Agency and appraise the practical implication for the Project costs and Initial Build Programme.

#### 2.2.40 **Materials & Labour Supply**

The Consultant will report on any difficulties in the delivery and provision of materials to the Project, whether in terms of logistics, supply, commercial, or financial terms. Including, but not limited to, securing pricing for materials at levels indicated in the assumptions underpinning the Cash Flow Statement and Development Appraisal.

The Consultant will report on any difficulties in the delivery and provision of labour to the Project, whether in terms of supply, commercial, or financial terms. Including, but not limited to, securing pricing for labour at levels indicated in the assumptions underpinning the Cash Flow Statement and Development Appraisal.

Where the Consultant becomes aware of such circumstances or events, the Consultant will provide comment on any indications of increases or decreases in the cost and supply of materials or labour in the area local to the Project or within the Project itself.

#### 2.2.41 **Labour Turnover & Key Personnel**

The Consultant will report on labour turnover and the loss of key personnel in the Borrower, Contractor(s) and where possible the Subcontractors, that the Agency has indicated or the Consultant deems important to the progression of the Project.

**Apparatus;** where the Works and Project involves the provision of and fitting of apparatus including those for the conduct of electricity, heating and storage of water and the Consultant will make particular comment on the elements being proposed to be used and the Borrower's procurement strategy for these elements including, but not limited to, lifespan stated by the manufacturer, warranties and repairs arrangements or any services contracts that exist as well as quality, track record of the provider and suitability for the Project. This is distinct from a design review and rather seeks to increase emphasis on the importance of these elements in terms of proportion of spend.

**Contamination;** any ground, or other contamination, that is found in the ground surveys or other surveys undertaken by the Borrower, its Sub-contractors or advisors should be explained in the Initial Report including a review of and comment upon the cost implications surrounding its containment and contractual treatment.

**Asbestos, vapours other gases or emissions;** the Consultant will make specific reference to asbestos, asbestos mounds, former mining works or Radon or other gases or emissions as it deems necessary having first considered the findings of the environmental and site reports and the geographic location of the Project site.

#### **2.2.42 Meetings**

As part of the preparation of the Initial Report the Consultant may be required to attend meetings with the Agency, the Borrower and its advisors, contractors, prospective contractors and the other advisors to the Borrower and the Agency.

Where the Project is spread over multiple sites, or the site is made up of a number of properties, that in the opinion of the Consultant a monthly physical inspection of each unit would not be feasible then the Consultant will suggest a strategy to undertake the Monthly Site Visit that will enable it to perform its obligations under this Instruction.

## 2.3 On-going monitoring

### 2.3.1 General Duties: Project monitoring and the funding documents

The Consultant will monitor and review the project and confirm that it is progressing in accordance with the relevant provisions of Finance Documents and will provide advanced warning and notification where the Consultant's findings indicate that there could be a potential breach of these documents.

Where there is a breach of the Finance Documents, or a potential breach, the Consultant will provide reporting and commentary on these matters to the Agency.

**For the avoidance of doubt it is the duty of the Consultant to request information from the Agency and the Borrower as the Consultant considers necessary in order to prepare the Monthly Progress Report. The Consultant must notify the Agency if the lack of information is causing difficulties in preparation of the Monthly Progress Report.**

**For the avoidance of doubt where construction activities have commenced on the Site the Consultant will undertake as many site visits as it considers necessary to complete the Monthly Progress Report. It is mandatory for the Consultant to attend the Site at least once as part of the preparation of each Monthly Progress Report.**

### 2.3.2 Health & Safety

The Consultant will confirm that they have reviewed information necessary to assess the compliance of the Borrower with the Health & Safety provisions of the Facility Agreement. The Consultant will confirm that in their opinion the Borrower has taken all necessary steps required to comply with the Health & Safety obligations imposed on them within the Facility Agreement, including but not limited to;

- Where there is more than one contractor working on the project confirming that the Principal Designer and Principal Contractor (as defined in the Facility agreement and the CDM Regulations) have been appointed (if they had not been at the time of the Initial Report) and confirming that, if they have been appointed, any changes to the appointments have been notified to the HSE on the F10;
- Confirming that construction phase plans are updated and maintained by the Contractor or Principal Contractor (where appointed) and provide commentary as to the adequacy of the plan.
- Notifying whether there has been any incident that could in the opinion of the Consultant or has attracted the attention of the Police and the media in addition to any incident occurring that is to be reported under the Facility Agreement;
- Providing comment on the compliance with the Health & Safety at Work etc. Act 1974 and the CDM Regulations.

