



dated [■] 20[■]

[ICN Party]

and

[Contractor]

Agreement for Pre-Construction Services

in relation to works at [■]

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Pre-Construction Services Agreement

dated [■] 20[■]

Parties

- (1) [■] **Limited** (company number: [■]) whose registered office address is [■] (the **Employer** which expression shall include its successors in title and assigns); and
- (2) [■] (company number: [■]) whose registered office address is [■] (the **Contractor**).

Introduction

- (A) The Employer wishes to carry out the Project (as defined below).
- (B) The Employer wishes to engage the Contractor to carry out the Pre-Construction Services (as defined below).
- (C) The Employer may engage the Contractor to carry out and complete the Works and design in relation to the Project.

Agreed terms

1 Definitions and interpretation

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

Agreement means this agreement together with the Appendices;

Appendices means Appendices 1 to 3 inclusive attached hereto;

Bribery Act means the Bribery Act 2010;

Building Contract means the final form of building contract that may be entered into between the Employer and the Contractor in relation to the Project;

CDM Regulations means Construction (Design and Management) Regulations 2015;

Consents means all consents, licences, permissions, approvals of all applicable Regulators, restrictions on working hours, all statutes and enforceable codes of practice of all applicable Regulators including, but not limited to, building control and/or any local or any other competent authority which may from time to time be necessary in respect of the Works;

Construction Act means the Housing Grants, Construction and Regeneration Act 1996;

Corrupt Activity means including, without limitation, any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 Bribery Act whether in connection with the Project or otherwise;

Data Controller, Data Subjects, Personal Data and Processing shall have the meaning as provided in the Data Protection Legislation;

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including but not limited to the General Data Protection Regulation ((EU) 2016/679) (the GDPR); the UK GDPR (as such term is defined in the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019) (such legislation being referred to in this Agreement as the UK GDPR), the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), along with any associated guidance and Codes of Practice, in each case as may be amended, updated or supplemented from time to time;

Data Subject's Rights means any rights of individuals under the Data Protection Legislation;

Due Date has the meaning given to such term in clause 7.5.1;

Environment means all and any of the following media being water, air or land (wherever situated) as well as any eco-systems; organisms, including (without limitation) humans, and their property, including natural and man-made structures.;

Final Date for Payment has the meaning given to such term in clause 7.5.6;

Group Company means any subsidiary or holding company of the Employer or another subsidiary or holding company of such company as subsidiary and holding company are defined in section 1159 Companies Act 2006;

Intellectual Property Rights means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attaching thereto which is created, brought into existence, acquired, used or intended to be used by or on behalf of the Contractor in connection with this Agreement and/or the Project;

Insolvent means, in relation to the Employer and Contractor, one or more of the following events:

- (a) an order is made for its winding up or a petition is presented or a meeting is convened for the purpose of considering a resolution for its winding up or any such resolution is passed (otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations of the Employer or the Contractor);
- (b) a receiver (including any administrative receiver) or similar person is appointed in respect of the whole or any part of any of its property, assets or undertaking or any step is taken by any person to enforce any rights under or pursuant to any security interest of any kind over any of its undertaking, property or assets;
- (c) an administrator is appointed (whether by the court or otherwise) or any step is taken (whether in or out of court) for the appointment of an

administrator or any notice is given of an intention to appoint an administrator;

- (d) any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangements between it and its creditors and/or members or any class of its creditors and/or members is proposed, sanctioned or approved;

Key Personnel means the persons identified in the Project Particulars or any replacement persons appointed in accordance with clause 6;

Milestones shall have the same meaning given to such term in clause 7.4;

Parties means the parties to this Agreement and **Party** and **Parties** shall be so construed interchangeably;

Pay Less Notice has the meaning given to such term in clause 7.5.4;

Payment Notice has the meaning given to such term in clause 7.5.2;

Permitted Uses means the tendering, re-tendering, design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, building information modelling and repair of the Works (and the completed Works), whether or not those Works are carried out by the Contractor;

Pre-Construction Fee means the fee described in Appendix 3, subject to any adjustments to the same pursuant to the terms of this Agreement;

Pre-Construction Services means the services referred to in Appendix 2, together with any variations instructed pursuant to clause 3;

Principals are the individuals identified in the Project Particulars or such replacement individuals as may be notified by one Party to the other from time to time;

Programme means the programme set out in Appendix 1 as may be varied from time to time by the Employer and/or operation of this Agreement;

Project means the project described in the Project Particulars;

Project Particulars means the particulars of the Project identified in Appendix 1;

Project Team shall have the meaning given to such term in the Project Particulars;

Proposed Variation Instruction means a notice setting out details of a proposed variation to the Pre-Construction Services issued by the Employer pursuant to clause 3.2;

Regulators means organisations/bodies including, but not limited to, authorities/regulators having authority and/or jurisdiction in respect of the Project and/or the works/design intended for the Project and in all cases, any part of parts thereof;

Site means the site identified as such in the Project Particulars;

Third Party Agreements means all agreements relating to or affecting the Project or any part or parts of the Project which have and been entered into or may be entered into by the Employer from time to time and disclosed to the Contractor (whether on or before the date of this Agreement or after the date of this Agreement);

Variation means additional services and/or modification to (excluding any changes to the Programme or order of working) and/or omission from the Pre-Construction Services not instructed by reason of the Contractor's default, negligence or breach of this Agreement;

Variation Instruction means a written notification varying the Pre-Construction Services by way of addition, modification and/or omission of the Pre-Construction Services; and

Working Day means any day other than Saturday or Sunday or public or bank holidays when clearing banks in the United Kingdom are open to the public for the transaction of business;

Works means the works and/or services required for the construction and completion of the Project.

- 1.2 The clause headings in this Agreement are for convenience only and do not affect its interpretation.
- 1.3 Words importing the singular meaning shall include where the context so allows the plural meaning and vice versa.
- 1.4 Words of one (1) gender include the feminine and neuter genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.5 References to "include(s)" or "including" are to be construed without limitation.
- 1.6 Where the context so admits references in this Agreement to a clause or appendix are to a clause or Appendix of this Agreement.
- 1.7 A reference to any statute or statutory instrument shall include a reference to any consolidation, extension, amendment or replacement of it for the time being in force.

