

MODEL FORM OF CONTRACT 1
RELATING TO PROFESSIONAL SERVICES

SCHEDULE 2A

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SPECIAL TERMS

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|---|--|
| 1 | The Parent Company Guarantee at 53 and 2-6 does not apply to this contract. |
| 2 | The reinstatement cost assessments are valid for 12 months at which time they will require review by the CLIENT for potential alteration, adjustment or uplift in accordance normal procedures for assessments of this kind. |
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CONTRACT SCHEDULES

Schedule

- | | |
|------|---|
| 2-1 | Interpretations |
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THIS CONTRACT is made the [30th] day of [April] 2009-2010

BETWEEN

- (1) ***The Mayor and Burgessess of the London Borough of Islington of 2nd Floor, 7 Newington Barrow way, Finsbury Park, London N7 7EP (the "CLIENT"); and***
- (2) ***Drivers Jonas LLP (Registered Number OC336200) whose registered address is at Capital House, 85 King William Street, London EC4N 7BL (the "SERVICE PROVIDER").***

BACKGROUND

- (A) The Lords Commissioners of Her Majesty's Treasury as represented by OGCBuying.solutions being a separate Trading Fund of Her Majesty's Treasury without separate legal personality ("the Authority") selected service providers including the SERVICE PROVIDER, to provide *Estates Professional Services*;
- (B) The SERVICE PROVIDER undertook to provide the same on the terms set out in a framework agreement number RM397/C dated 14 September 2008 (the Framework Agreement);
- (C) The Authority established a set of framework agreements, including the Framework Agreement, in consultation with and for the benefit of public sector bodies. The Authority has overall responsibility for management of those framework agreements;
- (D) The Authority and the SERVICE PROVIDER agree that public sector bodies within the UK may enter into Contracts under the Framework Agreement;
- (E) The CLIENT is granted rights by the Authority in accordance with the Contracts (Rights of Third Parties) Act 1999 to enter into a Contract under the Framework Agreement pursuant to an Order served by the CLIENT on the SERVICE PROVIDER;
- (F) The CLIENT served an Order for services on the SERVICE PROVIDER on 25 November 2009 and
- (G) The SERVICE PROVIDER confirmed its agreement to the terms of the Order and its acceptance of the Order and hereby duly executes this Contract.

IT IS AGREED AS FOLLOWS:

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DEFINITIONS, DOCUMENTS AND REPRESENTATIVES

1. Definitions and Interpretation

1.1 As used in this Contract:

1.1.1. the terms and expressions set out in Schedule 2-1 shall have the meanings set out therein;

1.1.2. the masculine includes the feminine and the neuter;

1.1.3. the singular includes the plural and vice versa; and

1.1.4. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".

1.2. A reference to any statute, enactment, order, regulations or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.3. A reference to any document other than as specified in Clause 1.2 shall be construed as a reference to the document as at the date of execution of this Contract.

1.4. Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

1.5. References to "Clauses" and "Schedules" are, unless otherwise provided, references to the Clauses of and Schedules to this Contract.

1.6. Terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in Schedule 2-1 shall be interpreted in accordance with the common interpretation within the legal services market where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.

1.7. To the extent that this Contract is expressed to confer rights or benefits on a party who is not a party to this Contract, that party shall by virtue of the Contracts (Rights of Third Parties) Act 1999, be entitled to enforce those rights as if it was a party to this Contract. For the avoidance of doubt the consent of any person other than the CLIENT (or the SERVICE PROVIDER, as the case may be) is not required to vary or terminate this Contract.

1.8. Except as provided in Clause 1.7 a person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This Clause 1.8 does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

1.9. This Contract shall be governed by and construed in accordance with the law of England.

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- 1.10 Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.
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2. Inconsistency and Entire Agreement

- 2.1 The documents forming this Contract shall be read and taken together. However, in the event and to the extent only of any conflict or inconsistency in the provisions of the Clauses of this Contract and the provisions of the Schedules, the following order of precedence shall prevail:
- 2.1.1 the Special Terms
 - 2.1.2 the Conditions of Contract and Schedule 2-1
 - 2.1.3 Schedule 2-2 (CLIENT'S Requirements)
 - 2.1.4 Schedule 2-3 (The Ordered Services and Fee Schedule)
 - 2.1.5 other Schedules
- 2.2 This Contract constitutes the entire agreement and understanding between the parties in relation to the Contract and supersedes all prior representations, arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating to the Ordered Services.
- 2.3 Each party irrevocably and unconditionally waives any rights it may have to claim damages and/or to rescind the Contract for any misrepresentation or for breach of any warranty not contained in the Contract unless such misrepresentation or warranty was made fraudulently.
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3. Responsibility for documents

- 3.1 The SERVICE PROVIDER shall ensure that all documents which are prepared and submitted by the SERVICE PROVIDER, its Sub-Contractors, staff and agents including any feasibility study, design or reports, drawings and any other documents supplied in connection therewith but excluding drafts of such documents, shall have been prepared to the Contract Standard. It is hereby acknowledged and agreed that the CLIENT shall be entitled to rely on all documents submitted by the SERVICE PROVIDER, its Sub-Contractors, staff and agents for the use of such documents in connection with the Project to which they relate.
- 3.2 The CLIENT may examine schedules, calculations, surveys, reports, specifications, drawings or other documents and/or information which are in the possession of the SERVICE PROVIDER and which concern this Contract at any time, but any such examination by the CLIENT will not relieve the SERVICE PROVIDER of any responsibility for the Ordered Services to be provided under this Contract. If the SERVICE PROVIDER finds any ambiguity in or conflict between any document forming part of this Contract, or in any drawings, information or documents issued by the CLIENT in connection with
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this Contract, then the SERVICE PROVIDER shall notify the CLIENT forthwith, who shall issue such instructions as the CLIENT considers appropriate.

4. CLIENT'S Representative

The CLIENT'S Representative shall act on behalf of the CLIENT in issuing instructions to the SERVICE PROVIDER and for receiving reports, requests or statements or in dealing with any other matter concerning the Contract.

5. Persons dealing with this Contract

The SERVICE PROVIDER shall appoint a partner or director of the SERVICE PROVIDER, firm or company, who shall be the Contract Manager and shall be duly authorised to receive instructions and shall be the point of contact between the CLIENT and the SERVICE PROVIDER throughout the course of this Contract and, subject to reasonable notice, will, on behalf of the SERVICE PROVIDER, attend all meetings with the CLIENT regarding matters relevant to this Contract and will approve and sign all reports submitted to the CLIENT by the SERVICE PROVIDER. No change in this named individual shall be made by the SERVICE PROVIDER without receiving the prior written approval of the CLIENT.

6. SERVICE PROVIDER'S staff

- 6.1 The SERVICE PROVIDER shall employ appropriately qualified, competent, suitable and experienced staff for the proper provision of the Ordered Services to the Contract Standard.
- 6.2 The SERVICE PROVIDER shall use reasonable endeavours to maintain continuity of the SERVICE PROVIDER'S staff.
- 6.3 The names, experience and professional qualifications of those members of the SERVICE PROVIDER'S staff who will be involved in providing the Ordered Services shall be notified to and approved by the CLIENT prior to such persons commencing their duties. Such notification shall indicate the services they are to perform. No change to those members of the SERVICE PROVIDER'S staff shall be made without receiving the prior approval of the CLIENT. The CLIENT may (but not unreasonably or vexatiously) require the SERVICE PROVIDER to cease to use the services of any member of the SERVICE PROVIDER'S staff for the provision of the Ordered Services. Subject to the approval of the CLIENT, the SERVICE PROVIDER shall replace such persons as the need arises and at the SERVICE PROVIDER'S own expense.
- 6.4 Where the SERVICE PROVIDER is responsible for the appointment of site inspection staff, then the SERVICE PROVIDER shall take full responsibility for the supervision of such staff, for the scope of their duties, payment for their services and for the sufficiency of their performance.

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7. Environmental Requirements

7.1 The SERVICE PROVIDER shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Ordered Services. Without prejudice to the generality of the foregoing, the SERVICE PROVIDER shall promptly provide all such information regarding the environmental impact of the Ordered Services as may reasonably be requested by the CLIENT.

7.2 The SERVICE PROVIDER shall meet all reasonable requests by the CLIENT for information evidencing compliance with the provision of this Clause 7 by the SERVICE PROVIDER.

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GENERAL OBLIGATIONS

8. Ordered Services

The SERVICE PROVIDER shall perform and carry out the Ordered Services from the Service Commencement Date and shall at all times perform the Ordered Services to the Contract Standard.

9. Professional responsibility

9.1 The SERVICE PROVIDER shall perform the Ordered Services to the following standards (the Contract Standard) which means the performance of the Ordered Services:-

- 9.1.1 using all reasonable skill care and diligence as would a competent and appropriately qualified consultant or other appropriate professional carrying out services of a similar specification, nature, scope, size and complexity as the Ordered Services;
- 9.1.2 in accordance with all relevant provisions of the Contract;
- 9.1.3 in accordance with the SERVICE PROVIDER'S Programme, as applicable;
- 9.1.4 in accordance with all Statutory Requirements;
- 9.1.5 in accordance with all codes of practice and guidance issued by the relevant professional bodies;
- 9.1.6 in accordance with the reasonable instructions of the CLIENT'S Representative;
- 9.1.7 in accordance with the SERVICE PROVIDER'S Method Statement; and
- 9.1.8 in coordination and liaison with any other contractor or consultant appointed by the CLIENT.

Duty of Care – Design

- 9.2 In so far as the SERVICE PROVIDER is responsible for design, the SERVICE PROVIDER:
 - 9.2.1 warrants and undertakes that it will use all due skill, care and diligence in the design of the Project that would reasonably be expected of a competent professional designer experienced in carrying out design activities of a similar nature, scope and complexity to those comprised in the Project; and
 - 9.2.2 shall be responsible for and liable for the design of the Project.
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¹10. Duration

The Contract shall commence on the Service Commencement Date and shall remain in full force and effect for the Contract Period unless the Contract is terminated sooner in accordance with these Conditions or in accordance with Common Law or statute.

11. Responsibility for work by others

11.1 Where the SERVICE PROVIDER is required to incorporate work provided by others, the SERVICE PROVIDER'S responsibility in respect of such work shall be limited to the review thereof to the extent required to ensure the satisfactory performance of the Ordered Services.

11.2 Notwithstanding Clause 11.1, if the SERVICE PROVIDER shall find any discrepancy in or divergence between any documents and/or information, which shall include work provided by others, the SERVICE PROVIDER shall immediately give to the CLIENT written notice specifying the discrepancy or divergence.

11.3 The SERVICE PROVIDER shall inform the CLIENT'S Representative upon it becoming apparent to him

11.3.1 that there is any inconsistency or incompatibility between any of the CLIENT'S requirements;

11.3.2 if there is any need to vary the CLIENT'S requirements or the Specification;

the SERVICE PROVIDER shall obtain any instruction to so vary in writing from the CLIENT'S Representative.

12. Co-ordination of SERVICE PROVIDER'S Ordered Services

12.1 The SERVICE PROVIDER shall:

12.1.1 take account of the role of any other contractors who may be appointed by the CLIENT; and

12.1.2 co-ordinate and integrate the Ordered Services with the services provided by other contractors to the extent necessary to ensure the satisfactory completion of the Ordered Services; and,

12.1.3 where Schedule 2-2 specifies that the SERVICE PROVIDER is appointed as Lead Design Consultant, be responsible for the co-ordination and integration of the services being provided by the other contractors; and

¹ The term of the call-off Contract shall not exceed x years in length. See the Ordering procedures.