The points detailed above should be specifically mentioned in the Initial report and retained in each monthly report and updated as necessary over the duration of the project.

### 2.3.3 Project monitoring and general duties

The Consultant will report to the Agency on all matters that could lead to a delay of the Project or lead to an increase in the cost of the Project. For the avoidance of doubt this will include accelerations in programme and periods of underspend that were not anticipated in the Initial Build Programme as much as it would include slow progress and overspend.

The Consultant will report all other material issues that could affect the risk of the Agency and the timely and successful completion of the Project.

The Consultant will advise, guide and provide recommendations to the Agency on both the responsive and proactive measures to reduce the Agency's risk relating to the Project.

At all times during the currency of the Instruction the Consultant will notify the Agency immediately by telephone or email, and then confirmed in writing within 3 business days, where the Consultant considers that the Agency's rights and interests may have become prejudiced by virtue of, but not limited to, cost overruns, disputes, health and safety issues or delays.

The Consultant will provide the duties detailed below:

- Attending Monthly Progress Meetings;
- Undertaking a Monthly Site Visit;
- Producing a Monthly Progress Report;
- Signing-off and verifying the Payment requests and Drawdowns to the Borrower; and
- Issuing a certificate of completion.

## **2.4 Monthly Progress Meeting & Site Visit**

### **2.4.1 Monthly Progress Meeting**

As part of the preparation of the Monthly Progress Report the Consultant will be required to attend the Monthly Progress Meeting. The Consultant will liaise with the Borrower to arrange attendance at the Monthly Progress Meeting.

In addition to or coinciding with the Monthly Progress meeting the Consultant will undertake the Monthly Site Visit.

### **2.4.2 Monthly Site Visit**

Where the Project is spread over multiple sites or the site is made up of a number of properties, that in the opinion of the Consultant a monthly physical inspection of each Unit would not be feasible, the Consultant will suggest a strategy to undertake the Monthly Site Visit that will enable it to perform its obligations under this Instruction, to be agreed with the Agency.

During Project development until the Completion Date or such other date as instructed by the Agency the Consultant shall monitor on an on-going basis the progress of the Project and the Infrastructure (making available sufficient and suitably qualified personnel for such purpose).

## 2.5 Monthly Progress Report

The Consultant will provide the Monthly Progress Report before each drawdown date and within one week of each Monthly Progress Meeting and where a Monthly Progress Meeting is cancelled with the prior agreement of the Agency, within one week of the date when the Monthly Progress Meeting should have taken place and the Report issued and set out substantially in the form set out in Appendix 3 (Template for Reporting) on the progress of the Project (Monthly Progress Report); and in both hard copy, with a sufficient number of copies reasonably requested by the Agency, and an electronic or PDF scanned copy.

### 2.5.1 Information

During the currency of the Instruction, the Consultant will request that the Borrower provides an updated list of documentation and agreements relevant to the Project and the Development Financing including but not limited to the Facility Agreement, the Finance Documents, the Project agreement, any agreements for lease, the Building Contract, the Development Appraisal, the Cash Flow Statement and the Build Programme including documents evidencing the variation of contracts or the progression of the project into anticipated next phases or stages.

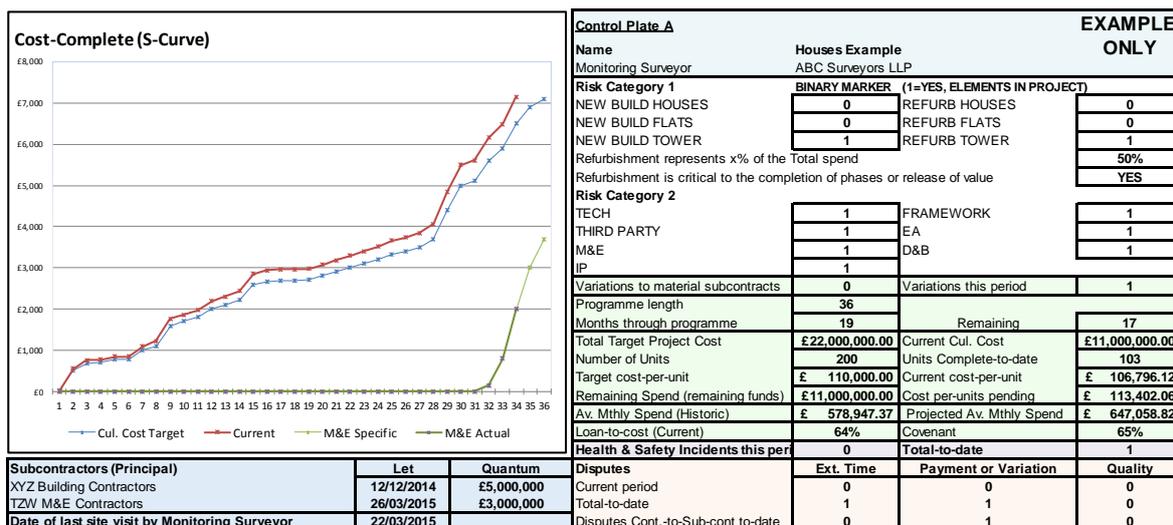
The Consultant will request that the Borrower provides (or arranges for the provision of) any document, agreement (in their most recent iteration) or other such information relevant to the Consultant's role as set out in this Instruction.