2 **Pre-Construction Services**

- 2.1 The Contractor shall perform and complete the Pre-Construction Services in accordance with:
 - 2.1.1 this Agreement;
 - 2.1.2 all relevant Consents;
 - 2.1.3 the Programme and such other time constraints as the Employer may agree with the Contractor; and
 - 2.1.4 all reasonable instructions from the Employer.
- 2.2 The Contractor warrants that it has exercised and will continue to exercise all the skill, care and diligence as may be expected of a properly qualified and competent contractor and designer of the appropriate discipline(s) experienced in the provision of works and

professional services equivalent to the Pre-Construction Services for projects of a similar size, scope, value, character and complexity to the Project.

2.3 Without prejudice to the generality of clause 2.2, the Contractor warrants to the Employer that it has not and shall not specify, authorise, cause and/or allow to be used and/or specified in or for the Project any products and/or materials which:

2.3.1 do not conform with UK Designated Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or

2.3.2 are generally known to 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 the Environment; and/or

2.3.3 do not comply with the guidance by the British Property Federation and British Council for Offices current at the time of undertaking the Pre-Construction Services entitled "Good Practice in the Selection of Construction Materials",

and the Contractor shall notify the Employer immediately if it becomes aware of any proposed or actual use or specification of any materials which do not comply with this clause 2.3.

2.4 The Contractor shall comply with all current health, safety and environmental regulations including the CDM Regulations. The Contractor shall in relation to the Project fulfil all of the obligations of a principal designer and principal contractor as set out in or reasonably to be inferred from the CDM Regulations.

2.5 The Contractor shall perform the Pre-Construction Services and its other duties under this Agreement so that no act, omission or default shall constitute, cause or contribute towards a breach of duties and obligations of the Employer under any or all of the Third Party Agreements.

2.6 Notwithstanding the date of this Agreement it shall have effect as from actual commencement of the performance by the Contractor of the Pre-Construction Services.

3 **Variations**

3.1 Immediately upon it becoming apparent that any modifications, additions and/or variations to the Pre-Construction Services are or are likely to be required, the Contractor shall give written notice to the Employer specifying the circumstance(s) and, as soon as possible thereafter, shall submit full and detailed particulars of such to the Employer, the details of which shall be as set out in clauses 3.3.1 to 3.3.3 inclusive below.

3.2 The Employer may at any time issue a Proposed Variation Instruction to the Contractor. Following receipt of any Proposed Variation Instruction the Contractor shall not implement the Proposed Variation Instruction unless and until the Employer issues a Variation Instruction. If the Contractor carries out any Variation without having received a Variation Instruction then the Contractor shall do so subject to the terms of this Agreement and at its own risk.

- 3.3 Within five (5) Working Days of receipt of a Proposed Variation Instruction issued by the Employer pursuant to clause 3.2, the Contractor shall in writing:
- 3.3.1 inform the Employer if the Proposed Variation Instruction will in its opinion prevent it from fulfilling any of its obligations under this Agreement;
 - 3.3.2 provide full details of the anticipated consequences of the Proposed Variation Instruction; and
 - 3.3.3 notify the Employer of any addition to or reduction of the Pre-Construction Fee that it considers should be made as a result of the Proposed Variation Instruction.
- 3.4 The Employer and the Contractor shall seek to agree the impact on the Project and the Pre-Construction Fee of the proposed Variation and the Employer shall inform the Contractor:
- 3.4.1 whether it will or will not (at its sole discretion) be issuing a Variation Instruction; and
 - 3.4.2 of any changes to the Pre-Construction Fee either by way of addition or reduction.
- 3.5 If the Employer informs the Contractor pursuant to clause 3.4.1 that it will not issue a Variation Instruction in respect of a Proposed Variation Instruction then the Contractor shall have no claim arising out of or in connection with such Proposed Variation Instruction.
- 3.6 Any adjustment to the Pre-Construction Fee in respect of a Variation Instruction shall be agreed by the Parties pursuant to the terms of clause 3.4.2.
- 3.7 No addition to the Pre-Construction Fee under this clause 3 shall be made in respect of any Variation Instruction issued by the Employer to repeat, modify or revise the Pre-Construction Services where the repetition, modification or revision required by the Employer has arisen through any act, omission, default and/or breach of the Contractor in carrying out the Pre-Construction Services.

4 **Copyright**

- 4.1 The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use (including copying, adapting and reproducing documents and/or designs) of any Intellectual Property Rights prepared by or on behalf of the Contractor for any purpose relating to this Agreement and the Project including any of the Permitted Uses.
- 4.2 This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent and shall continue in force notwithstanding any termination and/or suspension of the engagement of the Contractor and/or the Pre-Construction Services or any part or parts thereof.
- 4.3 The Employer may, at any time (whether before or after completion of the Pre-Construction Services, or after termination of this Agreement), request one or more copies of some or all of the Intellectual Property Rights from the Contractor. On the Employer's

payment of the Contractor's reasonable charges for providing those copies, the Contractor shall provide those copies to the Employer.

- 4.4 The Contractor represents and warrants that the Intellectual Property Rights do not and will not infringe any intellectual property rights of any third party.
- 4.5 The Contractor shall indemnify the Employer and keep the Employer indemnified against any losses, costs, expenses, charges, claims or demands directly arising from the Contractor's breach of clause 4.4.
- 4.6 The Contractor waives absolutely all Moral Rights the Contractor may have in the Intellectual Property Rights referred to in this clause 4 and/or the Works and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of such Intellectual Property Rights.
- 4.7 For the purposes of clauses 4.1 and 4.2, the licence is not subject to the payment of the Pre-Construction Fee and/or any monies due to the Contractor.

5 **Insurance**

- 5.1 The Contractor shall take out and maintain with a reputable insurance company carrying on business in the United Kingdom, from the date hereof and for a period expiring no earlier than 12 years after completion of the Pre-Construction Services notwithstanding the termination of this Agreement or termination and/or suspension in whole or in part and for any reason of the Contractor's employment under this Agreement:
 - 5.1.1 professional indemnity insurance (without conditions or excesses that in the market place are unusual or onerous) to cover the design liability which the Contractor may incur under this Agreement and otherwise relating to the Project, with a limit of indemnity of not less than ten million pounds (£10,000,000) on an each and every claim basis or in the aggregate (if in the aggregate then in any one (1) year of insurance a minimum of one (1) automatic reinstatement of the aggregate indemnity limit is required) in the period of insurance, subject to such insurance continuing to be available in the United Kingdom market upon reasonable terms and at commercially reasonable premium rates; and
 - 5.1.2 third party and public liability cover in connection with the Pre-Construction Services and the Project for not less than ten million pounds (£10,000,000); and
 - 5.1.3 employer's liability insurance cover to cover any claim for personal injury to or the death of any person under a contract of service or apprenticeship with the Contractor and arising out of and in the course of the person's employment in connection with the Pre-Construction Services or the Project, and providing cover of not less than ten million pounds (£10,000,000) any one event (such insurance shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and all orders and regulations made thereunder).
- 5.2 The Contractor shall provide documentary evidence that the insurances required under this clause 5 are being properly maintained, as and when reasonably required to do so by the Employer.