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12.1.4 ~~as necessary, regularly liaise with and consult with all other contractors appointed by the CLIENT; and~~

12.1.5 keep the relevant contractors fully informed of all matters related to the Ordered Services which are relevant to the services being provided by those relevant contractors.

13. SERVICE PROVIDER'S obligation to ensure

13.1 Where in this Contract the SERVICE PROVIDER is under an obligation to ensure that events occur which are under the direct control of others and, due to others, the SERVICE PROVIDER is unable to comply with that obligation, then the SERVICE PROVIDER will be liable to the CLIENT only in the event that the SERVICE PROVIDER has failed to use reasonable endeavours to ensure the occurrence of the event.

13.2 The SERVICE PROVIDER does not warrant the work of others, save that nothing in this Clause 13 shall affect the SERVICE PROVIDER'S responsibility for Sub-Contractors as stated in Clause 49 (Sub-Contractors). Notwithstanding this, the SERVICE PROVIDER will be required to inform the CLIENT in writing of the action taken to resolve the matter and recommend to the CLIENT a further course of action to ensure the occurrence of the event.

14. Compliance with Statutory Requirements

14.1 In providing any Ordered Services or in fulfilling any obligation under the terms of this Contract, the SERVICE PROVIDER shall ensure compliance with all Statutory Requirements including without limitation the Health and Safety at Work Act 1974, the Freedom of Information Act 2000, and the Construction (Design and Management) Regulations 2007 (as applicable). The CLIENT shall pay any statutory charges in respect of necessary applications for planning permission and/or building regulation approval.

14.2 The SERVICE PROVIDER shall bear the cost of ensuring that the Ordered Services shall comply with all Statutory Requirements and any amendments thereto except where any such amendment could not reasonably have been foreseen by the SERVICE PROVIDER at the date hereof.

14.3 Where such reasonably unforeseeable amendments are necessary, the CLIENT and the SERVICE PROVIDER shall use all reasonable endeavours to agree upon reasonable adjustments to the Fee Schedule as may be necessary to compensate the SERVICE PROVIDER for such additional costs as are both reasonably and necessarily incurred by the SERVICE PROVIDER in accommodating such amendments.

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15. Freedom of Information

- 15.1 The SERVICE PROVIDER acknowledges that the CLIENT is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and cooperate with the CLIENT to enable the CLIENT to comply with its Information disclosure obligations.
- 15.2 The SERVICE PROVIDER shall, and shall procure that its Sub-Contractors shall:
- 15.2.1 transfer to the CLIENT all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 15.2.2 provide the CLIENT with a copy of all Information in its possession, or power in the form that the CLIENT requires within five (5) Working Days (or such other period as the CLIENT may specify) of the CLIENT'S request; and
 - 15.2.3 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.
- 15.3 The CLIENT shall be 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.
- 15.4 In no event shall the SERVICE PROVIDER respond directly to a Request for Information unless expressly authorised to do so by the CLIENT.
- 15.5 The SERVICE PROVIDER acknowledges that the CLIENT may, acting in accordance with the Department of Constitutional Affairs' 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 SERVICE PROVIDER, or despite having taken the SERVICE PROVIDER'S views into account.
- 15.6 The SERVICE PROVIDER shall ensure that all Information is retained for disclosure and shall permit the CLIENT to inspect such records as requested from time to time.

16. Indemnity and Insurance

- 16.1 The SERVICE PROVIDER shall indemnify the CLIENT fully against any loss and all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities arising from the performance or non-performance of the Ordered Services by the SERVICE PROVIDER or any breach by the SERVICE PROVIDER of this Contract. This Clause 16(1) shall not apply to the extent that the Contractor is able to demonstrate that any such loss, claims, proceedings, actions, damages, legal costs, expenses or other

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~~liabilities, were caused by the negligence or default of the CLIENT, the CLIENT'S Representative or Staff.~~

- 16.2 The SERVICE PROVIDER shall by such existing or new policies as he sees fit effect and maintain from the time he commences work on any Site or any part of a Site or from the time he commences the Ordered Services (if earlier) to the expiration of the term, employer's liability insurance in respect of persons in his employment, appropriate to the nature of the Ordered Services. Such insurance shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 (or, if the Ordered Services are performed in Northern Ireland) Order 1972 and any subordinate legislation made thereunder, and shall be for the minimum amount of £10,000,000 (or such other minimum amount as may be stated in the Order) for any one occurrence or series of occurrences arising out of one event.
- 16.3 The Service Provide shall by such existing or new policies as he sees fit effect and maintain for the same period public liability insurance against legal liability for death or personal injury to any persons and loss or damage to property arising from or in connection with the Ordered Services, which is not covered by employer's liability insurance referred to in Clause 16(2) for the minimum amount stated in the Order, such public liability insurance to include a provision for indemnity to the CLIENT in respect of the SERVICE PROVIDER'S liability under Clause 16(1) provided that the insurance which the Contractor is required to effect and maintain under this paragraph need not cover loss or damage caused by any Accepted Risk.
- 16.4 The CLIENT shall have the right to receive, on request, a copy of insurances required to be effected or maintained by the SERVICE PROVIDER under this Clause. The Contractor shall within 21 Days of the Service Commencement Date, and also within 21 Days of any subsequent renewal or expiry date of relevant insurances, send to the CLIENT a certificate from his insurer or broker attesting that insurance has been effected in accordance with the Contract.
- 16.5 All insurances required to be effected or maintained by the insuring party under this Clause shall be with reputable insurers, to whom the other party has no reasonable objection, lawfully carrying on such insurance business in the United Kingdom, and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions shall not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.
- 16.6 All insurances required to be effected or maintained under Clause 16.3 shall be in the joint names of the CLIENT, and such other person as the CLIENT may reasonably require (including, without limitation, the CLIENT'S Consultants), the SERVICE PROVIDER and all Sub-Contractors.
- 16.7 If, without the approval of the CLIENT, the SERVICE PROVIDER fails to effect and maintain insurance he is required to effect and maintain under this Clause as described, or obtains a different policy of insurance, or fails to provide a copy of insurances or certificates in accordance with this Clause the

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~~CLIENT may, but is not required to, effect and maintain appropriate insurance cover and deduct the cost of doing so from any payment due to the SERVICE PROVIDER under the Contract, or recover such sum from the SERVICE PROVIDER as a debt.~~

- 16.8 For the avoidance of doubt, it is agreed that nothing in this Clause shall relieve the SERVICE PROVIDER from any of his obligations and liabilities under the Contract.

Professional Indemnity Insurance

- 16.9 Unless stated in the Order or agreed otherwise, the SERVICE PROVIDER shall maintain professional indemnity insurance 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 (on the basis and in an amount not less than that required by the Order), provided always, that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the SERVICE PROVIDER must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989. The SERVICE PROVIDER shall not, without the prior approval in writing of the CLIENT, settle or compromise with the insurers any claim which the SERVICE PROVIDER may have against the insurers and which relates to a claim by the CLIENT against the SERVICE PROVIDER, or by any act or omission lose or prejudice the SERVICE PROVIDER'S right to make or proceed with such a claim against the insurers.
- 16.10 The SERVICE PROVIDER shall immediately inform the CLIENT if such insurance ceases to be available at rates that the SERVICE PROVIDER considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the SERVICE PROVIDER'S own claims record or other acts, omissions, matters or things particular to the SERVICE PROVIDER'S shall be deemed to be within commercially reasonable rates.
- 16.11 The SERVICE PROVIDER shall fully co-operate with any measures reasonably required by the CLIENT including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the CLIENT undertakes in writing to reimburse the SERVICE PROVIDER in respect of the net cost of such insurance to the SERVICE PROVIDER above commercially reasonable rates or, if the CLIENT effects such insurance at rates at or above commercially reasonable rates, reimbursing the CLIENT in respect of what the net cost of such insurance to the CLIENT would have been at commercially reasonable rates.
- 16.12 As and when reasonably required to do so by the CLIENT, the SERVICE PROVIDER shall produce for inspection documentary evidence (including, if required by the CLIENT, the originals of the relevant insurance document) that his professional indemnity insurance is being maintained.

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~~16.13~~ The above obligation in respect of professional indemnity insurance shall continue notwithstanding determination of the Contractor's employment under the Contract for any reason whatsoever, including (without limitation) breach by the CLIENT.

17. Access to property

~~17.1~~ If, in the course of undertaking the Ordered Services, the SERVICE PROVIDER is required to enter any establishment, the SERVICE PROVIDER shall comply with the requirements of the CLIENT, and the occupier's rules and regulations regarding admission and shall only visit the establishment at times suitable to the CLIENT or the occupier.

17.2 The SERVICE PROVIDER shall comply with any changes to those requirements, rules or regulations, notified to him as a CLIENT'S instruction for a change in the Ordered Services of the SERVICE PROVIDER in accordance with Clause 43 (Payment for changed Ordered Services and variations) during the provision of the Ordered Services.

17.3 The names and addresses of all the SERVICE PROVIDER'S or Sub-Contractors' staff to be employed in connection with this Contract and requiring access to property shall be submitted to the CLIENT or the occupier concerned to enable the necessary clearances to be obtained.

18. Equal Opportunities & Race Relations

The SERVICE PROVIDER shall comply with all applicable Equalities Legislation in its performance of the Contract and shall take all reasonable steps to ensure that all servants, employees, agents and sub-contractors of the SERVICE PROVIDER engaged in the provision of the Ordered Services do not unlawfully discriminate within the meaning and scope of the Equalities Legislation. This Clause 18 shall be without prejudice to the SERVICE PROVIDER'S general obligation to comply with Statutory Requirements.

19. Change in SERVICE PROVIDER'S business

The SERVICE PROVIDER shall inform the CLIENT in writing of any contemplated change of legal status or reorganisation or restructuring of the SERVICE PROVIDER'S business or practice not less than one month prior to such event taking place. In the event of such a change, unless the CLIENT otherwise agrees in writing, the SERVICE PROVIDER and its constituent members shall have the same liability as if no such change of legal status or reorganisation or restructuring of the SERVICE PROVIDER'S business or practice had taken place.

20. Conflicts of Interest

20.1 The SERVICE PROVIDER shall disclose to the CLIENT'S Representative any actual or potential conflict of interest arising from the SERVICE

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~~PROVIDER'S provision of the Ordered Services as soon as is reasonably practical after becoming aware that such actual or potential conflict exists.~~

- 20.2 Should the parties be unable to either remove the conflict of interest and/or to alleviate its effect the CLIENT shall have the right to terminate this Contract in accordance with Clause 46.
- 20.3 The SERVICE PROVIDER shall immediately notify the CLIENT's Representative of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the SERVICE PROVIDER (including without limitation its reputation and standing) and/or the CLIENT of which it is aware or anticipates may justify the CLIENT taking action to protect its interests.