The Agency confirms that it will assist the Consultant in procuring that the Borrower provides or makes available any such information to the Consultant.

**The Consultant will notify the Agency should the Borrower not co-operate fully and promptly with such requests.**

The Consultant will maintain photographic evidence of progress from site visits as the Consultant deems reasonably necessary to support the findings in the Monthly Progress Report.

### 2.5.2 Metrics



PLEASE PRESENT THE PLATE AS ONE TABLE. BREAKING IT DOWN PER CHAPTER IS ACCEPTABLE, BUT IT MUST BE PRESENTED AT LEAST ONCE AS A COMPLETE TABLE SOMEWHERE IN EACH REPORT.

- All graphs used by the Consultant will be presented with inputs tables set out in an Excel spreadsheet. The Consultant will be responsible for the accuracy of all charts & tables.

- The Consultant will set out the following metrics and these will set the base comparator for the Monthly Progress Report.
- The S-Curve depicting the Initial Build Programme must be retained within the graph irrespective of any approved variation, any approved variations should be depicted in an identical fashion demonstrating the cost to complete for the for the new build programme and added to the chart. Each subsequent variation to the build programme should added to the chart in the same manner. A Consultant should only acknowledge a variation to the Initial Build Programme where they have received a written instruction from the Agency.

### **2.5.3 Cost-per-Unit**

The Consultant will estimate the Current Cost-per-Unit against the Initial Cost-per-Unit and the Current Total Cost-per-Unit against the Initial Total Cost-per-Unit and state it in a table at the front of your report.

### **2.5.4 Sources & Uses**

The Consultant will present a sources and uses table, updated as the Project progresses and showing the planned sources and uses as confirmed by the Agency at the commencement of the Instruction.

### **2.5.5 Cost-to-complete (S-Curve)**

The Consultant will include the Initial S-Curve and the Initial Unit Chart in a table at the front of the Initial Report. The metrics and in particular the S-Curve will be central to the presentation of the Consultant's findings and will be submitted with the underlying inputs in an Excel file.

### **2.5.6 Programme & Contractual Targets**

The Consultant will set out the contractual targets, long-stop dates and phasing dates that make-up the Project timetable setting the basis for the targets for monthly progress the Consultant will report upon in the Monthly Progress Report.

### **2.5.7 Loan-to-Cost**

The Consultant will comment on the profile of loan-to-cost and the assumptions made that underpin the view that the Borrower can comply with this covenant.

### **2.5.8 On-going S-Curve change to Initial S-curve**

The On-going S-Curve (as defined "On-going S-Curve" an update to Initial S-Curve showing the actual cumulative spend against the target cumulative spend as depicted in the Cash Flow Statement and the Initial Build Programme).

In addition the Consultant will provide a template detailed cost report summary indicating the original budget, current budget, variance, costs to date and details of how these costs are have been met and from what funding sources in a format to be agreed with the Agency or in keeping with Appendix 1 of this Scope of Services for the Monitoring Surveyor.

In the event to any permitted changes agreed by the Agency to the Initial Build Programme an agreed revised S-Curve (the "Variant S-Curve" as defined, as an update to Initial S-Curve showing the actual cumulative spend against the target cumulative spend as depicted in the Cash Flow Statement and the Initial Build Programme as well as the new cash-flow or build programme as confirmed by the Agency).

**In any event the depiction of progress by the Consultant will include a depiction of the Initial S-Curve sanctioned by the Agency in the original approval and any subsequent approved variations.**

### 2.5.9 Contents (Basic)

The Consultant will be responsible for including content in the report that it considers is necessary to notify to the Agency and in the spirit of this engagement and the matters considered in the Initial Report including commentary on, but not limited to the following matters.