- 5.3 Any increased or additional premium required by insurers as a result of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor (having regard to the premiums, terms and conditions then available in the UK insurance market) shall be deemed to be within reasonable terms and commercially reasonable rates.
- 5.4 The Contractor shall not do anything which might render any of the insurance policies referred to in this clause 5 void or voidable, and shall carry out its obligations under this Agreement, and shall use all reasonable endeavours to ensure that its servants or agents shall carry out their respective obligations, in a manner that fully complies with all requirements terms conditions stipulations and provisos of such insurances.
- 5.5 The Contractor's obligation to maintain such insurances shall in no way negate or limit any or all of its obligations or duties hereunder nor its liability in respect of any breach or non-performance of the same.

6 **Key Personnel**

- 6.1 The Contractor shall, subject to clause 6.3, use the Key Personnel in connection with the performance of the Pre-Construction Services and such person(s) services shall, subject to clause 6.3, be available for so long as may be necessary for the proper performance by the Contractor of the Pre-Construction Services.
- 6.2 Following conclusion of the Pre-Construction Services and where a Building Contract is entered into pursuant to the terms of this Agreement, the Contractor undertakes to the Employer that the Key Personnel shall remain engaged and involved on the Project including in relation to the procurement and delivery of the design, construction, management and coordination of the Project.
- 6.3 The Employer may require the removal of any person engaged in the performance of the Pre-Construction Services if, in the Employer's opinion, their performance or conduct is or has been unsatisfactory, or they do not complement or work well with the Employer or Project Team members, and the Contractor shall promptly remove such person and replace him with a person who shall previously have been approved by the Employer (such approval not to be unreasonably withheld or delayed).
- 6.4 In the event that any Key Personnel will become or has become unavailable because their employment by the Contractor has been or will be terminated, the Contractor shall ensure that such person is urgently replaced (such replacement being subject to the Employer's prior approval, such approval not to be unreasonably withheld or delayed) and that there is a handover period of a minimum of four (4) weeks.

7 **Payment**

- 7.1 The Employer shall pay the Contractor the Pre-Construction Fee as full remuneration for the proper performance of the Pre-Construction Services.
- 7.2 The Pre-Construction Fee shall be deemed to be inclusive of payment for the Pre-Construction Services and all other matters relating to this Agreement and for all costs, disbursements, expenses and overheads (including the costs of any delay or prolongation resulting from any changes to the Programme) of every kind incurred by the Contractor in connection with this Agreement.

7.3 The Pre-Construction Fee shall only be adjusted in the event of a variation or a reduction in scope to the Pre-Construction Services in accordance with clause 3.

7.4 The Parties have agreed the elements of the Pre-Construction Services against which the Pre-Construction Fee will be apportioned (and in the event of an addition to the Pre-Construction Fee the Parties shall agree in writing the milestones against which any such addition to the Pre-Construction Fee shall be paid). The Pre-Construction Fee shall be paid solely against fully completed milestones as set out in Appendix 3 (the **Milestones**). The Contractor shall make written applications for payment on the date of the month agreed and recorded in the Project Particulars or as may be agreed by the Parties from time to time, setting out what the Contractor considers will be due to it on the Due Date and the basis on which that sum is calculated, and in a form and with such supporting documentation as may be required and agreed by the Employer.

7.5 For the purposes of the Construction Act:

7.5.1 the due date for payment of any monies payable pursuant to the terms of this Agreement shall be the date of receipt by the payer of a valid application for payment (setting out what the payee considers will be due to it on the Due Date and the basis on which that sum is calculated in accordance with the provisions of clause 7.4) from the payee (the **Due Date**);

7.5.2 within five (5) days of the Due Date, the payer shall give notice of the sum which the payer considers to have been due on the Due Date and the basis on which the sum was calculated (the **Payment Notice**);

7.5.3 if the payer does not issue a Payment Notice in accordance with clause 7.5.2 then the payee's valid application for payment shall be treated as the Payment Notice;

7.5.4 if the payer wishes to pay less than the amount stated in the Payment Notice the payer will issue a notice specifying the sum the payer considers to be due on the date the notice is served and the basis on which that sum is calculated (the **Pay Less Notice**). Any Pay Less Notice(s) shall be served no later than three (3) days before the Final Date for Payment;

7.5.5 the payer shall pay the amount stated in any Payment Notice or, if issued, the Pay Less Notice (or if more than one Pay Less Notice is issued, the amount stated in the last Pay Less Notice issued) by the Final Date for Payment; and

7.5.6 the final date for payment for any sum payable pursuant to this Agreement shall be thirty (30) days after the Due Date (the **Final Date for Payment**).

7.6 In the event of:

7.6.1 any adjustment to the Pre-Construction Fee in accordance with clause 7.3; or

7.6.2 the Pre-Construction Services not be undertaken at the same rate or in the same order as envisaged by the Programme,

the Employer and the Contractor shall, where necessary, agree in writing an appropriate adjustment to the Milestones.

7.7 Subject to receipt of a duly completed value added tax invoice the Employer shall pay to the Contractor the total amount of value added tax properly chargeable in respect of the Pre-Construction Fee.

7.8 If any amount due is wrongfully withheld after the Final Date for Payment that amount shall bear simple interest at the rate of five per cent (5%) over the Bank of England's dealing rate current at the time the amount becomes due and payable for the period from the relevant Final Date for Payment until and including the date on which such amount is paid or discharged. The Parties acknowledge that such interest is a substantial remedy for late payment in compliance with the Late Payment of Commercial Debts (Interest) Act 1998.

8 **Intention to enter into Building Contract**

8.1 The Parties shall work together in accordance with the terms of this Agreement with the intent of agreeing the terms and conditions of the Building Contract.

8.2 The Contractor shall provide such information and assistance to the Employer as may be reasonably necessary in order to finalise the Building Contract.

8.3 The Contractor hereby acknowledges that the Employer has not given and shall not give any guarantee or warranty as to the award of the Building Contract and the Employer shall be under no obligation to enter into the Building Contract, any tender, further contract or other appointment to carry out part or all of the Project with the Contractor and the Contractor shall have no entitlement to any damages, costs, losses or similar for loss of opportunity, loss of overhead or profit or any other indirect or consequential loss, reimbursement or payment that the Contractor would have been entitled to had it been awarded the Building Contract and/or had the Project proceeded.