21. Copyright

- 21.1 The copyright and all other Intellectual Property Rights in all designs, drawings, specifications, photographs, plans, surveys, reports, and all other documents and/or information (Drawings), prepared by or on behalf of the SERVICE PROVIDER in relation to the Contract, and the work executed from them, shall be the property of and vested in the CLIENT, which reserves the right to reproduce such Drawings, or to execute, or to have executed, work or services in accordance therewith as may be required by the CLIENT.
- 21.2 In the event that the SERVICE PROVIDER does not own the copyright or any Intellectual Property Right in any Drawing the SERVICE PROVIDER shall use all reasonable endeavours to procure the right to grant such rights to the CLIENT to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event the SERVICE PROVIDER is unable to procure the right to grant to the CLIENT in accordance with the foregoing it shall procure that the third party grants a direct licence to the CLIENT on industry acceptable terms.
- 21.3 The SERVICE PROVIDER waives any moral right to be identified as author of the Drawings in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Drawings subjected to derogatory treatment in accordance with section 8 of that Act as against the CLIENT or any licensee or assignee of the CLIENT.
- 21.4 In the event that any act unauthorised by the CLIENT infringes a moral right of the SERVICE PROVIDER in relation to the Drawings the SERVICE PROVIDER hereby undertakes, if the CLIENT so requests, to institute proceedings for infringement of those moral rights and the CLIENT shall bear the cost of such proceedings.
- 21.5 The SERVICE PROVIDER warrants to the CLIENT that he has not granted and shall not (unless authorised by the CLIENT) grant any rights to any third party to use or otherwise exploit the Drawings.
- 21.6 The SERVICE PROVIDER warrants that the use of the Drawings for the purposes of this Contract will not infringe the rights of any third party.
- 21.7 For no additional fee the SERVICE PROVIDER shall supply copies of the Drawings to the CLIENT; and to the CLIENT'S other consultants as necessary to enable them to discharge their respective functions in relation to this Contract or related works.

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- 21.8 After the termination or conclusion of the SERVICE PROVIDER'S employment hereunder, the SERVICE PROVIDER shall supply the CLIENT with copies and/or computer discs of such of the Drawings as the CLIENT may from time to time request, and the CLIENT shall pay the SERVICE PROVIDER'S reasonable costs for producing such copies or discs.
- 21.9 Priced documents may be used by the CLIENT for the purposes of indexing and analysis without prior approval by the SERVICE PROVIDER, and the SERVICE PROVIDER shall ensure that a similar clause is inserted in all documents to be priced by contractors, or other contractors or sub-contractors.

22. SERVICE PROVIDER'S records

- 22.1 The SERVICE PROVIDER and any Sub-Contractor shall retain full and proper records of all documents and/or information relating to this Contract including but not limited to any data or notes whether held on paper, electronically or by any other means for a period of 12 (twelve) years (or, if longer, for the period during which the SERVICE PROVIDER is required to maintain insurance pursuant to Clause 16 (Insurance)) following completion of this Contract, and the CLIENT shall at any time have the right to audit any accounts and examine any documents and/or information so retained by the SERVICE PROVIDER.
- 22.2 The SERVICE PROVIDER, and any Sub-Contractor appointed by the SERVICE PROVIDER, shall maintain detailed records of time spent on the Ordered Services performed on a time basis and shall, when requested, make those records available to the CLIENT.
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SECURITY

23. Official secrets and confidentiality

Official Secrets

- 23.1 The SERVICE PROVIDER shall take all reasonable steps to ensure that all persons employed by the SERVICE PROVIDER or Sub-Contractors in connection with the Ordered Services and this Contract are aware of the Official Secrets Act 1989 and, where appropriate, with the provisions of the Atomic Energy Act 1946 and that these Acts apply to them during the execution of this Contract and after the expiry or termination of this Contract.

Confidentiality

- 23.2 The SERVICE PROVIDER shall ensure that neither he nor his employees without the written consent of the CLIENT'S Representative make use of, for their own purposes, or disclose to any other person, other than in accordance with the provision of the Ordered Services (except as may be required by law), all or any documents or information provided to the SERVICE PROVIDER by the CLIENT or the CLIENT'S Representative pursuant to this Contract, or which shall come into the possession or knowledge of the SERVICE PROVIDER or any of his employees by virtue of this Contract. All of the above information will be confidential to the CLIENT, and the SERVICE PROVIDER and his employees will be bound by this Clause during the period of this Contract and at all times thereafter.
- 23.3 The SERVICE PROVIDER will indemnify and keep indemnified the CLIENT against all actions, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the SERVICE PROVIDER of this Clause. Such indemnity will be without prejudice to any other rights the CLIENT may have.
- 23.4 The SERVICE PROVIDER shall maintain as confidential at all times and shall not divulge by any means of communication (whether oral, written, digital or by some other means) all information supplied by the CLIENT or produced for the CLIENT by the SERVICE PROVIDER in accordance with the Contract.
- 23.5 The SERVICE PROVIDER shall not without the consent of the CLIENT publish, discuss or issue alone or in conjunction with any other person any articles, press releases, or other information relating to the provision of the Ordered Services.
- 23.6 The provisions of this Clause shall survive the expiry of this Contract indefinitely.
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24 Corrupt Gifts and Payment of Commission

- 24.1 The SERVICE PROVIDER shall not:
- 24.1.1 offer to give or agree to give any person in Her Majesty's Service any gift or consideration of any kind as an inducement or reward for doing, forbearing to do, or for having done or forborne to do any act in relation to the obtaining or execution of this Contract or any other

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contract for Her Majesty's Service or for showing favour or disfavour to any person in relation to this or any other contract for Her Majesty's Services;

24.1.2 enter into this Contract or any other contract with Her Majesty's Service in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the CLIENT.

24.2 Any breach of Clause 24.1.1 by the SERVICE PROVIDER or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the SERVICE PROVIDER) or the commission of any offence by the SERVICE PROVIDER or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts 1889 to 1916, in relation to this Contract or any other contract with Her Majesty's Service shall entitle the CLIENT to terminate this Contract and recover from the SERVICE PROVIDER the amount of any loss resulting from such termination and/or to recover from the SERVICE PROVIDER the amount or value of any such gift, consideration or commission.

24.3 Any dispute, difference or question arising in respect of the interpretation of this Clause 24, the right of the CLIENT to terminate this Contract or the amount or value of any such gift, consideration or commission shall be decided by the CLIENT whose decision shall be final and conclusive enable them to discharge their respective functions in relation to this Contract.

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CONTROLS AND PROGRAMMING

25. Budget Requirements

The SERVICE PROVIDER shall have due regard in the performance of the Ordered Services to the CLIENT'S budget requirements for the Project. The SERVICE PROVIDER shall take no action which may result in that limit being exceeded without first obtaining the CLIENT'S written approval for that expenditure. Further if the SERVICE PROVIDER becomes aware of any circumstances which may cause those budget requirements to be exceeded, the SERVICE PROVIDER shall inform the CLIENT without delay.

26. Disputes between contractors

If any difference arises between the contractor and any other consultant or contractor of the CLIENT, the SERVICE PROVIDER shall use its best endeavours to achieve a reconciliation. If the reconciliation is not achieved and is not likely to be achieved then before such difference becomes detrimental to the Project the SERVICE PROVIDER shall refer the matter or difference to the CLIENT for instructions.

27. Project variations

In the event that there is any proposed variation to the Project the SERVICE PROVIDER shall inform the CLIENT and provide details of the estimated cost and time effect of the proposed variation. No variation shall be introduced without obtaining the prior written consent of the CLIENT unless failure to give immediate authority for the variation could result in danger to life or where substantial additional expenditure could be avoided by taking such immediate action. In those circumstances, the SERVICE PROVIDER shall inform the CLIENT in writing immediately following the issue of the variation together with reasons for such urgency.

28. SERVICE PROVIDER not to commit the CLIENT

The SERVICE PROVIDER shall ensure that either in correspondence or by any other means, the SERVICE PROVIDER shall not commit the CLIENT to any cost or to any action whilst dealing with others on behalf of the CLIENT unless the CLIENT'S prior written approval to such commitment has been obtained.

29. SERVICE PROVIDER'S Programme

29.1 Unless agreed otherwise the SERVICE PROVIDER shall, within 21 (twenty-one) Days of the Service Commencement Date, prepare and submit to the

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CLIENT for approval a SERVICE PROVIDER'S Programme which shall include -

- 29.1.1 the order and timing of the operations the SERVICE PROVIDER plans to do in order to provide the Ordered Services in accordance with Clause 10 (Professional responsibility);
 - 29.1.2 the dates when the SERVICE PROVIDER plans to complete work needed to allow the CLIENT and all others involved to do their work; and
 - 29.1.3 the dates when information is required by the SERVICE PROVIDER from the CLIENT and all others involved.
- 29.2 The SERVICE PROVIDER shall ensure that the SERVICE PROVIDER'S Programme is fully coordinated with that of the CLIENT and all others involved.
- 29.3 The CLIENT may, at any time, instruct the SERVICE PROVIDER to change the SERVICE PROVIDER'S Programme for any reason.
- 29.4 Any approval referred to in Clause 29(1) shall not be construed as the CLIENT'S acceptance of the sufficiency or adequacy of the SERVICE PROVIDER'S Programme.
- 29.5 The CLIENT reserves the right to change any of the dates in the Programme from time to time by providing written notice of such changes to the SERVICE PROVIDER. If the SERVICE PROVIDER objects to any changes it shall promptly notify the CLIENT of its reasonable objections to such changes.
- 29.6 If at any time the SERVICE PROVIDER is delayed or becomes aware of any circumstance which may prevent him from meeting programme requirements he shall forthwith inform the CLIENT and propose any measures which may be practicable to recover the delay or to avoid or reduce the anticipated delay.
- 29.7 The SERVICE PROVIDER shall comply at his own cost with all reasonable instructions of the CLIENT given for the purpose of achieving budget or programme requirements or minimising or recovering any cost overrun or delay.

30. Presentations

When, in providing the Ordered Services, the SERVICE PROVIDER is required to report to the CLIENT giving recommendations, the SERVICE PROVIDER shall without additional charge and when specifically instructed to do so by the CLIENT, make a formal presentation to the CLIENT of matters relevant to those recommendations.

31. Tender Documents and Contracts

- 31.1 The SERVICE PROVIDER shall obtain the prior written instructions of the CLIENT regarding the CLIENT'S procedures for obtaining tenders, the forms of contract to be used or any specification requirements or other matters relevant to the type of work to be dealt with by the SERVICE PROVIDER.

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The SERVICE PROVIDER shall also have due regard to all Statutory Requirements when conducting a procurement exercise.

- 31.2 In the event that the SERVICE PROVIDER is to produce tender documents it shall prepare all tender documents carefully and professionally, submitting them to the CLIENT and any other advisers of the CLIENT as directed by the CLIENT prior to dispatch.
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**NOTICES, INSTRUCTIONS, ADDITIONAL SERVICES AND
PAYMENTS**

32. Notices

32.1 All communications between the CLIENT and the SERVICE PROVIDER required by or authorised under the Contract including any instruction, consent, approval or authorisation shall be made in a form that can be read, copied and recorded. Communications shall take effect when received in such a form at the address of the recipient stated in Schedule 2-4, or an address subsequently notified to the other party. Communications that are not made in such a form shall be of no effect unless and until confirmed by the sender or recipient in a form that can be read, copied and recorded. All notices shall be in writing and shall be deemed duly given or made:

32.1.1 2 (two) working days after being sent by prepaid special delivery post or;

32.1.2 when delivered by hand, and a signature acknowledging its receipt has been obtained or;

32.1.3 when received in the case of a facsimile provided the relevant answer back is obtained.