- **Descriptive Introduction:** *For the avoidance of doubt this section is required for refurbishment works as well as “new build” projects.*

The Consultant will provide a short introductory description of the Building Technology proposed to be built or refurbished within the Project and Works. This description may be brief, but should be comprehensive and mention material characteristics of the scheme.

*Example.....“this is a scheme of 800 houses of which there are 450 new build and 350 to be refurbished. Refurbishment includes 200 houses being stripped back to their structural frame, renewed and re-roofed and 150 houses being decorated, kitchen and bathroom renewal 80 of the 150 refurbishments will be re-roofed. All 350 houses will require boiler replacement”.*

- **Programme:** The Consultant will provide commentary on progress against the Initial Build Programme or Build Programme (as adapted or varied) and any matters affecting completion together with commentary on whether there is any significant divergence from the Build Programme which may affect the viability of the budget or cash flow of the Project and affect the practical completion or sectional completion dates (as appropriate); and affect the long-stop dates in the pre-sale agreement(s) or the pre-let agreement(s) or the development agreement(s).
- **Health & Safety:** The Consultant will state whether there have been any health and safety incidents on the Project sites and maintain a note of such incidents that is restated in each Monthly Progress Report and state clearly observations on Health & Safety as set out in this Scope.
- **Site Visit Observations:** The Consultant will present photographs of the Site and provide commentary on the general condition and tidiness of the Site including the state, condition and procedures for waste control and recycling.
- **Site Security:** The Consultant will comment upon the effectiveness of security measures at the site including fences, hoardings, gates and other measures to limit access to the Site and the appropriateness of those measures given the location of the Site within the local community. Proximity to schools, hospitals and other public facilities should be considered as should efforts to minimise any peril or discomfort to the neighbouring community.
- **Transport Interfaces:** The Consultant will make observations about the access and public transport interfaces including but not limited cycle lanes, pedestrian activity, site logistics and delivery procedures and other measures taken by the Borrower and the Contractor(s) to ensure public safety.
- **Funds, Income Contributions & Expenditure:** The Consultant will provide commentary on the actual income and expenditure against Cash Flow Statement and the Development Appraisal.
- **Properly Incurred Expenditure:** The Consultant will comment on whether all claimed expenditure in respect of the Project has been properly incurred and has been approved for drawdown under the Facility Agreement (based on site inspections and a review of (i) architects/quantity surveyors interim certification against progress; and (ii) invoices in respect of fees and other costs (including, without limitation, costs incurred by sub-contractors). This is required to be in tabular or graphic form providing (i) a running total of all sums drawn under the Facility; (ii) a comparison of actual expenditure against the projected expenditure set out in

the Cash Flow Statement; and (iii) a forward looking commentary on the Agency's requirement that at all times the amount undrawn under the Facility will be sufficient to meet the costs required to complete the Project, including without limitation, a commentary as to appropriate provisioning of cash to cover unknown or unexpected future costs.

- **Confirmation of receipt of proceeds:** The Consultant will report on the evidence receipt of proceeds including cash contributions, revenues and proceeds from disposals permitted by the Agency (if applicable) and presented in the Cash Flow Statement in reviewed in compiling the Monthly Progress Report.
- **Cost to Complete and Adequacy of Funds:** The Consultant will confirm that the undrawn amount of the Facility together with Permitted Revenues (if applicable) will be sufficient to meet the costs required to complete the Project, including, without limitation, a statement as to appropriate provision of cash to meet unknown or unexpected future costs within the Cash Flow Statement and an updated sources & uses table.
- **Value Added Tax:** Subject to such information being available to the Consultant, the Consultant will comment on the amount of any Value Added Tax payments which have been paid by the Borrower together with a statement of how much Value Added Tax has been reclaimed by the Borrower from HM Revenue & Customs and repaid to the Agency.
- **Consents & Licences:** The Consultant will verify and review the evidence available to demonstrate that all relevant statutory authorities are satisfied with the quality of the works and the conduct of the Site and that the Project is compliant with the Agreed Plan, Building Contract, and legal consents.
- **Variations:** Cost and programme implications of variations issued or anticipated fall within or out-with the parameters of the Agreed Plans, Building Contract and any other contracts in relation to the Project. The Consultant shall inform the Agency immediately they are advised or become aware of any material changes and shall obtain written consent from the Agency before confirming the Agency's approval.
- **Disputes:** The Agency considers Disputes & Potential Disputes to be a key indicator of problems on site, potential delays and quality issues. The Consultant will provide a periodically updated list of any material contractual issues or Disputes & Potential Disputes (as defined) and proposed mechanisms for resolution and details of the quantum of claim;
- **Claims:** The Consultant will note and comment upon any claims against subcontractor surety bonds, retentions and any other contractual deductions (including alleged cause and likely quantum of claim and possible impact in the Initial Build Programme). If required the Consultant will undertake a detailed review under this Scope, but on terms to be agreed with the Agency.
- **Defects and Quality:** The Consultant will request and comment on any evidence of defective workmanship and workmanship that falls below the quality standard expected in the contractual undertakings of the Borrower, the Contractor(s) or the Sub-contractors as presented by the Borrower, Contractor(s) and Professional Team.
- **Design Compliance:** The Consultant will comment on any deviation from the design anticipated by the Development Proposal and the Agreed Plans.
- **Resourcing:** The Consultant will provide commentary on the adequacy of resourcing on the Project sites as perceived from site visits and from the invoicing procedure of the Borrower.

