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CA 2016 Consultancy Agreement (Public Sector) 2016

2016 CONSULTANCY AGREEMENT

Consultancy Agreement (Public Sector) (CA)

Appropriate for use by Public Sector employers who are undertaking construction works and wish to engage a consultant (regardless of discipline) to carry out services in respect of such works.

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For details of 2016 Edition changes, see the Guidance Notes and the Tracked Change Document.

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Agreement

This Agreement

is made the 24 March 2025

Between

The Client

Ebbsfleet Development Corporation

of The Observatory, Castle Hill Drive, Castle Hill, Ebbsfleet, Kent DA10 1EE

And

The Consultant

Ove Arup & Partners Limited

Place of incorporation: England and Wales

(Company No. 01312453)^[1]

whose registered office is at 8 Fitzroy Street, London, United Kingdom, W1T 4BJ

[1] Where the Consultant is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number.
As to execution by foreign companies and matters of jurisdiction, see the Guidance Notes.

Recitals

Whereas

First

the Client wishes to have the following construction project carried out^[2]:

Phase 1 Ebbsfleet Central (EC2)

at

Car Park A and Car Park B, International Way, Northfleet, Gravesend, DA10 ('the Project')
as more particularly described in the Client's Brief;

Second

for the purposes of the Project the Client has requested the Consultant to act in the capacity specified in the Contract Particulars and, for the fee specified in Annex A ('the Fee'), to provide the services set out in Annex B ('the Services'), which the Consultant has agreed to do on the terms of this Agreement;

Third

Supplemental Provisions 1 and 2 (Schedule 2) will only apply in the circumstances set out in Schedule 2;

[2] State nature and location of the intended project.

Articles

Now it is hereby agreed as follows

Article 1 **Consultant's obligations**

The Consultant shall perform the Services in accordance with the Conditions.

Article 2 **Payment**

The Client shall pay the Consultant in accordance with the Conditions.

Article 3 **Principal Designer**

The Principal Designer for the purposes of the CDM Regulations is^[3]

[REDACTED]

of

Halford House, Charles Street, Leicester, United Kingdom, LE1 1HA

or such replacement as the Client at any time appoints to fulfil that role.

Article 4 **Adjudication**

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 12.2.

Article 5 **Arbitration**

Not applicable

Article 6 **Legal proceedings^[4]**

Subject to Article 4 and (where it applies) to Article 5, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

Article 7 **Schedule of Amendments**

The Contract is modified by the Schedule of Amendments and is to be read and construed accordingly. In the event of any inconsistency between any of the provisions in the Conditions and the Schedule of Amendments, the Schedule of Amendments shall prevail.

[3] Insert the name of the Principal Designer if appointed or, where appropriate, amend to state whom the Client intends to appoint.

[4] If it is intended, subject to the right of adjudication and exceptions stated in Article 5, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 5 and clauses 12.3 to 12.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 6 (see also clause 1.5 and paragraph 15 of Schedule 1).

Contract Particulars

Note: An asterisk * indicates where selection has been or should have been made.

Part 1: General

Second Recital

The Consultant is appointed as^[5]

Security Consultant

Article 5

Arbitration

(If neither entry is deleted, Article 5 and clauses 12.3 to 12.8 will not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 5 and clauses 12.3 to 12.8 apply.)^[6]

Article 5 and clauses 12.3 to 12.8 (Arbitration)

* do not apply

1.1

BIM Protocol

(Not applicable unless it is stated to apply, with the title, edition, date or other identifiers of the relevant documents stated, and the identified protocol is included in the Client's Brief.)

* applies as set out in the following document(s) included in the Client's Brief

Ebbsfleet Central - BIM Execution Plan IDT - Revision P01.
Document to be updated throughout RIBA Stage 2.

Client's Brief

(State reference number and date or other identifier of the relevant document(s) in which this is set out.)^[7]

EC2_ProjectBrief_version 3_07JULY2023

Brief currently under development following the commencement of RIBA Stage 2.

Appendix 1 - Ebbsfleet_Infrastructure Scope_Scope of Works_16 05 2024

Client's Representative

(as at the date of this Agreement)

[REDACTED]

of

M3 Property Limited (trading as M3 Consulting) Company Registration Number: 3298573

Consultant's Representative

[5] Insert function within the Consultant Team.

[6] On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Guidance Notes. See also footnote [4].

[7] If the relevant document or set of documents takes the form of an Annex to this Contract, it is sufficient to refer to that Annex.

(as at the date of this Agreement)

[Redacted]

of

6th Floor, Three Piccadilly Place, Manchester, M1 3BN, United Kingdom

Consultant Team
(other than the Consultant)

[Name]

[Redacted]

[Function]

Project Director
Project Manager
Security Advisory Lead
Physical Security Lead
Blast and Protective Design Lead

Cost Plan
(State reference number and date or other identifier of the document(s) in which this is set out.)^[7]

20240321 Ebbsfleet EC2 Cost Estimate No. 14 25th March 2024 (Aecom)

Key Personnel^[8]
(Names and functions)

* are set out in the following document^[7]

Ebbsfleet Development Corporation and M3 Consulting personnel:
Appendix D: Project Organogram
Ebbsfleet Project Execution Plan 2023 07 13

Programme
(State reference number and date or other identifier of the current document(s) in which this is set out.)^[7]

Strategic Programme 2024 04 30

Programme dates under the current Programme

* the provisional date
of commencement of the Services is

July 2024

* the intended period for carrying out the Services is

July 2024 to April 2029 (4 years and 9 months)

Project Team
(other than Consultant Team members)

[Name]

[Redacted]

[Function]

Civil & Structural Engineer
Highways Engineer
MEP & Services Engineer
Landscape Architect

[8] See the Guidance Notes.



Architect

Principal Designer
Cost Consultant
Development Manager
Fire Engineer

Third Party Agreements

[Parties]	[Date]	[Subject]
See Schedule of Amendments	See Schedule of Amendments	See Schedule of Amendments

1.3

Interim agreements etc.

Details of any interim agreements etc. (or provisions of them) not superseded by this Agreement^[9]

Not applicable

1.5

Addresses for service of notices by the Parties

(If none is stated, the address in each case, subject to clause 1.5.3, shall be that shown at the commencement of the Agreement.)^[10]

Client

The Observatory, Castle Hill Drive, Castle Hill, Ebbsfleet, Kent DA10 1EE

Consultant

8 Fitzroy Street, London, United Kingdom, W1T 4BJ

2.11.1

Consultant's aggregate liability (excluding liability for personal injury or death) is limited to
(If no limit is specified, liability is unlimited.)

See Schedule of Amendments

2.11.2

Consultant's liability in respect of pollution or contamination damage (excluding liability for personal injury or death) is limited to
(If no limit is specified, liability is unlimited.)

See Schedule of Amendments

3.2.3

Contract administration – site visits

Not applicable as the Consultant is not the Contract Administrator.

[9] See the Guidance Notes.

[10] As to service of notices etc. outside the United Kingdom, see the Guidance Notes.

3.3.1.4.2

Limits of Consultant's authority

Maximum increase in overall Project cost is
(If no limit is specified, any increase requires Client approval.)

£0

Maximum increase per item is
(If no limit is specified, any increase requires Client approval.)

£0

8.1.1

Professional Indemnity insurance

Level of cover

(If an alternative is not selected, the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)

Amount of indemnity required

* relates to claims or series of claims arising out of one event

(If no amount is stated, insurance under clause 8.1.1 shall not be required.)

and is

£5,000,000 (five million pounds)

Sub-limits within the overall level of cover

Cover for pollution and contamination claims

(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)

* is required, with a limit of indemnity of

£5,000,000 (five million pounds)

Cover for asbestos claims

(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)

* is required, with a limit of indemnity of

£250,000 (two hundred and fifty thousand pounds)

Cover for toxic mould claims

* is not required

Cover for combustible cladding, facades or internal/external wall systems and fire safety claims

* is required, with a limit of indemnity of

8.1.2 £1,000,000 (one million pounds) in the aggregate

Public Liability insurance

(If neither entry is deleted or cover level is not stated, such insurance is not required.)

* is required with a cover level of

£5,000,000 (five million pounds)

8.2.1

Professional Indemnity insurance – expiry of required period of insurance is

(If no period is selected, the expiry date shall be 6 years from the date of completion of the Services.)

- * 15 years
from the date of completion of the Services

8.2.2

Public Liability insurance – required period (if shorter than the period of the Consultant's engagement) is
the duration of the Consultant's engagement

10.2

Novation

Clause 10.2

(If neither entry is deleted, clause 10.2 will not apply.)

- * does not apply

11.2

Suspension: Remobilisation – period for recommencement instructions (if other than 2 months) is
2 weeks

12.2

Adjudication^[11]

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)^[12]

(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed below selected by the Party requiring the reference to adjudication.)

- * The Royal Institution of Chartered Surveyors

[11] The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body. The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

[12] Delete all but one of the nominating bodies asterisked.

Part 2: Third Party Rights and Collateral Warranties

If such rights or warranties are required from the Consultant, complete the particulars below:

Identity of Beneficiaries

Name, category or description of beneficiary and interest in the Project ^{[13][14]}	Third Party Rights (TPR) or Collateral Warranty (CW) ^[15]
See Schedule of Amendments	CW

Paragraph 5.2 of Schedule 1 – Third Party Rights (Purchaser or Tenant)

Not applicable

Clause 10.3.2 – Collateral Warranties

Where any Beneficiaries are entitled to a Collateral Warranty, the form of warranty
(If no form is annexed or sufficiently identified – or if the further particulars required by the following entry are not given – the identified Beneficiaries shall only be entitled to Third Party Rights under clause 10.3.1.)

* is annexed to this Agreement

Collateral Warranties – Further particulars^[15]
(If insufficient particulars are given to complete the form, identified Beneficiaries are only entitled to Third Party Rights under clause 10.3.1.)

The further details required for completion of the form of Collateral Warranty are:

[Clause etc. number]	[Entry]
See Schedule of Amendments	See Schedule of Amendments

[13] The Client may only confer Third Party Rights on or require the grant of a Collateral Warranty to those persons who are sufficiently identified by name, category or description. If in relation to an identified Beneficiary it is not stated whether rights are to be granted as Third Party Rights or by Collateral Warranty they are granted as Third Party Rights and clause 10.3.1 applies.

[14] In the case of Beneficiaries identified by name, specify whether the Beneficiary is a Purchaser, Tenant or Funder and, in the case of Purchasers and Tenants, the part of the Project they have agreed to purchase or lease.

[15] As to completion of this entry, see the Guidance Notes.

Attestation

Note on Execution

This Agreement should be executed by both the Client and the Consultant either under hand or as a deed. As to factors relevant to that choice, see the Guidance Notes.

Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or his authorised representative should sign where indicated in the presence of a witness who should then sign and set out his name and address.

Execution as a Deed

If this Agreement is to be executed as a deed, each Party should use the relevant form marked 'Execution as a Deed' in accordance with the notes provided.

Other forms of Attestation

In cases where the forms of attestation set out are not appropriate, e.g. in the case of certain housing associations and partnerships or if a Party wishes an attorney to execute this Agreement on his behalf, the required form(s) may be inserted in the vacant space below and/or on the following pages for execution under hand or (in the case of the Client) as a deed, as appropriate.

Notes on Execution as a Deed

For the purposes of execution as a deed, two forms are provided for execution, one for the Client and the other for the Consultant.

Execution by the Client

In the case of a Local Authority Client it is anticipated that execution will be by affixation of the common seal in the presence of authorised officers.

Where a Local Authority or other Public Sector Client prefers to use any other recognised and authorised form for executing deeds, this can be inserted in the space below the printed form.

Execution by the Consultant

The form for the Consultant provides four methods of execution, **(A)** to **(D)**, for use as appropriate.

- 1 The full name of the Consultant (whether an individual, a company or other body) should be inserted where indicated at the commencement of the relevant form. This applies irrespective of the method used.
- 2 For public and private companies incorporated and registered under the Companies Acts, the three principal methods of execution as a deed are:
 - (A)** through signature by a Director and the Company Secretary or by two Directors;
 - (B)** by affixing its common seal in the presence of a Director and the *Company* Secretary or of two Directors or other duly authorised officers; or
 - (C)** signature by a single Director in the presence of a witness who attests the signature.

Methods **(A)** and **(C)** are available to public and private companies whether or not they have a common seal. Methods **(A)** and **(B)** are available to Limited Liability Partnerships. (Method **(C)** was introduced by section 44(2)(b) of the Companies Act 2006.)

- 3 Where method **(A)** is being used in the case of a company, delete the inappropriate words and insert in the spaces indicated the names of the two Directors, or of the Director and the Company Secretary, who are to sign. Where this method is being used in the case of a Limited Liability Partnership (LLP), insert after the words "**(A)** acting by" the words "two members", delete the remainder of that line and substitute "Member" for the references to "Director" and "Company Secretary/Director".
- 4 If method **(B)** (affixing the common seal) is adopted in the case of companies where either or both the authorised officers attesting its affixation are not themselves a Director or the *Company* Secretary, their respective office(s) should be substituted for the reference(s) to Director and/or to *Company* Secretary/Director. (In the case of execution by bodies that are not companies or LLPs, the reference to "*Company*" under the second signature should be deleted where appropriate.) In the case of execution by LLPs, the word "Member" should be substituted for the references to "Director" and "*Company* Secretary/Director" in the same way as for method **(A)**.
- 5 Method **(C)** (execution by a single Director) has been introduced primarily, but not exclusively, for 'single officer' companies. The Director should sign where indicated in the presence of a witness who should then sign and set out his name and address.
- 6 Where the Consultant is an individual, he should use method **(D)** and sign where indicated in the presence of a witness who should then sign and set out his name and address.

Execution as a Deed

Executed as a Deed by the Client

namely Ebbfleet Development Corporation

by affixing hereto its

in the presence of

Signature

Signature



[Common seal]

Execution as a Deed

Executed as a Deed by the Consultant

namely Ove Arup & Partners Limited

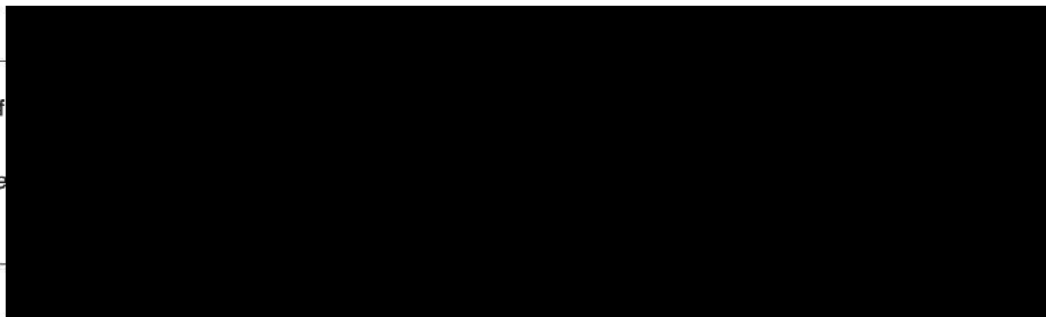
(C) by attested signature of a single Director **of the company**

Signature

in the presence of

Witness' signature

Witness' address



Conditions

Section 1 Definitions and Interpretation

Definitions

1.1 Definitions

Unless the context otherwise requires, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated or referred to below:

Acceleration Quotation: see **clause 6.4**.

Additional Payments: see **clause 7.1.4**.

Additional Services: see **clause 6.2**.

Adjudicator: an individual appointed under **clause 12.2** as the Adjudicator.

Agreement: the Agreement to which these Conditions are annexed, including its Recitals, Articles and Contract Particulars.

Arbitrator: an individual appointed under **clause 12.4** as the Arbitrator.

Article: an article in the **Agreement**.

Beneficiary: a Purchaser, Tenant or Funder in whom Third Party Rights may be vested or to whom a Collateral Warranty is agreed to be granted under **clause 10.3**.

BIM Protocol: (where applicable) the document identified as such in the **Contract Particulars** (against the reference to **clause 1.1**).

Building Contract: the main contract(s) for the construction of the Project.

CDM Regulations: the Construction (Design and Management) Regulations 2015.

Change: see **clause 6.3**.

Client's Brief: the document identified as such in the **Contract Particulars** (against the reference to **clause 1.1**), as amended from time to time in accordance with the Client's instructions.

Client's Representative: the person named as such in the **Contract Particulars** (against the reference to **clause 1.1**) or any replacement appointed by the Client from time to time.

Conditions: the clauses set out in sections 1 to 12 of these Conditions, together with and including the Schedules hereto.

Consultant's Design Information: Design Information required to be supplied by the Consultant under this Contract whether under the BIM Protocol or otherwise.

Consultant's Representative: the person named as such in the **Contract Particulars** (against the reference to **clause 1.1**) or any replacement appointed in accordance with **clause 5.2**.

Consultant Team: the Consultant and the persons named as such in the **Contract Particulars** (against the reference to **clause 1.1**) or otherwise notified to the Consultant.

Contract: the agreement between the Client and the Consultant relating to the provision of the Services, comprising the Agreement, these Conditions and the other documents referred to in the

Contract Particulars.

Contract Administrator: the person appointed as such for the Building Contract.

Contract Particulars: the particulars in the Agreement and there described as such, including the entries made by the Parties.

Contractor: the person named as main contractor in the Building Contract.

Cost Plan: the plan identified as such in the **Contract Particulars** (against the reference to **clause 1.1**), as amended/revised from time to time.

Design Information: designs, drawings, specifications, programmes, schedules and other material to be supplied by or on behalf of any member of the Project Team for the purposes of the Project, whether in hard copy form or stored in any electronic or other medium.

Fee: see **Annex A**.

Funder: a person named or identified as such in or by **Part 2 of the Contract Particulars** who agrees to provide finance for the Project.

Incentive Payment: see **Annex A**.

Information Release Schedule: the schedule referred to as such in (or its equivalent for the purposes of) the Building Contract.

Interest Rate: a rate 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Contract becomes overdue.

Joint Fire Code: the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire Protection Association, as amended/revised from time to time.

Key Personnel: the persons listed or referred to as such in or by the **Contract Particulars** (against the reference to **clause 1.1**) or their replacements appointed under **clause 5.2**.

Lead Consultant/Lead Designer: the persons identified as such in the Consultant Team or any replacement notified by the Client.

Local or Public Authority: a body that is a 'contracting authority' as defined by the PC Regulations.

Omission: see **clause 4.5**.

Optional Services: the Services (if any) listed as such in **Annex A**.

Parties: the Client and the Consultant together.

Party: either the Client or the Consultant.

Pay Less Notice: see **clause 7.7.1**.

PC Regulations: the Public Contracts Regulations 2015.

Programme: the document identified as such in the **Contract Particulars** (against the reference to **clause 1.1**), as amended/revised from time to time.

Project Team: the Consultant Team, the Contractor (or prospective Contractor) where selected and such specialists as the Client or Lead Consultant shall nominate from time to time.

Purchaser: a person named or identified as such in or by **Part 2 of the Contract Particulars** who agrees to purchase all or part of the Project.

Recitals: the recitals in the **Agreement**.

Reimbursable Expenses: see **Annex A**.

Scheme: Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.

Services: the services listed in **Annex B** that are to be performed by the Consultant (including such

of the Optional Services as the Client requires from time to time) and any Additional Services agreed or instructed in accordance with this Contract, subject in each case to any Changes.

Statutory Requirements: any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Project or performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Project or with whose systems the Project is, or is to be, connected.

Tenant: a person named or identified as such in or by **Part 2 of the Contract Particulars** who agrees to acquire a leasehold interest in all or part of the Project.

Third Party Agreement: any agreement or licence between the Client and any person other than members of the Project Team that relates to the Project, the Project site or the use of it and of which the relevant details have been given to the Consultant (including, without limitation, agreements with actual or prospective purchasers, tenants and funders and those relating to planning, highways, rights of way, light, oversailing or other easements) as listed in or by the **Contract Particulars** (by reference to **clause 1.1**).

Third Party Rights: the rights set out in Schedule 1 vested in a Beneficiary under **clause 10.3.1**.

VAT: Value Added Tax.

Interpretation

1.2 Headings, references to persons, legislation etc.

In the Agreement and these Conditions, unless the context otherwise requires:

- 1.2.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a gender includes any other gender;
- 1.2.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 1.2.5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
- 1.2.6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information under this Agreement, be deemed to include information in a form or medium conforming to that protocol.

1.3 Scope of the Contract

Save as otherwise stated in the Contract Particulars (by reference to this clause), nothing contained in any document referred to in this Contract shall override or modify the Agreement or these Conditions and it is intended that this Contract should govern all the Services and their performance, whether carried out before or after the date of the Agreement, and shall unless otherwise stated supersede in their entirety and with retrospective effect any interim agreement, letter of intent and/or other arrangement on the basis of which the Services may have commenced.

1.4 Contracts (Rights of Third Parties) Act 1999

Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clause 10.3.1, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

1.5 Notices and other communications

- 1.5.1 Any notice or instruction under this Contract shall be in writing.
- 1.5.2 Any notice required to be given in accordance with this clause 1.5.2 shall be delivered by

hand or sent by Recorded Signed for or Special Delivery post, in which case it shall be deemed to be given on delivery.

1.5.3 Any other communications and documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing. In default of an agreed procedure they may be sent by the means in clause 1.5.2 or any other effectual means.

1.5.4 The Parties' addresses for delivery of notices shall be those stated in the Contract Particulars or subsequently notified to the other Party.

1.6 **Applicable law**

This Contract shall be governed by and construed in accordance with the law of England.^[16]

[16] Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

Section 2 Consultant's General Obligations

2.1 Performing the Services

The Consultant shall perform the Services in accordance with the Client's Brief, exercising the level of skill, care and diligence reasonably to be expected of a consultant holding himself out as competent to take on the performance of the Services and experienced in projects of similar size, scope and complexity, and shall carry them out in a manner that complies with the Statutory Requirements and is consistent with the Cost Plan, the Programme and any Third Party Agreements.^[17]

2.2 Compliance with instructions

In performing the Services the Consultant shall comply with all lawful instructions from the Client (or from the Lead Consultant, Contract Administrator or other designated member of the Consultant Team on behalf of the Client) as to matters within the scope of the Project and the Consultant's competence, subject only to clause 6.5.