8.4 If the terms and conditions of the Building Contract are agreed by the Parties then the Employer may, by the issue of the Building Contract, at its sole option and discretion appoint the Contractor to carry out the Works and the Contractor agrees to accept such appointment. Upon completion of the Building Contract, the Parties' respective rights and liabilities in respect of all matters with which this Agreement is concerned shall be subsumed in the Building Contract.

9 **Termination**

9.1 The Employer may terminate this Agreement at any time by giving the Contractor notice to that effect and such termination shall be effective from the date of issue of that notice.

9.2 The Contractor may terminate this Agreement if:

9.2.1 the Employer is Insolvent; or

9.2.2 a suspension of all of the Pre-Construction Services under clause 11.1 continues for a continuous period of six (6) months and the Employer does not instruct the Contractor to resume those Pre-Construction Services within ten (10) Working Days of receiving a notice from the Contractor requiring it to do so,

by giving notice to the Employer to that effect and such termination shall be effective from the date of issue of that notice.

- 9.3 If this Agreement is terminated, the Parties shall co-operate to bring the Pre-Construction Services to an orderly conclusion and to allow the Parties to comply with their remaining obligations under this Agreement.
- 9.4 If this Agreement is terminated the Employer shall pay the Contractor any sums due under clause 7, and that payment shall be the Contractor's sole compensation for termination.
- 9.5 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement, including clauses 4 (Copyright), 13 (Dispute Resolution), 14 (Confidentiality), 16 (Collateral Warranties), 17 (Performance Security), 18 (Bribery and Corrupt Activity), 21 (GDPR) and this clause 10.5 shall remain in full force and effect, notwithstanding such termination or expiry.
- 9.6 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including any right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.

10 **Suspension**

- 10.1 The Employer may, at any time, suspend performance of part or all of the Pre-Construction Services by giving notice to the Contractor. Subject to clause 9.2.2, the Contractor shall resume performance of that part or all of the Pre-Construction Services as soon as reasonably practicable after receiving a notice from the Employer to do so.
- 10.2 If the Employer does not pay a sum due under this Agreement on or before the Final Date for Payment and the failure continues for 7 days after the Contractor has given notice to the Employer of its intention to suspend performance of its obligations under this Agreement and the grounds for such suspension the Contractor may suspend the performance of any or all of its obligations under this Agreement until payment is made.
- 10.3 In the event of a suspension under clause 11.1, the Employer shall pay the Contractor any sums due under clause 7 and such payment shall be the Contractor's sole compensation for suspension of the Pre-Construction Services.

11 **Notices**

- 11.1 Any notices and communications to be given under this Agreement shall be in writing by post (save in respect of any notices or communications given pursuant to clauses 9 and 10 which shall be sent by personal delivery or pre-paid registered or recorded delivery mail) and shall be deemed to be duly given if delivered to the Parties' address for service as set out in the Project Particulars.
- 11.2 Notices and communications shall be deemed to have been served or received in the case of:
- 11.2.1 personal delivery if given/served on a Working Day before 16:00 hours GMT on the date of delivery and if given/served on a non-Working Day and/or after 16:00 hours GMT, on the next Working Day after the date of delivery;
 - 11.2.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted.

12 **Dispute resolution**

- 12.1 The Employer and Contractor undertake, without prejudice to any other contractual or statutory remedy that may be available, to adopt the procedure set out in this clause 12 for resolving any dispute that may arise.
- 12.2 Within five (5) Working Days of the Employer or the Contractor notifying the other that a dispute or difference has arisen a meeting of the Principals shall be convened. The Principals shall, in good faith, negotiate to reach a resolution and record any agreement in writing.
- 12.3 If the first meeting does not result in a resolution, a second meeting of Principals shall be convened within three (3) Working Days of the first meeting. The Principals shall, in good faith, use every reasonable endeavour to seek a negotiated resolution by agreement.
- 12.4 The Principals shall in good faith seek to implement a method of alternative dispute resolution between the Parties, which method might involve one or more of the following: (i) structured negotiation; (ii) early neutral evaluation; (iii) inviting a neutral evaluator to provide a written or verbal evaluation on the dispute; and (iv) mediation.
- 12.5 Without prejudice to clauses 12.1 to 12.4 above, either the Employer or the Contractor shall be entitled to refer any dispute or difference to adjudication in accordance with the Scheme for Construction Contracts (as defined in the Construction Act). For the purposes of this clause the adjudicator shall be such person as the Parties may agree or, failing such agreement within seven days following a request by either Party, a person appointed on the application of either Party by the President or a Vice-President for the time being of The Royal Institution of Chartered Surveyors.

13 **Confidentiality**

- 13.1 The Contractor shall not, without the prior approval of the Employer:
- 13.1.1 take or authorise the taking of any photographs of the Project for use in any publicity or advertising; nor
 - 13.1.2 publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Project or any part of the Project; nor
 - 13.1.3 impart to any publication, journal or newspaper or any radio or television programme any information regarding the Project; nor
 - 13.1.4 speak with the media or offer any public comment about the Employer and/or the Project and/or any Group Company and/or any Group Company matter; nor
 - 13.1.5 reference any Group Company or the Employer or any Group Company matter in any promotional materials and/or statements.
- 13.2 The Contractor shall not, either during the period of his engagement under this Agreement (save in the proper course of his duties) or at any time after its termination or termination of the Contractor's employment under it in either case for any reason whatsoever:
- 13.2.1 disclose to any person (save for his insurance or other professional advisers) nor otherwise make use of any confidential information (including information relating to methods and techniques of construction for the Project proposed by

the Employer, all financial information relating to the Project and the contents of any documents prepared by or on behalf of the Employer) of which the Contractor has or may in the course of its engagement under this Agreement become possessed relating to the Employer, the Project or otherwise; and/or

13.2.2 disclose to any person whatsoever (save his insurance or other professional advisers) anything contained in this Agreement, without the prior authority of the Employer.

13.3 The restriction contained in clause 13.2 shall continue to apply, without limitation in point of time, unless and until such information comes properly into the public domain through no fault of the Contractor.

14 **Assignment**

14.1 The Contractor shall not without the prior written consent of the Employer:

14.1.1 sub-let the Pre-Construction Services or any parts thereof; and/or

14.1.2 assign and/or transfer any benefit and/or interest in this Agreement.

Any such sub-letting, assignment and/or transfer of the benefit in this Agreement shall not relieve the Contractor from any of its obligations and/or liabilities pursuant to this Agreement.