#### 2.5.10 Content Continued - Review of framework contracts over-time

The Agency acknowledges that the following elements requested to be reviewed for the Initial Report will need on-going review as the Works are procured, the Consultant will review these elements throughout the tender of this instruction:

- ***Building contract(s)(see above)***
- ***Insurance (see above)***
- ***Contractor & Sub-contractor suitability (see above)***

The Agency is keen to ensure that funds are spent appropriately and with their approved purposes and that where the Borrower utilises a framework the subcontracts, variations and amendments are documented in a manner that will not be a prohibition on the Agency exercising its contractual rights including, but not limited to, the Agency's step-in rights.

The Consultant will make comment on the manner of record keeping that it perceives when it attends the Monthly Site Visit and Monthly Progress Meeting this will include periodic audits of Contractor work orders, schedules to any JCT contracts or similar contract frameworks and payment claims requested by the Contractor(s). As part of the process of verifying expenditure, to ensure that the Contractor(s) and Borrower are complying with the recommended documentation approach suggested by the RICS, JCT or other appropriate body and that proper documentary evidence of the contracting arrangements is being maintained. The Consultant will also periodically review claims for extensions of time, variations and claims or disputes.

The Consultant will also notify the Agency of instances where disputes between the Contractor(s) and its Sub-contractors come to the attention of the Consultant. The Agency believes that such disputes are a key indicate for future difficulties on Project sites.

Where the Borrower is directly managing construction activities or where they are using an Employer's Agent the Consultant will provide commentary on the relationship between the Borrower and its Contractors and the Borrower, Employer's Agent and its Contractors.

#### **2.5.11 Content Continued – Development Cost Reconciliation**

The Consultant will provide an assessment of the progress against the Project Initial Cash Flow Statement and Target Project Spend assessing progress against elemental costs set out under appropriate heading in the format set out in Appendix 1 "Development Cost Reconciliation" or as otherwise agreed with the Agency, but always containing the information depicted in Appendix 1 "Development Cost Reconciliation".

## 2.6 Drawdowns

The Consultant will be responsible for reviewing Project expenditure and confirming to the Agency that periodic spending is in line with the Development Appraisal, Cash-flow Statement and Agreed Plans. The Consultant will issue a certificate confirming that spending is in accordance with Project plans and this will be the a condition precedent to each draw-down.

## 2.7 Completion sign-off & certification

The Consultant will monitor and comment on progress of the completion and handover of the Works issuing a certificate (the Certificate of Completion that is included in a standard format in the schedules to the Facility Agreement). The Agency will rely on the Certificate of Completion to signal the completion of the works to the standard anticipated in the Development Appraisal and the contractual agreements relating to the Project.

The Consultant will also comment on the Snagging items found at handover of the Works and will discuss with the Agency the implications of the type of Snagging items that exist prior to issuing the Certificate of Completion. The achievement of completion and the issuance of the Certificate of Completion by the Consultant, in accordance with the Facility Agreements, will trigger the release or alteration of the contractual and security rights held by the Agency as contained within the covenants within the Facility Agreement and the Finance Documents. At the point of issuing the Certificate of Completion the Consultant is satisfied that the Works including any Snagging are complete.

### **Infrastructure Completion**

The Consultant will comment upon completion, the quality and method of any Infrastructure, enabling works (including foundations, demolition, retaining walls or reinforced embankments) required in order for the Works and Project to progress.