2.3 Co-operation and supply of Design Information

The Consultant shall liaise and co-operate fully with the other members of the Project Team, both directly and through Consultant Team and Project Team meetings, and in accordance both with any applicable Framework Agreement and with such procedures as the Client or Lead Consultant may establish from time to time. In particular (but without limitation) the Consultant shall:

- 2.3.1 supply in accordance with the Programme and/or Information Release Schedule all the Consultant's Design Information required as part of the Services, together with any other information reasonably requested by the Client or Project Team;
- 2.3.2 notify other members of the Project Team in due time of any requirements that the Consultant may have for Design Information from any of them that is not provided for in the Programme or Information Release Schedule;
- 2.3.3 promptly notify the Client and, where applicable, the Lead Consultant of any inconsistency or divergence (actual or prospective) of which he becomes aware in relation to the Client's Brief, the Cost Plan, the Programme and/or any Third Party Agreements and of any delay or impediment in performing the Services;
- 2.3.4 promptly notify those to whom the Consultant has supplied Consultant's Design Information of any changes to it, and of any inaccuracies or inconsistencies in it of which he becomes aware, together with any necessary corrections, and similarly notify those from whom he has received Design Information if he becomes aware of inaccuracies or inconsistencies in the items received.

2.4 Specification of materials

Unless required by this Contract or otherwise authorised in writing by the Client or Lead Consultant, the Consultant will not select, or permit the selection of, materials for the Project other than in accordance with the guidelines contained in the edition of 'Good Practice in the Selection of Construction Materials' (British Council for Offices) current at the date of this Contract.

2.5 Joint Fire Code

Insofar as the Services concern matters within the Joint Fire Code, the Consultant shall observe its provisions.

2.6 Consultant's Representative and Key Personnel – roles and availability

The Consultant shall ensure that, unless otherwise agreed with the Client, Key Personnel shall fulfil their identified roles in relation to the Services and that they and the Consultant's Representative (or competent deputies) are at all reasonable times available for communication and consultation with the

[17] By its assumption that the consultant is 'experienced in projects of similar size, scope and complexity' clause 2.1 may impose a duty of care higher than might otherwise arise. If that standard is not appropriate, the clause should be revised accordingly.

Client and Project Team. Instructions given to the Consultant's Representative shall be deemed to have been issued to the Consultant.

2.7 Sub-contracting

The Consultant shall not sub-contract the performance of any of the Services without the Client's prior consent. The Consultant shall remain fully responsible for any work sub-contracted.

2.8 Records and time charge estimates

2.8.1 The Consultant shall keep full accounting records in accordance with any accounting requirements and procedures specified in paragraph 8.2 of Annex A and shall on reasonable prior notice make any such records available for inspection by or on behalf of the Client during normal business hours.

2.8.2 To the extent that the Consultant is entitled to time-based charges (whether as part of the Fee or otherwise) or Reimbursable Expenses, he shall prior to each work stage agreed as part of the Programme give the Client a budgetary estimate (or updated estimate) for the time-based charges and, where material, any Reimbursable Expenses for that work stage.

2.9 Limitations on Consultant's obligations

In performing his obligations under this Contract and subject to clause 2.10, the Consultant:

2.9.1 shall be entitled to assume the accuracy (in accordance with its terms) of any Design Information supplied to him by the Client or by any member of the Consultant Team unless, as part of the Services or by an instruction, he is expressly required to investigate matters in that Design Information which are within the scope of his competence;

2.9.2 gives no warranty as to work or services provided by any person other than the Consultant and his sub-contractors; and

2.9.3 shall not be liable for any failure or delay to the extent he is prevented from performing any of the Services by any event or cause that is beyond his control.

2.10 Exceptions to clause 2.9

Nothing in clause 2.9.1 or 2.9.2 shall affect or modify any obligation or duty of the Consultant:

2.10.1 to warn, whether under clause 2.3.3, clause 2.3.4 or otherwise;

2.10.2 (where he is the Lead Designer) under clause 3.1.1;

2.10.3 (where he is the Lead Consultant but not Lead Designer) under clause 3.1.2; or

2.10.4 (where he is the Contract Administrator) under clause 3.2.3.

2.11 Limitations of Consultant's liability^[18]

2.11.1 Where the Contract Particulars specify or refer to any limitation in relation to this clause 2.11.1, then, notwithstanding any other provision of this Contract, the Consultant's aggregate liability for any and all claims arising under or in connection with this Contract (whether in contract, in tort, for breach of statutory duty or otherwise but excluding liability for personal injury or death) shall be limited in the manner and to the amount stated.

2.11.2 Where the Contract Particulars specify or refer to any limitation in relation to this clause 2.11.2, the Consultant's liability to the Client in respect of pollution or contamination damage (excluding liability for personal injury or death) shall be limited in the manner and to the amount stated.

[18] See the Guidance Notes.

Section 3 Lead Consultants and Contract Administration

3.1 Design – Lead Designer and Lead Consultant

- 3.1.1 Where the Consultant is Lead Designer, he shall, in addition to design work which he himself is to perform under this Contract, co-ordinate and integrate design work for the Project and (subject to any necessary authority or approval of the Client under clause 3.3) promptly issue or, where appropriate, request the issue by or on behalf of the Client of all instructions reasonably necessary for the purpose of integrating that design work.
- 3.1.2 Where the Consultant is Lead Consultant but not Lead Designer, he shall exercise the level of skill, care and diligence required by clause 2.1 to monitor that such design co-ordination and integration are carried out.

3.2 Contract Administrator's duties and discretions

Where the Consultant is the Contract Administrator, he shall:

- 3.2.1 exercise his powers, duties and discretions fairly, impartially and as required by the Building Contract and nothing in clause 3.3.1 shall in any way be deemed to affect, prevent or inhibit the exercise of those powers, duties and discretions;
- 3.2.2 issue the Design Information and other information required to be provided by him in accordance with the Information Release Schedule or at such other times as the Contractor may reasonably require, having regard to the progress of the Project, except to the extent that the Consultant is prevented from doing so by any event or cause that is beyond his control;
- 3.2.3 make regular site visits to inspect the progress and quality of the works being carried out as part of the Project and to check their conformity with the Building Contract at such intervals and in accordance with such other requirements as are set out or referred to in the Contract Particulars.

3.3 Limits of authority

- 3.3.1 Notwithstanding appointment as Lead Consultant, Lead Designer and/or Contract Administrator, subject to clause 3.2.1 in the case of the Contract Administrator and save as otherwise expressly stated in this Contract, no Consultant shall have authority without the Client's prior approval to:
- 3.3.1.1 approve (or otherwise) any designs or any specification or selection of materials for the Project by any person, or the quality and standards of materials and workmanship to be comprised in it;
- 3.3.1.2 vary any agreed design or specification of work or materials or their quality or quantity;
- 3.3.1.3 progress from a work stage specified in Annex B to the next work stage;
- 3.3.1.4 issue any instruction or any notice under the Building Contract which would:
- 3.3.1.4.1 delay the completion of the Project; or
- 3.3.1.4.2 increase the cost of the Project or any item forming part of it by more than the respective amount(s) stated in the Contract Particulars;
- 3.3.1.5 terminate the Building Contract, or the Contractor's employment under it, or the appointment or engagement of any member of the Project Team, agree any amendment to the terms of such agreements or waive compliance by the Contractor or any of the Project Team with their respective obligations under them; or
- 3.3.1.6 enter into any contractual or other commitment on behalf of the Client.

- 3.3.2 In the event of an emergency on the site, the Lead Consultant or Contract Administrator shall nevertheless have authority to issue any instruction reasonably required to prevent danger to persons or damage to the Project or any other property, but shall promptly notify the Client of any such instruction and its likely time and cost implications.

Section 4 Client's General Obligations

4.1 Supply of Client information

The Client shall provide the Consultant with such information in his possession or control as is reasonably necessary, or likely to be useful, for the purposes of providing the Services and/or compliance with the Statutory Requirements. That information shall be supplied in accordance with the Programme or (where not expressly included in the Programme) promptly upon the Consultant's reasonable request.

4.2 Consultant Team appointments

Where at the date of execution of this Contract any appointments remain to be made to the Consultant Team, the Client shall use all reasonable endeavours to make those appointments promptly and within the times envisaged by, or necessary for the purposes of, the Programme and compliance with the Statutory Requirements.

4.3 Notification of appointments etc.

The Client or Lead Consultant on his behalf shall promptly notify the Consultant of:

- 4.3.1 additions to or other changes in the Project Team and/or the services to be provided by members of it;
- 4.3.2 the appointment of the (or each) Contractor, together with relevant details of the Building Contract with him;
- 4.3.3 any novations to the Contractor of appointments or contracts with the Project Team; and
- 4.3.4 any necessary corrections to any information supplied under clause 4.1.

4.4 Decisions, approvals and instructions

Decisions, approvals and instructions reasonably required by the Consultant shall be made or given by the Client, or by the Lead Consultant or Contract Administrator or other designated member of the Consultant Team on his behalf, within a reasonable time of the Consultant's request.

4.5 Omissions

No instruction shall be given for the omission of any of the Services (an 'Omission') with a view to their performance by any other person unless either:

- 4.5.1 the Consultant is in material breach of his obligations and such reallocation is reasonably necessary to ensure the proper carrying out of those Services and/or the progress of the Project in accordance with the Programme; or
- 4.5.2 the Consultant recommends reallocation to a specialist or another consultant.

Where clause 4.5.1 or 4.5.2 applies, then, unless it is agreed that the Consultant shall procure the work in question by sub-contracting it to that specialist or consultant, there shall be a fair and reasonable adjustment to the Fee (and, if appropriate, to the instalments specified in Annex A) to be agreed between the Parties or, in default of such agreement, assessed by the Client.

4.6 Contingent payments – information and assessment

Where any condition attaching to a payment to the Consultant under this Contract relates to an event or matter that is not or may not be within the immediate knowledge of the Consultant, the Client shall promptly notify the Consultant of the occurrence of the event or fulfilment of the condition and, where an assessment of the payment is required, shall procure that that assessment is carried out promptly.

4.7 Project Team – delay or default

If the Consultant is at any time materially delayed or hindered in performing the Services by any delay or default on the part of any other member of the Project Team and notifies the Client and/or the Lead

Consultant with relevant particulars, the Client shall exercise his powers to ensure, as far as is reasonably practicable, that the delay or default is promptly corrected.

Section 5 Representatives and Key Personnel

5.1 Client's Representative

The Client's Representative shall be the authorised recipient for all notices to and other communications with the Client under this Contract and, subject only to such limits on his authority as are from time to time notified to the Consultant in accordance with clause 1.5.2, shall otherwise have full power and authority to represent the Client. If at the date of this Contract no appointment has been made to the post, or if at any time the appointee ceases to hold the post, the Client shall promptly appoint or replace the Client's Representative and notify the Consultant accordingly.

5.2 Consultant's Representative and Key Personnel – changes

5.2.1 The Consultant shall not remove the Consultant's Representative or any of the Key Personnel from their post or replace such person without the Client's prior approval of the removal or of the replacement appointee. Where practicable, the Consultant shall arrange an appropriate handover period. The Client shall not unreasonably withhold or delay any such approval.

5.2.2 If for any reason the Consultant's Representative or any of the Key Personnel ceases to hold their post, the Consultant shall, subject to such approval, promptly appoint a replacement.

5.3 Client's right to require removal

After consultation with the Consultant, the Client may require the removal of the Consultant's Representative or any of the Key Personnel or of any other person engaged in performing the Services if, in the Client's reasonable opinion, their performance or conduct is or has been unsatisfactory.

Section 6 Further Services, Changes and Fee Adjustments

6.1 Optional Services

The Consultant shall perform any Optional Services that the Client instructs and shall be entitled to charge for such services on the basis set out in Annex A. The Consultant shall promptly notify the Client if at any time he considers such services necessary or desirable for the purposes of the Project.

6.2 Additional Services

In addition to the Optional Services, the Client may instruct the Consultant to perform services which are additional to or represent an alteration in the Services as then specified (including changes to the definitive design) ('Additional Services') to the extent that they are within the scope of the Project and the Consultant's competence. The Consultant shall promptly notify the Client of any Additional Service that he at any time considers necessary or desirable.

6.3 Changes

The Fee and/or other amounts payable to the Consultant under this Contract shall be adjusted for additional work and for any additional costs that the Consultant incurs as a result of any of the following (a 'Change'):

- 6.3.1 instructions for any Additional Services;
- 6.3.2 instructions for any Omissions;
- 6.3.3 instructions (or changes in the Client's Brief, Cost Plan or Programme) that require or necessitate any other material change in any of the Services or in the sequence or timing for performing any of them; and
- 6.3.4 any event or cause related to the Project that is beyond the Consultant's control and materially alters, prolongs or disrupts the performance of the Services, including any default on the part of the Client, the Contractor or any other member of the Project Team.

6.4 Notification by the Consultant

Where the Consultant wishes to claim an adjustment of the Fee and/or any other additional payment or reimbursement in respect of any Additional Services or other Change, he shall promptly and before implementing the relevant instruction notify the Client to that effect upon receipt of the instruction, resolution of any objection under clause 6.5 or the occurrence of the relevant event or cause (as the case may be). Such notification shall include, or as soon as practicable be followed by:

- 6.4.1 (in the case of any instructions for Additional Services that are within clause 6.3.3) an estimate of the required time and cost involved that is consistent, in the terms of cost, with any rates set out in Annex A that are properly applicable;
- 6.4.2 (in the case of any Omissions) the amount of any costs and expenses already reasonably and properly incurred or reasonably, properly and unavoidably committed to; and
- 6.4.3 (in the case of any event or occurrence within clause 6.3.4) an estimate of the amount of any loss and/or expense and of any delay arising from it.

Where additional time is required for performance of any of the Services and the Client so requests, the Consultant shall also promptly give a quotation for accelerating or resequencing the Services or part of them with a view (so far as is reasonably practicable) to offsetting the actual or potential delay (an 'Acceleration Quotation') and, where the instruction, event or occurrence affects or is likely to affect the Contractor and/or any other member of the Project Team, the Consultant shall immediately liaise with them so as to enable the Lead Consultant to report to the Client upon the additional time and cost implications for the Project.

6.5 Consultant's right of objection

If the Consultant considers that, irrespective of any extension of time or financial adjustment, an instruction for a Change would compromise or materially and adversely affect the Project, the

performance of the Services or compliance with the Statutory Requirements, and he makes a reasonable written objection to the Client, the Consultant shall not be obliged to comply for so long as the objection remains unresolved. In the event of such an objection, the Parties shall promptly meet and consult as necessary with other relevant members of the Project Team with a view to immediate resolution of the matter. Time for compliance with clause 6.4 shall be adjusted accordingly.

6.6 Adjustment of Fee, other payments and time

Where following notification by the Consultant under clause 6.4 the Client confirms his instruction for a Change within clauses 6.3.1 to 6.3.3 or the Consultant is able to demonstrate loss and/or expense and/or delay arising from an event or cause within clause 6.3.4:

- 6.6.1 in the case of Additional Services or any matter within clause 6.3.3 or 6.3.4, the addition to the Fee, Reimbursable Expenses and/or any other payment shall be such amount as is agreed between the Parties or, in default of such agreement, fairly valued by or on behalf of the Client, based upon the net additional time spent by the Consultant in performing them;
- 6.6.2 in the case of an Omission, the reduction in (or amount offset against any increase in) any payment and, in a case falling within clause 6.3.4, the amount of any loss and/or expense payable to the Consultant shall in default of agreement between the Parties be fairly valued by or on behalf of the Client, taking account (in the case of an Omission instructed other than in the circumstances mentioned in clauses 4.5.1 and 4.5.2) of such costs and expenses as are referred to in clause 6.4.2;
- 6.6.3 where an Acceleration Quotation has been given, the Consultant shall be under no obligation to accelerate or resequence performance of the Services unless and until the quotation is accepted or the Parties otherwise agree, but in each other case a fair adjustment of time shall where relevant be made;
- 6.6.4 in making any valuation pursuant to this clause 6.6, the Client or valuer shall be entitled to make reasonable adjustments to the timing of any related payment or instalment that has not then fallen due; and
- 6.6.5 where a Change or adjustment of the Fee or any other amount payable under this Contract affects the criteria for, or achievability of any Incentive Payment to which the Consultant may be entitled, then, save in the case of any default on the part of the Consultant, a fair and reasonable adjustment shall be made.

6.7 Adjustment for default

If as a result of a default by the Consultant the Client incurs a liability to another member of the Consultant Team or to any contractor or specialist, the Consultant shall allow, and the Client, without affecting his other rights or remedies, shall be entitled to adjust the Fee or other payment to reflect, any amounts reasonably and properly paid by the Client on that account.

Section 7 Payment

7.1 Amounts payable

The Client shall pay the Consultant:

- 7.1.1 the Fee;
- 7.1.2 Reimbursable Expenses;
- 7.1.3 any Incentive Payments payable; and
- 7.1.4 any amounts payable pursuant to section 6 that are not included by way of adjustment of any other amount ('Additional Payments')

together with any VAT properly payable in respect of such sums.

7.2 Fee – instalments

The Fee shall be payable by instalments at the invoice dates or stages/milestones respectively specified in Annex A ('the specified dates'). The due date for payment in each case shall be the specified date or (if later) the date of submission of the Consultant's invoice.

7.3 Reimbursable Expenses and Additional Payments

Reimbursable Expenses and (unless otherwise agreed) any Additional Payment, or instalment of it, may be included in an invoice for an instalment of the Fee following the period in which such expenses were paid or incurred or to which the Additional Payment or instalment relates. Each such amount shall become due upon the same date as the Fee instalment.

7.4 Incentive Payments

The due date for any Incentive Payment shall be the date upon which it becomes payable in accordance with the conditions attaching to it, as set out or referred to in Annex A, or (if later) the date of submission of the Consultant's invoice.

7.5 Invoices

Each invoice shall state the sum that the Consultant considers due to him at the due date, together with VAT, shall show the basis on which that sum has been calculated and shall be accompanied by such documents, vouchers and receipts as are specified in paragraph 8.1 of Annex A or are otherwise reasonably required by the Client.

7.6 Final date for payment

In each case the final date for payment of any amount payable under clauses 7.1 to 7.4 shall be 14 days from the due date.

7.7 Payment – amount and notices

- 7.7.1 If the Client intends to pay less than the sum stated as due from him in the Consultant's invoice, he shall not later than 5 days before the final date for payment give notice to the Consultant of that intention (a 'Pay Less Notice') specifying the sum the Client considers to be due to the Consultant at the date the notice is given and the basis on which that sum has been calculated. Where such notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.
- 7.7.2 Unless a Pay Less Notice is given, the Client shall pay the sum specified in the invoice.
- 7.7.3 A Pay Less Notice may be given on behalf of the Client by the Client's Representative or by any other person who the Client notifies the Consultant as being authorised to do so. It is immaterial to the requirement for the giving of such notice that the amount the Client then considers to be due may be zero.

7.8 Interest

If the Client fails to pay a sum, or any part of it, due to the Consultant under this Contract by its final date for payment, the Client shall, in addition to any unpaid amount that should properly have been paid, pay the Consultant simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made. Any such unpaid amount and any interest under this clause 7.8 shall be recoverable as a debt. Acceptance of a payment of interest under this clause 7.8 shall not be construed as a waiver of the Consultant's right to proper payment of the principal amount due, to suspend performance under clause 7.9 or to terminate his engagement under clause 11.5.

7.9 Consultant's right of suspension

- 7.9.1 If the Client fails to pay the Consultant the invoiced sum or, if a Pay Less Notice is given, the amount specified in that notice (together with any VAT properly chargeable in respect of such sum or amount) by the final date for payment and the failure continues for 7 days after the Consultant has given notice to the Client of his intention to suspend the performance of the Services and the grounds for such suspension, the Consultant, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full. Where payment is made in full the Consultant shall notify the Client of the resumption of the Services.
- 7.9.2 Where the Consultant exercises his right of suspension under clause 7.9.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 7.9.3 Applications in respect of any such costs and expenses shall be made to the Client and the Consultant shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

Section 8 Insurance

8.1 Professional Indemnity and Public Liability insurance

The Consultant shall maintain with reputable insurers that have a place of business in the United Kingdom:

- 8.1.1 Professional Indemnity insurance with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars; and
- 8.1.2 if the Contract Particulars state that it is required, Public Liability insurance in respect of death and personal injury and injury or damage to property in a sum not less than the amount stated in the Contract Particulars for any one occurrence or series of occurrences arising out of one event,

provided in the case of any renewal of Professional Indemnity insurance that it remains available at commercially reasonable rates.

8.2 Period of insurance

- 8.2.1 Subject to the proviso in clause 8.1, Professional Indemnity insurance shall be maintained from the date of this Contract until the expiry of the period stated in the Contract Particulars; that obligation shall not be affected by the expiry or termination of the Consultant's engagement.
- 8.2.2 Unless a shorter period is stated in the Contract Particulars, Public Liability insurance (where required) shall be maintained for the duration of the Consultant's engagement.

8.3 Evidence of insurance

The Consultant shall on reasonable notice send to the Client such documentary evidence as the Client may reasonably require that such insurances have been effected and/or are being maintained.

8.4 Non-availability of Professional Indemnity insurance

If Professional Indemnity insurance as at renewal has ceased to be available at commercially reasonable rates, the Consultant shall promptly notify the Client in order that they may discuss the means of best protecting their respective positions.

Section 9 Use of Consultant's Design Information, Confidentiality etc.

9.1 Use of the Consultant's Design Information

- 9.1.1 Unless otherwise agreed in writing in relation to any specific items, all rights including (without limitation) copyright in the Consultant's Design Information shall remain vested in the Consultant.
- 9.1.2 Subject to clause 9.1.4 and to all sums due and payable under this Contract to the Consultant having been paid, the Consultant grants to the Client an irrevocable royalty-free licence to copy and use the Consultant's Design Information and to reproduce the designs and content of that Design Information for any purpose relating to the Project including (without limitation) its construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, alteration, refurbishment and repair.
- 9.1.3 The licence referred to in clause 9.1.2:
- 9.1.3.1 shall enable the Client to copy and use the Consultant's Design Information for an extension of the Project, but (unless terms for such use are stated in paragraph 9 of Annex A) not to reproduce any designs contained in that Design Information for any such extension;
- 9.1.3.2 includes the right to grant sub-licences; and
- 9.1.3.3 shall continue in force notwithstanding the expiry or termination of the Consultant's engagement.
- 9.1.4 Where the design work to be performed by the Consultant:
- 9.1.4.1 is not a scheme design or detail design work; or
- 9.1.4.2 is a scheme design or detail design work but the Consultant's engagement is terminated by the Client under clause 11.5.1 prior to completion of that design or design work,
- the reproduction of any such design or design work in the execution of the Project or any part of it shall be subject to such payment and other terms as are fair and reasonable in all the circumstances.
- 9.1.5 The Consultant shall not be liable for the consequences of any use of the Consultant's Design Information by the Client or any other person for any purpose other than that for which it was prepared.