32.2 In each case the notice must:-

32.2.1 refer to the Contract;

32.2.2 be marked for the attention of the appropriate officer, person or department as notified to the other party in writing.

32.3 The notices shall be sent to the addresses of each party to the Contract specified at the beginning of the Contract or to such addresses as each party shall notify the other in writing within 5 (five) working days of any change in its address for service.

32.4 Any notice served on a non Working Day or after Working Hours shall be deemed to be served on the following Working Day.

32.5 For the avoidance of doubt, electronic mail shall not constitute a valid form of notice for the purpose of the Contract unless specifically agreed between the parties in writing for an express purpose set out in such agreement.

33. CLIENT'S instructions

The SERVICE PROVIDER shall comply with all instructions issued by the CLIENT in connection with this Contract, including the modification of, or alteration to, the Ordered Services or alteration to the scope or content of the Project. All instructions shall be in writing, except where the CLIENT considers that there is an emergency, in which case instructions may be given verbally. Verbal instructions shall be immediately effective in accordance with their terms, but shall be confirmed in writing by the CLIENT to the SERVICE PROVIDER within 4 (four) Working Days.

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34. Change to Ordered Services

The CLIENT may, at any time, instruct a change in the Ordered Services. Where the CLIENT requires a change in the Ordered Services, the SERVICE PROVIDER shall provide the CLIENT with an estimate of the additional or reduced fees which shall be calculated in accordance with Clause 43 (Payment for changed Ordered Services and variations).

35. Fees

- 35.1 Unless otherwise set out in the Order the SERVICE PROVIDER shall be entitled to submit invoices each month in respect of Ordered Services properly performed during the preceding month. The SERVICE PROVIDER shall ensure:
- 35.1.1 the fee reflects the Ordered Services properly performed in the preceding month; and
 - 35.1.2 the fee is calculated in accordance with the fees and/or percentage quoted against each stage, or proportion thereof as relevant, by the SERVICE PROVIDER in the Fee Schedule; and
 - 35.1.3 the invoice includes evidence of the relationship to the stage payments included in the Fee Schedule;
 - 35.1.4 the invoices states whether the invoice is interim or final in relation to that stage; and
 - 35.1.5 the invoice is accompanied by an updated Fee Schedule.
- 35.2 Prior to the submission of the SERVICE PROVIDER'S first invoice, the SERVICE PROVIDER shall submit to the CLIENT an estimate of the amount of fees likely to be claimed on a month by month basis covering the whole of the Ordered Services to be performed under this Contract up to a stated estimated completion date for the Ordered Services. Subsequently, an updated estimate shall accompany each further invoice submitted in accordance with Clause 35.1, irrespective of the basis of the fee. The SERVICE PROVIDER shall also submit such further information which the CLIENT may reasonably require in order to substantiate the amount claimed.
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36. Payment

- 36.1 The CLIENT shall pay the SERVICE PROVIDER for Ordered Services satisfactorily performed, such sum or sums to be calculated in accordance with this Contract.
- 36.2 Fee invoices shall be submitted in accordance with Clause 36 (1) above and the fee shall become due and final 30 days after receipt of a valid invoice by the CLIENT.
- 36.3 Not later than five days after the date on which a payment becomes due, or would have become due if the SERVICE PROVIDER had carried out his obligations under the contract, and no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts,

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~~the CLIENT shall give notice specifying the amount (if any) of the payment made or proposed to be made, and the basis on which that amount was calculated.~~

- 36.4 If the amount of any fees or disbursements becoming due hereunder is wrongfully withheld after the relevant final date for payment, such amount shall bear simple interest at the rate of 2% over Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged. The parties agree that this clause constitutes a substantial remedy for the purposes of the Late Payments of Commercial Debts Act 1998.

37. Notice of Intention to withhold

Not later than the date on which payment becomes due the CLIENT may give written notice to the SERVICE PROVIDER which shall specify any amount proposed to be withheld and/or deducted from the invoice, the ground or grounds for such withholding and/or deduction and the amount of the withholding and/or deduction attributable to each ground.

38. Right to suspend for non-payment

- 38.1 Without prejudice to any other right or remedy of the SERVICE PROVIDER, where a sum due under the Contract is not paid in full by the final date for payment as required by this Contract, and no effective notice to withhold payment has been given under Clause 37 (Withholding payment), and such failure continues for 7 days after the SERVICE PROVIDER has given to the CLIENT written notice of its intentions to suspend the performance of his obligations under the Contract and the ground or grounds on which it is intended to suspend performance, the SERVICE PROVIDER may then suspend such performance until payment in full occurs.
- 38.2 Any period during which performance is suspended in pursuance of the right conferred by this Clause shall be disregarded in computing, for the purposes of any contractual time limit, the time taken by the party exercising the right or by a third party to complete any work directly or indirectly affected by the exercise of the right. Where the contractual time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly.

39. Payment following termination and consequences of termination

- 39.1 In the event of the SERVICE PROVIDER'S Ordered Services being terminated in accordance with Clause 45 or in the event of the SERVICE PROVIDER'S employment being determined in accordance with Clause 46, the SERVICE PROVIDER shall only be entitled to fair and reasonable fees for partial Ordered Services satisfactorily performed together with any fair and reasonable expenses incurred in the provision of the Ordered Services; save that

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- 39.1.1 the total amount payable to the SERVICE PROVIDER under the terms of this Clause shall in no event exceed the amount which would have been payable to the SERVICE PROVIDER had he completed either the whole or, if applicable, a part of the SERVICE PROVIDER'S Ordered Services under the terms of this Contract; and
- 39.1.2 no expenses shall be reimbursed where the determination occurred as a consequence of any breach by the SERVICE PROVIDER of the Contract, or the grounds set out in Clause 46.2.1 – 46.2.5.
- 39.2 Following termination of the Ordered Services in accordance with this Contract, the SERVICE PROVIDER shall deliver to the CLIENT all correspondence, reports, drawings, documents or other records used by the SERVICE PROVIDER in connection with the Ordered Services and the CLIENT may make full use of such correspondence, reports, drawings, documents or other records without further obligation to the SERVICE PROVIDER and in accordance with Clause 21 (Copyright).
- 39.3 In the event of the Contract being determined as a consequence of any breach by the SERVICE PROVIDER of the Contract, or upon the grounds set out in Clauses 46.2.1 – 46.2.5, then the CLIENT will be entitled to engage another contractor to complete those Ordered Services which otherwise would have been performed by the SERVICE PROVIDER under the terms of this Contract and to recover from the SERVICE PROVIDER any losses or additional costs and expenses which are attributable to such determination and/or the engagement of another contractor. In the event of determination of the Contract for any reason, the SERVICE PROVIDER shall co-operate in the transfer of the Ordered Services in accordance with the CLIENT'S instructions.

40. Recovery of sums due

- 40.1 The CLIENT shall be permitted to deduct and withhold from any sum due to the SERVICE PROVIDER under this Contract any sum of money due from the SERVICE PROVIDER under either:
- 40.1.1 this contract; or
- 40.1.2 any other agreement between the SERVICE PROVIDER and the CLIENT;
- 40.1.3 any other agreement between the SERVICE PROVIDER and OGCbuying.solutions; or
- 40.1.4 any other department, office or agency of the Crown,

provided that the terms of such other agreement provide for sums of money due from the SERVICE PROVIDER under that agreement to be recovered by way of a deduction from sums of money due to the SERVICE PROVIDER under this Contract (albeit that this Contract may not be referenced specifically under that agreement).

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41. Payment of Sub-Contractors

Where work in connection with this Contract has been undertaken by the SERVICE PROVIDER'S Sub-Contractors, then the SERVICE PROVIDER shall pay the Sub-Contractors for those Ordered Services satisfactorily performed within 30 (thirty) Days of the SERVICE PROVIDER'S receipt of a valid invoice for those Ordered Services.

42. VAT

- 42.1 All sums payable by or to the CLIENT or the SERVICE PROVIDER are exclusive of Value Added Tax ("VAT"). Where VAT is chargeable on such sums, the payer shall pay, upon production of a valid VAT invoice by the payee, such VAT in addition to such sums.
- 42.2 The SERVICE PROVIDER shall pay to the CLIENT within 7 days of the same being demanded by the CLIENT any VAT or amount in respect of VAT incurred by the CLIENT but which it is unable to recover from HM Customs & Excise which the CLIENT incurs as a result of the SERVICE PROVIDER'S failure to carry out its obligations under this Contract and the CLIENT employing another person to fulfil the same obligations. Where the CLIENT would have been unable to recover VAT if the SERVICE PROVIDER had fulfilled its obligations under this Contract then this clause shall only apply in respect of such additional amounts of or in respect of VAT which the CLIENT is unable to recover.
- 42.3 Where a party is liable to reimburse or indemnify the other party for costs incurred by that other party, the amount to be paid shall not include any VAT charged on such costs, save where the payee is unable to recover such VAT from HM Customs & Excise as input tax.
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43. Payment for changed Ordered Services and variations

- 43.1 Where the CLIENT has specifically instructed a change in the Ordered Services of the SERVICE PROVIDER, then the rates and prices included in this Contract may be used for the calculation of fees in respect of those changed services or, alternatively, and at the CLIENT'S sole discretion, a lump sum may be agreed between the CLIENT and the SERVICE PROVIDER. Provided always that where the Variation was as the result of the SERVICE PROVIDER'S default, the SERVICE PROVIDER shall not be entitled to any additional remuneration.
- 43.2 Where the CLIENT gives written authority to introduce variations then, to the extent that the SERVICE PROVIDER can show that the variations have involved additional expense in providing drawings, documents and/or information for which reimbursement would not be received by the payment of other fees paid by the CLIENT, then the reasonable cost of the additional drawings, documents and/or information which the SERVICE PROVIDER is required to provide will be reimbursed to the SERVICE PROVIDER by the CLIENT.
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43.3 The reimbursement of any costs claimed by the SERVICE PROVIDER under the terms of this Clause shall be subject to the SERVICE PROVIDER providing such substantiation of the SERVICE PROVIDER'S claim as the CLIENT may reasonably require.

44. Additional work by Sub-Contractors

Where the CLIENT has authorised additional Ordered Services to be undertaken and either the whole or part of those additional Ordered Services are undertaken by Sub-Contractors appointed by the SERVICE PROVIDER in accordance with Clause 49 (Sub-Contractors) then the reimbursement of the SERVICE PROVIDER will include for the additional work undertaken by Sub-Contractors in the same way as if the whole of the additional Ordered Services had been undertaken by the SERVICE PROVIDER'S own staff.

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PARTICULAR POWERS AND REMEDIES

45. Suspension of SERVICE PROVIDER'S Ordered Services

By giving a minimum 14 (fourteen) Days notice to the SERVICE PROVIDER, the CLIENT may suspend the whole or part of the Ordered Services to be performed under the terms of this Contract. Where the whole of the Ordered Services have been suspended and the SERVICE PROVIDER has not been given instructions to resume the suspended Ordered Services within 6 (six) months from the date of such suspension, then the SERVICE PROVIDER may by notice to the CLIENT request an instruction that the suspended Ordered Services shall be resumed and, if no such instruction is received from the CLIENT within 30 (thirty) Days of such notice, the SERVICE PROVIDER shall have the right to treat the SERVICE PROVIDER'S employment under this Contract as terminated upon the expiry of the 30 (thirty) Days.