## Appendix 1: Appendices Required by the Agency

- A register of Variations and disputes that the Consultant notes in the Metrics table above
- Metrics table as set out above
- A schedule of Variance
- Sources & Uses table
- The Development Costs Reconciliation as detailed below and available in Excel format from the Agency.
- Otherwise it is at the discretion of the Consultant

### Development Costs Reconciliation

[REDACTED]								
[REDACTED]								
[REDACTED]								
[REDACTED]								
[REDACTED]								
[REDACTED]								
[REDACTED]								
[REDACTED]								
[REDACTED]								
[REDACTED]								

### Development Costs Reconciliation Continued

[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							

## Appendix 2: Refurbishment

### Refurbishment (applicable to the Initial Report & the On-going Monitoring phase)

1. To the extent the Project includes refurbishment, replacement and renewal of part of, or a substantial proportion of, an existing structure or its fittings and internal decoration (the “Refurbishment Works”) the Consultant will review and comment on the proposals to undertake the Refurbishment Work that are part of the Project, including reviewing the appropriateness of the plans and methodologies proposed to achieve the desired structural standard and environmental output given the existing condition of the buildings to be refurbished (the “Refurbishment Estate”).
2. Where the Refurbishment Estate has been the subject of a preliminary stock condition survey (the “Stock Condition Survey”) the methodology of that Stock Condition Survey will be reviewed and commented upon by the Consultant, with particular regard to the appropriateness of the Stock Condition Survey for the purposes of scoping the proposed Refurbishment Works. This is in addition to reviewing and commenting on the scope of the Refurbishment Works against the findings of the Stock Condition Survey, where it has been determined that the Stock Condition Survey and any other surveys including any environmental surveys are adequate for the purpose of scoping the Refurbishment Works.
3. Where the Refurbishment Estate is made up of a large number of properties the Consultant will agree with the Agency how they will assess the Refurbishment Works and what proportion of the Refurbishment Estate they will visit periodically. The Consultant will maintain a register of the properties that they have visited over the period of the Project.
4. Where the Refurbishment Works are for the fitting out, partial or full replacement of kitchens and bathrooms or for the installation of apparatus including those for the conduct of electricity, heating and storage of water the Consultant will make particular comment on the elements being proposed to be used and the Borrower’s procurement strategy for these elements in addition, but not limited to, their cost assumptions.
5. The Consultant will review the proposed technical scope of the Refurbishment Works and adequacy of the subcontracting arrangements, whether independent of or embedded within the contracting arrangements for the any other construction activities on the wider Project (where applicable) with particular attention being paid to any risk transferral and interface between the Contractor(s) and Sub-contractors and the Borrower or any other agent, or person that may have consequences for the undertaking the Refurbishment Works as part of the Project. The Consultant will also consider and comment on any implications the Refurbishment Works may have on the Agency’s rights to exercise of security over the Project, including the right of step-in.
6. The Consultant will consider matters specific to the Refurbishment Works, including the Building Technology adopted, any regulations or permissions specific to the Refurbishment Works and any other issues for example, but not limited to, implications for fire regulations, heritage, health and safety, acoustic, site access or disability access and statutory compliance that might be appropriate for the Refurbishment Works of the kind making up part of the Project.
7. The Consultant will explain the implications for the Works and the Project of the nature of the estate being treated including preservation orders, national park status, listings, changes in usage and Building Technology, structure design and age implications for cost and potential delays.
8. The Consultant will pay particular attention to the objectives and standards that are to be attained by the Refurbishment Works (the “Refurbishment Objectives”), site completion and snagging of the Refurbishment Works. Reviewing and confirming that the funds lent for the Refurbishment Works have been spent in accordance with the Cash-Flow Statement and that it has achieved the desired qualitative and structural standards as stated within the Project objectives and any contractual arrangements for the procurement of the Refurbishment Works.

9. The Consultant will offer commentary on the life-span and likely lifecycle costs or on-going maintenance issues that could be consequent to the Refurbishment Works. Including, but not limited to, the relationship between the methodology of the Refurbishment Works and the design life of the refurbished elements in conjunction with the Agency's Valuers. Additionally the Consultant will provide commentary on any foreseeable obsolescence issues or future maintenance requirements and costs that may be required over the design life of the Refurbishment Works.
10. The Consultant will review and offer opinion on the measures adopted by the Borrower and its contracting team and advisors to investigate for asbestos. Where asbestos has been found the Consultant will comment on the strategy of the Borrower and its contracting team and advisors to treat asbestos within the Refurbishment Works.
11. Additionally where refurbishment is considered the Consultant will consider the history and previous uses of the structures as it reasonably deems necessary considering the structural implications of change in use as well as discussing any other issues that may be consequent to a historic use in the opinion of the Consultant for example, but not limited to, a change in use from industrial to residential may require the notification that the Borrowers environmental surveys are comprehensive enough in the opinion of the Consultant.
12. The Consultant will review with care that the money drawn to be expended on the Refurbishment Works is spent in line with the Agreed Plans, Development Appraisal and Cash Flow Statement and that the Borrower and the Contractor(s) and any associated Sub-contractors or advisors have appropriate controls and processes in place to safeguard that the Borrower receives value for money and the Refurbishment Works procured and undertaken do not require call-back or repetition or dispute.