9.2 Confidentiality and publicity

- 9.2.1 During the Consultant's engagement and for a period of 6 years after its expiry or termination:
- 9.2.1.1 the Consultant shall keep all Project-specific information confidential; and
- 9.2.1.2 each Party shall keep confidential all information supplied to him regarding the business and affairs of the other Party that is of a confidential nature.
- 9.2.2 The undertakings in clause 9.2.1 shall not apply to the extent that:
- 9.2.2.1 the information supplied is known to the recipient Party independently and without restriction;
- 9.2.2.2 the information supplied is in, or comes into, the public domain other than through wrongful use or disclosure by that Party;
- 9.2.2.3 the disclosure or use by that Party is reasonably necessary for the proper performance of the Services or this Contract or to enforce any rights under this Contract; or

9.2.2.4 that Party is required by law to disclose it.

9.2.3 The Client's consent shall be required to any publicity or publication relating to the Project but shall not be unreasonably delayed or withheld.^[19]

9.2.4 Where the Client is a Local or Public Authority or other body of the type mentioned in Supplemental Provision 1, his obligations of confidentiality shall be subject to that Supplemental Provision.

[19] See the Guidance Notes.

Section 10 Assignment, Novation, Third Party Rights and Collateral Warranties

10.1 Restrictions on assignment

Subject to clause 10.2, where it is stated to apply, neither the Client nor the Consultant shall without the consent of the other assign this Contract or any rights thereunder.

10.2 Novation^[20]

Where the Building Contract is a design and build contract and the Contract Particulars state that this clause 10.2 applies, the Consultant shall, within 28 days of the Client's request notified in accordance with clause 1.5.1, execute and deliver to the Client a novation agreement with the Contractor in the form identified in the Contract Particulars or such other form as the Client may reasonably require. With effect from the date of that novation agreement references to the Client in this Contract shall (unless the context otherwise requires) be construed as references to the Contractor but, save as expressly provided by the form of novation, any then subsisting variations to the Services and other obligations of the Parties shall continue to apply and the rights and obligations of the Consultant in respect of the Project shall otherwise remain unchanged.

10.3 Third Party Rights and Collateral Warranties

10.3.1 Where Part 2 of the Contract Particulars provides that a Beneficiary is entitled to Third Party Rights under this Contract, the rights set out in Schedule 1 shall vest in that Beneficiary on the date of receipt by the Consultant of the Client's notice to that effect, given in accordance with clause 1.5.2 and stating the name of the Beneficiary, his address for communications and the nature of his interest in the Project.

10.3.2 Where Part 2 of the Contract Particulars provides that a Beneficiary is entitled to a Collateral Warranty from the Consultant, identifies the relevant form and gives the details required to complete it, the Consultant, within 14 days of receipt of notice from the Client given in accordance with clause 1.5.2, identifying the Beneficiary and nature of his interest in the Project and accompanied by the form of warranty identified in the Contract Particulars, shall execute the Warranty and deliver it to the Beneficiary or as the Client directs.

10.3.3 Where this Contract is executed as a deed, any collateral warranty shall be executed as a deed; where this Contract is executed under hand, any such warranty may be executed under hand.

10.3.4 Where Third Party Rights have vested in any Purchaser or Tenant, the Client and the Consultant shall not be entitled without the consent of that Purchaser or Tenant Beneficiary to amend or vary the express provisions of this clause 10.3.4 or, as they affect the Beneficiary, those of Schedule 1 but, subject thereto, the rights of the Client and/or the Consultant:

10.3.4.1 to terminate the Consultant's engagement under this Contract, or to agree to rescind this Contract itself;

10.3.4.2 to agree to amend or otherwise vary or to waive any terms of this Contract;

10.3.4.3 to agree to settle any dispute or other matter arising out of or in connection with this Contract, in each case in or on such terms as they shall in their absolute discretion think fit,

shall not be subject to the consent of any Purchaser or Tenant Beneficiary.

10.3.5 Where Third Party Rights have been vested in a Funder pursuant to clause 10.3.1:

10.3.5.1 no amendment or variation shall be made to the express terms of this clause 10.3 or, as they affect the Funder, those of Schedule 1, without the prior written

[20] As to forms of novation agreement, see the Guidance Notes.

consent of the Funder; and

10.3.5.2 neither the Client nor the Consultant shall agree to rescind this Contract, and the rights of the Consultant to terminate his engagement under it or to treat it as repudiated shall in all respects be subject to the provisions of paragraph 9 of Schedule 1

but, subject thereto, unless and until the Funder gives notice under paragraph 8 of Schedule 1, the Consultant shall remain free without the consent of the Funder to agree with the Client to amend or otherwise vary or to waive any term of this Contract and to settle any dispute or other matter arising out of or in connection with it, in each case in such terms as they think fit, without any requirement that the Consultant obtain the consent of the Funder.

10.3.6 The Client acknowledges that the Consultant is entitled to rely on any notice given by a Funder under paragraph 8 of Schedule 1 as conclusive evidence of the right of the Funder to give such notice and that acceptance of the instructions of the Funder or Funder's nominee following such notice shall not constitute a breach of the Consultant's obligations under this Contract.

Section 11 Suspension by the Client and Termination

11.1 Suspension by the Client

The Client may at any time on not less than 14 days' notice to the Consultant given in accordance with clause 1.5.2 require him to suspend performance of the whole or any part of the Services. Following the issue of a notice under this clause 11.1, the Client shall pay the Consultant in accordance with section 7:

- 11.1.1 any accrued instalments of the Fee and of any Additional Payment then unpaid;
- 11.1.2 a fair proportion of the next instalment in each case, having regard to the Services performed (or to be performed to the effective date of suspension) since the last instalment fell due;
- 11.1.3 all Reimbursable Expenses accrued; and
- 11.1.4 any demobilisation costs properly and necessarily incurred by the Consultant in complying with the notice,

together with any VAT properly payable.

11.2 Remobilisation

The Client may at any time within 2 months (or such other period as is specified in the Contract Particulars) following the notice under clause 11.1 instruct the Consultant to recommence the performance of the suspended Services. The Consultant shall comply with any such instruction as soon as reasonably practicable and the Client shall pay the Consultant any remobilisation costs properly and necessarily incurred by him as a result.

11.3 Notification of costs

The Consultant shall:

- 11.3.1 notify the Client promptly of the amount of any demobilisation and remobilisation costs which he intends to claim;
- 11.3.2 provide to the Client such supporting documents as the Client may reasonably require to verify the amount claimed; and
- 11.3.3 use all reasonable endeavours to minimise those costs.

11.4 Extended suspension

In the case of a suspension by the Client of the whole or a substantial proportion of the Services for any reason, where the Client has not within the period referred to in clause 11.2 instructed the Consultant to recommence the performance of all or substantially all the Services that remain to be performed, the Consultant, after giving to the Client not less than 14 days' prior notice of his intention to do so, may give notice to the Client terminating the Consultant's engagement. Each notice under this clause 11.4 shall be given in accordance with clause 1.5.2 and, if notice of termination is given, clause 11.6 shall apply.

11.5 Termination

- 11.5.1 The Client may at any time give the Consultant not less than 14 days' notice terminating his engagement.
- 11.5.2 If either Party is insolvent, the other may give notice to that Party terminating the Consultant's engagement with immediate effect.
- 11.5.3 If either Party ('the defaulting Party') commits a material breach of his obligations, the other Party may give notice to the defaulting Party specifying the breach and requiring its remedy. If the defaulting Party fails to comply with the notice within 14 days, the other Party may give notice to the defaulting Party terminating the Consultant's engagement with

immediate effect.

- 11.5.4 Where this Contract is one to which regulation 73(1) of the PC Regulations applies and the circumstances set out in regulation 73(1)(a), 73(1)(b) or 73(1)(c) of those regulations apply, the Client shall be entitled by notice to the Consultant to terminate the Consultant's engagement.
- 11.5.5 Notice of termination of the Consultant's engagement shall not be given unreasonably or vexatiously.
- 11.5.6 Each notice referred to in clauses 11.4 and 11.5 shall be given in accordance with clause 1.5.2.

11.6 Consequences of termination

- 11.6.1 Following the issue of a notice of termination under clause 11.4 or 11.5:
 - 11.6.1.1 the Parties shall consult and take all reasonable steps to bring the Services to an orderly close within the period of notice (or, if the termination takes immediate effect, within 14 days thereafter); and
 - 11.6.1.2 the Consultant shall deliver to the Client within 14 days copies of the Consultant's Design Information (including any information prepared prior to the date of termination and not previously provided to the Client), provided that in the case of termination under clause 11.4 or by the Client under clause 11.5.4 (regulation 73(1)(a) or 73(1)(c)) or where the Consultant terminates under clause 11.5, the Consultant shall be obliged to do so only against the Client's payment of any amount due under clause 11.6.2.
- 11.6.2 The amount due on termination from the Client to the Consultant or (if a negative amount) from the Consultant to the Client shall be the aggregate of:
 - 11.6.2.1 an amount determined in accordance with Annex A (after making any appropriate apportionments);
 - 11.6.2.2 any Reimbursable Expenses;
 - 11.6.2.3 (where the termination is not due to the Consultant's insolvency or material breach or under clause 11.5.4 (regulation 73(1)(b))) any demobilisation and other costs reasonably and properly incurred by the Consultant as a result of the termination; and
 - 11.6.2.4 (where the Consultant terminates his engagement under clause 11.5.2 or 11.5.3) any other direct loss and/or damage caused to the Consultant by the termination,

less amounts previously paid to the Consultant and less (where the termination is due to the Consultant's insolvency or material breach or under clause 11.5.4 (regulation 73(1)(b))) any additional costs reasonably and properly incurred by the Client in procuring the completion of the Services by others, but together in each case with any VAT properly payable.
- 11.6.3 The amount due on termination shall be calculated and invoiced within 2 months of the date of termination by the Party giving notice of it and the final date for payment shall be 14 days from the date of submission of the invoice. With respect to the invoice the provisions of clause 7.7 (or its converse) shall apply.
- 11.6.4 Where the Client terminates the Consultant's engagement under clause 11.5.1, the Client shall not be liable to the Consultant for any loss of profit, loss of contracts or other losses or, except as set out in clauses 11.6.2.1 to 11.6.2.3, any costs or expenses that arise out of the termination.
- 11.6.5 Termination of the Consultant's engagement shall not affect any accrued rights or remedies of either Party.

Section 12 Settlement of Disputes

Mediation

12.1 Mediation

Subject to Article 4, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.

Adjudication

12.2 Adjudication

If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply, except that for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars.

Arbitration

12.3 Not applicable

12.4 Not applicable

12.5 Not applicable

12.6 Not applicable

12.7 Not applicable

12.8 Not applicable

Schedules

Schedule 1 Third Party Rights

(Clause 10.3.1)

- 1 The Consultant warrants to each Beneficiary in whom rights under this Schedule are vested by notice under clause 10.3.1 that he has complied and will comply with his obligations under this Contract.
- 2 The rights vested in each Beneficiary shall come into effect upon such notice being given or, in the case of a Purchaser or Tenant, the date of practical completion of the Project, if later.
- 3 In the event of any breach of the warranty in paragraph 1, the Consultant's liability to the Beneficiary shall be limited to that proportion of the losses arising which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for those losses on the basis that:

3.1 each other member of the Consultant Team has given contractual warranties and undertakings or conferred third party rights on the Beneficiary as regards the performance of his services in connection with the Project that are no less onerous than those of the Consultant and that there are no exclusions or limitations on liability as between any such Consultant and the Client;

3.2 the Contractor has provided contractual undertakings or conferred third party rights on the Beneficiary in respect of his obligations under the Building Contract (excluding for the purposes of this paragraph 3 any work or services sub-contracted to the Consultant, through novation or otherwise) and that there are no exclusions or limitations of liability affecting the Building Contract;

3.3 the other members of the Consultant Team and the Contractor have each paid to the Beneficiary such proportion of the Beneficiary's losses as it would be just and equitable for them to pay having regard to their responsibility for those losses.

(Reference to exclusions and limitations shall for the purposes of this paragraph 3 include joint or composite insurance arrangements having a similar effect.)

- 4 The Consultant shall be entitled in any action or proceedings by a Beneficiary to rely on any term in this Contract and to raise the equivalent rights in defence of liability as it would have against the Client under this Contract.

- 5 In the case of a Purchaser or Tenant Beneficiary, the losses for which the Consultant shall be liable in the case of a breach of his warranty under paragraph 1 of this Schedule, but subject to paragraphs 2, 3 and 4, are:

5.1 the reasonable costs of repair, renewal and/or reinstatement of any part or parts of the Project to the extent that they result from the breach and that the Purchaser or Tenant incurs such costs or becomes liable for them, either directly or by way of financial contribution; and

5.2 (if Part 2 of the Contract Particulars state that this paragraph 5.2 applies and specify a maximum liability) any other losses incurred by the Purchaser

up to that maximum liability.

If by the Contract Particulars paragraph 5.2 is stated or deemed not to apply, the Consultant shall not be liable for any losses incurred by the Purchaser or Tenant other than the costs referred to in paragraph 5.1, and, whether or not that paragraph applies, the Consultant shall have no liability to the Purchaser or Tenant for any delay in the performance of the Services.

- 6 No Purchaser or Tenant Beneficiary shall have authority to issue any instruction or direction to the Consultant in relation to this Contract, nor shall any Funder have such authority unless and until the

Funder has given notice under paragraph 8.

- 7 In the case of each Beneficiary, the Consultant:
- 7.1 grants an irrevocable royalty-free licence to use the Consultant's Design Information in the same terms as is agreed to be granted to the Client by clause 9.1.2, but subject to clauses 9.1.3 to 9.1.5 and limited in the case of a Purchaser or Tenant of part only of the Project to such of that Design Information as relates to the part acquired or leased; and
- 7.2 undertakes on request to produce evidence that Professional Indemnity insurance is being maintained in accordance with section 8 and, in the circumstances mentioned in clause 8.4, promptly to notify and discuss protective measures with the Beneficiary.
- 8 If so required by a Funder by written notice given to the Consultant at any time during the Consultant's engagement under this Contract, the Consultant shall, subject to the conditions in paragraph 10, accept the instructions and directions of the Funder in respect of the Project to the exclusion of the Client.
- 9 The Consultant shall not exercise any right to terminate his engagement under this Contract or to accept a repudiation of it by the Client without having first given to the Funder not less than 14 days' written notice that the Consultant has the right to terminate or accept repudiation, accompanied by copies of any related notices to the Client (whether of any specified default, suspension or otherwise) previously given by the Consultant. If prior to the expiry of the period of notice to the Funder, the Funder gives notice to the Consultant under paragraph 8 and complies with the conditions in paragraph 10, the Consultant shall not exercise the right to terminate or accept repudiation and this Contract shall continue as if the right had not arisen.
- 10 The conditions referred to in paragraphs 8 and 9 are that the Funder shall in writing to the Consultant accept liability for all amounts due to the Consultant but unpaid at the date of the Funder's notice under paragraph 8 and for performance of the Client's other obligations under this Contract, including payment of all amounts subsequently becoming due to the Consultant. As from such acceptance, without affecting any accrued liability of the Consultant to the Client for any breach of this Contract, the Consultant's obligations and liability under this Contract shall be to the Funder in place of the Client; the Funder shall be entitled to delegate or assign to a nominee the right to give instructions or directions and/or to perform any other functions of the Client under this Contract but shall remain liable as principal obligor and not merely as surety for all amounts due or become due to the Consultant under this Contract.
- 11 The Consultant shall have no liability to the Funder in respect of any delay in performing the Services unless and until the Funder gives notice under paragraph 8 and acceptance in accordance with paragraph 10, and shall not be liable for any amount paid to or deducted by the Client on account of any delay.
- 12 The rights of a Beneficiary contained in this Schedule may be assigned without the consent of the Consultant by the Beneficiary, by way of absolute legal assignment, to another person (P1) and by P1, by way of absolute legal assignment, to another person (P2). In such cases the assignment shall only be effective upon written notice of it being given to the Consultant. No further or other assignment of these rights will be permitted and in particular P2 shall not be entitled to assign these rights.
- 13 Unless otherwise agreed between the Consultant and the Beneficiary, any notice to be given under this Schedule shall be sent by the means specified in clause 1.5.2.
- 14 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Consultant after the expiry of the relevant period from the date of completion of the Services. For the purposes of this paragraph, the relevant period shall be:
- 14.1 where this Contract is executed under hand, 6 years; and
- 14.2 where this Contract is executed as a deed, 12 years.
- 15
- 15.1 This Schedule shall be governed by and construed in accordance with the law of England and subject to paragraph 14.2 the English courts shall have jurisdiction over any dispute or difference between the Consultant and the Beneficiary which arises out of or in connection with this Schedule.
- 15.2 Where a Funder gives notice under paragraph 8, any dispute or difference which shall arise between the Consultant and the Funder (or its nominee) shall be subject to the provisions

of Article 4 and (where they apply) Article 5 and clauses 12.3 to 12.8.

Schedule 2 Supplemental Provisions

(Third Recital)

Supplemental Provision 1 applies where the Client is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 2 applies where the Client is a Local or Public Authority and this Contract is subject to the PC Regulations.

Transparency

- 1** Where the Client is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Client shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of this Contract:

- 1.1 the Consultant hereby consents to the Client publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;
- 1.2 the Client shall promptly inform the Consultant of any request for disclosure that he receives in relation to this Contract.

The Public Contracts Regulations 2015

- 2** Where the Client is a Local or Public Authority and this Contract is subject to the PC Regulations^[21]:
- 2.1 where regulation 113 of the PC Regulations applies to this Contract, the Consultant shall include in any sub-contract entered into by him suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
- 2.2 the Consultant shall include in any sub-contract entered into by him provisions requiring the sub-consultant:
- 2.2.1 to supply and notify to the Consultant the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
- 2.2.2 to include in any sub-subcontract he in turn enters into provisions to the same effect as required under paragraph 2.2.1 of Supplemental Provision 2;
- 2.3
- 2.3.1 the Consultant shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-consultant's engagement where there are grounds for excluding the sub-consultant under regulation 57;
- 2.3.2 in the event the Client requires the Consultant to terminate a sub-consultant's engagement pursuant to regulation 71(9) the Consultant shall take the appropriate steps to terminate that engagement and where required by the Client under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-consultant.

[21] An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Guidance Notes.

Annex A Fee and Other Payments

Note: An asterisk * indicates where selection has been or should have been made.

1 The Fee

1.1 The Fee *is:

* See Schedule of Amendments

1.2 Not applicable

2 Payment of Fee etc.

The Fee shall be payable in accordance with section 7 in the following amounts or percentages^[22]:

*[Invoice date or stage/
milestone]*

[Percentage of Fee or amount]

See Schedule of Amendments

See Schedule of Amendments

3 Incentive Payments^[23]

See Schedule of Amendments

4 Optional Services

The following comprise the Optional Services which, where required, shall be for the following amounts or calculated and charged on the following basis:

[Optional Service]

[Amount/basis of calculation]

See Schedule of Amendments

See Schedule of Amendments

5 Applicable rates

The *daily all-in rate for any necessary extension of the Services work (and for the purposes of any apportionment under clause 11.6.2.1) is

£See Schedule of Amendments based on the Consultant's Project Staff of

[No.]

[Person/Grade]

[Rate per hour/day]

See Schedule
of Amendments

See Schedule of Amendments

£ per Schedule of Amendments

6 Additional Services

The rates specified above shall apply (so far as properly applicable) for the purposes of any Additional Services instructed or other Changes within clause 6.3 *subject to the following:

See Schedule of Amendments

[22] If the dates or stages/milestones are not specified sufficiently clearly, the Scheme for Construction Contracts (under the Housing Grants, Construction and Regeneration Act 1996) will apply.

[23] To be completed where the Consultant is entitled to any incentive payment(s), subject to fulfilment of the conditions, either as part of a wider Project incentive scheme or as an individual incentive that is more readily dealt with separately and not as an element of the Fee. The entry for these particulars may conveniently refer to a separate scheme document; where full details are to be included here, the entry should describe the basis and amount(s)/percentage payment(s), the conditions for payment and the dates/times at which payments are scheduled to be ascertained and made.

7 Reimbursable Expenses

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

[Type]

[Maximum amount/rate]

See Schedule of Amendments

See Schedule of Amendments

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

8 Supporting documents and accounting records

8.1 Each invoice that includes any of the following types of charge or expenditure should be accompanied by the following documents:

[Charge/Expenditure]

[Documentation]

See Schedule of
Amendments

See Schedule of
Amendments

8.2 The accounting requirements and procedures referred to in clause 2.8 (if any) are as follows:

See Schedule of Amendments

9 Consultant's designs – additional usage

The terms upon which the Consultant is prepared to license such use of his designs as is mentioned in clause 9.1.3 are as follows:

See Schedule of Amendments

10 VAT

All amounts and rates shown above are exclusive of VAT.

Annex B The Services^[24]

See Schedule of Amendments

[24] Each Project is likely to have its own individual requirements for each member of the Consultant Team and the listing for this Annex is therefore a matter for the Client and the relevant member(s) of the Consultant Team.

Guidance Notes

Introduction

General

The JCT Consultancy Agreement is for Public Sector employers undertaking projects of a size or complexity that involve the appointment of a team of consultants. It is not intended for use on private sector projects.

It includes options that are designed to make it appropriate for each member of the consultant team, whatever their discipline and whether their respective appointments are for a limited period or for the duration of the project.

It can nevertheless be used for procurements that involve only a single or a limited number of consultants. With only two exceptions it is suitable for use in projects that are based on any JCT main contract and, since it provides an option for novation of the appointment to the main contractor, can be used in projects under the JCT Major Project Construction Contract or JCT Design and Build Contract. The two exceptions are the JCT - Constructing Excellence Contract, which itself is designed to act also as a form of consultant appointment at any level, and the JCT Homeowner Contract, which in the HO/C (with consultant) version has its own form of consultant appointment (HO/CA).^[25]

The payment provisions in this Agreement comply with the requirements of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 ('the Construction Act').