14.2 The Employer shall be entitled to assign, charge and/or transfer all or any of its rights and/or obligations under this Agreement at any time without the Contractor's consent to:

14.2.1 another Group Company; and/or

14.2.2 any third party acquiring an interest in the Site and/or the Project and/or providing finance and/or refinance (whether by way of security or otherwise); and/or

14.2.3 any other person subject to a maximum of three (3) such assignments, transfers and/or charges.

15 **Collateral Warranties**

15.1 The Contractor shall execute and deliver to the Employer within ten (10) Working Days of a written request to do so from or on behalf of the Employer, collateral warranties for the benefit of the party identified in Appendix 1 (if any) in the appropriate form identified in Appendix 1 with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed).

15.2 If the Contractor does not provide to the Employer the collateral warranties requested pursuant to clause 15.1, the Employer shall be entitled to withhold one hundred percent (100%) of the value of each and every following payment until all collateral warranties requested are so provided. Any amounts so retained shall become due to the Contractor on the due date of the next payment to be made in accordance with clause 7 following the provision of the warranties from the Contractor.

15.3 The Contractor shall procure that each and every sub-contractor and/or sub-consultant engaged by it in connection with the Pre-Construction Services shall execute as a deed

and deliver to the Employer within fifteen (15) Working Days of a request to do so from or on behalf of the Employer a collateral warranty or warranties in favour of the Employer and/or other beneficiaries identified in Appendix 1 (if any), in the appropriate form identified in Appendix 1 with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed).

15.4 If the Contractor does not provide to the Employer the collateral warranties requested pursuant to clause 15.3, the Employer shall be entitled to withhold any and all sums relating to the work/services of the relevant sub-contractor and/or sub-consultant then in default and would otherwise be due and payable under the terms of this Agreement in each and every following payment until all collateral warranties requested are so provided. Any amounts so retained shall become due to the Contractor on the due date of the next payment to be made in accordance with clause 7 following the provision of the warranties from the relevant sub-contractor and/or sub-consultant, duly executed, to the Employer.

16 **Performance security**

16.1 Where Appendix 1 states that this clause 16 applies, then the Contractor shall on execution of this Agreement provide to the Employer a parent company guarantee from the Contractor's ultimate parent company in the form set out in Appendix 1.

16.2 If the Contractor does not provide the parent company guarantee as referred to in clause 16.1 above, the Employer shall be entitled to withhold one hundred percent (100%) of the value of each and every payment to be made pursuant to the Payment Schedule until such parent company guarantee is provided.

16.3 Any amounts so retained under clause 16.2 shall become due to the Contractor on the due date of the next payment to be made in accordance with clause 7 following the provision of the parent company guarantee, duly executed, to the Employer.

17 **Bribery and Corrupt Activity**

17.1 The Contractor undertakes to the Employer that:

17.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;

17.1.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Employer in breach of section 7(1) Bribery Act;

17.1.3 it has and shall maintain and implement:

(a) procedures to ensure compliance with clauses 17.1.1 and 17.1.2; and

(b) adequate procedures designed to prevent any Associated Person (as defined in the Bribery Act) from undertaking any Corrupt Activity and/or conduct that would give rise to an offence under section 7 Bribery Act;

17.1.4 it shall include undertakings similar to those contained in this clause 17.1 in any contract it may enter into with sub-contractors and suppliers and provisions similar to those contained in clause 17.2 which shall be capable of enforcement directly by the Employer;

- 17.1.5 from time to time, at the reasonable request of the Employer, it will confirm in writing that it has complied with its undertakings under clauses 17.1.1 to 17.1.4 inclusive and will provide any information reasonably requested by the Contractor in support of such compliance.
- 17.2 The Contractor shall maintain adequate records to assist in verifying its compliance with the provisions of clauses 17.1.1 to 18.1.3 inclusive (including without limitation books of account showing all payments made by the Contractor in connection with this deed) and shall permit the Employer and its third party representatives, on reasonable notice during normal business hours, but without notice in the case of any reasonably suspected breach of clauses 17.1.1 to 17.1.3 inclusive, to access and take copies of such records and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations under this clause 17. The Contractor shall give all necessary assistance to the conduct of such audits.
- 17.3 Audit access by any third party representative of the Employer in accordance with clause 17 shall be subject to such representative agreeing to be bound by confidentiality obligations equivalent to those in clause 13 in respect of the information obtained provided that all information obtained may be disclosed to the Employer
- 17.4 The Contractor shall indemnify the Employer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Employer as a result of any breach of this clause 17 by the Contractor or any breach of provisions equivalent to clause 17 any contract with a sub-contractor or supplier.
- 18 **Governing law and jurisdiction**
- This Agreement shall be governed by and shall be subject to the laws of England and Wales and the exclusive jurisdiction of the English Courts.
- 19 **The Contracts (Rights of Third Parties) Act 1999**
- Nothing in this Agreement confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 20 **GDPR**
- 20.1 The Parties will each act in the capacity of Data Controller in respect of the Personal Data processed under this appointment and each will Process the Personal Data as independent Data Controllers.
- 20.2 The Parties (including their employees, agents or officers) shall at all times during the period of this appointment comply with the provisions and obligations imposed by this clause 20 and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this appointment.
- 20.3 The Parties warrant and represent that they each have in place appropriate technical and organisational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.

- 20.4 Each Party shall notify the other without undue delay on becoming aware of any breach of the Data Protection Legislation in relation to the Personal Data Processed under this Agreement.
- 20.5 Whilst each Party shall be responsible for responding to any complaint in relation to the Personal Data Processed pursuant to this appointment, or any request by individuals to exercise the Data Subject's Rights, the Parties will co-operate with each other and provide reasonable assistance with any request, proceedings or inquiry by any affected Data Subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with data processed under this Agreement.
- 20.6 The provisions of this clause 20 shall apply during the continuance of this Agreement and indefinitely after its termination.

21 **Limitation**

Neither Party shall commence any legal action against the other under this Agreement after 12 (twelve) years from the date of completion of the whole of the Pre-Construction Services and any adjudicator's decision under Clause 12.5 of this Agreement shall be finally binding on them unless either Party has referred that dispute for final determination by legal proceedings, or has commenced any legal action to recover any overpayment to which the decision has led, before that date.