46. Determination by the CLIENT

Voluntary Determination by CLIENT.

- 46.1 The CLIENT shall be entitled at its absolute discretion to terminate the Contract at any time by 6 months notice in writing to the SERVICE PROVIDER.

Determination as a result of Termination Events.

- 46.2 The CLIENT may at any time by notice in writing terminate this Contract as from the date of service of such notice, or a later date specified in such notice, if any of the Termination Events specified below occur. The Termination Events are:

46.2.1 if the SERVICE PROVIDER:

- 46.2.1.1 commits an act of fraud or bankruptcy; or
- 46.2.1.2 has been convicted of a criminal offence relating to the conduct of its business or profession; or
- 46.2.1.3 has committed an act of grave misconduct in the course of its business or profession; or
- 46.2.1.4 has failed to comply with any obligations relating to the payment of any taxes or social security contributions; or
- 46.2.1.5 has made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or
- 46.2.1.6 has failed to obtain any necessary licences or obtain or maintain membership of any relevant body; or
- 46.2.1.7 demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form or there is a change of control as defined by section 416 of the Income and Corporation taxes Act 1988 (any such case being a "Change of Control") and, in any such Change of Control, there are reasonable grounds for the CLIENT to withhold its consent relating to the

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financial standing of the new entity through which it is proposed that the Ordered Services will be delivered or there are security concerns arising from the provision of the Ordered Services by the new entity.; or

- 46.2.2 the CLIENT has reasonable grounds to object to the SERVICE PROVIDER arising from security concerns in respect of the SERVICE PROVIDER; or
- 46.2.3 the SERVICE PROVIDER, being an individual, or where the SERVICE PROVIDER is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport so to do, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986, or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him on behalf of his creditors, or any similar event occurs under the law of any other jurisdiction; or
- 46.2.4 the SERVICE PROVIDER, being a company, passes a resolution, or the Court makes an order that the SERVICE PROVIDER or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the SERVICE PROVIDER or the Parent Company (or an application for the appointment of an administrator is made or notice to appoint an administrator is given in relation to the SERVICE PROVIDER or the Parent Company), or a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the SERVICE PROVIDER or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123(1)(a) and is for an amount of less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction; or
- 46.2.5 where the SERVICE PROVIDER is an unincorporated joint venture and any of the events referred to in Clause 46.2.3 or 46.2.4 occur in relation to any member of such unincorporated joint venture who is a signatory to this Framework Agreement.

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46.3 Without prejudice to the provisions of Clause 46.2, the CLIENT may at any time by notice in writing terminate this Contract forthwith if the SERVICE PROVIDER is in material Default of any obligation under this Contract and:

46.3.1 the material Default is capable of remedy and the SERVICE PROVIDER shall have failed to remedy the material Default within thirty (30) Days of written notice to the SERVICE PROVIDER specifying the material Default and requiring its remedy; or

46.3.2 the material Default is not capable of remedy.

46.4 The SERVICE PROVIDER shall promptly notify the CLIENT in writing on each occasion of the occurrence of any Change of Control specified in Clause 46.2.1.7. The CLIENT shall only be permitted to exercise its rights pursuant to Clause 46.2.1.7 for six (6) Months after service of a notice by the SERVICE PROVIDER pursuant to this Clause relative to each such Change of Control and shall not be permitted to exercise such rights where the CLIENT has agreed in advance in writing to the particular change and such change takes place as proposed.

46.5 For the purposes of Clause 46.2.1.7, the following shall be disregarded:

46.5.1 any change in beneficial or legal ownership of any shares that are listed on a stock exchange resulting in the relevant shareholding being less than or equal to five per cent (5%) of the total issued share capital; and

46.5.2 any transfer of shares or of any interest in shares by a person to its affiliate where such transfer forms part of a bona fide reorganisation or restructuring.

47. Dispute Resolution

Any dispute arising in relation to any aspect of this Contract shall be resolved in accordance with the dispute procedure set out in Schedule 2-10.

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**ASSIGNMENT, SUB-CONTRACTORS, AND PARENT
COMPANY GUARANTEE**

48. Assignment

48.1 The SERVICE PROVIDER shall not, without the consent in writing of the CLIENT, sub-contract, sub-let, assign or transfer the Contract, or any part, share or interest under it. No sum of money to become payable under the Contract shall be payable to any person other than the SERVICE PROVIDER without the CLIENT'S written consent.

48.2 Subject to the provisions of Clause 48.5, the CLIENT shall be entitled to:

48.2.1 Assign or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority; or

48.2.2 Assign or otherwise dispose of its rights and obligations under this Contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the CLIENT;

provided that where such assignment or other disposal increases the burden of the SERVICE PROVIDER'S obligations pursuant to this Contract, the SERVICE PROVIDER shall be entitled to such charges as may be agreed between the CLIENT and the SERVICE PROVIDER to compensate for such additional burdens.

48.3 Subject to the provisions of Clause 48.5 the CLIENT shall be entitled, without the need to obtain the SERVICE PROVIDER'S consent to seek to

48.3.1 novate this Contract or any part thereof to any Contracting Authority; or

48.3.2 novate its rights and obligations under this Contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the CLIENT;

upon such terms as the CLIENT shall propose provided that where such novation increases the burden of the SERVICE PROVIDER'S obligations pursuant to this Contract, the SERVICE PROVIDER shall be entitled to such charges as may be agreed between the CLIENT and the SERVICE PROVIDER to compensate for such additional burdens.

48.4 Subject to the provisions of Clause 48.5, any change in the legal status of the CLIENT such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the CLIENT.

48.5 If this Contract is novated to a body which is not a Contracting Authority pursuant to Clause 48.3.1 or if a successor body which is not a Contracting Authority becomes the CLIENT pursuant to Clause 48.4 (in the remainder of this Clause 48 both such bodies are referred to as the "transferee"):

48.5.1 the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the SERVICE PROVIDER; and

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48.5.2 The following Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if this Contract had been amended by the CLIENT and the SERVICE PROVIDER in accordance with Clause 34:

- 48.5.2.1 in Clause 24.1.1, the first reference to "in Her Majesty's Service" shall be replaced with "employed by the CLIENT or acting on its behalf" and the second and third references to "Her Majesty's Service" shall be replaced with "the CLIENT"; and
- 48.5.2.2 in Clause 24.1.2 the words "with Her Majesty's Service" shall be replaced with "CLIENT or acting on its behalf"; and
- 48.5.2.3 in clause 24.2 the words "Her Majesty's Service" shall be replaced with "the CLIENT"; and
- 48.5.2.4 Clause 40 shall be deleted.

49. Approval of Sub-Contractors

49.1 The SERVICE PROVIDER may:

- 49.1.1 upon prior written notice to the CLIENT employ any of the Approved Sub-contractors; and/or
- 49.1.2 upon prior written approval of the CLIENT, which approval shall be at the discretion of the CLIENT, employ any contractors who are not Approved Sub-Contractors.

For the purposes of this Contract the Approved Sub-Contractors and the contractors approved in accordance with 49.1.2 shall be termed Sub-Contractors.

- 49.2 Within 7 (seven) Days of the Service Commencement Date and the CLIENT'S provisional acceptance of the list of proposed Sub-Contractors, the SERVICE PROVIDER must submit for the approval of the CLIENT, a Certificate of Professional Indemnity Insurance (if the relevant Sub-Contractor is required to have Professional Indemnity Insurance) and a Certificate of Employer's and Public Liability Insurance, all duly completed on behalf of each of the proposed Sub-Contractors.

50. Sub-Contractors

The SERVICE PROVIDER shall be fully responsible for the Ordered Services undertaken by Sub-Contractors whom the SERVICE PROVIDER shall himself appoint and the SERVICE PROVIDER shall have the same responsibility for the Ordered Services undertaken by such Sub-Contractors as if such Ordered Services had been undertaken directly by the SERVICE PROVIDER. The SERVICE PROVIDER shall further be responsible for entering into any agreements with Sub-Contractors as considered necessary and any fees or expenses claimable by those Sub-Contractors and any costs incurred by the SERVICE PROVIDER in employing

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those Sub-Contractors and in accepting the additional responsibilities thereby shall be deemed to be included in the SERVICE PROVIDER'S Proposals.

51. Sub-Contractor warranties

In so far as it is required by the CLIENT it shall be a condition of the CLIENT'S approval of a Sub-Contractor that the SERVICE PROVIDER and the Sub-Contractor shall enter into a direct CLIENT/Sub-Contractor Agreement (Warranty) in the form specified by the CLIENT, or such other form as the CLIENT may agree; and that the ultimate holding company (if any) of the relevant Sub-Contractor shall enter into a guarantee in respect of the Sub-Contractor's obligations pursuant to such CLIENT/Sub-Contractor Agreement, in the form specified by the CLIENT, or such other form as the CLIENT may agree; and that the SERVICE PROVIDER shall deliver to the CLIENT such CLIENT/Sub-Contractor Agreement and guarantee, both duly executed, within 28 (twenty-eight) Days of the CLIENT'S approval of the relevant Sub-Contractor. If that condition is not fulfilled, the CLIENT'S approval of the relevant Sub-Contractor shall be null and void, and the SERVICE PROVIDER shall cease to employ that Sub-Contractor. The CLIENT will not enter into any other direct agreement with a Sub-Contractor.

52. Direct appointment of other contractors

- 52.1 Where it is indicated in Schedule 2-2 that the CLIENT intends to appoint other contractors to undertake services, the CLIENT will enter into direct agreements with such contractors and will be responsible for the payment of their fees and, where possible, the names of such contractors will be stated in Schedule 2-5.
- 52.2 Where other contractors are appointed by the CLIENT, the SERVICE PROVIDER shall co-operate fully with those appointed contractors in order to ensure that production of the SERVICE PROVIDER'S drawings, design information or other relevant documents or information are fully co-ordinated with the work of the other contractors and that they meet the required programme. The SERVICE PROVIDER shall attend all meetings which may be called by any appointed contractor in connection with the Ordered Services.
-

53. Specific parent company guarantee

In so far as it is requested by the CLIENT the SERVICE PROVIDER shall, within 21 (twenty-one) Days of the Service Commencement Date, deliver to the CLIENT a specific parent company guarantee in the form set out in Schedule 2-6 from its ultimate holding company (if any).

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SPECIAL TERMS

The Contract shall be amended by the following Special Terms agreed by the CLIENT and the SERVICE PROVIDER:

[Drafting Note Insert on a contract specific basis. Any Special Terms agreed by the parties should be for clarification of the contract only. Special Terms that are intended to alter the substance of the Conditions of Contract are not permitted.]

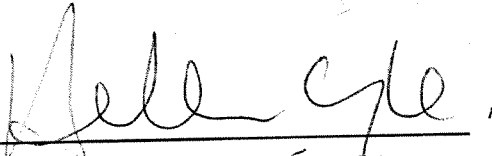
MODEL FORM OF CONTRACT 1
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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as a deed by their duly authorised representatives and delivered on the date first above written.