Underlying principles

The JCT Consultancy Agreement is predicated on a professional duty of care on the part of the Consultant (clause 2.1) that should be generally acceptable to both consultant and employer on Public Sector projects. The Agreement seeks at clause 2.9 to set reasonable limits to the 'pro-activity' that some might otherwise seek to imply as part of the Consultant's obligations; that is balanced by the requirements for co-operative working with both the Consultant Team and the wider Project Team and a duty to warn on the part of the Consultant in relation to those teams as well as to the Client (clauses 2.3, 2.9 and 2.10).

In terms of liability to the Client, there is no net contribution provision but there are the provisions for caps on liability referred to below and also the obligations of the Client under clause 4.7. Third party rights are subject to net contribution.

The Consultant's duties to consult expressly extend to financial aspects of the Agreement, requiring prompt prior notification of any increase in payment required for additional services instructed (or as loss and expense for prevention or unavoidable delay), as well as notification of any additional time required (clause 6.4). That is coupled with a requirement for proper estimates from the Consultant and for review, prior to each work stage, of any prospective time charges or expenses for that work stage (clause 2.8).

The Client retains close control over material matters, including the authority levels of the Lead and other Consultants (section 3) but, at the same time, the Contract offers flexibility in relation to delegation and in relation to structuring of the fee and other payments (Annex A and clauses 6.6.4 and 6.6.5), with options for capping the Consultant's liability (clause 2.11), novation and the grant of third party rights or collateral warranties (section 10). The Client also has the right to suspend or terminate at will on 14 days' notice (section 11).

Annex A (Fee) requires completion by the Parties and Annex B (Services) requires the Parties to list the Services. JCT has considered whether a basic and adjustable listing should be provided in Annex B but has concluded that, in addition to those published by various bodies:

- many Clients and almost all Lead Consultants already have appropriate services lists for the

[25] The Agreement is not intended to cover the provision of pre-construction services by a prospective Contractor who in a two stage tendering process is included in the Project Team following the initial tender round. For that purpose the JCT recommends use of its Pre-Construction Services Agreement (General Contractor) (PCSA).

various Consultant disciplines, and

- a further listing by JCT, which would almost certainly require adjustment to accord with the particular circumstances, would probably complicate, rather than simplify, the practical process of agreeing the list.

The framing of the Annexes is nevertheless of central importance since the proper operation both of Annex A and of the Agreement as a whole may depend upon the adequacy of Annex B. Annex B requires a conventional framework of work stages that apply across each relevant discipline which not only lists aims and deliverables at each stage but adequately defines Consultants' functions and responsibilities (including responsibility to monitor the work of others) and the scope of their respective services (including the general and/or specific advice that may be required at each stage). Amendments or additions for individual Consultants in respect of their Services must be compatible with those for others.

Agreement

Recitals

The First Recital requires the insertion of only a brief description of the Project: the detailed description is intended to be given by the Client's Brief. The Second Recital refers to the description of the Consultant's role, which forms the first entry to be made in the Contract Particulars; it also refers to the two key documents which the Parties are required to agree, namely Annex A (Fee), for which a reasonably flexible framework is provided, and Annex B (Services) where, for reasons given above, the listing is a matter for the Parties, in conjunction with the Lead Consultant and other consultants where appropriate. The Third Recital has been added in CA 2016 to refer to new Supplemental Provisions 1 and 2 as set out in Schedule 2 (these provisions are commented on below in the context of the Conditions to which they relate).

Articles

The Articles follow the same general format as JCT main contracts, so far as that format is applicable; identification of members of the Consultant Team, other than the Consultant himself, is left to the fifth entry against clause 1.1 in the Contract Particulars. Reflecting the statutory requirement for the appointment of a Principal Designer under the CDM Regulations (though he will also be a member of the Consultant Team), there is provision for identifying him at Article 3, but not the Principal Contractor, since the latter will not generally be appointed prior to formation of the Consultant Team, or its core. Article 5 retains the option of agreeing in advance that arbitration should be the final means of dispute resolution (subject to the two exceptions on questions of law set out in clause 12.7 of the Conditions).

Contract Particulars

Following the description of the Consultant's role referred to above and the entry to be made where arbitration is the chosen method of final dispute resolution, the Contract Particulars entries for clause 1.1 cover the principal listings over and above Annex A and Annex B and the list of beneficiaries entitled to Third Party Rights or Collateral Warranties which is set out in or by Part 2 of the particulars. In this 2016 edition, there is a new entry in relation to BIM; if a BIM Protocol is to apply, this must be stated and the identified protocol included in the Client's Brief.

Clause 1.3 has been framed with a view to all the services provided by a Consultant for the Project being governed solely by a single Consultancy Agreement, whenever they are performed and whenever the Agreement is executed. It is however recognised that this may not be practical in cases where special, detailed terms have been agreed for the performance of particular preliminary services; the Contract Particulars entry for clause 1.3 has therefore been inserted to allow preservation of those special terms.

Clause 1.5.2 provides specified methods of service for several of the most important types of notices under the Contract, namely those relating to suspension of the Project, default and termination and those relating to novations and the grant of third party rights/collateral warranties.

Attention is drawn to the caps on the Consultant's liability that may be agreed for the two entries relating to clause 2.11: the first is an overall cap on liability, a matter of some importance in view of the position on net contribution, and the second, which relates to pollution and contamination, should generally be considered in conjunction with the entries for clause 8.1.1. The printed entries for clauses 2.11.1 and 2.11.2 relate to financial limits: any other limitations on liability should also be identified there, either directly or by reference to identified documents. Attention is also drawn to the entry for

clause 3.2.3, enabling the Parties to record in detail the inspection duties of the Consultant where his role requires.

The entries for clause 3.3.1.4 that relate to the limits of authority have been inserted for the purpose of recording such levels as may have been agreed prior to execution of the Agreement. If none have then been agreed, the matter can still be dealt with as necessary by subsequent written authority from the Client.

The two entries for clause 8.1.1 (Professional Indemnity insurance) differ from the standard JCT format, with the inclusion of asbestos and toxic mould cover. Asbestos and toxic mould covers are not generally commercially available to Contractors but cover is more commonly available to Consultants for these risks. However, such additional cover should only be required in those cases where it might be relevant.

In relation to Part 2 of the Contract Particulars, the JCT itself does not at present publish forms of Collateral Warranty for Consultants. It will be noted that, to be effectual, any requirement for Collateral Warranties rather than Third Party Rights requires not only identification of the relevant form but also the particulars necessary to complete that form in each case.

Attestation

General

The attestation provisions are in the standard JCT layout, with separate forms for execution under hand and execution as a deed. Different attestation provisions are still required under the law of Scotland (for which the Scottish Building Contract Committee Limited issues appropriate documentation); other clauses may also be needed in the case of certain housing associations, partnerships and, as discussed below, foreign companies.

Execution under hand or as a deed

The primary factor governing the decision to execute the Contract under hand or as a deed is whether the limitation period for instituting proceedings is to be 6 years, as in the case of execution under hand, or 12 years, where the Contract is executed as a deed. The mode of execution of the Contract will also determine the mode of execution of collateral warranties (clause 10.3.3) and (for both third party rights and collateral warranties) the limitation period that applies to them.

Foreign companies

An increasing number of foreign companies involved in development and construction now themselves carry on business in the United Kingdom, rather than operating here through UK subsidiaries.

Under existing Companies legislation (the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009 (SI2009/1917)), a foreign company can execute deeds either:

- by affixing its common seal or any manner of execution permitted under the laws of its place of incorporation; or
- by expressing the document to be executed by the company under the signature of persons authorised to sign on its behalf in accordance with its domestic law.

Many foreign companies do not have a seal and the authority of relevant signatories needs to be checked but if there is any doubt, professional advice should be obtained.

To avoid complications as respects the service of claims or notices outside the jurisdiction, consideration should also be given to inserting an obligation on the foreign company for the duration of the Contract to maintain an agent for service within England and Wales or within Scotland or Northern Ireland, as appropriate.

Conditions

Section 1 – Definitions and Interpretation

Most of the terms defined or referred to in clause 1.1 are standard to the JCT suite as a whole, or at least to a material segment of it, and the meaning of most of them will be self-evident. 'Additional Payment' covers payments for Optional and Additional Services or for other Changes where the

additional amount takes a form other than adjustment of the Fee. 'Third Party Agreement' covers the wide variety of agreements and arrangements with others that may affect the way that the Consultant's Services are to be carried out but, unlike certain other definitions, is limited to agreements and arrangements listed at the outset; where the Consultant Team needs to take account of later agreements and arrangements of that type, appropriate instructions should be given and the matter treated as a Change under section 6.

The provisions in the Interpretation sub-section will be familiar to JCT users, except for clause 1.3, which, as mentioned in relation to the Contract Particulars, is intended, so far as is practicable, to bring the performance of the Consultant's Services on the Project within the umbrella of a single agreement.

In CA 2016 there are straightforward changes with new clause 1.2.6 and in clause 1.3, both of which relate to BIM, i.e.:

- first, with a view to avoiding any 'form over substance' argument, clause 1.2.6 reflects the fact that, under BIM, designs and information supplied to or by the Consultant may not take the same name or form as their hardcopy equivalent, albeit they clearly serve the same function
- secondly, in terms of clause 1.3 and precedence of documents, any BIM Protocol stated to apply is a document as referred to in the Contract but some model protocols claim in the case of conflict they override the Agreement and other contract documents; JCT considers that its contracts give sufficient latitude to BIM Protocols so that a conflict should not arise; in any event it also considers that unqualified overriding provisions of this type are not appropriate in such protocols.

Section 2 – Consultant's General Obligations

Clauses 2.1 to 2.7, governing performance of the Services, are generally in standard JCT form.

Clause 2.1 sets out the duty of skill and care expected of the Consultant in carrying out the Client's Brief and the requirements for performance both in accordance with the Statutory Requirements and in a manner consistent with the other main documents, i.e. the Cost Plan, Programme and any Third Party Agreements.

The duty of care imposed on the Consultant is the level of skill and care reasonably to be expected of a consultant "experienced in projects of similar size, scope and complexity". The Consultant will generally have that experience and have given details of it at the pre-qualification stage. There may be circumstances in which it is appropriate to qualify or modify the duty and the clause in particular respects, but professional consultants will in any event be aware of their duty under relevant Codes of Practice and discuss with the Client in advance any matters arising in that regard.

Clause 2.2 sets out the general duty to comply with the Client's instructions or those given on his behalf. The latter will generally be given by or through the Lead Consultant in the pre-construction period and by the Contract Administrator thereafter, but the Contract recognises that there may be limited delegation to others in the initial stages, for example to the Lead Designer on certain design integration issues where he is not the overall Lead Consultant (see clause 3.1).

Clause 2.3 sets out the Consultant's duty to co-operate with the Client and Project Team as a whole, updating them as necessary and giving warning both of any delay and of any errors or inconsistencies in documentation, in a manner that is consistent with any Framework Agreement that there may be and with such procedures as may be established to govern the workings of the Consultant and Project Teams.

Clauses 2.4 and 2.5 add requirements for compliance with the British Council for Offices guidelines on the selection of materials and with the Fire Code, if relevant to the Services.

Clauses 2.6 and 2.7 and the (clause 1.1) Contract Particulars relating to the Consultant's Representative and Key Personnel, which are reinforced by clauses 5.2 and 5.3, are intended to ensure, so far as is practicable, that the personnel that the Consultant uses on the Project are those that the Client has approved.

In relation to clause 2.7, it will be noted that the Client has an absolute discretion on the issue of sub-contracting (i.e. the appointment of sub-consultants); when there is, or may be, a need for this in the course of what may be a lengthy appointment, Client's approval, at least in principle, should be sought in advance of entry into the Agreement. Supplemental Provision 2 (Schedule 2), which will only apply where the Client is a Local or Public Authority and the Contract is subject to the Public Contracts Regulations 2015 ('the PC Regulations'), is also relevant to the issue of sub-contracting. For a summary of those provisions from the regulations reflected in Supplemental Provision 2, please go to www.jctltd.co.uk. (Reference should always be made to the wording of the regulations themselves and

if there is any doubt as to the applicability of the PC Regulations generally or any specific provision, appropriate legal advice should be taken.)

Clause 2.8 requires the Consultant to keep accounting records in accordance with Annex A (paragraph 8) and, consistently with the general approach in clause 2.3, requires him regularly, prior to each work stage, to provide or update budgetary estimates for time-charges and expenses for which he can claim reimbursement.

Clauses 2.9 to 2.11 are concerned with limitation. Clause 2.9 is intended to make clear that the Consultant is not obliged to check material supplied by the Client or the work of other Consultants, unless specifically required to do so, nor to warrant work or services by persons not under his control. Equally he is not liable for failures or delay arising from matters outside his control. However, where his role is such that he should be required to monitor particular matters, these can and should be specified in Annex B or an instruction. Clause 2.10 also makes clear that each Consultant's general duty to warn remains, including (but not limited to) the specific matters referred to in clause 2.3 (e.g. actual or prospective delays, errors and inconsistencies in designs or related information) and does not affect the performance of certain specific duties of the Lead Designer, Lead Consultant and Contract Administrator under clauses 3.1 and 3.2.

Clause 2.11 provides two limitation options: first, the option of an overall cap on the Consultant's liability under the Contract (leaving aside any liability for death or personal injury) and, secondly, the option of a limitation on liability for pollution or contamination damage. Any overall cap should be considered in the light of the position on net contribution and both options should also be considered in conjunction with the Professional Indemnity cover position. As indicated in the notes relating to the Contract Particulars, any limitations over and above the financial limits should also be identified in those particulars.

The JCT considers that the Agreement represents a fair balance of risk. However, if it is felt appropriate to alter or adjust that balance in any particular case by inclusion of a net contribution clause, that can readily be done, based on the text of paragraph 3 of Schedule 1 (Third Party Rights), substituting 'breach of the Consultant's obligations under this Contract' for 'breach of the warranty in paragraph 1' and 'Client' for 'Beneficiary'.

Section 3 – Lead Consultants and Contract Administration (and Annex B)

Section 3 follows up section 2 by making specific provisions regarding aspects of the roles of the Lead Consultant, Contract Administrator and Lead Designer ('the lead consultants', though all three roles may be vested in the same Consultant).

Clause 3.1.1 sets out the Lead Designer's responsibility for design co-ordination/integration and, so far as he is able, for ensuring that appropriate instructions are given in that regard; clause 3.1.2 differentiates between that and the role of the Lead Consultant where he is not also the Lead Designer.

Clause 3.2, mirroring the Building Contract, states the Contract Administrator's obligations with regard to the exercise of his powers generally, the supply of Design Information during the construction phase and to make site visits. Clause 3.2.1 is in effect an express saving provision in relation to the independent exercise of powers, duties and discretions on which the Building Contract is predicated.

The saving provision is important also in the context of clause 3.3.1.4.2 since clause 3.3.1, subject to the other (clause 3.3.2) exception for emergency site action, expressly limits the lead consultants' authority (and that of the Consultant Team generally) to commitments and/or spending levels that are expressly stated in the Contract or which otherwise have the Client's prior approval.

The framing of Annex B, the overall schedule of Services for the Project, is initially a matter for the Client and Lead Consultant, together with other consultants as appropriate. As indicated in the Introduction, there are several base models and many variants in existence. In JCT's view, and in order to iron out possible inconsistencies at the earliest possible stage, it is advantageous if the schedule takes the form of a composite document showing clearly the roles and responsibilities of each of the principal members of the Consultant Team, rather than one limited to the specific services required under the particular Consultancy Agreement. In relation to the issues of approval and authority referred to above, it is important that it should show clearly the various stages of the timetable, including the points at which Client approval is to be sought, and also, to the extent not incorporated in the schedule, that detailed procedures and authorised expenditure levels etc. consistent with the schedule should be established at the earliest opportunity.

Section 4 – Client's General Obligations

Leaving aside appointment of the Client's Representative (identified in the Contract Particulars or to

be appointed under clause 5.1) and the Client's payment obligations (which are dealt with in sections 6 and 7), the Client's principal obligations are:

- to supply the information he has that is reasonably necessary for performance of the Services or compliance with the Statutory Requirements (which include CDM Regulations and Health and Safety legislation generally) (clause 4.1);
- to make any necessary appointments to the Consultant Team (clause 4.2);
- to notify the Consultant of relevant appointments and transactions (including authorisation of any Consultant other than the Lead Consultant/Contract Administrator to give instructions on the Client's behalf) (clause 4.3);
- to give the Consultant any necessary information regarding any contingent payments (clause 4.6); and
- if there is a default by any other member of the Consultant Team that delays the Consultant, to take corrective action (clause 4.7).

The clause 4.5 restriction on the giving of instructions for omissions from the Services essentially and expressly reflects general construction law.

Section 5 – Representatives and Key Personnel

For administrative convenience, the Contract requires each Party to appoint and maintain a representative to act as the main point of contact for the other (clauses 5.1 and 5.2). The further clause 5.2 requirement, for the Client's approval to any change of the Consultant's Representative or Key Personnel that the Consultant may wish to initiate, underpins the provisions of clause 2.6 regarding their availability; the Client's right under clause 5.3 to require removal for unsatisfactory performance or conduct is standard in JCT contracts that contain Key Personnel provisions.

Section 6 – Further Services, Changes and Fee Adjustments

By clause 6.1 the Consultant agrees to perform any Optional Services listed in Annex A (paragraph 4) that the Client instructs. (Paragraph 4 envisages that these services will be of a fairly standard nature and that the amount or basis of charging will be agreed in advance.) By clause 6.2 the Client may instruct Additional Services, i.e. those which are additional to or otherwise alter the Services as then specified, subject to the general restriction on instructions to matters within the scope of the Project and the Consultant's competence. (In each case the Consultant, for his part, is to notify the Client if he thinks an Optional or Additional Service is necessary.)

Clause 6.3 provides for adjustment of the Fee or other amounts payable in the case of instructions for Additional Services, Omissions or other Changes, with clause 6.4 requiring the Consultant promptly to notify the Client to that effect and to give the relevant cost and time estimates. If requested, the Consultant is also to provide an Acceleration Quotation. Under clause 6.5, the Consultant has a right of reasonable objection if he considers that, independently of time or money, the relevant instruction would adversely affect the Project, in which event there is to be prompt consultation between the Parties and with other relevant Project Team members.

Clause 6.6 provides that if the instruction is then confirmed or where Changes give rise to loss, expense or delay, fair adjustments are to be made both in terms of payment and time.

Clause 6.7 provides for a corresponding adjustment in favour of the Client if as a result of any default by the Consultant the Client incurs a liability to another consultant, the contractor and/or any specialist.

Section 7 – Payment (and Annex A)

The provisions of section 7 closely follow the standard JCT payment provisions, with clause 7.1 providing for payment of the Fee, Reimbursable Expenses and any Incentive Payments (each to be specified in, or calculated in accordance with, Annex A) together with any Additional Payments in accordance with section 6 and the VAT properly chargeable.

Clauses 7.2 to 7.6 provide for the Consultant to invoice amounts becoming payable at specified dates or stages, with such documentary evidence as is either specified in Annex A or reasonably required by the Client. Clause 7.6 has been revised (in line with other JCT 2016 contracts) and the final date for payment of any amount payable under clauses 7.1 to 7.4 is now 14 days from the respective due date. Those provisions are then followed by standard provisions as to payment and Pay Less Notices (clause 7.7), interest on unpaid amounts (clause 7.8) and the Consultant's right of suspension (clause

7.9). The Consultant's right of suspension for non-payment reflects the statutory right for him to recover his reasonable costs and expenses arising from such suspension.

Annex A requires the insertion of the amount (or basic amount) of the Fee and/or the method of calculation, if or to the extent that it is other than a fixed sum or percentage of Total Construction Cost (as defined in paragraph 1.2 of that Annex). The dates/stages/milestones for payment are then for insertion in paragraph 2 of the Annex.

Paragraphs 3 and 4 require particulars of any Incentive Payments (and their method of calculation) and of the types and amounts, or basis for calculating the amounts, payable for Optional Services. It is envisaged that Incentive Payments will usually be linked to KPIs and/or payable either on practical completion of the Project or on successful completion of a work stage.

Paragraph 5 specifies the Consultant's Project Staff manning levels and enables the Parties to specify a daily or weekly rate for extended services from particular categories of Project Staff and, where appropriate, gives a basis for the valuation of any Additional Services, subject to any additional factors that the Parties specify in paragraph 6.

In terms of paragraph 7 of Annex A, it is highly desirable that the categories of Reimbursable Expenses be listed and it may be appropriate that a limit be put on the overall amount and/or the rate at which certain items are reimbursable.

Paragraph 8 of Annex A is not exhaustive, since the Client has a residual right to call for reasonable evidence of time charges and other payments and disbursements by the Consultant, but it is desirable that there should be prior agreement on the documentation generally required to support the Consultant's invoices.

Paragraph 9 of the Annex will be relevant only where there is design work by the Consultant which the Client may wish to reproduce in three-dimensional form in any subsequent extension of the Project.

As indicated in paragraph 10, all amounts and rates shown in the Annex are exclusive of VAT.

Section 8 – Insurance

The Consultant is required to maintain Professional Indemnity ('PI') and, if the Contract Particulars state that it is required, Public Liability insurance in the respective amounts specified in those particulars and on request to produce appropriate evidence of those insurances. The obligation to maintain PI insurance is subject to the usual proviso as to continuing availability at commercially reasonable rates; it will also be noted that the Contract Particulars provide for separate optional covers for pollution and contamination, asbestos and toxic mould claims, all within the general cover. These recognise that cover for pollution and contamination claims and asbestos claims is generally available only in an aggregate annual amount and not (as under the policy generally) for an amount per claim or series of claims arising out of a single event. Certain of those risks may not be relevant in every case and, as stated in relation to the Contract Particulars, cover should not be required when it is clearly not relevant.

Section 9 – Use of Consultant's Design Information, Confidentiality etc.

The section comprises at clause 9.1.2 the usual licence for the Client to use the Consultant's design work, subject to certain provisos, and at clause 9.2 an undertaking by the Consultant to treat Project-specific information as confidential coupled with cross-undertakings between the Parties in relation to confidential business information.