22 **Miscellaneous**

- 22.1 This Agreement supersedes any previous agreement and/or arrangements between the Parties in respect of the Project and/or the Pre-Construction Services (whether oral or written) and represents the entire understanding between the Parties in relation to the Project and/or the Pre-Construction Services.
- 22.2 The Contractor warrants that any works and/or services carried out by it in connection with the Project prior to the date of this Agreement shall be deemed to have been undertaken pursuant to the terms of this Agreement and any payments made by the Employer to the Contractor shall be deemed to have been made under and pursuant to the terms of this Agreement (and credit given to them).
- 22.3 All additions, amendments and variations to this Agreement shall be binding only if in writing and signed by the duly authorised representatives of each Party.
- 22.4 If any provision of this Agreement is declared to be invalid or unenforceable it shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 22.5 No failure or delay by any Party to exercise any right power or remedy shall operate as a waiver of it or operate an election to affirm this deed nor will any partial exercise preclude any further exercise of the same or some other right power or remedy.

Appendix 1
Project Particulars

Clause

The Employer []

The Contractor []

The Site []

The Project []

The Programme []

The Project Team **Employer's Lawyers:** Trowers & Hamlins LLP

Architect:

Principal Designer:

Quantity Surveyor:

Structural Engineer:

MEP Engineering/Environmental Engineering (BREEAM):

Landscape Architect:

Clerk of Works:

BIM Information Engineer:

**Geotechnical Engineers/Rail Engineers/Security/Waste
Consultant:**

Transport Consultant/Crowd Movement:

Fire Engineering:

Architectural Lighting:

Acoustic/Audio Visual:

Independent Acoustic Consultant:

IT/Security Infrastructure:

EIA Consultant:

Catering Consultant:

Irrigation Engineer:

Building Control:

Rights of Light Surveyor/Party Wall Surveyors:

Contract Administrator:

and/or in each case such other alternative, additional and/or substitutes as the Employer may require/appoint in respect of the Project or any part or parts thereof from time to time.

6 **Key Personnel** []

5 **Level of professional indemnity insurance** []

12 **Addresses and numbers for service** []

15 **Warranties¹** [Clause 15.1 – Warranties will be required from the Contractor in favour of:

- []

The form of warranty is annexed / provided to the Contractor on []

[Clause 15.3 – Warranties are required from the following sub-contractors / sub-consultants in favour of the following parties:

- The Employer
- []

The form of warranty is annexed / provided to the Contractor on []

16 **Parent Company Guarantee** [Will be required in favour of the Employer in a form the annexed / provided to the Contractor on []]

[Is not be required]

¹ Amend to suit warranty requirements. Warranties will not always be required under a PCSA.

Appendix 2

Pre-Construction Services

[Drafting note: the below services are indicative only and not exhaustive. The services must be carefully reviewed and edited to suit each client. The below services will not necessarily be appropriate, either in whole or in part]

All those services that would reasonably be expected of an experienced contractor in carrying out services for projects of a similar size, scope, value, character and complexity to the Project during the pre-construction stage including but not limited to []

General

- 1 The Pre-Construction Services are to be performed as part of the Project with the intent that details produced by the Contractor (both with the intent of agreeing and entering into the Building Contract in accordance with the Programme) are capable of forming part of the Building Contract.
 - 1.1 Meetings will comprise regular progress meetings and workshops with the Project Team with the intent of meeting the Programme and in any event at least [].
 - 1.2 Organise and facilitate regular Project Team meetings as required and at least monthly with the Project Team to carry out the Pre-Construction Services within the programme requirements of the Employer.
 - 1.3 Work up and agree with the Project Team the proposed work package breakdown structure, information release schedule and [procurement schedule] developed from the Stage 1 tender process.
 - 1.4 Undertake tasks as may be necessary, to achieve the Employer's Project objectives in full by the period confirmed in the Programme.

2 Programme

- 2.1 Prepare an integrated master programme for acceptance by the Employer to include the activities of the Project Team, the Contractor and its proposed subcontractors and suppliers. The master programme should be in sufficient detail to reflect the pre-construction period activities, including those activities that are agreed as being the responsibility of the Employer as well as those that are agreed as the responsibility of the Contractor and to indicate the proposed dates of possession and completion, including sectional completion where relevant.
- 2.2 Identify and agree in conjunction with the Employer a construction phase project programme highlighting the durations and critical path of all sub-contract/supplier work packages.
- 2.3 Prepare and agree with the Employer a detailed procurement programme addressing any design development programme produced by the Project Team and setting out of dates for the settling of tender lists and for preparation and despatch of tender documents, the tender period, a period for evaluation of tenders and target dates for the placement of each subcontract/supply order. Maintain and update the package procurement programme (and advise on any corresponding changes to be made to any relevant design

development programme) to address any delays or changes occurring in the procurement process.

2.4 Procurement programme will include:

- the scope of works broken down into separate works packages;
- identification of dates when the design and tender information is required for subcontractor/supplier tenders;
- when the tenders will be returned; and
- the contracting arrangements to be utilised and the reasoning why.

2.5 Advise on sub-contract work package lead-in times, identifying any difficulties in sourcing specific materials, plant, etc.

2.6 Advise on the availability of goods and materials/components and similar and alternative goods/materials and components which would meet or exceed the Employer's Project requirements. Prepare material and component flows and identify goods and materials/components or similar which require advance ordering and processing.

2.7 Prepare a detailed construction programme, critical path analysis and bar chart for the Project with reference to the master programme and agree with the Project Team and with relevant subcontractors/suppliers.

2.8 Advise on and prepare schedules of release of information for construction from the Project Team to ensure progress in accordance with all programmes consistent with the programme for the subcontract/supply packages and to allow time (agreed with the Employer) for the Employer's internal approvals.

2.9 Advise timeously and diligently on the placing of early orders prior to commencement and advise on how best to accelerate the mobilisation and construction activities to meet the Employer's required dates for completion.

2.10 Incorporate within the programmes referred to at paragraphs 2.1 to 2.7 (inclusive) above and allow for the effects of, if any, and interface with any adjacent development and / or highways, pedestrian, transport networks and utility companies.

3 Construction advice/buildability and design

3.1 Review in conjunction with the Project Team the objectives and requirements of the Employer.

3.2 Review the design and buildability of the proposed scope of works and report to the Project Team on a [fortnightly basis] providing a critique on all elements of the design/specification including, but not limited to the practical and cost implications of proposed drawings and specifications with particular reference to safety requirements, sound construction practice and the Employer's Project requirements.

3.3 Contribute design information for which the Contractor is responsible and participate in the overall design and planning process. Attend all meetings if required by the Employer relating to the overall design and planning process.