The common seal of

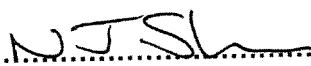
**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF ISLINGTON**

was hereunto affixed by order

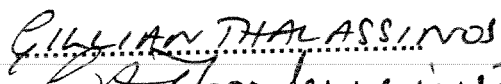


Authorised Officer 62894

Signed for and on behalf of the SERVICE PROVIDER

By : 
Name : NICHOLAS SHEPHERD
Title : Partner
Date : 14/12/09

Signed for and on behalf of the SERVICE PROVIDER

By : 
Name : GILLIAN THALASSINOS
Title : Partner
Date : 14/12/09

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SCHEDULE 2-1

INTERPRETATIONS

The expressions set out below shall have the meanings ascribed thereto:

Definition	Meaning
Accepted risks	Means the risks of: (a) pressure waves caused by the speed of aircraft or other aerial devices; (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel; (c) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly (including any nuclear component); and (d) war, invasion, act of foreign enemy, hostilities (whether or not war has been declared) civil war, rebellion, insurrection, or military or usurped power.
Approved Sub-Contractors	means the sub-contractors listed in Schedule 9 of the Framework Agreement.
AUTHORITY	means OGCbuying.solutions
Catalogue of Services	means the catalogue of services that shall be made available to the CLIENT by the SERVICE PROVIDER in electronic format. The Catalogue of Services specifies the Services available to the CLIENT under this Contract.
CLIENT Billing Address	means the customer billing address specified in Schedule 2-4 of this Contract.
CLIENT'S Representative	means the person employed in that capacity named in the CLIENT'S Requirements and appointed by the CLIENT to act on his behalf, or such other person as may be appointed in that capacity for the time being by the CLIENT.
CLIENT'S Requirements	means the CLIENT'S requirements as specified in Schedule 2-2.
Confidential Information	means any information designated as such by the party disclosing that information.
Contract	means the binding agreement, comprising the Conditions of Contract and the Schedules, incorporating any applicable Special Terms, between the CLIENT and the SERVICE PROVIDER relating to the provision of the Ordered Services resulting from the placing of an Order by the CLIENT.
Contract Manager	means the person (together with any duly authorised deputies) appointed by the SERVICE PROVIDER to act as Contract Manager in respect of this Contract or any replacement notified by the SERVICE PROVIDER to the CLIENT.
Contract Period	means the period as set out in the Order which commences on the Service Commencement Date.

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Definition	Meaning
Contract Standard	means the standard to which the Ordered Services are to be provided as set out in Clause 10.
Days	means calendar days.
Default	means any negligent act or omission, any breach of contract and/or any failure by the SERVICE PROVIDER properly to perform any of the obligations, terms and conditions of the Contract including (without limitation) any failure by the SERVICE PROVIDER to perform the Ordered Services to the Contract Standard.
Environmental Information Regulations	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the information Commissioner in relation to such regulations.
Equalities Legislation	all Legislation which makes unlawful discrimination on grounds of sex, sexual orientation, gender reassignment, age, disability, colour, race, ethnic, or national origin, religion, marital status, part time or temporary status in employment or otherwise including, without limitation, the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1975, the Equal Pay Act 1970 and the Disability Discrimination Act 1995.
Fee Schedule	means the schedule of rates, charges and/or percentages agreed between the CLIENT and the SERVICE PROVIDER for carrying out the Contract and as set out in Schedule 2-3.
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
Framework Agreement	means the framework agreement between the AUTHORITY and the SERVICE PROVIDER under which the AUTHORITY has established a contractual vehicle for the provision of Ordered Services to CLIENTS.
Group	means and includes a company and every holding company of that company for the time being, and every subsidiary for the time being of every such holding company, and the terms "CLIENT'S Group" and "SERVICE PROVIDER'S Group" shall be interpreted accordingly; but, while the CLIENT is a Minister of the Crown, a government department or other Crown agency or authority, the term "CLIENT'S Group" shall also include all other Ministers of the Crown, government departments and Crown agencies and authorities.
Holding Company	shall have the meaning given in Section 736 of the Companies Act 1985, as substituted by Section 144 of the Companies Act 1989.
Information	has the meaning given under section 84 of the Freedom of Information Act 2000.

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Definition	Meaning
Intellectual Property Rights	means any and all patents, trade marks, service marks, copyright, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial 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 attached thereto.
Key Personnel	means the key personnel as specified in Schedule 2-4.
Method Statement	Means the method statements or statements included in the SERVICE PROVIDER'S Proposals.
Month	means a calendar month.
OGC	means the Office of Government Commerce.
OGCbuying.solutions	means the Lords Commissioners of Her Majesty's Treasury as represented by OGCbuying.solutions being a trading fund of Her Majesty's Treasury without separate legal personality.
Order	means an order for Ordered Services served by the CLIENT on the SERVICE PROVIDER.
Ordered Services	means the work performed or to be performed for the CLIENT by the SERVICE PROVIDER as specified in Schedule 2-3.
Parent Company	means any company which is the ultimate Holding Company of the SERVICE PROVIDER or any other company of which the ultimate Holding Company of the SERVICE PROVIDER is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the SERVICE PROVIDER or which is engaged in the same or similar business to the SERVICE PROVIDER.
Project	means the works for which the SERVICE PROVIDER is to provide professional services in accordance with the terms of this Contract.
Quarter	means a three (3) Month period beginning on 1st January, 1st April, 1st July or 1st October.
Requests for Information	means a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations.
Schedule	means a schedule to this Contract.
Service Commencement Date	means the date of the commencement of this Contract as specified in the Order, or such other date as is agreed between the CLIENT and the SERVICE PROVIDER.
SERVICE PROVIDER'S Programme	means the programme to be provided by the SERVICE PROVIDER in accordance with the provisions of Clause 29.
SERVICE PROVIDER'S Proposals	means the proposals made by the SERVICE PROVIDER to the CLIENT in response to the CLIENT'S Requirements.
Special Terms	means any terms which are additional to the Conditions of Contract, which are agreed between the CLIENT and the SERVICE PROVIDER in the Order and included in

Model Contract

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Definition	Meaning
	the Contract.
Staff	Means all persons used by the SERVICE PROVIDER or any sub-contractor to perform the Ordered Services
Statutory Requirements	means all requirements to be complied with under any Act of Parliament; any instrument, rule or order made under any Act of Parliament; or any regulation or byelaw of any local authority; or any regulation, directive or decision of the European Union having the force of law
Sub-Contractor	means any contract or proposed contract between the SERVICE PROVIDER and any third party in respect of the provision of the Ordered Services including any Approved Sub-Contractors. The terms "Sub-Contractor" "Sub-Consultant" and "Sub-Contracting" shall be similarly construed.
Subsidiary	shall have the meaning given in Section 736 of the Companies Act 1985, as substituted by Section 144 of the Companies Act 1989.
Working Day	means Monday to Friday inclusive, excluding English public and bank holidays.
Year	means a calendar year.

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SCHEDULE 2-2

CLIENT'S REQUIREMENT

INTRODUCTION

This Schedule 2-2 specifies the CLIENT'S Requirement.

The London Borough of Islington require building reinstatement valuations for insurance purposes on the Council's residential stock.

There are 1,693 separate buildings with 9,497 leaseholders. It will not be possible to inspect each individual occupational unit and this does not form part of the requirements of the surveys.

Each building requires an individual valuation and inspection as the stock has not been measured and then valued for insurance purposes for a period estimated to exceed 10 years.

We require the production of a dimensioned floor plan that shows the footprint of the property on an external basis only (or internal if absolutely necessary if external measurements cannot be made) and to calculate a total gross external area suitable for reinstatement valuation purposes by multiplying the number of storeys observed on inspection.

You may sub-contract this work but if so this should be priced into your fee estimate.

You will need to make (and subsequently advise LBI) on any assumptions made on any common parts, lifts and plant. You will need to factor in any other issues which may affect the rebuilding costs apparent from inspection and calculate the reinstatement value. You will produce a report to LBI listing each building and value separately on a spreadsheet which can be use for recharge purposes. LBI will then apportion and recharge according to the number of 1, 2 or 3 bed flats in each property.

We expect the price to be a flat fee per building. Some building will be more straightforward than others but should even out over the number of properties we are looking at.

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SCHEDULE 2-3

THE SERVICES AND THE FEE SCHEDULE

INTRODUCTION

This Schedule 2-3 specifies the Ordered Services to be provided and the corresponding Fee Schedule.

THE SERVICES

~~Drivers Jonas propose to carry out the services in the manner set out in their document 'Residential Leaseholds – Reinstatement Valuations' dated May 2009.~~

The following is an extract of the document that excludes marketing information and on the following pages key delivery documents are provided including:

1. Example FIVs
2. Example Plan

Generally

We understand that the following is required by The London Borough of Islington (LB Islington):

- Fire insurance valuation of 1,693 separate buildings with 9,497 leaseholders

The fire insurance valuations will require the following:

- Measured survey of the footprint of each property to ascertain relevant areas
- Inspection of the building to confirm construction type, rebuild rates and special features
- Production of individual building fire insurance valuations in MS Excel for each building
- Production of a footprint plan showing the area of the property

Assumptions

We list below the key assumptions, which should they differ significantly, could affect the scope of the work and the fees payable:

- There are approximately 90 housing blocks
- The remainder of the properties are 'street' properties
- London Borough of Islington will provide access to the properties/ notify leaseholders the surveys are taking place
- The measurements are to be predominantly external for calculation purposes. Internal access to some properties, i.e. terraced houses and flats, will be required to complete floor area calculations

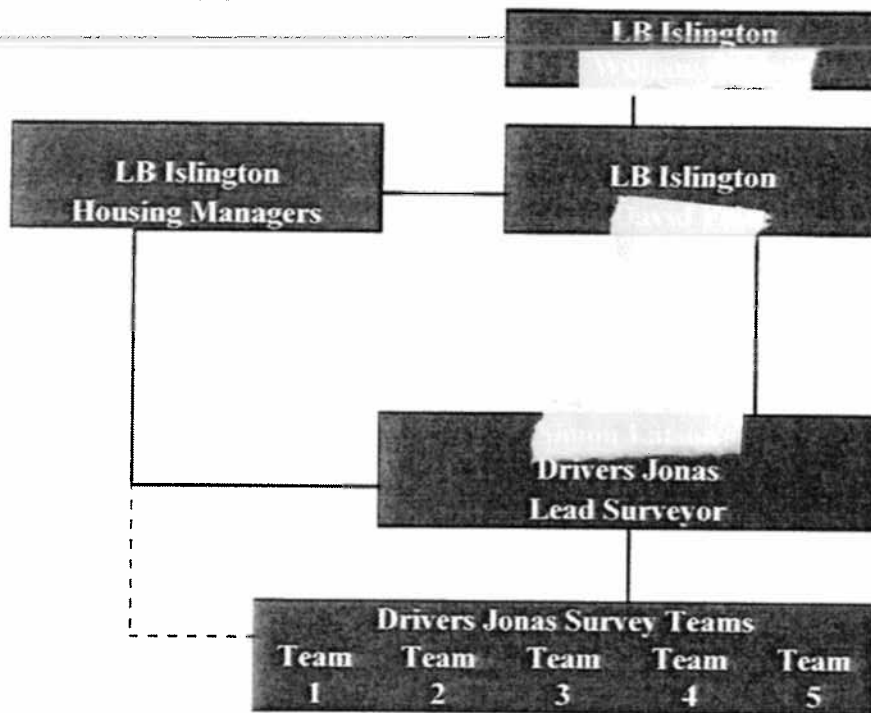
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- We may require access to a sample of the units, common parts, roof spaces or roof areas as appropriate and/or available to inspect the property
- Access to roofs and roofspaces is available by either permanent or surveyors ladder brought by us.