The basis of clause 9.1 is the same as that in JCT construction contracts and collateral warranties where the contractor has full or partial design responsibilities: the clause adds to that an optional provision at clause 9.1.3.1 for specifying (in paragraph 9 of Annex A) the terms for reproduction of the Consultant's designs in any extension to the Project (which as regards artistic designs are otherwise not covered by the licence). In clause 9.1.4, it is also made clear that the licence is not intended to cover such reproduction where the architect or the designer has either not been employed to do a scheme design or detailed design work or, if he has been, where his employment is terminated under the Client's termination at will powers in clause 11.5.1 before the design or design work has been completed. Where there is any likelihood of any such situation arising, each Party should consider taking professional advice as to the best approach, if he has not already done so.

In relation to confidentiality and clause 9.2, it will be noted that the Client's consent to publicity and publications relating to the Project is not to be unreasonably withheld; this is appropriate in a large majority of cases, but it will also be recognised that there are Clients who need to limit or preclude publicity regarding their construction activities. Supplemental Provision 1 (Schedule 2), if it applies, deals with the authorising of disclosures by public sector clients in accordance with the Freedom of

Information Act 2000.

Section 10 – Assignment, Novation, Third Party Rights and Collateral Warranties

Clause 10.1 contains the standard JCT restriction on assignment.

Where the Building Contract is a JCT Design and Build Contract or Major Project Construction Contract and the Contract Particulars state that clause 10.2 applies, clause 10.2 provides that the Client may require that the Agreement be novated from the Client to the Contractor by a novation agreement in such form as is identified in the Contract Particulars, to be executed by the Consultant within 28 days of the Client's request made in accordance with clause 1.5.2.

The JCT itself does not at present publish forms of novation agreement but several forms are available.

However, novations, though commonplace, are not entirely straightforward and each party may need advice before agreeing to enter into one. The Client, for example, will wish to ensure that his obligations to the Consultant are discharged but that he remains entitled to any necessary warranties in respect of past services; the latter is important because under most JCT main contracts, statutory compliance apart, the Client will remain liable for any inadequacy in his requirements. The Contractor for his part will wish to ensure that he has the necessary representations, warranties and/or undertakings as to performance prior to the novation, free of any unreasonable limitations and any 'no loss' arguments, and that, save as provided for in the Building Contract price, amounts owing or accrued to the Consultant, are discharged on or before the novation. The Consultant will wish to ensure that amounts then owed are paid up and may also be concerned to ensure that the novation, if it thereafter involves liabilities to both Client and Contractor, does not deprive him of any limitations or protection that he would otherwise have.

The Third Party Rights for Purchasers/Tenants and for Funders are set out in Schedule 1. In the interests of brevity the two sets of rights have been consolidated but in each case they remain in the same terms.

In relation to Collateral Warranties, as indicated in relation to Part 2 of the Contract Particulars, the JCT itself has not at present published forms of Collateral Warranty for Consultants. The Contract Particulars for clause 10.3.3 therefore require not only identification of the agreed form of warranty but also the details needed to complete it in each case, failing which any identified beneficiary will be entitled to a Third Party Right in lieu.

Section 11 – Suspension by the Client and Termination

The Client has the right at any time to suspend the Services or part of these (clause 11.1) or to terminate the Consultant's employment at will (clause 11.5.1), in each case on not less than 14 days' notice.

In the case of suspension, he has the right under clause 11.2 to instruct the Consultant to remobilise but, if the period of suspension exceeds the relevant period (2 months or such other period as is specified in the Contract Particulars) and such instruction has not been given, the Consultant, after giving a warning notice, may himself terminate his employment.

In common with JCT contracts generally, each Party has the right to terminate that employment in the case of the insolvency or unremedied default of the other (clauses 11.5.2 and 11.5.3). In the case of default a warning notice is required.

In the case of suspension by the Client, there is provision for payment up to the date of suspension, plus reasonable demobilisation costs (clauses 11.1.1 to 11.1.4), with clause 11.2 making provision for remobilisation costs and for the notification of costs either way.

In the case of termination, clause 11.6.1 makes provision for consultation and delivery of documents and clause 11.6.2 for the financial consequences of termination. The latter are essentially limited to costs and expenses incurred by the Consultant, less, in the case of termination for the Consultant's insolvency or default, the additional cost to the Client in procuring completion of the Services.

Suspension, warning and termination notices each require to be given by the means set out in clause 1.5.2.

In CA 2016 the section includes some new termination grounds to reflect regulation 73(1) of the PC Regulations, where those regulations apply.

Regulation 73(1) of the PC Regulations requires a contracting authority to have the right to terminate

the Contract where:

- there has been a substantial modification to the Contract which would have required a new procurement procedure (regulation 73(1)(a)); or
- at the time of Contract award one of the mandatory grounds for exclusion applied and the contractor (in the case of CA, Consultant) should have been excluded from the procurement procedure (regulation 73(1)(b)); or
- the Contract should not have been awarded to the contractor (in the case of CA, Consultant) in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive as declared by the ECJ (regulation 73(1)(c)).

These termination rights will be implied into the Contract where the relevant regulations apply and are not expressly provided for, but the JCT has chosen to deal with them in the Contract itself (clause 11.5.4) to provide greater legal clarity and to allow for the consequences of termination to be specified. Termination under regulation 73(1)(b) is dealt with in the same way as a material breach by the Consultant and termination under regulations 73(1)(a) and (c) on a neutral basis (clause 11.6).

Section 12 – Settlement of Disputes

The provisions are substantially the same as those in other JCT contracts and clause 12.2 incorporates into the Agreement the Adjudication provisions of the Scheme for Construction Contracts.^[26]

[26] i.e. those set out in Part I of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.



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SCHEDULE OF AMENDMENTS

AMENDMENTS AND INSERTIONS

Articles

Insert new Article 7 as follows:

"The Contract is modified by the Schedule of Amendments and is to be read and construed accordingly. In the event of any inconsistency between any of the provisions in the Conditions and the Schedule of Amendments, the Schedule of Amendments shall prevail."

Conditions

Clause 1.1

Amend the following definitions:

"Beneficiary" Delete "in who Third Party Rights may be vested or"

"Interest Rate" delete "5%" and insert "2%".

"Third Party Agreement" delete the full stop at the end of the definition and insert the following "or as listed in the table below:

Development Agreement	means a development agreement dated 8 December 1994 made between The Secretary of State for Transport (1) Blue Circle Properties Limited (2) and Blue Circle Industries Plc (3) as may be supplemented and/or varied;
Department for Transport Lease	means a lease dated 3 September 2010 and made between Ebbsfleet (GP) Limited and Ebbsfleet Nominee No.1 Limited (1) and Secretary of State for Transport (2) as may be supplemented and/or varied;
HS1 sub underlease	means a lease dated 5 November 2010 and made between The Secretary of State for Transport (1) and HS1 Limited (2) as may be supplemented and/or varied;
Permanent Way Transfer	means a transfer dated 3 September 2010 made between Ebbsfleet Investment (GP) Limited and Ebbsfleet Nominee No.1 Limited (1) and The Secretary of State for Transport (2) as may be supplemented and/or varied;
Option on wider site	means a call option agreement dated 15 October 2019 made between the Client (1) and Ebbsfleet Investment (GP) Limited (in its capacity as the General Partner of The Ebbsfleet Limited Partnership) (2) as varied by a deed of variation dated 23 December 2020 made between the same parties; and
Car Park Agreement	means a deed of variation dated 13 December 2022 to be made between the Client (1) The Secretary of State for Transport (2) and HS1 Limited (3) and a draft letter of acknowledgment to be issued by the Client to both The Secretary of State for Transport and HS1 Limited.
and any additional project agreements provided by the Client to the Consultant from time to time."	

Insert the following new definitions:

"Business" means the business of the Client."

"Business Day" means 9.00 am to 5.00 pm on any day (other than a Saturday) on which clearing banks in the City of London are open for the transaction of normal sterling banking business."

"Change of Control is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010."

"Client's Confidential Information: all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Consultants of the Client, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential."

Commercially Sensitive Information: the information agreed between the parties (if any) comprising the information of a commercially sensitive nature relating to the Consultant, the charges for the Services, its IPR or its business or which the Consultant has indicated to the Client that, if disclosed by the Client, would cause the Consultant significant commercial disadvantage or material financial loss;

"Confidential Information: the Client's Confidential Information and/or the Consultant's Confidential Information."

"Consultant's Confidential Information: any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Consultants of the Consultant, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information."

"Contracting Body: any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Services, Service and Supply) (Amendment) Regulations 2000 other than the Client."

"Controller: has the meaning given to it in the Data Protection Act 2018".

"Crown Body: any department, office or agency of the Crown"

"DLUHC means the Department for Levelling Up, Housing and Communities (as amended from time to time as confirmed by the Client to the Consultant)"

"DOTAS: is the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

"Framework Agreement" – Not Used.

"General Anti-Abuse Rule: the legislation in Part 5 of the Finance Act 2013; and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions"

"Halifax Abuse Principle: the principle explained in the CJEU Case C-255/02 Halifax and others"

"Insolvency a party is Insolvent if:

(a) In the case of a company:

- i. when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
- ii. on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
- iii. on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
- iv. on the making of a winding-up order under Part IV or V of that Act.

(b) In the case of a partnership

- i. on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or
- ii. when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.

(c) In the case of an individual

- i. on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or
- ii. on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.

(d) A person also becomes Insolvent if:

- i. it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
- ii. (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this definition; or
- iii. it applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986.

Each of (a) – (d) above also includes any analogous arrangement, event or proceedings in any other jurisdiction.”

“**Insolvent** has the meaning set out in the definition of Insolvency.”

“**Intellectual Property Rights or ‘IPRs’**:

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction;
- c) all other rights having equivalent or similar effect in any country or jurisdiction; and
- d) all or any goodwill relating or attached thereto.”

“**Law**: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Consultant is bound to comply;”

“**Monthly Performance Report** a performance report showing performance of the Consultant against the Site Development Plan and including an update on expenditure since the preceding Monthly Performance Report (or in the case of the first Monthly Performance Report since the date of commencement of the Services).”

“**Occasion of Tax Non-Compliance**: where any tax return of the Consultant submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:

- A Relevant Tax Authority successfully challenging the Consultant under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

- The failure of an avoidance scheme which the Consultant was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime; and/or
- where any tax return of the Consultant submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion."

"Personal Data: the meaning given to it in the Data Protection Act 2018".

"Phase means Phase A to Phase H as provided for in Schedule 7".

"Prohibited Act: to directly or indirectly offer, promise or give any person working for or engaged by the Client or other Contracting Body or any other public body a financial or other advantage to:

- induce that person to perform improperly a relevant function or activity; or
- reward that person for improper performance of a relevant function or activity;
- to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;
- committing any offence:
 - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)
 - under legislation or common law concerning fraudulent acts; or
 - defrauding, attempting to defraud or conspiring to defraud the Client; or

any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK."

"Request for Information: a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations Relevant Requirements: all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010."

"Relevant Requirements: all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010"

Relevant Tax Authority: HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Consultant is established.

Clause 1.3

Delete Clause 1.3 and insert a new Clause 1.3 as follows:-

"1.3 Save as otherwise stated in the Contract Particulars (by reference to this clause) and the Schedule of Amendments as set out in Appendix C, nothing contained in any document referred to in this Contract shall override or modify the Contract or these Conditions and it is intended that this Contract should govern all the Services and their performance, whether carried out before or after the date of the Contract, and shall unless otherwise stated supersede in their entirety and with retrospective effect any interim agreement, letter of intent and/or other arrangement on the basis of which the Services may have commenced. For the avoidance of doubt, in the event of any inconsistency between any of the provisions in the Conditions and the Schedule of Amendments, the Schedule of Amendments shall prevail."

Clause 1.4

Delete Clause 1.4 and insert new Clause 1.4 as follows:-

- "1.4 This Contract does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Client is deemed to be a party to this Contract."

Clause 2.1

Replace the word "consultant" in the second line with "Security Consultant"

After "Statutory Requirements" insert the following " , the Consultant's obligations under the Building Safety Act 2022, the Consultant's obligations under the CDM Regulations"

Clause 2.4

Delete Clause 2.4 and insert new Clause 2.4 as follows:-

- "2.4 The Consultant warrants that it will not specify any products or materials for use or use any products or materials in the Project which:-
- 2.4.1 do not conform with British or European Standards (where appropriate) or Codes of Practice equivalent current at the date of use or which contravene the recommendations of the publication "Good Practice in the Selection of Construction Materials" (British Council for Offices, 2011) (or where no such standard exists do not conform with a British Board of Agreement Certificate or equivalent); and/or
 - 2.4.2 are generally known in the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
 - 2.4.3 are specifically prohibited by this Contract.

Clause 2.7

Delete Clause 2.7 and insert a new Clause 2.7 as follows:-

- "2.7 The Consultant shall not sub-contract, assign, novate, delegate or otherwise transfer any benefit or obligation, or the performance of any of its rights, obligations or duties under this Contract other than in accordance with the provisions of this Clause 2.7. The Consultant may sub-contract the Services (or part thereof) provided always that the Consultant:-
- 2.7.1 has received the prior written consent of the Client (such consent not to be unreasonably withheld or delayed);
 - 2.7.2 shall select sub-contractors and/or sub-consultants who are appropriately qualified to undertake the task for which they have been appointed;
 - 2.7.3 exercises full supervision of the performance of its sub-contractors and/or subconsultants and for any costs or fees of any such sub-contracting;
 - 2.7.4 places obligations and liabilities on each sub-contractor and/or sub-consultant (where appropriate) which are no less onerous than the obligations and liabilities placed on the Consultant under this Contract in respect of the Services which are the subject of the sub-contract taking into account the nature of the services required under that arrangement;
 - 2.7.5 shall be responsible for all acts and omissions of its sub-contractors and/or sub-consultants as though they were its own;

- 2.7.6 requires (on appointment of any sub-contractors and/or sub-consultant and on each subsequent anniversary of each appointment thereafter) that such sub-contractors and/or sub-consultant have adequate insurance commensurate to their role with an insurer of repute (including, but not limited to professional indemnity insurance) in the form of a broker's certificate and upon request delivers evidence of the same to the Client;
- 2.7.7 shall be responsible for the costs and fees of such sub-contract (including all costs incurred by the Consultant as a result of any sub-contract);
- 2.7.8 where the Client consents to any delegation or sub-contracting pursuant to this Clause 2.7, the Consultant shall procure collateral warranties from any sub-consultants and/or sub-contractors engaged by the Consultant in favour of the Client and in favour of any Beneficiary with an interest in the Project as the Client may require, each in terms of the collateral warranty set out in Schedule 5 (amended as required to reflect the grantor being a sub-consultant or sub-contractor to the Consultant) within 21 days of notification of such from the Client and in favour of the Client as a condition of commencing any of the Services under this Contract; and
- 2.7.9 Without prejudice to the foregoing the Consultant shall ensure that every sub-contract pertaining to the Services contains provisions requiring that payment due to the sub-consultants and/or sub-consultant or supplier is made no later than thirty (30) days after receipt of a valid and undisputed invoice, unless the relevant sub-contract requires the Consultant's sub-consultants or supplier to make earlier payment."

Clause 2.11

Delete Clause 2.11 and insert:

- 2.11.1 Without affecting any other limitation in this agreement, the Consultant's liability under and in connection with this Contract shall be limited to £5,000,000 (five million pounds) for any one claim. This limit shall apply however that liability arises including a liability arising by breach of contract, arising by tort (including tort of negligence) or arising by breach of statutory duty. Provided that this clause 2.11 shall not exclude or limit the Consultant's liability:
 - .1 for death or personal injury caused by the action, error or omission of the Consultant, its employees, agents or sub-contractors; or
 - .2 for fraud or fraudulent misrepresentation; or
 - .3 for third party property damage; or
 - .4 where applicable law or any statutory provision does not permit liability of any person to be limited or excluded and/or where it would limit or exclude the Consultant's liability to any person who suffers a loss or liability arising from any statutory provision and where the relevant breach of statutory duty was caused or contributed to by the Consultant.
- 2.11.2 Subject to clause 2.11.3, the Parties agree that no action or proceedings may be brought or commenced under this Contract at any time after the period from the date of this Contract until the date 12 years after the later of the date of completion of the Services for a Phase or if applicable the date of practical completion of the respective development to which a Phase relates. Notwithstanding any other provision of this Contract, any action in respect of or relating to:
 - .1 a breach or alleged breach of the Consultant's obligation to comply with his statutory duties under the Defective Premises Act 1972 or otherwise arising out of or relating to a breach or alleged breach of the duties imposed by Section 1 or Section 2A of the Defective Premises Act 1972 in relation to the Project; or

- .2 a breach of the Consultant's obligation to exercise the standard of care required by clause 2.1 to ensure that the design of all elements of the Project for which the Consultant is responsible complies with building regulations,

may be brought at any time before the expiration of the period of 15 years from the practical completion of a development to which a Phase relates. The provisions of section 8 of the Limitation Act 1980 do not apply to such actions, and the Consultant shall not rely on any limitation defence under section 8 of the Limitation Act 1980 that might otherwise be available to it in defence of proceedings commenced earlier than the expiry of such 15 year period.

- 2.11.3 The Consultant shall comply with and shall not do any act or omission to put the Client in breach of its statutory obligations under the Defective Premises Act 1972 and the Building Act 1984. The Consultant shall be responsible for and indemnify the Client from and against any and all claims, losses, damages, liabilities, expenses and/or costs, resulting from any failure, default, act, or omission by the Consultant in failing to comply with this clause 2.11.3. The indemnity in this clause 2.11.3 shall last for 15 years from the date of practical completion of a development to which a Phase relates.
- 2.11.4 In respect of any claims relating to fire safety or cladding the Consultant shall have no liability for loss of profits, loss of use, loss of production, loss of contracts, liquidated damages or for any cost of decamping or rehousing, and subject thereto the Consultant's liability for all or any such claims shall be limited in the aggregate to £1,000,000 (one million pounds) .

Clause 2.12

Insert a new clause 2.12 entitled "IR35" as follows:-

- "2.12 For the purpose of this clause 2.12, the following capitalised words have the following meaning:

"IR35 Contractor" means any of the Consultant's personnel or any individual engaged by the Consultant (either directly or via any other intermediary or intermediaries) through a PSC.

"ITEPA" means the Income Tax (Earnings and Pensions) Act 2003.

"PSC" means a limited company or partnership which meets the conditions specified in sections 61O or 61P (as applicable) of ITEPA.

- 2.12.1 The Consultant shall ensure (and shall ensure that all or any other third parties ensure on behalf of the Consultant), that on or after 6 April 2021 none of its subcontractors of any tier nor any other person whatsoever will be supplied or otherwise allowed to be utilised in the undertaking of any works and/or the performance of any other obligations of the Consultant under or pursuant to the contract if they are an IR35 Contractor, unless the Client has expressly authorised in writing the supply or utilisation of any sub-subcontractor or other person who had been expressly identified as an IR35 Contractor in a prior notice given to the Client by the Consultant.
- 2.12.2 The Consultant shall provide (and shall ensure that all or any other third parties provide on behalf of the Consultant) all such information and documentation as is reasonably required by the Client to make a determination as to whether any person whom the Consultant has given the Client prior notice of as referred to in clause 2.12.1 would be regarded for Income Tax purposes as an employee of the Client under Part 2 Chapter 10 of ITEPA.
- 2.12.3 The Consultant shall pay all Corporation Tax, Income Taxes, National Insurance Contributions, VAT and other taxes, duties, levies, charges and contributions (and any interest or penalties thereon) whatsoever properly payable by the Consultant in respect of payments to the Consultant's personnel. In particular, but without limitation, the Consultant shall comply with any requirement to make deductions of Income Tax and National

Insurance Contributions at source and to pay employer National Insurance Contributions and Apprenticeship Levy in respect of each and any of the Consultant's personnel.

- 2.12.4 Without prejudice to any other rights or remedies of the Client, the Consultant shall indemnify and save harmless the Client against and from any and all damages, losses, claims, demands, expenses (including reasonable legal and other professional expenses), costs, deductions, liabilities, fines, penalties, compensation orders and any proceedings whatsoever suffered or incurred by the Client due to or resulting from any breach by the Consultant of this clause 2.12 (including any liability of the Client to account for deductions of Income Tax, and/or employee National Insurance Contributions, or to make payment of employer National Insurance Contributions or Apprenticeship Levy (and in each case against any liability of the Client to pay interest or penalties in respect of such sums)), as a result of a subcontractor of any tier or any other person whatsoever being supplied or otherwise allowed to be utilised in the undertaking of any works and/or the performance of any other obligations of the Consultant under or pursuant to the contract, in each case regardless of whether or not the Contractor has or is deemed by HM Revenue & Customs to have complied with its own obligations under Chapter 10 of Part 2 ITEPA or otherwise."

Clause 2.13

Insert a new clause 2.13 entitled "Reporting and Progress Monitoring" as follows:-

- "2.13 In the performance of the Services, the Consultant shall:-
- 2.13.1 keep the Client regularly informed of progress of all Services in which the Consultant is engaged under this Contract and provide all such information in relation to the Services as the Client shall reasonably request from time to time;
 - 2.13.2 make full and timely disclosure to the Client immediately upon becoming aware of any:-
 - .1 matter which adversely affects any of the Project, or adversely affects the Client's liability in respect of any of the Project;
 - .2 matter which arises (or is likely to arise) and which would have a material adverse effect on the ability of the Consultant to perform the Services in accordance with this Contract;
 - .3 if the Consultant becomes Insolvent; and/or
 - .4 actual or potential conflict of interest which may arise with the Consultant or any of the Consultant's directors or Key Personnel in the performance of the Services and/or the Consultant's duties and obligations under this Contract.
 - 2.13.3 allow the Client, on reasonable prior notice, access to Key Personnel and to inspect and/or take copies of any documents or records as may be necessary or appropriate for the purpose of or in connection with the Services and/or the Business and for the purpose of monitoring the Consultant's performance of the Services in accordance with this Contract;
 - 2.13.4 when required by the Client (giving details of time, location and agenda) to attend meetings (at no cost to the Client) to present its Monthly Performance Report, to provide a full briefing and professional advice to the Client on the performance of the Services and the Project and on general matters in respect of the Client, to seek the Client approval to support its actions and to answer either at, or as soon as is reasonably practicable after, such meeting all enquiries made at such meetings; and
 - 2.13.5 within five Business Days of the end of each month which follows the Commencement Date, provide the Client with a report (in a format approved by

the Client) detailing the Consultant's performance and delivery of the Services during the immediately preceding month (the "**Relevant Month**") in accordance with the terms of this Contract (the "**Monthly Performance Report**"). For the avoidance of doubt the first Monthly Performance Report shall relate to the period from and including the Commencement Date and expiring on the last Business Day of the month in which the Commencement Date occurred (and the Monthly Performance Report shall become due on the fifth Business Day thereafter)."