# Appendix 3: Template for Reporting

## Part 1 - Initial Report

Example format please refer to Schedule 2 for instruction as to specific matters and general duties the Agency expects the Consultant to satisfy in the Initial Report.

### Executive Summary

*Provide brief and concise headline issues/comments together with a High, Medium or Low risk indicator where appropriate. Detailed comments should be incorporated in the main body of the report. Comment on any outstanding issues from either the Initial Report or last Progress Report. Approval of drawdown request if applicable.*

*MS Signoff*

- *Dated.....*
- *Signed.....*
- *Contact Details*

The Metrics (Project Plate) should be included in the executive summary of every report.

### 1. Contents

### 2. Introduction

- Overview – project name, location, outline scope and parties involved.
- Information obtained, site meetings, client reports etc.
- Terms of appointment
- Confidentiality statement
- Contacts at MS

### 3. Health & Safety

### 4. Key Project Data

#### Tabular Format

- Project Description, location and Borrower
- Consultants, note any specific roles
- Principal Contractor
- Form of contract, procurement strategy
- Construction cost.
- Programme
- Third party interests i.e. tenants, pre-sales / pre-lets
- Approval status i.e. statutory authorities, NHBC (or similar), superior landlord

### 5. Programme and Progress

- Design
- Procurement
- Programme
- Statutory Authorities (utilities)
- Construction (inc build quality)
- Unit completions against cashflow forecast
- Surveys: contamination, asbestos etc.
- Tenant issues
- Archaeology

## **6. Consents & Approvals**

- Planning and clearance conditions
- Regulations Approval
- Health & Safety Issues (comment on reported accidents)
- Building Warranty
- Listed Building Consent and/or Conservation Area Consent
- S106 Agreement
- S278 Agreement
- Compliance with any letting and sale agreements
- Update on remaining Conditions Precedent under the facility document.

## **7. Financial Reporting**

- Development Appraisal
- Development Budget vs. anticipated out-turn
- Funding gap – i.e. reliance and timing on revenues and equity contributions
- Construction Costs
  - Cost report
  - Variations
  - Claims
  - VE savings
  - Cashflow
- Status on VAT payments / receipts (if applicable)
- Accuracy of cashflow forecast monthly expenditure and receipts

## **8. Programme and Cost**

- Initial Build Programme
- Initial Cost Per Unit
- Initial Total Cost Per Unit
- Initial S-Curve
- Contingency
- Others as suggested by the Consultant

## **9. First Drawdown Approval**

- Statement of drawdown application made
- Table illustrating
  - Source and Application of Funds
  - Budgeted Costs
  - Drawn amount and allocations
  - Expenditure to date
  - Funds required to complete against Forecasted Final Cost
  - Variance from Budget
  - Movement this Month
  - Negative / positive funding balance
  - Materials off site
- Statement regarding funds required to complete
- Approval of drawdown monies / commentary

## **10. Contractual Matters**

- Status of the following:
  - Contract documents
  - Performance Bonds
  - Parent Company Guarantees
  - Appointments
  - Novation

- Collateral Warranties
- Delay Notices
- Extension of Time
- Liquidated damages, non- completion certificates
- Dispute Resolution Process as proposed by the Borrower

#### **11. Insurance**

- Schedule of employer, design and key sub-contractors detailing:
  - Policy holder
  - Type
  - Values
  - Renewal dates
  - Expiry dates
  - Each and every, aggregate, net contribution clause
  - Terrorism

#### **12. Neighbourly Issues (& Compliance with regulations & consents)**

- Party Wall Matters
- Rights of lights
- Licences
- Rail / Underground
- Service diversions
- Access, legal & easements and physical constraints
- Others

#### **13. Other Matters**

- Any other relevant matters

#### **14. Appendices I (examples below (Borrower's Cost Report not required))**

- Letter of Appointment
- Location and Site Plan
- Site/Progress Photographs
- Schedule of approved invoices for payment (assuming this is not included as part of the draw down request).
- Cash Flow Statement (borrower and contractor)
- Developers appraisal
- Schedule of appointments, contracts and warranties (if not in main report)
- Discharge of planning consents
- Programme
- Letting / pre-sale minutes
- Any other relevant items

## Part 2 - Monthly Progress Report

Example format please refer to Schedule 2 for instruction as to specific matters and general duties the Agency expects the Consultant to satisfy with each Monthly Progress Report.