Communication

We show below and simply organagram setting out the typical lines of communication.



Members of the survey team will work on site alone or in teams, as the property dictates, and are fully conversant with Drivers Jonas LLP on site health & safety policy. This serves to ensure that Health and Safety is maintained at all times, in particular, when inspecting accessible roof areas.

For each inspection, the lead surveyor will be aware of the location of each of the survey team and telephone communication will be utilised to maintain this link.

Should any member of the survey team identify a major Health and Safety issue they will report this immediately to the on site manager or appointed contact and the lead surveyor who will inform LB Islington's key contact at once.

A copy of Drivers Jonas LLP on site health & safety policy is available on request.

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DJ are a Quality Assured Practice

All UK teams in Drivers Jonas LLP are quality assured. Our systems are in accordance with the International Standard for Management Systems BS/EN/ISO 9001: 2000. Our independent certification is undertaken by SGS Yarsley International Certification Services. Our current certification remains valid until 15 November 2010 and our Certificate Number is GB96/6921. A copy can be provided on request.

We have a firm-wide QA Process which utilizes our company intranet – **DJi** – which contains a series of flowcharts and general checklist requirements and procedures for each main service line. These reference exemplar documents plus internal and external sources of best practice (many with "hotlinks") to assist staff to take the assignment forward.

The QA system contains a series of mandatory Gateways which define key points where specified outputs must be reviewed by a competent and authorised Reviewer (authorities for these are defined in the system). This is an entirely internal review to ensure that all of our services reach the required quality standard.

A copy of the Gateway sign off review must be kept on file. Gateways are held at:

- Gateway 1 – Fee tender/Bid stage
- Gateway 2 – Project inception and startup
- Gateway 3 – Inspection, valuation panel and delivery
- Gateway 4 – Project closeout

Set Up and Programme

The lead surveyor will analyse the property data, liaise with the client and agree the following before site inspections take place:

- Agreed property list
- Survey programme and timetable
- Agreed interim review dates
- Report format agreed
- Site Survey
- Measurements

Measurements of gross areas are undertaken in accordance with the RICS/ISVA Code of Measuring Practice.

When measurements are taken on site, sufficient site measurements must be taken to enable the Surveyor to calculate the areas of all floors. Where different parts of a building are of significantly different forms of construction or standard of finish, the floor areas of each form/standard should be identified and noted separately.

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Details Required

Data relating to the construction and components of a property are to be recorded using our standard inspection forms. These are completed for all properties or accessible parts of a property of different forms of construction.

For all properties we will measure the footprint of the building and provide a scaled CAD plan showing the area. We will note any differences in area above ground floor for the purposes of our calculations but will not provide drawings of these areas, as directed in the brief.

For every property the Surveyor will provide to the valuation panel a sketch of the building layout on which his measurements should be noted clearly stating how the floor areas have been calculated.

Photographs

Sufficient photographs will be taken and included with other documents to enable the valuation panel to gain a full appreciation of the building and its nature and situation. Generally these will include views of all elevations and external areas, and internal views of typical rooms/spaces where available for inspection. In the case of very ornate internal finishes, it may be necessary to take photographs on a room-by-room basis.

Valuation

Generally

The proposed valuation is submitted to a panel of at least two Surveyors with experience of undertaking such valuations on a regular basis. The panel is to review the submission and implement any amendments they consider necessary prior to their sign-off. A note is to be placed on file with details of the valuation and confirmation that Gateway 3 has been achieved.

The valuation panel members will agree on a rate per square metre that is appropriate for the building to cover the full reconstruction of the building on a *like-for-like* basis assuming that there has been total destruction. For a building with piled foundations, however, it is assumed that the piles will be undamaged and renewal of the pile caps only will be necessary. It is not the panel's role to speculate whether or not, in the case of total destruction, the building would actually be reconstructed in its original form.

Area Calculations

A suitably qualified surveyor shall check the floor areas calculated by the site Surveyor and will then countersign the calculation sheet accordingly.

If possible, a cross check should also be made as to whether the gross floor areas tie up with any other available material (e.g. Agents' details of net internal areas).

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Derivation of Rates

In deciding the rates to be applied to the building, the panel will take the following into consideration:

- Published data on actual building costs.
- Comparison of the subject building with past valuations.
- Client known costs, ie previous claims.
- Geographical location factors.
- Special difficulties (e.g. poor access, parking restrictions, restricted sites, known archaeological remains etc).
- Standard of finishes internally and externally, especially where particularly ornate.
- Unusual forms of construction.
- Whether or not the building is listed.
- Party wall difficulties.
- Demolition

A rate per square metre is also assessed for the element of demolition and site clearance. The above factors are equally considered, but in addition the following may have to be allowed for:

- Temporary support and weathering of adjoining buildings.
- Whether demolition can be by "ball and chain" or will need to be done carefully by hand, or in the case of framed buildings, dismantled or broken up by machines.
- Whether, in the case of listed buildings, an allowance must be made for salvage of reusable elements of the building.

Fees

A percentage fee rate is assessed according to whether, in the panel's opinion, the following will need to be allowed for:

- Architect
- Surveyor
- Structural Engineer
- Services Consultant
- CDM Co-ordinator
- Specialist Finishes Consultant
- Building Control Fees
- Planning Application Fees
- Party Wall Surveyors' Fees
- Value Added Tax (VAT)

VAT is, in general terms, currently not chargeable on construction of new domestic properties, but is chargeable on all commercial construction, on demolition and site clearance of all properties (commercial or residential) and on all fees associated with demolition and construction of all properties. In some cases, where clients can recover VAT, they may request that the VAT is not shown on the valuation.

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Day One or Future Inflating

The valuations will be prepared on a Day One basis.

Reporting

Insurance Valuation Reporting

Our proposed fire insurance valuation report is attached to this document.
This is our standard reporting format which appears to meet your requirements.

Our insurance valuations are held on a Microsoft Excel spreadsheet database which we have operated for a number of years. In addition to preparing the initial valuation, it allows us to apply index linked uplifts to give annual updates for clients.

If during the subsequent years of this commission, you wish valuations undertaken in the first year to be index linked, this is an additional service we can provide, but have not allowed for this in our fee proposal.

No Access Properties

We anticipate that there will be a percentage of properties where access is difficult or impossible. We also expect that there will be a great deal of properties that are similar in location, size and construction.

Should we be unable to access a property to measure and inspect it we can, if the data collected from other similar properties allows, prepare a 'generic' reinstatement valuation based on the following:

- Visual inspection as far as possible
- Area checks as far as possible from neighbouring property (using a laser measure)
- Area checks using OS data
- Construction and rate information from neighbouring property

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Programme

We set out below an outline programme for the commission. The precise programme will be agreed within 21 days as referred elsewhere within this Contract.

We understand that the survey programme is driven by the need to insure the properties by 1 April 2010 and the inspections need to be completed by 28 February 2010.

The programme assumes the following key ingredients:

- Sensible sequential access to properties to allow 'continuous' surveying
- LB Islington arrange access to properties where free access externally is not possible

Week	Activity
1	Survey set up, base information delivery
2	Agreement of survey programme and report formats
3 to 14	Field surveys
3 to 14	Continual analysis and reporting

We anticipate that the entire process, to be completed by the end of February, will take approximately 14 weeks to complete with field surveys over the entire period.

It must be acknowledged that the field survey exercise is dependent on the organisation of access to resident's homes by the CLIENT and the provision of access by the residents. This cannot be guaranteed by the SERVICE PROVIDER.

Where access is limited, delayed or refused we will follow the 'generic' valuation procedure for that property if that is possible to keep the project on programme.

Where it is not possible we will inform the CLIENT and appropriate action is to be taken that may include removing the property from the exercise, alternative valuation methods such as desktop mapping or extending the deadline for that property.

Sample Client

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THE FEE SCHEDULE

To carry out the services identified in the project as described above and using standard OGC Professional Services (EPS) framework rates and based on inspecting a volume of 1,693 properties, our fee is **£125** per property.

Based on 1,693 properties this calculates to a total fee of **£211,625**.

Hourly Rates

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SCHEDULE 2- 4

KEY POSTS AND CONTACT DETAILS

1. INTRODUCTION

This Schedule2-4 contains details of the key personnel of both parties involved with this Contract and also relevant contact details.

2. For the CLIENT (CLIENT'S Representative):

[**Drafting Note – to be completed by the CLIENT.**]

Telephone Number:.....

Fax Number:

Email:

CLIENT'S Billing address:

3. For the SERVICE PROVIDER (Contract Manager):

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SCHEDULE 2-5

SUB-CONTRACTORS

INTRODUCTION

This Schedule 2-5 sets out the SERVICE PROVIDER'S principal Sub-Contractors and their obligations and responsibilities arising under this Contract. Other sub-contractors shall not be used to fulfil such obligations and responsibilities.

Name	Obligations and Responsibilities
ND Oliver & Co Ltd	CAD drawing services.

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SCHEDULE 2-6

PARENT COMPANY GUARANTEE

NOT APPLICABLE

OGC buying.solutions Framework Agreement No. [] Dated []:

Ordered Services:

CLIENT'S Reference No:

THIS AGREEMENT is made the _____ day of _____ 200

BETWEEN:

(1) _____
whose registered office is at _____
("the Guarantor"); and

(2) _____
of _____
("the CLIENT", which term shall include its successors and assignees).

WHEREAS by an Agreement ("the Contract") dated [] and made between the CLIENT of the one part and [] ("the SERVICE PROVIDER") of the other part, the SERVICE PROVIDER is to execute certain services ("the Ordered Services") in accordance with the terms and conditions of the Contract.

NOW THIS DEED WITNESSETH as follows:

- 1 The Guarantor hereby absolutely irrevocably and unconditionally guarantees to the CLIENT the due and punctual performance by the SERVICE PROVIDER of all the obligations on the part of the SERVICE PROVIDER under or pursuant to the Contract ("the Terms") and (as a separate stipulation and as primary obligor) agrees that if the SERVICE PROVIDER shall in any respect commit any breach of or fail to fulfil any of the Terms, then the Guarantor will forthwith perform and fulfil in place of the SERVICE PROVIDER each and every Term in respect of which the SERVICE PROVIDER has defaulted or which is unfulfilled by the SERVICE PROVIDER. The Guarantor shall be liable to the CLIENT for all losses, damages, expenses, liabilities, claims, costs or proceedings which the CLIENT may suffer or incur by reason of the said failure or breach PROVIDED THAT the Guarantor's liability shall not exceed the SERVICE PROVIDER'S liability under the Contract.
- 2 The Guarantor shall be, and continue to be, liable under this Guarantee even if the Contract is or becomes for any reason not binding on, or unenforceable against, the SERVICE PROVIDER, for any reason whatsoever. No

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alterations in the Contract, or in the Ordered Services, and no extension of time, forbearance or forgiveness, nor any act, matter or thing whatsoever except an express release by the CLIENT, shall in any way release or reduce any liability of the Guarantor hereunder. References to the Contract in this Guarantee shall include all amendments, variations and additions to it, whether made before or after the date hereof.