Clause 2.14

Insert a new clause 2.14 entitled "Accounts, Inspection and Audit Facilities" as follows:-

- "2.14.1 The Consultant shall at all times:
 - 2.14.1.1 maintain a full record of particulars of all the income received by the Consultant in respect of the Project;
 - 2.14.1.2 when required to do so by the Client, provide a summary of any of the income referred to in paragraph 2.14.1 as the Client may require to enable it to monitor the performance by the Consultant of its obligations under this clause;
 - 2.14.1.3 permit the Client and persons authorised by the Client to inspect audit and take copies of all reports books accounting records and vouchers which the Client properly considers relevant to the Project; and
 - 2.14.1.4 provide such facilities as the Client may require for its representatives to visit any place where the records are held and examine the records maintained under this clause 2.14.
- 2.14.2 The Consultant shall maintain records of all time spent by his professional and technical staff (including partners) in performing each Services performed by such staff under this Contract.
- 2.14.3 The Consultant shall from time to time upon request (and after as well as before the termination or conclusion of the Consultant's employment under this Contract) make the records referred to in Clause 2.14 available to the Client or its appointee for inspection and provide such copies as the Client may request."

Clause 2.15

Insert a new clause 2.15 entitled 'Social Value Delivery Plan' as follows:

- "2.15.1 The Consultant shall register for the social value portal (as shall be confirmed by the Client to the Consultant) or any alternative portal that the Client shall notify the Consultant from time to time.
- 2.15.2 The Consultant shall be responsible for payment of any fees which are necessary in order for the Consultant to remain registered with the social value portal.
- 2.15.3 The Consultant shall use the social value portal to record quarterly progress against the social value delivery plan provided at Schedule 4 for review by the Client.
- 2.15.4 The Consultant shall in carrying out its Services comply with the social value delivery plan provided at Schedule 4."

Clause 2.16

Insert new clause 2.16 entitled 'CDM Regulations and Building Safety Act' as follows:

- 2.16.1 The Consultant will comply with any regulation or bye law of any local authority or of any statutory undertaker or of any public or private utility or undertaking which has any

jurisdiction with regard to the Project or with those systems or property the Project is or will be connected with, and without limitation to the generality of this Clause, undertakes to carry out and fulfil in all respects the duties of;

2.16.1.1 a designer under the CDM Regulations (as that term is defined under the CDM Regulations); and

2.16.1.2 a dutyholder under the Building Safety Act, (as that term is defined in the Building Safety Act),

and to comply with all planning permissions and agreements, together with any associated conditions and building control requirements.

2.16.2 The Consultant will, to the extent relevant to the Services and the Consultant's role, comply with;

2.16.2.1 the CDM Regulations and any and all instructions and/or directions issued by the principal contractor and principal designer (as those terms are defined in the CDM Regulations) (where the Consultant has not been appointed the principal designer);

2.16.2.2 the Building Safety Act and any and all instructions and/or directions issued under the Building Safety Act.

2.16.3 Where the Consultant is appointed by the Client to act as principal designer for the purposes of the CDM Regulations it shall carry out all the duties and obligations of a principal designer as set out in the CDM Regulations (including, without limitation, preparing the Health and Safety File (as defined in the CDM Regulations) and reviewing, updating and revising it as required from time to time).

2.16.4 Where the Consultant is appointed by the Client to act as the dutyholder for the purposes of the Building Safety Act it shall carry out all the duties and obligations of a dutyholder or as set out in the Building Safety Act.

2.16.5 The Consultant confirms that it has the skills, knowledge, experience and organisational capability necessary to fulfil the roles that it is appointed to undertake pursuant to the CDM Regulations and the Building Safety Act in a manner that secures the health and safety of any person affected by the Project.

2.16.6 The Consultant shall advise the Client should the Consultant become aware at any stage that it no longer has the requisite skills, knowledge, experience or organisational capability to fulfil the roles that it is appointed to undertake pursuant to the CDM Regulations and/or the Building Safety Act;

2.16.7 The Consultant shall:-

2.16.7.1 liaise and co-operate with the other designers, the principal contractor and the Client to allow such parties to fulfil the obligations incumbent upon them pursuant to the CDM Regulations and the Building Safety Act;

2.16.7.2 seek the co-operation of and co-operate with any other consultants and/or contractors and/or subcontractors appointed in relation to the Project and (if applicable) in relation to any adjoining site so far as is necessary to enable each of them to comply with their respective obligations, duties, or functions under the CDM Regulations and Building Safety Act;

2.16.7.3 coordinate its activities with those parties listed in sub-clause 2.16.2 to ensure, so far as is reasonably practicable, the health and safety of persons carrying out the Project or work in relation to the Project and any persons affected by the completed Project; and

2.16.7.4 take account of and/or apply the general principles of prevention as required by the CDM Regulations and the Building Safety Act.

- 2.16.8 The Consultant shall indemnify and hold harmless the Client from and in respect of any fees, damages, costs, losses, fines or expenses suffered or incurred by the Client arising out of any liability the Client has to pay the Health and Safety Executive and/or the Building Safety Regulator (as defined in the Building Safety Act) including but not limited to any fee for intervention to the extent arising out of or in connection with any act, omission, negligence or default by the Consultant (or any of its employees, agents or sub-consultants) in performing its obligations under this Deed

Clause 4.1

After "Services" insert the following ", the Consultant's obligations under the Building Safety Act 2022, the Consultant's obligations under the CDM Regulations"

Delete "promptly upon the Consultant's reasonable request" and insert "upon 14 days written notice from the Consultant's request."

Clause 4.2

Delete Clause 4.2 and insert "Not used."

Clause 5.2.1

In line 2 insert after "prior" "written"

Clause 5.2.3

Insert new clause 5.2.3 as follows:

- "5.2.3 To the extent that the Consultant wishes to replace any member of the Key Personnel or add any additional individual to the list of Key Personnel the Consultant shall provide a person specification and curriculum vitae for the relevant candidate for prior approval by the Client (such approval not to be unreasonably withheld or delayed)."

Clause 6.1

In line one insert after "client instructs" "in writing".

At the end of the clause insert "The Consultant shall not undertake any Optional Services without prior written consent of the Client".

Clause 6.2

In line one insert after "client may instruct" "in writing".

At the end of the clause insert "The Consultant shall not undertake any Additional Services without prior written consent of the Client".

Clause 6.4.3

Insert a new paragraph at the end of clause 6.4 as follows:-

"The Client shall on receipt of such notice confirm their acceptance of the Additional Services, other Change or Acceleration Quotation. If acceptance is not provided, the Client can instruct the Consultant to repeat the notification procedures set out in this Clause 6 or reject the instruction and pay a fair and reasonable sum for the services.

Insert new clauses 6.8 to 6.15

Phases

6.8 Not less than 3 weeks before the completion date of a Phase, the Client shall issue to the Consultant a notice setting out the following proposals for the subsequent Phase (a "**Phase Proposal**"):-

- 6.8.1 scope of works to which the Services shall relate;
- 6.8.2 requirements for completion of that Stage;
- 6.8.3 completion date for services under that Stage;
- 6.8.4 key dates for that Stage.

The above information may or may not vary to that provided in this Contract at the date of the Contract.

6.9 Within 1 week of receipt of the Phase Proposal the Consultant shall issue to the Client:-

- 6.9.1 a revised Phase Proposal clearly and explicitly identifying any amendments to the Phase Proposal (the "**Revised Phase Proposal**"); and
- 6.9.2 an updated percentage (if applicable) of the Construction Cost for Phases B to H.

6.10 Within 2 weeks of receipt of the Revised Phase Proposal and proposed percentage based fee, the Client either:-

- 6.10.1 queries, discusses or explores any aspect of the Revised Phase Proposal and proposed percentage based fee with the Consultant, and requests a further Revised Phase Proposal and/or proposed percentage based fee following which clause 6.11 and this clause 6.12 applies until the Client either accepts or rejects the Revised Phase Proposal and proposed percentage based fee; or
- 6.10.2 rejects the Revised Phase Proposal and proposed percentage based fee by issuing a notice to the Consultant confirming such; or
- 6.10.3 accepts the Revised Phase Proposal and proposed percentage based fee. Upon receipt of such governance approval, the Client shall issue a notice to the Consultant (an "**Approval Notice**").

6.11 Upon receipt of an Approval Notice from the Client the Consultant commences the relevant services for the relevant Phase and the provisions of this Contract apply to such services as amended by the Revised Phase Proposal and Annex A is updated to reflect the Fee for the relevant Phase.

6.12 If for any reason the Client does not proceed with or curtails a Phase, or if the Consultant's employment is terminated or suspended by the Client other than for the Consultant's breach, the Consultant will be paid (in addition to any amount which shall have become payable under Clause 7 a fair and reasonable amount for any abortive work for which the Consultant would not otherwise be remunerated.

6.13 Subject to Clause 11.6, the Consultant shall not be entitled to any compensation for the termination or suspension of the Consultant's employment under this Contract.

6.14 The Consultant acknowledges that the Client may at any time in its sole and unfettered discretion exercise not to proceed with the Services for Phases B to H and may have the Services for those Phases carried out by others. The Client shall not be liable for any losses, damages or claims (including but not limited to loss of use, loss of profit, loss of contract or any indirect or consequential loss or damage) suffered by the Consultant arising from any or all proposed Phases of the Project not being delivered under this Contract by the Consultant.

- 6.15 The Parties acknowledge that until an Approval Notice (as provided for in clause 6.11) is issued pursuant to clause 6.10.3, the instruction of any Phase pursuant to clauses 6.8 - 6.11 is not a variation or otherwise a change to this Contract.

Delete 7.6 and replace with:

- "7.6 The Client shall, subject to any Pay Less Notice, pay the sum specified in the Payment Notice or, if no Payment Notice is issued by the Client pursuant to clause 7.7.1, the amount stated in the invoice within 30 days of the due date."

Renumber 7.7.1 as 7.7.2 and the other subclauses accordingly and insert a new clause 7.7.1:-

- 7.7.1 No later than 5 days after the due date, the Client shall submit to the Consultant a notice specifying the sum that the Client considers to be due at the due date and the basis on which that sum is calculated (the "**Payment Notice**"). It is immaterial that the sum referred to in the Payment Notice may be zero.

- 7.7.2 In line 2 delete "5 days" and insert "1 day".

Clause 8.1.1

In line 2, after "Contract Particulars" insert "provided that such insurance is available at commercially reasonable rates".

Clause 8.2.1

Delete "the period stated in the Contract Particulars; that" and insert "15 years from the date of completion of the Services or the Project (whichever is later). This"

Clause 9.1.2

Delete Clause 9.1.2 and insert:-

- "9.1.2 The Consultant shall retain all rights including (without limitation) copyright in all designs and other documents it prepares in relation to this Contract and as beneficial owner grants to the Client an irrevocable, non-exclusive and royalty-free licence to copy and use the Consultant's Design Information and to reproduce the designs, documents and content of the Design Information for any purpose relating to the Project including (without limitation) its construction, completion, operation, maintenance, letting, sale, promotion, advertisement, reinstatement, alteration, refurbishment and repair."

At the end of Clause 9.1.3.2 insert "and to transfer the same to third parties."

Insert new Clause 9.1.6:-

- "9.1.6 The Consultant warrants to the Client that no design or document that it prepares and nothing else that it contributes in or pursuant to this Contract shall infringe any third party intellectual property rights and indemnifies the Client in respect of any legal liability and related costs arising out of or in connection with such infringement."

Clause 9.2

Delete clause 9.2 and insert the following:

- 9.2.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:
- 9.2.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

- 9.2.1.2 not disclose the other party's Confidential Information to any other person without prior written consent;
 - 9.2.1.3 immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information; and
 - 9.2.1.4 notify the Serious Fraud Office where a Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 9.2.2 The clause above shall not apply to the extent that:
- 9.2.2.1 such disclosure is a requirement of the law of the contract placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 13.1 (Freedom of Information);
 - 9.2.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 9.2.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 9.2.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 9.2.2.5 it is independently developed without access to the other party's Confidential Information.
- 9.2.3 The Consultant may only disclose the Client's Confidential Information to Consultant's Persons who are directly involved in the provision of the service and who need to know the information and shall ensure that such Consultant's Persons are aware of and shall comply with these obligations as to confidentiality.
- 9.2.4 The Consultant shall not, and shall procure that the Consultant's Team do not, use any of the Client's Confidential Information received otherwise than for the purposes of this contract.
- 9.2.5 The Consultant may only disclose the Client's Confidential Information to Consultant's Team who need to know the information and shall ensure that such Consultant's Persons are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Consultant's Team causes or contributes (or could cause or contribute) to the Consultant breaching its obligations as to confidentiality under or in connection with this contract, the Consultant shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any of the Consultant's Team, the Consultant shall provide such evidence to the Client as the Client may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Consultant is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Consultant's Team, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Consultant's Team in connection with obligations as to confidentiality.
- 9.2.6 At the written request of the Client, the Consultant shall procure that those members of the Consultant's Team identified in the Client's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 9.2.7 Nothing in this Contract shall prevent the Client from disclosing the Consultant's Confidential Information:
- 9.2.7.1 to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body;

- 9.2.7.2 to a professional adviser, consultant, Consultant, supplier or other person engaged by the Client or any Crown Body (including any benchmarking organisation) for any purpose connected with this Contract, or any person conducting an Office of Government Commerce gateway review (or a successor body exercising a comparable function);
- 9.2.7.3 for the purpose of the examination and certification of the Client's accounts;
- 9.2.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources;
- 9.2.7.5 for the purpose of the exercise of its rights under this Contract; or
- 9.2.7.6 to a proposed successor body of the Client in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract, and for the purposes of the foregoing, disclosure of the Consultant's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Client under this clause 9.2.
- 9.2.8 The Client shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or sub-contractor to whom the Consultant's Confidential Information is disclosed pursuant to the above clause is made aware of the Client's obligations of confidentiality.
- 9.2.9 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
- 9.2.10 The Client may disclose the Confidential Information of the Consultant:
 - 9.2.10.1 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 9.2.10.2 to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

Clause 10.1

Delete Clause 10.1 and insert new Clause 10.1 as follows:-

- "10.1 The Client may assign the benefit of this Contract. The Consultant may not assign or delegate the obligations under this Contract to any person. The Consultant shall not be entitled to contend that any person to whom this Contract is assigned in accordance with Clause 10.1 is precluded from recovering under this Contract any loss incurred by such assignee resulting from any breach of this Contract (whenever happening), by reason that such person is an assignee and not a named promisee under this Contract."

Clause 10.2

Replace the words "Contract Particulars" on the fourth line with "Schedule 6".

Clause 10.3

Delete clause 10.3 and insert a new Clause 10.3 as follows:-

- "10.3 Within 14 days of receiving a written request from the Client, the Consultant will enter into and deliver to Client a warranty in the form appended at Schedule 5 subject to any amendments as approved by the Client in favour of any Beneficiary with an interest in the Project save for;
 - 10.3.1 any individual tenants or purchasers of residential units; or

10.3.2 commercial tenants of a single unit smaller than 1,000 square feet.

Clause 11.5

11.5.1 Delete "14 days" and insert "7 days"

11.5.2 Delete "insolvent" and insert "Insolvent"

Clause 11.6

11.6.2 delete "insolvency" and insert "Insolvency"

11.6.2.3 Delete clause 11.6.2.3 and insert "not used;

11.6.3 Delete "14" and insert "30"

11.6.4 At clause 11.6.4 insert the words ", loss of opportunity" after the words "loss of contracts".

Insert clause 12.2A as follows:

"12.2A The Parties agree that the Adjudicator shall have the power to determine more than one dispute under this Contract at the same time, and if requested to do so by either Party shall determine any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to it."

Delete Clauses 12.3-12.8 and insert "Not Used"

SECTION 13

Insert a new Section 13 entitled "Boilerplate" as follows:-"

Insert new clauses 13.1 to 13.8 as follows:

"Clause 13.1 Freedom of Information

13.1.1 The Consultant acknowledges that unless the Client has notified the Consultant that the Client is exempt from the provisions of the FOIA, the Client is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations. The Consultant shall co-operate with and assist the Client so as to enable the Client to comply with its information disclosure obligations.

13.1.2 The Consultant shall:

13.1.2.1 transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

13.1.2.2 provide the Client with a copy of all Information in its possession, or power in the form that the Client shall require within five Working Days (or such other period as the Architect/Contract Administrator may specify) of the Client's request;

13.1.2.3 provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and

13.1.2.4 procures that its sub-contractors do likewise.

13.1.3 The Client is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

- 13.1.4 The Consultant shall not respond directly to a Request for Information unless authorised to do so by the Client.
- 13.1.5 The Consultant acknowledges that the Client may, acting in accordance with the Cabinet Office Freedom of Information Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the Consultant or despite the Consultant having expressed negative views when consulted.
- 13.1.6 The Consultant shall ensure that all Information is retained for disclosure for twelve years where this Contract is executed as a deed or six years where this Contract is executed under hand and shall permit the Client to inspect such records as and when reasonably requested from time to time."

Clause 13.2 Tax Compliance

- 13.2.1 The Consultant represents and warrants that as at the date of this Contract, it has notified the Client in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
- 13.2.2 If, at any point prior to the end of the Rectification Period, an Occasion of Tax Non-Compliance occurs, the Consultant shall:
 - 13.2.2.1 notify the Client in writing of such fact within 5 days of its occurrence; and
 - 13.2.2.2 promptly provide to the Client:
 - 13.1.2.2.1 details of the steps which the Consultant is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - 13.1.2.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Client may reasonably require.

Clause 13.3 GDPR

The Client and the Consultant shall comply with the provisions of Schedule 3

Clause 13.4 Prevention of Fraud and Bribery

- 13.4.1 The Consultant represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the date of this Contract:
 - 13.4.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 13.4.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 13.4.2 During the carrying out of the Services the Consultant shall not:
 - 13.4.2.1 commit a Prohibited Act; and/or
 - 13.4.2.2 do or suffer anything to be done which would cause the Client or any of the Client's employees, consultants, Consultants, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements

- 13.4.3 During the carrying out of the Services the Consultant shall:
- 13.4.3.1 establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 13.4.3.2 keep appropriate records of its compliance with this Contract and make such records available to the Client on request;
 - 13.4.3.3 provide and maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Client on request) to prevent it and any Consultant's employees or any person acting on the Consultant's behalf from committing a Prohibited Act.
- 13.4.4 The Consultant shall notify the Client immediately in writing if it becomes aware of any breach of clause 13.4.1, or has reason to believe that it has or any of its employees or sub-contractors have:
- 13.4.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 13.4.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 13.4.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 13.4.5 If the Consultant shall make a notification to the Client pursuant to clause 13.4.4, the Consultant shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation in accordance with this Contract.
- 13.4.6 If the Consultant breaches Clause 13.4.3, the Client may by notice require the Consultant to remove from carrying out the Services any Consultant's Person whose acts or omissions have caused the Consultant's breach.

Clause 13.5 Equality and diversity

- 13.5.1 The Consultant shall perform its obligations under this contract in accordance with
- 13.5.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - 13.5.1.2 any other requirements and instructions which the Client reasonably imposes in connection with any equality obligations imposed on the Client at any time under applicable equality Law;
- 13.5.2 The Consultant shall take all necessary steps, and inform the Client of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Clause 13.6 Conflicts of interest

- 13.6.1 The Consultant shall take appropriate steps to ensure that neither the Consultant nor any of its personnel are placed in a position where (in the reasonable opinion

of the Client) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant or its personnel and the duties owed to the Client under this contract.

- 13.6.2 The Consultant shall promptly notify and provide full particulars to the Client if such conflict referred to in the clause above arises or may reasonably be foreseen as arising.
- 13.6.3 The Client may terminate the Consultant's obligation to perform the Services immediately under clause 11.5.2 (as if insolvency applied) and/or to take such other steps the Client deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant and the duties owed to the Client under this contract.

Clause 13.7 Publicity and Branding

- 13.7.1 The Consultant shall not
 - 13.7.1.1 make any press announcements or publicise this contract in any way
 - 13.7.1.2 use the Client's name or brand in any promotion or marketing or announcement of the contract without approval of the Client.
- 13.7.2 The Client is entitled to publicise the contract in accordance with any legal obligation upon the Client, including any examination of the contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

Clause 13.8 Change of Control

- 13.8.1 The Consultant shall notify the Client immediately in writing and as soon as the Consultant is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law. The Consultant shall ensure that any notification sets out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 13.8.2 The Client may terminate the Consultant's obligation to perform the Services (which shall take effect as termination under clause 11.5.1) within six months from:
 - 13.8.2.1 being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
 - 13.8.2.2 where no notification has been made, the date that the Client becomes aware that a Change of Control is anticipated or is in contemplation or has occurred but shall not be permitted to terminate where an approval was granted prior to the Change of Control."

SCHEDULE 1

Delete and Insert "Not used"

Insert new Schedules 3, 4, 5, 6 and 7.

SCHEDULE 3

Insert a new Schedule 3 "GDPR"

SCHEDULE 3 - PART 1: DEFINITIONS

The following definitions shall apply to this Schedule 3

Agreement: this contract;

Processor Personnel: means all directors, officers, employees, agents, consultants and Consultants of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement.

GDPR CLAUSE DEFINITIONS:

Data Protection Legislation: (i) the GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy which, pending a decision from the competent authorities of the EU on the adequacy of the UK data protection regime will include the requirements set out or referenced in Part Three, Title VII, Article 71(1) of the Withdrawal Agreement signed by the UK and the EU in December 2019 ;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: any third party appointed to process Personal Data on behalf of that Processor related to this Agreement

1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Consultant is the Processor unless otherwise specified in Schedule 3. The only processing that the Processor is authorised to do is listed in Schedule 3 by the Controller and may not be determined by the Processor.

- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Schedule 3, unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 3);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as

otherwise permitted by this Agreement; and

- (d) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (e) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (d) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;

- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its data processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1.11 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 1.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to

the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

SCHEDULE 3 - PART 2: SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [REDACTED]
2. The contact details of the Processor's Data Protection Officer are: [REDACTED]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Consultant is the Processor in accordance with Clause 1.1.
Subject matter of the processing	Processing is needed in order to ensure that the Processor can effectively deliver the Services and engage with the Client, Beneficiaries, members of the public, persons who are stakeholders and persons who are users of any consultation/public engagement website.
Duration of the processing	For the period starting from the commencement of the Agreement until the earlier of: <ol style="list-style-type: none"> 1. The date when it is no longer needed for purposes for which the Processor required it in order to perform the Services under the Agreement; 2. The date when Processor has completed the Services under the Agreement; or 3. The termination of the Agreement
Nature and purposes of the processing	Any processing undertaken by the Parties under the Contract shall be for the purposes of: <ol style="list-style-type: none"> a. administering and providing the Services; b. requesting and receiving the Services; c. compiling, dispatching and managing the payment of invoices relating to the Services; d. managing the Agreement and resolving any disputes relating to it; e. responding and/or raising general queries relating to the Services; and f. otherwise dealing with any legislative duties in relation to the Services.

Type of Personal Data being Processed	<p>For the Consultant</p> <p>The Client names, contact details, skills based information of employees (and related accreditations), limitations of the employees (having regard to the requirements of the CDM Regulations) and right to work information.</p> <p>For the Client</p> <p>Names and contact details of the Client employees, agents, consultants and contractors.</p> <p>Beneficiaries</p> <p>The names, contact details and other information strictly necessary for the performance of the Services which relates to persons who are Beneficiaries (or to persons who are employees, agents or consultants of Beneficiaries).</p> <p>For both the Client and the Consultant:</p> <p>Any personal information given by persons who are stakeholders, members of the public or users of any consultation/public engagement website where such persons have consented to the processing of this data.</p>
Categories of Data Subject	<p>Employees, agents, consultants and contractors of the Client.</p> <p>Employees, agents, consultants and contractors of the Consultant</p> <p>Beneficiaries and employees, agents, consultants and contractors of Beneficiaries</p> <p>Persons who are stakeholders, members of the public or users of any consultation/public engagement and who have consented to the processing of their data.</p>
Plan for return and destruction of the data once the processing is complete unless preservation is required by law	<p>Personal Data is to be returned to the Data Subject or securely destroyed upon the earlier of:</p> <ol style="list-style-type: none"> 1. The date when it is no longer needed for purposes for which the Processor required it in order to perform the Services under the Agreement; 2. The date when Processor has completed the Services under the Agreement; or 3. The termination of the Agreement

SCHEDULE 4

Social Value Delivery Plan

Ebbsfleet Central Phase 1 Infrastructure - Security Consultant: Social Value Commitments

Supplier: Arup
Status: Submitted
Contract Value: [REDACTED]

Social & Local Economic Value (SLEV) Committed:

[REDACTED]

Target SLEV Add (%):
5.33%

Summary Results by Measure

Ref	Item	Proxy Value	Units	Target SLEV		Target Description
				No.	£SVA	
NT1	No. of direct local employees (FTE) hired or retained on the contract	[REDACTED]	no. people FTE			
NT2	Percentage of local employees (FTE) on contract	[REDACTED]	%			
NT3	No. of employees (FTE) hired on contract who are long term unemployed (1+ yrs)	[REDACTED]	no. people FTE			
NT4	No. of employees (FTE) hired on the contract who are NEETs	[REDACTED]	no. people FTE			

NT76	No. of employees (FTE) hired on contract who are registered as unemployed		no. people FTE			
NT8	No. of staff hours spent on local school and college visits (inc. prep. Time)		no. staff hours	188		We will undertake 5 local school events and commit half day of preparation and half day of attendance time for each. We will determine the type of event by engaging with the local community through the project and staying up to date with the "Match My Page" portal and Ebbfleet's Engagement Hub. We are able to draw from the broad range of skills and experience offered by Arup, from careers talks in engineering and STEM activities to mentoring or CV writing. Our team has a broad experience with local school and college programmes. Further to the activities mentioned, we recently funded, designed and ran a local schools programme to re-purpose recycled items into designed products. We will continually look for opportunities to integrate similar initiatives wherever possible where they match the needs of the community. The overview of this program will be undertaken by the project Social Value Champion who will report to the Project Director, ensuring governance and quality assurance.
NT10	No. of weeks of apprenticeships on the contract - Level 2, 3 or 4+		no. weeks			
NT11	No. of hrs supporting unemployed people into work		no. hrs (total session duration)*no. attendees			
NT12	No. of weeks spent on meaningful work placements (unpaid)		no. weeks	15		We will offer one 6-week unpaid student summer placement for a student during the summer period up to 2026. This summer placement will respond to the needs of the community, which will be determined during our initial engagement and through the "Match My Page" portal. We will be able to draw from the broad range of skills and experience offered by Arup so that the placement experience is well matched with the objectives of the placement scheme. Our opinion is that these placement meets the maximum 6-week duration to maximise the learning and experience gained, although shorter durations could be considered. Arup and our team already have a broad experience with providing summer placements with more than 400 summer placements over the last 3 years alone. A suitable person will be assigned to be the Nominated Supervisor of the student and will be responsible for their development and for scheduling all appropriate activities during their time with us.
NT15	Provision of expert business advice to VCSEs and MSMEs		no. staff expert hours			
NT18	Total amount (£) spent in local supply chain through the contract		£			
NT26	Initiatives to engage the community in health or wellbeing initiatives		£ invested including staff time			

NT28	Donations or in-kind contributions to local community projects (£ & materials)			£ value	3,000	£3,000	We will donate £3,000 to local community projects until 2026. These donations will respond to the needs of the community and be directed to initiatives identified during the project. The Social Value Champion, supported by the Project Director will be responsible for identifying these opportunities by regularly reviewing the "Match My Page" portal, as well as through embedding ourselves within the delivery team such that we can understand community issues and identify opportunities where we can make a valuable contribution. We will engage with EDC to ensure our donation supports and is in line with the Community theme ambitions. Our vision is to shape a better world and we engage with many parts of society including charities and community groups local to our projects. Our team already has a long experience in donating to local communities including donating equipment that can be used for Schools projects and funding for materials required in community schemes.
NT29	No. of hours volunteering time provided to support local community projects			no. staff volunteering hours	150.6	£2,550	We will volunteer 30 hours on local community projects until 2026. This time can be allocated depending on the needs of the community and can be allocated to several projects. These initiatives will be identified during the inception stage of the project in collaboration with EDC and supported by information on the "Match my Page" portal and our overall engagement with the local community through the project, as described in other TOMs. As per the rest of the TOMs the progress will be part of our regular meeting agenda and will be monitored by the SVC, supported by the Project Director. We will be able to draw from the broad range of skills and experience offered by Arup. Our involvement to local community efforts ranges from volunteering with local clean up groups to providing our specialist technical knowledge to improve community and infrastructure resilience in underdeveloped areas around the world where we operate.
NT29a	No. of volunteering hrs to support health-care charity & community projects			no. staff volunteering hours			
NT67	Donations towards environmental & biodiversity conservation initiatives			£	3,000	£3,000	We will donate £3,000 towards environmental and biodiversity conservation initiatives until 2026. These donations will respond to the needs of the community and be directed to initiatives identified during the project either through the "Match My Page" portal or by our project engagement to ensure we can identify relevant initiatives. We will engage with EDC to ensure our donation supports and is in line with the Environment theme ambitions. At Arup our commitment to sustainability is at the heart of what we do. EDC's environmental, sustainability and net-zero carbon ambitions are in line with Arup environmental commitments, and we are keen to support these initiatives beyond our efforts on the project design and delivery.
NT85	Resources dedicated to green spaces, biodiversity or ecosystems			£ invested			
NT35	% procurement contracts that include sustainable procurement commitments			% of contracts			
NT50	Innovative measures to promote local skills and employment			£ invested inc. time, materials, equipment etc			
NT51	Innovative measures to promote and support responsible business			£ invested inc. time, materials, equipment etc			

NT52	Innovative measures to enable healthier, safer and more resilient communities	<div></div>	£ invested inc. time, materials, equipment etc		
NT53	Innovative measures to safeguard the environment	<div></div>	£ invested inc. time, materials, equipment etc		

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SCHEDULE 5

Beneficiary Warranty

DATED _____ []

(1) OVE ARUP & PARTNERS LIMITED

(2) []

BENEFICIARY WARRANTY

relating to

**Phase 1 Ebbsfleet Central (EC2) at the Car Park A and
Car Park B, International Way, Northfleet, Gravesend,
DA10**

THIS DEED is made on

BETWEEN:-

- (1) **OVE ARUP & PARTNERS LIMITED** (No 01312453) whose registered office is at 8 Fitzroy Street, London, United Kingdom, W1T 4BJ (the "**Consultant**");
- (2) [REDACTED] (No [REDACTED]) of/whose registered office is at [REDACTED] (the "**Beneficiary**").

NOW THIS DEED WITNESSES in consideration of the sum of £10.00 paid by the Beneficiary, receipt of which the Consultant acknowledges, as follows:-

1. INTERPRETATION

1.1 In this Deed:-

"Appointment"	means the appointment dated [REDACTED] made between (1) the Client and (2) the Consultant [as novated to the Contractor and the Consultant by the Novation Agreement] [DN: delete or add reference to Novation Agreement as appropriate]
"Client"	means Ebbsfleet Development Corporation of The Observatory, Castle Hill Drive, Castle Hill, Ebbsfleet, Kent DA10 1EE
"Materials"	means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project
["Novation Agreement"]	[means the novation agreement dated [REDACTED] between the Client, the Contractor and the Consultant] [DN: delete or add reference to Novation Agreement as appropriate]
"Project"	means Phase 1 Ebbsfleet Central (EC2) at the Property
"Property"	means Car Park A and Car Park B, International Way, Northfleet, Gravesend, DA10

1.2 In interpreting this Deed:-

- 1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "**person**" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.3 references to Beneficiary shall be deemed to include its successors in title and assigns;
- 1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;

1.2.5 headings to Clauses shall be disregarded.

2. GENERAL

2.1 The Client has appointed the Consultant to act in the capacity of Security Consultant in relation to the Project.

2.2 The Client has entered into a [] with the Beneficiary.

2.3 [The parties entered into the Novation Agreement, which novates the Appointment from the Client to the Contractor]. **[DN: delete or add reference to Novation Agreement as appropriate]**

2.4 The Consultant has agreed to enter into this Deed with the Beneficiary.

3. SKILL AND CARE

The Consultant undertakes with and warrants to the Beneficiary that:-

3.1 in carrying out and performing its duties and obligations under or in connection with the Appointment, the Consultant has exercised and will continue to exercise the skill, care and diligence reasonably to be expected of a consultant holding himself out as competent to take on the performance of the services performed under the Appointment and experienced in projects of a similar size, scope and complexity to the Project;

3.2 the Consultant has exercised and will continue to exercise the standard of skill, care and attention referred to in Clause 3.1 not to specify or approve any products or materials for use in the Project which at the time of use:-

3.2.1 do not conform with British and European Standards or Codes of Practice current at the date of use or which contravene the recommendations of the publication '*Good Practice in the Selection of Construction Materials*' (British Council for Offices, 2011) ; or

3.2.2 are generally known within the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of the building or structures; or

3.2.3 are specifically prohibited by the Appointment

3.3 it has carried out and will carry out the duties and obligations on its part to be performed under the Appointment.

4. COPYRIGHT

4.1 The copyright in all Materials provided by the Consultant in connection with the Project shall remain vested in the Consultant but the Consultant grants to the Beneficiary and its nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy, use and reproduce the Materials for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable the Beneficiary to copy and use the Materials for the extension of the Project but shall not include a licence to reproduce the designs contained in them for any extension of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

4.2 The Consultant shall not be liable for any such use by the Beneficiary or its nominees of any Materials for any purpose other than that for which the same were prepared by the Consultant.

4.3 The Beneficiary shall on written request, be entitled to be supplied by the Consultant with copies of any Materials (in either electronic format or hard copy where applicable and/or in such other format as the Beneficiary may reasonably request).

- 4.4 The Consultant unconditionally and irrevocably waives (and shall ensure that any sub-Consultants waive), in respect of the Materials and the Project, all moral rights to which the Consultant (or any relevant sub-Consultants) may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 as amended from time to time or under any other applicable laws.
- 4.5 This waiver is made in favour of the Beneficiary and shall extend to the Beneficiary's sub-licensees, assignees and successors in title in accordance with this Deed.
- 4.6 The Consultant warrants that the Materials (save to the extent that duly authorised sub-Consultants have been used to prepare the same) are the Consultant's own original work and that in any event their use in connection with the Project will not infringe the rights of any third party. The Consultant further warrants that where duly authorised sub-Consultants are used their work will be original and that the Consultant will obtain the necessary consents in relation to Clause 4.1.

5. INDEMNITY INSURANCE

- 5.1 The Consultant shall maintain professional indemnity insurance covering (inter alia) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than:
- 5.1.1 £5,000,000 (five million pounds) for claims or series of claims arising out of one event;
- 5.1.2 £5,000,000 (five million pounds) in the aggregate in relation to pollution or contamination claims;
- 5.1.3 £250,000 (two hundred and fifty thousand pounds) in the aggregate in relation to asbestos claims; and
- 5.1.4 £1,000,000 (one million pounds) in the aggregate in relation to combustible cladding, facades or internal/external wall systems and fire safety,
- for a period beginning now and ending 12 years after (i) the date of practical completion of the Project or (ii) the date that the Consultant last carried out services under the Appointment (whichever is later), provided always that such insurance is available at commercially reasonable rates.
- 5.2 Any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 5.3 The Consultant shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates in order that the Consultant and the Beneficiary can discuss means of best protecting the respective positions of the Beneficiary and the Consultant in respect of the Project in the absence of such insurance.
- 5.4 The Consultant shall fully co-operate with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Beneficiary undertakes in writing to reimburse the Consultant in respect of the net cost of such insurance to the Consultant above commercially reasonable rates or, if the Beneficiary effects such insurance at rates at or above commercially reasonable rates, reimbursing the Beneficiary in respect of what the net cost of such insurance to the Beneficiary would have been at commercially reasonable rates.
- 5.5 As and when reasonably requested to do so by the Beneficiary the Consultant shall produce for inspection documentary evidence (including, if required by the Beneficiary, the original of the relevant insurance documents) that his professional indemnity insurance is being maintained.
- 5.6 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by the Beneficiary.

6. **LIABILITY PERIOD**

The obligation of the Consultant under this Deed shall cease 12 years from (i) the date of practical completion of the Project or (ii) the date that the Consultant last carried out services under the Appointment (whichever is later).

7. **ASSIGNMENT**

7.1 The Consultant consents to the benefit of this Deed being assigned twice only **PROVIDED ALWAYS** that the maximum number of two assignments referred to above shall not be affected by assignments by way of security and assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.

7.2 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 7.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

8. **NOTICES**

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

9. **COLLATERAL WARRANTIES**

9.1 Without prejudice to the remainder of this Deed, within 14 days of a written request by the Beneficiary, made from time to time, the Consultant shall execute as deeds and deliver to the Beneficiary collateral warranties in the terms of those specified in the Appointment in favour any of the potential beneficiaries of such warranties referred to therein (as the Beneficiary may nominate).

9.2 The Beneficiary acknowledges that the Consultant shall not be obliged to enter into any greater number of collateral warranties pursuant to this Clause 9 than it would pursuant to the Appointment.

10. **EXTRANEIOUS RIGHTS**

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

10.2 No approval or inspection of the Project or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Deed.

10.3 This Deed may be executed in one or more counterparts. Any single counterpart or set of counterparts executed by both Parties shall constitute the full and original Deed for all purposes.

10.4 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Beneficiary is deemed to be a party to this Deed.

10.5 If any term or condition of this Deed is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Deed and the validity and enforceability of the remainder of this Deed shall not be affected or impaired thereby.

- 10.6 Notwithstanding any other provision herein, the Consultant shall owe no greater liability to the Beneficiary than it would have owed to the Beneficiary if the Beneficiary had been named as the Client in lieu of the Client under the Appointment provided always that this Clause shall not entitle the Consultant to set-off against any amount due to the Beneficiary hereunder any set-off or counterclaim against the Client under the Appointment or any outstanding amounts which the Client is due to pay to the Consultant under the Appointment and the Consultant shall not seek to defend or dispute any claim by the Beneficiary on the basis that the employer under the Appointment has not suffered any loss or has not suffered the same loss which the Beneficiary is seeking to recover pursuant to this Deed.

11. **GOVERNING LAW**

This Deed and any non-contractual obligations in connection with this Deed is subject in all respects to English law and the parties hereby submit to the exclusive jurisdiction of the English Courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this Clause 11 and for the enforcement of any judgment, order or award given under English jurisdiction.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

SCHEDULE 6

Deed of Novation

NOT USED

SCHEDULE 7

Phases

Phase A.EC2 – Area Masterplan – RIBA Stage 1

The consultant will work with other members of the IDT and with the SMT to work through options for the EC2 Area Masterplan and refine the options to allow a preferred Area Masterplan to be approved by EDC. The EDC team will then agree the scope of the enabling Infrastructure works that is to be delivered ahead of development plot disposals.

The Highways Engineer will also carry out the preliminary design of any revised junctions on the existing highways.

Fixed Fee - The tendering consultants are asked to propose a fixed fee for each of the Infrastructure Works Elements for this phase.

Phase B.EC2 – Infrastructure Works – RIBA Stage 2

The IDT will develop the concept design of the Infrastructure Works and submit an RMA or a number of RMA's for the various elements of the proposed Infrastructure Works: Highways, Utilities, Structure, Buildings and Landscaping.

The Highways Engineer will also carry out the detailed design through to issuing draft GA drawings to KCC.

% Based Fee - The tendering consultants are asked to propose %'s for each of the Infrastructure Works Elements. For the purposes of tender evaluation these %'s will be applied to the Indicative Construction Cost shown in the Pricing Matrix for each element to generate a notional tender fee. When appointed the %'s will be applied to each element's construction cost plan determined at the end of Phase A. If a % is not put against any one of the Infrastructure Works Elements then the scope, services and fee are deemed to be included.

Phase C.EC2 – Infrastructure Works – RIBA Stage 3

The IDT will develop the technical design of the Infrastructure Works and will support a contractor procurement process currently envisaged as a 2 Stage D&B process under JCT.

The Highways Engineer will also complete the detailed design through to submission of the S278/S38 package to KCC and support the contractor procurement process.

% Based Fee - The tendering consultants are asked to propose %'s for each of the Infrastructure Works Elements. For the purposes of tender evaluation these %'s will be applied to the Indicative Construction Cost shown in the Pricing Matrix for each element to generate a notional tender fee. When appointed the %'s will be applied to each element's construction cost plan determined at the end of Phase B. If a % is not put against any one of the Infrastructure Works Elements then the scope, services and fee are deemed to be included.

Phase D.EC2 – Infrastructure Works – RIBA Stage 4

The IDT will develop the construction design of the Infrastructure Works working alongside preferred contractors who will be appointed under Pre Construction Service Agreements (PCSA).

The Highways Engineer will also support the KCC approval process, produce and submit the 2nd submission of S278/S38 package to KCC for approval with early contractor involvement.

% Based Fee - The tendering consultants are asked to propose %'s for each of the Infrastructure Works Elements. For the purposes of tender evaluation these %'s will be applied to the Indicative Construction Cost shown in the Pricing Matrix for each element to generate a notional tender fee. When appointed the %'s will be applied to each element's construction cost plan determined at the end of Phase C. If a % is not put against any one of the Infrastructure Works Elements then the scope, services and fee are deemed to be included.

Phase E. EC2 – Infrastructure Works – RIBA Stage 5 & 6 – Novated/Retained

It is anticipated that the architect, the civils and structural engineer and landscape architect will be novated to the contractor(s) as shown below and will carry out the Stage 5 Services with the contractor taking the place of the Client.

Architect – Novated to Structures and Buildings Contractor

Civils and Structural Engineer – Novated to Structures and Buildings Contractor

Landscape Architect – Novated to Landscape Contractor

Highways Engineer - retained by EDC to approve Contractor submissions, monitor progress on site and support the Contractor in their interface with KCC.

MEP and Services Engineer - retained by EDC to approve Contractor submissions, monitor progress on site and act as the verification engineer for the commissioning.

If it is decided by EDC that any of the architect, the civils and structural engineer and landscape architect will not be novated then Phase E will not be instructed and Phase H; Retained Services as part of a Compliance Team, may then be instructed.

% Based Fee - The tendering consultants are asked to propose %'s for each of the Infrastructure Works Elements where the Consultant Fee % cell is highlighted yellow. For the purposes of tender evaluation this/these %'s will be applied to the Indicative Construction Cost shown in the Pricing Matrix for each relevant element to generate a notional tender fee. When appointed the %'s will be applied to each element's construction cost plan determined at the end of Phase D. If a % is not put against any one of the yellow cells Infrastructure Works Elements then the scope, services and fee are deemed to be included.

Phase F. EC2 – Buildings over Infrastructure Works – RIBA Stage 2

As described in Section 4 above the IDT will carry out the design for notional buildings that require support from any part of the Infrastructure Works.

% Based Fee - The tendering consultants are asked to propose %'s for each of the Notional Buildings 1 to 4 unless this section is shown as 'Not Required' in the Tender Pricing Matrix. For the purposes of tender evaluation these %'s will be applied to the Indicative Construction Cost shown in the Pricing Matrix for each of the Notional Buildings and totalled to generate a notional tender fee. When appointed the %'s will be applied to the construction cost plan for the buildings over Infrastructure Works determined at the end of Phase A.

Phase G. EC2 – Buildings over Infrastructure Works – RIBA Stage 3

As described in Section 4 above the IDT will carry out the design for notional buildings that require support from any part of the Infrastructure Works.

% Based Fee - The tendering consultants are asked to propose %'s for each of the Notional Buildings 1 to 4 unless this section is shown as 'Not Required' in the Tender Pricing Matrix. For the purposes of tender evaluation these %'s will be applied to the Indicative Construction Cost shown in the Pricing Matrix for each of the Notional Buildings and totalled to generate a notional tender fee. When appointed the %'s will be applied to the construction cost plan for the buildings over Infrastructure Works determined at the end of Phase F (RIBA Stage 2).