**ALL S-CURVES AND DATA SHEETS OR GRAPHS SUBMITTED AS PICTURE FILES TO BE SUBMITTED WITH UNPROTECTED EXCEL SPREADSHEETS THAT UNDERPINN THEIR CALCULATION.**

### Executive Summary

*Provide brief and concise headline issues/comments together with a High, Medium or Low risk indicator where appropriate. Detailed comments should be incorporated in the main body of the report.*

*Comment on any outstanding issues from either the Initial Report or last Progress Report.*

*Approval of drawdown request if applicable.*

*MS Signoff*

- *Dated.....*
- *Signed.....*
- *Contact Details*

The Metrics (Project Plate) should be included in the executive summary of every report.

### 1. Contents

### 2. Introduction

- Terms of appointment
- Confidentiality statement
- Contacts at MS
- Date of the Site Visit
- Descriptive Introduction (See above)

### 3. Health & Safety

### 4. Overview of progress

- Overview – Cost to complete, progress & quality.
- Information obtained, site meetings, client reports etc.
- Progress
- Quality
- Issues

### 5. Key Project Data

#### Tabular Format

- Contractor(s) active in period
- Contractor(s) proposed for future periods
- Form of contract, procurement strategy
- Construction cost
- Programme
- Third party interests i.e. tenants, pre-sales / pre-lets
- On-going approval status i.e. statutory authorities, NHBC (or similar), superior landlord
- Update and comment on any changes

### 6. Programme and Progress

- Design Process
- Procurement
- Programme

- Statutory Authorities (utilities)
- Construction (inc build quality)
- Unit completions against cashflow forecast
- Surveys: contamination, asbestos etc.
- Tenant issues
- Archaeology

## 7. Consents & Approvals

- Planning and clearance conditions
- Regulations Approval
- Health & Safety Issues (comment on reported accidents)
- Building Warranty
- Listed Building Consent and/or Conservation Area Consent
- S106 Agreement & Works
- S278 Agreement & Works
- Compliance with any letting and sale agreements
- Update on remaining Conditions Precedent under the facility document.

## 8. Financial Reporting

- Progress vs. Development Appraisal
- Development Budget vs. anticipated out-turn
- Funding gap – i.e. reliance and timing on revenues and equity contributions
- Construction Costs
  - Cost report
  - Variations
  - Claims
  - VE savings
  - Cashflow
- Status on VAT payments / receipts (if applicable)
- Accuracy of cashflow forecast monthly expenditure and receipts

## 9. Programme and Cost

- Progress vs. Initial Build Programme
- Initial Unit Chart (including depiction of long stops or stages)
- Initial Cost Per Unit
- Initial Total Cost Per Unit
- Initial S-Curve
- Contingency
- Others as suggested by the Consultant

## 10. Drawdown Approval

- Statement of drawdown application made
- Table illustrating
  - Source and Application of Funds
  - Budgeted Costs
  - Drawn amount and allocations
  - Expenditure to date
  - Funds required to complete against Forecasted Final Cost
  - Variance from Budget
  - Movement this Month
  - Negative / positive funding balance
  - Materials off site
- Statement regarding funds required to complete

- Approval of drawdown monies / commentary

#### **11. Contractual Matters**

- Status of the following:
  - Contract documents
  - Performance Bonds
  - Parent Company Guarantees
  - Appointments
  - Novation
  - Collateral Warranties
- Delay Notices
- Extension of Time
- Liquidated damages, non- completion certificates
- Dispute Resolution Process as proposed by the Borrower

#### **12. Insurance**

- Schedule of employer, design and key sub-contractors detailing:
  - Policy holder
  - Type
  - Values
  - Renewal dates
  - Expiry dates
  - Each and every, aggregate, net contribution clause
  - Terrorism

#### **13. Neighbourly Issues (& Compliance with regulations & consents)**

- Party Wall Matters
- Rights of lights
- Licences
- Rail / Underground
- Service diversions
- Access, legal & easements and physical constraints
- Others

#### **14. Other Matters**

- Any other relevant matters

#### **15. Appendices (as appropriate)**