- 3.4 Advise on the relative suitability of alternative materials and components.
- 3.5 Formulate and agree construction methods with the Project Team and advise on “buildability” issues and on time and cost implications of alternative solutions. Advise on the selection, availability and price of materials, method of working, labour plans, building systems, off-site fabrication, feasibility of construction and manufacture of components and installation of construction. Initiate appropriate requirements for temporary works and the programme for approvals and execution of them.
- 3.6 Advise on off-site fabrication and on alternative methods of construction and manufacture and installation of components.
- 3.7 Provide advice on construction logistics, including considering delivery of materials from manufacturing facilities to the Site and to the erection of large building components on site.
- 3.8 Advise on the provision and layout of site facilities and services to be provided or secured by the Contractor generally.
- 3.9 Recommend appropriate alternatives and economies in terms of cost and time which may be made provided they are consistent with the sound construction practice and the Employer's Project requirements.
- 3.10 Prepare a construction management plan and a construction environmental action plan for the Project.
- 3.11 Develop the construction phase plan for the construction period and establish and maintain adequate safety procedures for the Project incorporating best industry safety practices, the latest requirements of all authorities having responsibility for or jurisdiction over safety matters and any requirements advised by the Project Team. Ensure compliance by all persons on site from time to time with established safety procedures. Take such steps as may be necessary to secure compliance with the applicable CDM Regulations.
- 3.12 In collaboration with the Project Team, provide any relevant information necessary to assist with the discharging of planning conditions and other consents/approvals as required by the Employer from time to time.
- 3.13 In collaboration with the Employer and its advisors, develop a coordination strategy that addresses the construction phasing, sequencing and interface between any adjacent development and / or highways, pedestrian and / or transport networks and / or utility companies with the Project with the objective to mitigate the effect to the occupants / users continued use of any adjacent development and / or highways, pedestrian and / or transport networks throughout the Project.
- 3.14 Attend meetings as may be required by the Employer from time to time relating to the interface of the Project with any adjacent development and / or highways, pedestrian and / or transport networks and incorporate and allow for the effects of and interface with the Project.
- 3.15 In conjunction with the Project Team engage with supply chain subcontractors/suppliers as necessary to provide a coordinated design solution that includes / takes account of the subcontractor/supplier design/specification elements.

- 3.16 Manage the timely preparation of design development, technical design and production information for items which will fall within the Contractor's design responsibilities for the Building Contract and items of performance specified work, to ensure that the design, procurement and construction programme is maintained. Actively participate in the design development process, attending all meetings.
- 3.17 In collaboration with the Project Team, ensure the Employer's Project specification requirements is reviewed at regular intervals and updated as necessary with the consent of the Employer.
- 3.18 Regularly review the Employer's key design criteria and performance requirements with the Project Team to ensure the Employer's design objectives are met.
- 3.19 Identify in consultation with the Project Team the decisions to be taken and the information required to be supplied in order for design materials to be prepared, and the persons responsible for making/communicating decisions and the dates by which decisions are needed.
- 3.20 Establish the inter-dependency between the various design materials listed.
- 3.21 Identify any additional manpower or other resources required in order to secure timely design production.
- 3.22 Establish a procedure for the review of design information by the Project Team and the Employer and its advisers. Include within the Contractor's design production programme sufficient time for the review of design materials by the Employer and Project Team and (in parallel) the cost evaluation of these materials by the Project Team.
- 3.23 Allow, within the Contractor's design production programme, sufficient time for follow-up actions, including further reviews by the Employer, following the re-issue of any design materials which are rejected or which are approved only conditionally/in part.
- 3.24 On a continuous basis monitor the actual production of design materials against planned production as set out in the Contractor's design production programme.
- 3.25 Regularly re-assess the Contractor's design production programme to address any changed circumstances and any actual or anticipated difficulties and implement measures to recover delays.
- 3.26 To support construction logistics methodology and to support the Employer in negotiations with third party stakeholders, reflect the evolving design in BIM generated modelling at regular intervals, not less than monthly. Where the Contractor considers that any such BIM generated modelling cannot reasonably be undertaken by the Contractor without employing external third party expertise and/or resources, the Contractor shall notify the Employer without delay and provide details of the cost of such external resource. The costs of any instruction to the Contractor to proceed in such circumstances shall be dealt with as an additional service.
- 3.27 Develop and regularly re-assess the BREEAM accreditation for the Project in order to achieve a minimum "Excellent" rating.
- 3.28 Develop and regularly re-assess the Project risk register and, in collaboration with the Project Team, endeavour to minimise the Project risk profile.

3.29 Undertake buildability studies in conjunction with the Project Team in identified work packages to achieve value for money.

4 **Cost/contract sum**

4.1 Assist the Quantity Surveyor by providing costing advice and assisting in the regular updating of the cost plan for the Project (to an agreed cost breakdown structure), including obtaining the budget costs of equipment and materials and advising on current pricing levels. Use all best efforts to achieve economies in time, cost and design.

4.2 Evaluate methods of cost effective working in conjunction with the Employer's Quantity Surveyor.

4.3 Check that tenders comply with the applicable cost plan for each element and for the cost plan as a whole in conjunction with the Employer's Quantity Surveyor.

4.4 Identify areas of potential increases or savings in the Project cost plan and recommend action to the Project Team. Use all best efforts to achieve economies in the time and cost to the extent that such economies are consistent with the Employer's overall objectives.

4.5 Assist the Employer's Quantity Surveyor in cost modelling and planning throughout the packaging and design development stages.

4.6 Participate in any benchmarking, risk management and/or value engineering processes and CDM risk assessment workshops required by the Employer.

4.7 Prepare monthly financial reports in formats and frequencies to be agreed by the Employer on actual and projected costs for the Project.

4.8 In collaboration with the Employer's Quantity Surveyor, develop a life cycle costing analysis in connection with the BREEAM accreditation process.

4.9 Work with the Quantity Surveyor (and, if the Employer so requires, the Employer) on an open book basis to arrive at a series of defined provisional sums for the Works.

4.10 Undertake value engineering studies in conjunction with the Project Team in identified work packages to achieve value for money.

4.11 Demonstrate to the Employer's satisfaction the Employer is obtaining the most competitive price.

5 **Procurement**

5.1 Advise the Employer and Project Team for the need, if any, of further surveys required for the purposes of informing the design and the works.

5.2 Identify suitable subcontractors/suppliers to tender and undertake the identified subcontractor/suppliers works packages.

5.3 Undertake all necessary subcontractors/suppliers prequalification to ensure suitability and effective market testing. Include the Project Team recommendations for inclusion on the subcontractor/supplier tender list.