Phase H. Other Services

It is anticipated that services associated with the following scope of works may be instructed separately under an hourly rates basis

- EC2 – Infrastructure Works – RIBA Stage 5 – EDC Retained Services – Compliance Monitoring
- Ad Hoc services and defined and instructed by EDC as Other Services or Additional Services

Fixed fees for Phase H works will be agreed on a resource forecast basis applying the agreed resource profile to the hourly rates. Hourly rates are to be valid up to the end of 2024 and will then be indexed as the originating Framework dictates.

ANNEX A – FEE AND OTHER PAYMENTS

Delete Annex A and replace with:-

Ebbfleet Development Corporation EC2 Phase 1 Infrastructure Works Tender Pricing Schedule

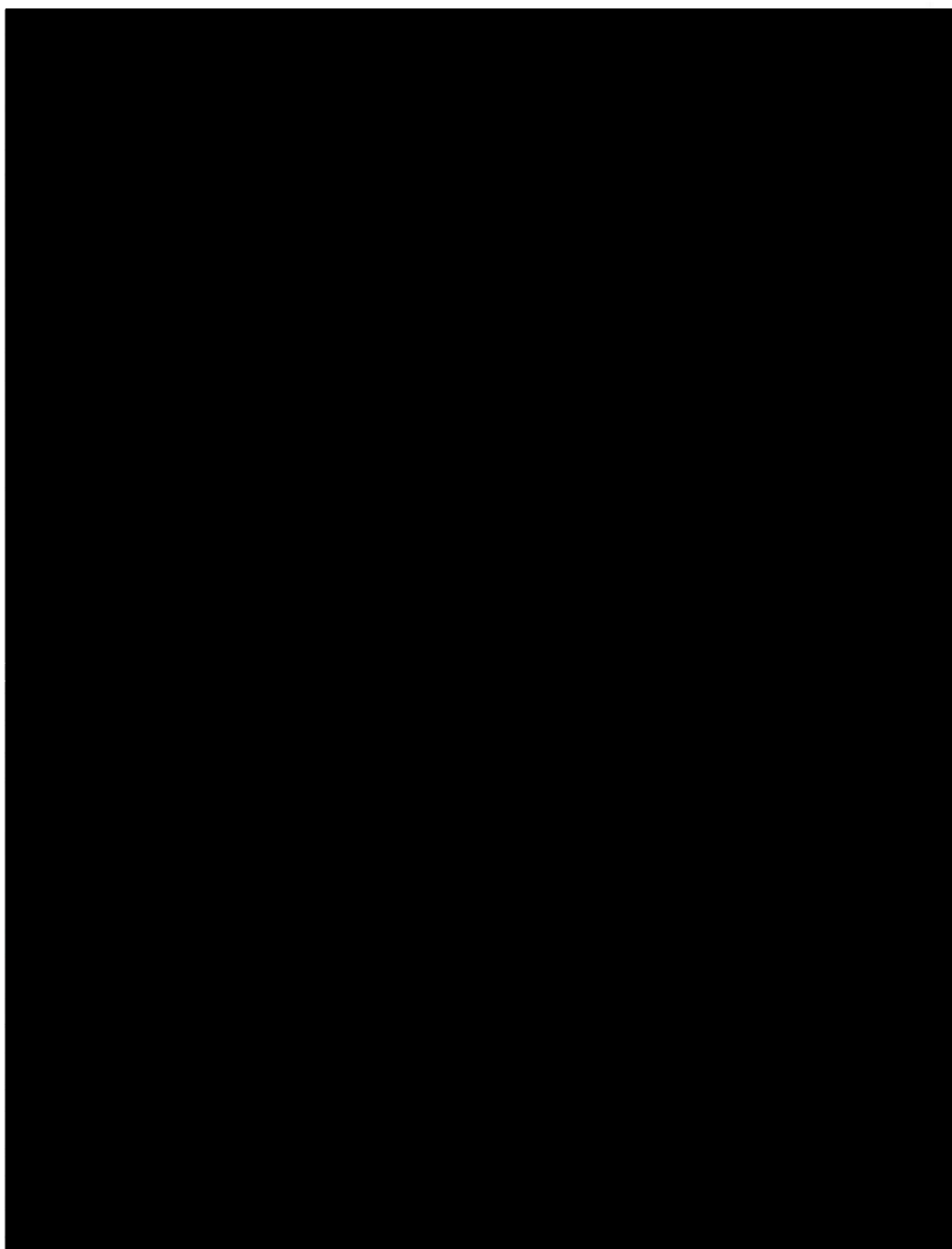
Instructions to Bidders:

1. The Tender Pricing Schedule is to be read in conjunction with the Tender Pricing Information and the Tender Scoring Matrix.
2. Prices should be submitted in Pounds Sterling inclusive of expenses but exclusive of VAT.
3. Bidders should complete and return a copy of their individual Tender Pricing Schedule & Tender Scoring Matrix as a separate excel document.
4. Any abnormally low pricing will be further investigated by EDC, to ensure all bids are being fairly evaluated.
5. The proposed EC2 Phase 1 Infrastructure Works have been divided into 5no. sub-categories: Site Preparation, Transport & Highways, Utilities, Landscaping, Structures & Buildings. Indicative construction costs have been provided against each sub-category based on the current Cost Plan.
6. It is anticipated that the primary focus, and therefore, the majority of the bidders time and associated fees, will be generated by the sub-categories highlighted in dark blue, with less focus, time and associated fees generated by the sub-categories highlighted in light blue.
7. Bidders are required to input a response in each of the cells highlighted in yellow. The response must either be a fixed fee (Phase A), a fee % (Phases B-G) or hourly rates (Phase H). If left blank, the services will deemed to be included.
8. Bidders are requested to take account within their responses the amount of engagement their design discipline will have with each sub-category of the Infrastructure Works. The Scope of Works document provides more guidance on lead designer and designer interface for each sub-category.

Scoring Instructions

9. The fixed fees provided in Phase A across the 5no. sub-categories will be totalled in the column noted as "Total Fee". This total fee will then be transferred automatically to the Tender Scoring Matrix.
10. The fee %'s provided in Phases B-E across the 5no. sub-categories will be used to generate notional fee amounts, based on the current indicative construction costs, in the row noted as "EDC Use". These notional fees will then be totalled for each Phase B-E in the column noted as "Total Fee". This total notional fee for each Phase will then be transferred automatically to the Tender Scoring Matrix. The successful bidders actual fees for Phases B-E will be calculated by applying the fee %'s, across the 5no. sub-categories, to the estimated construction costs developed in the Cost Plan at the end of the preceding RIBA Stage. For example, the successful bidders actual fees for Phase D (RIBA Stage 4) will be based on the Cost Plan developed at the end of Phase C (RIBA Stage 3).
11. The quantity and scale of the Infrastructure over buildings is currently undetermined. Therefore, a range of notional building values have been estimated. The fee %'s provided in Phases F & G will be used to generate notional fee amounts based on there being 1no. building valued at the upper end of each range. These notional fees will then be totalled for Phases F & G in the column noted as "Total Fee". This total notional fee for each Phase will then be transferred automatically to the Tender Scoring Matrix. The actual quantity and indicative construction costs of any Infrastructure over buildings will be determined during Phase A (RIBA Stage 1). Therefore, the successful bidders actual fees for Phases F & G will be calculated by applying the relevant fee %'s to the quantity and corresponding estimated construction cost ranges of the Infrastructure over buildings developed in the Cost Plan at the end of Phase A (RIBA Stage 1) and Phase B (RIBA Stage 2) respectively.
12. The hourly rates provided in Phase H will be multiplied by the notional hours provided for each Grade to generate a notional fee. The notional fees for each Grade will be totalled in the column noted for "EDC Use" and then transferred automatically to the Tender Scoring Matrix. The successful bidders actual fee will be calculated using these rates when the scope of this phase is known.





Ebbfleet Development Corporation
EC2 Phase 1 Infrastructure Works
Tender Scoring Matrix

Instructions to Bidders:

1. The Tender Pricing Matrix is to be read in conjunction with the Tender Pricing Information and the Tender Pricing Schedule.
2. Bidders should complete and return a copy of their individual Tender Pricing Schedule & Tender Scoring Matrix as a separate excel document.
3. The total fees (fixed & notional) generated in the Tender Pricing Schedule for each Phase will be transferred automatically to the Tender Scoring Matrix.

Scoring Instructions

4. The maximum score available for the Commercial section is 40%.
5. The maximum score available for each Phase is identified in the table below.
6. The maximum score for each Phase will be awarded to the bidder submitting the lowest fee, as generated in the Tender Pricing Schedule. Remaining bidders will be awarded a score out of this maximum, on a pro rata basis, dependent on how far they deviate from the lowest fee submitted.
7. For example, the calculation that will be used to determine the bidders score for **Phase B** is as follows:

$$\text{Score} = \frac{\text{Lowest Tender Price}}{\text{Bidder Tender Price}} \times 5\% (\text{maximum score available})$$

8. The weighted scores awarded to each bidder for Phases B-H will be totalled to provide a final Commercial score out of the maximum 40% available.

$$\text{Weighted Score (Phase A)} + \text{Weighted Score (Phase B)} + \text{Weighted Score (Phase C) Etc} = \text{Final Commercial Score}$$

9. Scores will be calculated to 2 decimal places.

Security Consultant

Phase	RIBA Stage	Maximum Score Available
A	RIBA 0/1	N/A
B	RIBA 2	5%
C	RIBA 3	9%
D	RIBA 4	9%
E	RIBA 5/6	9%
F	Buildings Over - RIBA 1/2	3%
G	Buildings Over - RIBA 3	3%
H	Other	2%
Total		40%

ANNEX B

THE SERVICES

Ebbsfleet Central – Infrastructure Works Security Consultant Schedule of Services



Introduction

EDC (the Client) is seeking to procure a Security Consultant (who will thereafter in this schedule of services be referred to as the 'Consultant'). M3 Consulting is acting as Development Manager on behalf of the Client.

The Consultant will lead the review of Security across the designs for the Multi-Story Car Park, Station Forecourt facilities and any buildings required as part of the infrastructure works for Phase 1 of Ebbsfleet Central, the urban centre of Ebbsfleet Garden City located on the land around Ebbsfleet International railway station.

The Consultant will be working closely with the Development Manager and Client and in close collaboration with the Project Team, and wider multidisciplinary Consultant teams working with the Development Manager and Client on the Sitewide, Area Masterplan and Design Code.

This Schedule of Services outlines the Services for the Consultant between RIBA Stages 2-6.

This Schedule of Services also outlines the Additional Services for the Consultant which can be carried out at any point between RIBA Stages 2-6. The Additional Services can be instructed by the Client, as and when appropriate.

The contract can be extended on an annual basis for Additional Services, which will be drawn down as required. No minimum level of work can be guaranteed.

Ebbsfleet Central – Infrastructure Works Security Consultant Schedule of Services



Ebbsfleet
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1.0 General Services – All Work Stages

- 1.1 Print, reproduce or purchase all documents, drawings, maps, models, photographs and other records necessary for the proper performance of the Services;
- 1.2 Issue information required to be prepared by the Consultant to the Other Consultants and the Contractor from time to time as may be necessary to enable them to carry out their respective duties;
- 1.3 Cooperate with Network Work Rail High Speed (NRHS) and High Speed 1 (HS1). Work within the framework provided by the NRHS Handbook and assist the Client in securing relevant design approvals. Provide requested information to support the Development Manager and Client in securing third party agreements and statutory consents.
- 1.4 Cooperate with UKPN and any other third parties as appropriate to support the design and installation of the primary substation required to support the development of Ebbsfleet Central.
- 1.5 Keep full and proper records of all meetings and negotiations attended or conducted by the Consultant and make the same available for inspection by the Development Manager and Client forthwith on request;
- 1.6 Comply with the Client's manuals setting out his requirements relating to the Project as issued to the Consultant by the Client from time to time;
- 1.7 Perform such other duties as may reasonably be required by the Development Manager and Client which are customarily basic services within the professional expertise of the Consultant to secure the completion of the Project;
- 1.8 Attend all relevant meetings called by the Development Manager and Client including meetings at the Site;
- 1.9 Visit the Site as necessary for the provision of the Services at any particular Work Stage.
- 1.10 Assist and provide cost information to the Development Manager and Client and provide capital allowances support to the Client.
- 1.11 Obtain the Client's written authority to proceed to the next Work Stage.
- 1.12 Work with the Developer Manager and Client to execute the agreed Social Value Plan.

Ebbsfleet Central – Infrastructure Works Security Consultant Schedule of Services



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2.0 RIBA Stage 2 – Concept Design

- 2.1 Review existing Stage 1 designs for security equipment advice and layout optimisation and brief the design team on possible improvements to layout, materials and security design;
- 2.2 Brief the design team to possible security strategies and their implications;
- 2.3 Produce security needs assessment and security concept design;
- 2.4 Identify potential locations and space requirements for functional security spaces;
- 2.5 Consider integration of security with the use strategies such as door entry routines, integration with lifts, deliveries and waste;
- 2.6 Outline security rating requirements;
- 2.7 Consider security operations with the potential different user groups;
- 2.8 Meet with security stakeholders;
- 2.9 Confirm legislation changes following the completion of the previous design stage which affect the Project.

3.0 RIBA Stage 3 – Developed Design

- 3.1 Provide initial blast mitigation assessment and advice;
- 3.2 Brief the design team to possible security strategies and their implications;
- 3.3 Uphold and support the intended building and public realm design;
- 3.4 Participate with the design team to agree programme for the whole design and construction of the works;
- 3.5 Describe any potential interfaces with other design streams. This will include, but will not be limited to, the architectural, mechanical, electrical and civil engineering disciplines;
- 3.6 Check other associated systems technical performance and verify that there are no inconsistencies with any interfaces proposed;
- 3.7 Consider security operations with the potential different user groups, including staff, contractors and visitors;
- 3.8 Provide internal and external security zoning diagrams where required;
- 3.9 Assess and agree with the Development Manager and Client appropriate emergency procedures;
- 3.10 Assess and agree with the Development Manager and Client waste management strategies and security implications;
- 3.11 Define potential duress and lockdown scenarios;
- 3.12 Assess and agree with the Development Manager and Client appropriate security requirements for mail handling and screening e.g. scanner rooms;
- 3.13 Review other extra low voltage building services systems designs and establish parameters that are to be monitored within the security control room;
- 3.14 Assess the requirements for IT equipment including switches and other components that are required for the communication of data and CCTV;
- 3.15 Produce Security Scheme Design; and
- 3.16 Assess equipment requirements and coordinate with design team.

Ebbfleet Central – Infrastructure Works Security Consultant Schedule of Services



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4.0 RIBA Stages 3 and 4 – Security Design Specifics – Explosive Effects & Blast Load Assessments

- 4.1 Evaluate the likely performance of facades in response to estimated blast loads and demonstrate compliance with established blast criteria or performance specifications;
- 4.2 Review the capacity of the materials, maximise the potential energy dissipated due to deformation, and manage the failure mechanisms;
- 4.3 Review non-structural building components, such as piping, ducts, lighting fixtures and conduits;
- 4.4 Review suitable measures with the design team to mitigate the effects of in-structure shock, due to the infilling of blast over-pressures through damaged windows;
- 4.5 Review the structural design calculations and study the impact of an explosive device on the elements identified in a risk assessment;
- 4.6 Report and identify where an explosion might damage a single column which would result in adequate load paths that could result in unspecified abnormal loading;
- 4.7 Review the effect on increase the spans of all beams directly above the zone of damage and if, appropriate, recommend different patterns of reinforcement and different types of connection details than those typically detailed for conventional structural design;
- 4.8 Provide advice to the Structural Engineer on where columns may be sized, reinforced, or protected to prevent critical damage as a result of an explosion in close proximity to them;
- 4.9 Recommend potential solutions for any vulnerable steel columns;
- 4.10 Undertake detailed blast calculations ; and
- 4.11 Identify suitable contractors for the enhanced facade works and will review the technical aspects of the tender submissions subsequently received.

Ebbfleet Central – Infrastructure Works Security Consultant Schedule of Services



Ebbfleet
DEVELOPMENT CORPORATION



5.0 RIBA Stage 4 – Technical Design & Construction Documentation

- 5.1 Detail requirements of the security systems and physical enhancements;
- 5.2 Liaise with building control and statutory fire bodies throughout to ensure that emergency door overrides are correctly located;
- 5.3 Provide detailed design information for each access control component including individual component reference, point reference, package type, special commissioning codes, installation detail indicating interfaces with other trades, detail any anti-tail gaiting requirements, disability and discrimination requirements, default lock failure position and fully coordinated installation details of all access control panels showing fire alarms units and fused spur locations;
- 5.4 Liaise with the Architect to ensure that each CCTV camera is properly coordinated;
- 5.5 Review CCTV design with respect to the Data Protection Act and advise the Client on the requirements for statutory approvals, regulation and licensing constraints;
- 5.6 Provide details for each camera including individual component reference, resolution, plan drawing showing location with references, installation detail indicating interfaces with other trades and housing and mounting detail for each individual camera;
- 5.7 Provide additional metadata for each CCTV camera listing various parameters including point reference, field of view, frame rate, camera type and resolution, type of package, alarm pre-sets, special commissioning codes, distance from nearest switch in metres and list of applicable video analytics on a camera by camera basis;
- 5.8 Fully co-ordinate the security systems with associated design packages;
- 5.9 Design a Disability Discrimination Act compliant audio and video intercom system for deployment in the Project;
- 5.10 Detail the full cascade of calls and define the actions to be triggered by individual events;
- 5.11 Liaise with the Acoustic Consultant to provide details of deployment;
- 5.12 Provide for each revision and each floor individual component references for intercom, plan drawing showing location with references, fully coordinated installation details of all intercoms, fully coordinated installation details within stairwells, plan drawings of each floor, installation details indicating interfaces with other trades, quantities of each intercom type and estimated costs;
- 5.13 Co-ordinate with the Architect to ensure that the emergency/fire escape requirements are acceptable to the District Surveyor and Fire Officer;
- 5.14 Provide performance requirements for specified security equipment including power loadings, cable containment and floor loading;
- 5.15 Provide documentation and drawings to integrate into the electrical package showing containment, cable and other facilities required for the implementation of the security monitoring and control functions;
- 5.16 List any security related electrical power requirements;
- 5.17 Liaise with the Vertical Transport Consultant and provide an interface matrix to allow security components to be furnished within the lift packages;
- 5.18 Provide outline specifications and guidelines to allow emergency "lockdown" and "duress" software routines;;

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- 5.19 Detail and provide a design for a security control room addressing issues such as physical layout of the control room, control room operation, personnel training and HR matters, evidence gathering, data protection, information security and business continuity;
- 5.20 Provide advice on human workload, design, allocation of functions between humans and systems, screen design, interior specification, workstation layout and design;
- 5.21 Issue a full list of connected components and a floor plan showing the CCTV camera locations with both IP reference and point reference for easy commissioning;
- 5.22 Provide operation routines and system diagrams to enable building management to specify the mechanical and electrical plant operation during security lockdown and duress scenarios;
- 5.23 Design the security systems to co-ordinate with the fire engineering strategy that is developed for the Site; and
- 5.24 Assist the Cost Consultant with providing on-going cost estimates.
- 5.25 Compile and detail all security equipment;
- 5.26 Produce detailed specifications and drawings;
- 5.27 Produce documentation and issue a design freeze, after which all variations to documentation will only be as directed by the Development Manager and Client;
- 5.28 Work with the Cost Consultant and design team to produce final estimate;
- 5.29 Production information will include health and safety guidance notes where appropriate, specifications and security schematics, plan drawings (typically one of each level), door interface and installation drawing and special installation details
- 5.30 Provide a definitive list of competent contractors, this will include establishing the estimated budget, pre-qualifying potential security contractors, responding to tender questions regarding the design and associated systems and equipment, providing technical adjudication to tenders and a tender analysis report and post-tender negotiations with security contractors on technical matters;
- 5.31 Assist the Cost Consultant in establishing the budget and expectations for the costs of the electronic security systems, this will include a full cost report detailing the summary for the project, total cost per floor, total cost per system, system cost per floor and cost and quantity of each and every component;
- 5.32 Respond to tender queries and create tender analysis reports;
- 5.33 Prepare all design information and technical data required for tender documentation (in packages if necessary) as required by the Client and agreed procurement route;
- 5.34 Prepare and issue in advance of the final agreed tender release date, draft information of the tender documentation for review by the Client;
- 5.35 Prepare and collate tender documents in sufficient detail to enable a comprehensive tender or tenders to be obtained;
- 5.36 Prepare contract documentation to be incorporated within the contract document to the timescales as required by the Client;
- 5.37 Pass information as required for Health and Safety Plan;
- 5.38 Attend mid tender meetings with security contractors;
- 5.39 Contribute to appraisal and report on tenders negotiations;

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- 5.40 Participate in any value engineering exercises throughout all stages of the Project as necessary to amend the design as requested by the Client;
- 5.41 Update the security design information as necessary to incorporate any agreed design solutions proposed by the subcontractors in a timely manner as dictated by the Client;
- 5.42 Provide information for revision of cost estimate;
- 5.43 Advise on consequences of any subsequent changes on cost and programme;
- 5.44 Contribute to the production of a tender recommendation report and provide a technical recommendation; and
- 5.45 Issue tender bid placement.

6.0 RIBA Stages 5 & 6 – Construction and Operation

- 6.1 Provide security strategy advice to help the design follow the agreed security strategy.
- 6.2 Attend meetings where security strategy input is needed.
- 6.3 Attend site as necessary to check the security strategy measures to ensure that the proposed construction appears in line with the principles of the security strategy report. Advise the Contractor if there are any immediately visible and obvious deviations from the security strategy.
- 6.4 Following site inspection produce a short technical note to summarise the observations taken on site.
- 6.5 Attend witnessing of commissioning of security systems as required by the Contractor.

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7.0 Additional Services

- 7.1 In addition to the Services outlined at Sections 1 - 6 of this document, Additional Services may be drawn down by the Client relating to the Site or adjacent, adjoining or related sites. These may include but are not limited to:
- 7.2 Any Security Consultant Services related to the delivery of the Site for redevelopment or any other related site including Blue Lake.
- 7.3 Any other relevant Services which could support the Client related to the delivery of the Site for redevelopment.
- 7.4 Assist the Client and Development Manager with Security Consultant Services in relation to the design and construction of a Health and Wellbeing Hub or any other buildings within the Site or any other related site including Blue Lake.
- 7.5 Assist the Client and Development Manager with Security Consultant Services relating to the production and submission of Business Cases relating to the Site or any other related site including Blue Lake.