- 5.4 Work in conjunction with the Project Team in the production of subcontractor/supplier works package tender documentation.
- 5.5 Undertake financial and other necessary references on the suggested list of subcontractors/suppliers tendering for the specified works packages.
- 5.6 Prepare a specific statement of the content of each package, its inter-relationship with other packages and the responsibilities at interfaces between packages.
- 5.7 Develop and agree with the Employer and its advisors the form of subcontract supply contract and associated tender documents ensuring that such documents are fully compatible with the documents intended to comprise the Building Contract.
- 5.8 Arrange pre-tender interviews as required; advise on the necessity for performance bonds and/or parent company guarantees.
- 5.9 Receive drawings, specifications and pricing schedules prepared by the Project Team; check and take responsibility for the completeness and adequacy of the same for the purpose of seeking subcontract/supplier tenders capable of being priced with sufficient detail; prepare all other tender documents and arrange the printing and collation of the tender documents including delivery/collection.
- 5.10 Enable and allow, in good time, the Employer and its advisers to review and monitor all tender and enquiry materials sent to prospective subcontractors/suppliers in connection with the tendering of subcontract/supplier packages.
- 5.11 Provide reasonable prior notice to allow the Project Team to be party to all mid-tender meetings and to enable and allow the Project Team to review all correspondence and other communications involving subcontractors/suppliers.
- 5.12 Provide reasonable prior notice, to allow the Project Team to be present at the opening of all tenders submitted as part of the tendering process and at any meeting(s) held for the evaluation of such tenders or other information submitted by the tenderer or prospective tenderer. Enable and allow the Employer and any person(s) nominated by the Employer to attend and observe the same.
- 5.13 Make available to the Project Team on an "open book" good faith basis such information concerning the pricing and procurement of subcontracts and supply agreements as the Employer may request.
- 5.14 Bring to the attention of and discuss with the Project Team any concerns identified by the Project Team relating to pricing, tender or contractor performance information and pay due regard to any representations thereon made by or on behalf of the Employer.
- 5.15 Evaluate tenders from subcontractors/suppliers and in conjunction with the Quantity Surveyor (and, if the Employer so requires, with the Employer) negotiate terms as required and agreed with the Employer and produce a tender placing report and make recommendations to the Employer.
- 5.16 Make recommendations in conjunction with the Employer, PM and QS based on the results of tender exercises undertaken for the subcontractor/supplier work package.
- 5.17 Keep the Employer fully informed as to the progress of the tender process and provide to the Employer such information as the Employer requests including notes of pre-tender

interviews, notes of any mid-tender interviews and any tender reports, including supporting documentation and analyses and copies of recommendations in respect of selection.

- 5.18 Work together with the Quantity Surveyor and the Employer in working up and agreeing the lump sum contract sum elements and the cost plus pricing, target cost mechanism, related key performance indicators and disallowed costs.
- 5.19 Confirm that all necessary information has been received from the Project Team to identify and agree on an open book basis the contract sum for the purposes of the Building Contract.

6 **Communication**

- 6.1 [Sign up to and use [Aconex²] to establish and implement a comprehensive system for co-ordination of information and document control. Licences and training will be provided by the Employer free of charge to the Contractor to the extent reasonably required for the Project.]
- 6.2 Establish and implement in conjunction with the Quantity Surveyor a change management process to ensure that all changes, omissions and additions to the cost plan are advised to the Employer and its advisors before they are implemented as part of the design for the works.
- 6.3 Assist the Employer in procuring all necessary consents for the Works/Project.
- 6.4 The Contractor shall recognise and implement at all times the intent of the Employer's health and safety policy for the Project.

7 **Building Contract**

Provide sufficient resources to expedite the agreement of the terms and conditions of the documentation, in accordance with the Programme, drawings and other documents that will comprise the Building Contract.

² Aconex is a cloud based software management system for construction projects.

Appendix 3

Pre-Construction Fee and Fee Milestones

The Pre-Construction Fee means the sum of [] pounds (£[]) exclusive of VAT, payable as follows:

Ref	Milestone	Fee amount
1		
2		
3		
4		
5		

EXECUTED and **DELIVERED** as a deed by both the Employer and the Contractor on the date which first above appears:

[INSERT THE APPROPRIATE EXECUTION AS DEED PROVISIONS FROM BELOW]

THE COMMON SEAL of [insert company name] was hereunto affixed in the presence of:) *[Common seal of company]*

Director

Director/Secretary

OR

EXECUTED as a **DEED** by [insert company name] acting by [insert name of director], a director and [insert name of director or secretary], a director *OR* its secretary)

Director

Director/Secretary

OR

EXECUTED as a **DEED** by [insert company name] acting by [insert name of director], a director)

in the presence of:)

Director

witness signature:

name:

address:

occupation:

OR

SIGNED as a **DEED** by [insert name of partner])
and [insert name of partner] for and on behalf of)
[insert name of partnership] under a power of)
attorney dated [insert date] in the presence of:)

[Signature of partner]

[Signature of partner]

witness signature:

name:

address:

occupation:

OR

EXECUTED as a **DEED** by affixing THE) *[Common seal of LLP]*
COMMON SEAL of [insert name of LLP])

in the presence of:)

Member

Member

OR

SIGNED as a **DEED** by [insert name of LLP])
acting by [insert name of member], member and)
[insert name of member], member:)

Member

Member

OR

Signed as a DEED by [insert name of attorney])
as attorney for [insert name of contracting entity])
under a power of attorney dated [insert date] in)
the presence of:)

[Signature of attorney]

in the presence of:)

witness signature:

name:

address:

occupation:

OR

**Signed as a DEED by [insert name of
contracting entity] acting by its attorney [insert
name of attorney] under a power of attorney)
dated [insert date] in the presence of:)**

*[Attorney signs in the name of the principal and
adds "by its attorney [insert name of attorney]
acting by" and then signs in the attorney's own
name]*

witness signature:

name:

address:

occupation:

OR

SIGNED as a **DEED** by [insert name of attorney])
acting by [insert name of director], a director and)
[insert name of director or secretary], [a)
director][the secretary] as attorney for [insert)
name of contracting entity] under a power of)
attorney dated [insert date]:)

Director

Director/Secretary

OR

SIGNED as a **DEED** by [insert name of attorney])
acting by [insert name of director], a director, as)
attorney for [insert name of contracting entity])
under a power of attorney dated [insert date] in)
the presence of:)

Director

witness signature:

name:

address:

occupation:

OR

Executed as a **DEED** by affixing the common)
seal of **[insert name of attorney]** as attorney for)
[insert name of contracting entity] under a)
power of attorney dated **[insert date]** in the)
presence of:)

[Common seal of attorney]

Director

Director/Secretary