- 3 This Guarantee shall remain in full force and effect until performance in full of the Terms, notwithstanding:

- (a) the insolvency or liquidation of the SERVICE PROVIDER, the Guarantor or any other person;
- (b) any disclaimer of the Contract by a liquidator of the SERVICE PROVIDER; and/or any feature of the Contract, the negotiations prior to the SERVICE PROVIDER and the CLIENT entering into the Contract, or the performance of the Contract, making if ineffective or unenforceable.

- 4 Until the Terms have been unconditionally and irrevocably performed in full the Guarantor shall not by virtue of any performance or payment made by it or otherwise:

- (a) be subrogated to any rights, security or moneys held or received or receivable by the CLIENT; or
- (b) be entitled to exercise any right of contribution from any co-surety in respect of such performance and liabilities under any other guarantee, security or agreement; or
- (c) exercise any right of set-off or counterclaim against the SERVICE PROVIDER or any such co-surety; or
- (d) receive, claim or have the benefit of any payment, distribution, security or indemnity from the SERVICE PROVIDER or any such co-surety; or
- (e) unless so directed by the CLIENT (when the Guarantor will prove, and turn over any realisations to the CLIENT, in accordance with such directions) claim as a creditor of the SERVICE PROVIDER or any such co-surety in competition with the CLIENT.

- 5 No delay or omission of the CLIENT in exercising any right, power or privilege hereunder shall impair such right, power or privilege or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the CLIENT herein provided are cumulative and not exclusive of any rights or remedies provided by law.

- 6 A waiver given or consent granted by the CLIENT under this Guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

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- 7 (a) If at any time any one or more of the provisions of this Guarantee is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby.
- (b) As a separate and alternative stipulation the Guarantor unconditionally and irrevocably agrees that any sum expressed to be payable by it or obligation to be performed by it under this Guarantee but which is for any reason (whether or not now existing and whether or not now known or becoming known to the Guarantor) not recoverable from or enforceable against the Guarantor on the basis of a guarantee shall nevertheless be recoverable from or enforceable against the Guarantor as if the Guarantor were the sole principal debtor or obligor (where relevant).

- 8 Any notice, demand or other communication to be served under this Guarantee may be served upon either party hereto only by posting by first class post or delivering the same or sending the same by facsimile transmission to the party to be served at its address or facsimile number shown below:

CLIENT :

Guarantor:

Fax:

Fax:

or at such other address or number as it may from time to time notify in writing to the other party.

- 9 A notice or demand served by first class post shall be deemed duly served on the second business day after the date of posting and a notice or demand sent facsimile transmission shall be deemed to have been served at the time of transmission unless served after 5.00 p.m. in the place of intended receipt in which case it will be deemed served at 9.00 a.m. on the following business day. For the purposes of this paragraph "business day" means a day on which commercial banks are open for business in London.
- 10 In proving service of any notice it will be sufficient to prove, in the case of a letter, that such letter was properly stamped or franked first class, addressed and placed in the post and, in the case of facsimile transmission, that such facsimile was duly transmitted on a business day to a current facsimile number of the addressee at the address referred to above.
- 11 The CLIENT shall be entitled to assign or transfer all or any of the CLIENT'S rights under this Guarantee without consent of the Guarantor.
- 12 Nothing in this Guarantee confers or purports to confer any right to enforce any of its terms on any person who is not a party to it (except any successor or any permitted assignee of such a party). The Contracts (Rights of Third

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Parties Act) 1999, or any amendment or re-enactment thereof, accordingly shall not apply.

- 13 The proper law of this Guarantee shall be the same as that of the Contract. Where the proper law of this Guarantee is Scots law, the parties prorogate the non-exclusive jurisdiction of the Scottish courts.

IN WITNESS whereof the Guarantor has executed this Deed on the date first stated above.

THE COMMON SEAL of

is affixed to this Deed in the presence of:-

Director

Secretary

NOTE: Where the proper law of the above document is Scots law, the format will be subject to alteration to reflect the requirements of Scots law in relation to the execution of a document.

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SCHEDULE 2-7

SERVICE PROVIDER'S CERTIFICATE OF EMPLOYER'S AND PUBLIC LIABILITY INSURANCE [QUERY WHETHER THESE GET COMPLETED?]

OGCbuying.solutions Framework Agreement No. RM397/C Dated 14 September 2008:

Ordered Services: Building Reinstatement Costs

CLIENT'S Reference No:

1 This certificate relates to a contract ("the Contract") dated [.....] for the provision of certain services, made between

of

("the CLIENT") and

Drivers Jonas LLP

("the SERVICE PROVIDER"), and is furnished to the CLIENT.

2 Clause 16(8) of the Contract requires the SERVICE PROVIDER to effect and maintain employer's and public liability insurance, in an amount not less than that stated in the Contract.

3 We certify that the SERVICE PROVIDER has complied with the above requirements by effecting and maintaining insurance as follows:-

Employer's Liability

Insured: Drivers Jonas LLP

Insurers: AXA Insurance

Policy No: MECOM 1336721

Period of Insurance: from 1 June 2009

to 31 May 2010

Amount Insured: £10,000,000
(not less than required by the Contract)

Public Liability

Insured: Drivers Jonas LLP

Insurers: AXA Insurance

Policy No: MECOM 1336721

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Period of Insurance: from 1 June 2009

to 31 May 2010

Amount Insured: £5,000,000
(not less than required by the
Contract)

Excess or Deductible: £No excess per claim

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SCHEDULE 2-8

**SERVICE PROVIDER'S CERTIFICATE OF PROFESSIONAL INDEMNITY
INSURANCE**

**OGC buying.solutions Framework Agreement No.RM397/C dated 14 September
2008:**

Ordered Services: Building Reinstatement Costs

CLIENT'S Reference No:

- 1 This certificate relates to a contract ("the Contract") dated [] for the provision of certain services, made between

The Mayor and Burgessess of the London Borough of Islington

("the CLIENT") and

Drivers Jonas LLP

("the SERVICE PROVIDER"), and is furnished to the CLIENT.

- 2 Clause 16(1) of the Contract requires the SERVICE PROVIDER to effect and maintain professional indemnity insurance, in an amount not less than that stated in the Contract.

- 3 We certify that the SERVICE PROVIDER has complied with the above requirements by effecting and maintaining insurance as follows:-

Insured: Drivers Jonas LLP

Insurers: Lloyds Syndicates

Policy No: P1A 29170

Period of Insurance:

from 1 August 2009

to 1 August 2010

Amount Insured:

£5,000,000

(not less than required by the Contract) for any one occurrence or series of occurrences arising out of any one event

Excess or Deductible:

£150,000 per claim

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SCHEDULE 2-9

CLIENT'S PROPERTY

1. All CLIENT'S Property shall remain the property of the CLIENT and where such CLIENT'S Property is equipment, such equipment shall be used in the performance of the Ordered Services and for no other purpose without prior Approval.
- [2. The CLIENT shall be responsible for the repair or replacement of CLIENT'S Property ~~unless the need for repair or replacement is caused by the SERVICE PROVIDER'S failure to comply with Clause 4, of this Schedule (CLIENT'S Property), or by the negligence or default of the SERVICE PROVIDER.]~~ [Option A].
- [2. The SERVICE PROVIDER shall be responsible for the repair and/or replacement of CLIENT'S Property save where the cost of such repair and/or replacement, assessed by the CLIENT'S Representative, shall exceed the amount stated in the Abstract of particulars, in which case the CLIENT shall be responsible for such repair and/or replacement unless such repair and/or replacement was caused by the contractor's failure to comply with Clause 4, of this Schedule (CLIENT'S Property), or by the negligence and default of the SERVICE PROVIDER.] [Option B].
- [2. The SERVICE PROVIDER shall be responsible for the repair and/or replacement of the CLIENT'S Property unless the need for such repair or replacement was caused by the negligence or default of the CLIENT after the Service Commencement Date.] [Option C].
- [3. The SERVICE PROVIDER shall be responsible for his own costs resulting from any failure of CLIENT'S Property, unless he can demonstrate that the CLIENT had caused undue delay in his replacement or repair where the CLIENT was responsible for such replacement or repair.] [Delete if Option C used].
4. The SERVICE PROVIDER shall maintain all items of CLIENT'S Property in good and serviceable condition and in accordance with the manufacturer's recommendations.
5. The SERVICE PROVIDER shall be liable for any loss of or damage to any CLIENT'S Property save to the extent that the SERVICE PROVIDER is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the CLIENT.
6. The SERVICE PROVIDER shall not in any circumstances have a lien on any CLIENT'S Property and shall take all steps necessary to ensure that the title of the CLIENT and the exclusion of any lien are brought to the attention of any third party dealing with any CLIENT'S Property.

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SCHEDULE 2-10

Dispute Resolution

1. SETTLEMENT OF DISPUTES

- 1.1 Any dispute or difference between the parties arising out of or relating to this Contract (a "Dispute") shall be referred, by either party, to the CLIENT'S Representative and the Contract Manager for resolution.
- 1.2 If any Dispute cannot be resolved within 10 Working Days after it has been referred under paragraph 1.1, the Dispute shall be referred to an authorised senior officer of the AUTHORITY and an authorised senior officer of the SERVICE PROVIDER for resolution.
- 1.3 If any Dispute cannot be resolved within 10 Working Days after it has been referred under paragraph 1.2, then the Dispute shall be further referred to mediation in accordance with the provisions of paragraph 2.

2. MEDIATION

- 2.1 The procedure for mediation pursuant to paragraph 1.3 and consequential provisions relating to mediation shall be as follows:
- 2.1.1 a neutral adviser or mediator ('the Mediator') shall be chosen by agreement between the AUTHORITY and the SERVICE PROVIDER or, if they are unable to agree upon the identity of the Mediator within ten (10) Working Days after a request by one party to the other, or if the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ('CEDR') to appoint a Mediator;
- 2.1.2 the AUTHORITY and the SERVICE PROVIDER shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. The parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure.
- 2.2 Unless otherwise agreed by the AUTHORITY and the SERVICE PROVIDER, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 2.3 In the event that the AUTHORITY and the SERVICE PROVIDER reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on both parties once it is signed by a duly authorised senior officer of the AUTHORITY and a duly authorised senior officer of the SERVICE PROVIDER.
- 2.4 Failing agreement, the AUTHORITY or SERVICE PROVIDER may agree to invite the Mediator to provide a non-binding but informative opinion in writing. No such invitation shall be made without the written consent of both parties. If it is agreed that such an invitation shall be made, the opinion shall be provided on a without prejudice basis and shall not be used in evidence in

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any proceedings relating to this Contract without the prior written consent of both parties.

- 2.5 The AUTHORITY and the SERVICE PROVIDER shall each bear their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator shall be borne jointly in equal proportions by both parties unless otherwise directed by the Mediator.
- 2.6 Work and activity to be carried out under this Contract shall not cease or be delayed during the dispute resolution process set out in paragraph 1 and this paragraph 2.
- 2.7 In the event that the AUTHORITY and the SERVICE PROVIDER fail to reach agreement in the structured negotiations within forty (40) Working Days of the Mediator being appointed, or such longer period as may be agreed, then the Dispute may, subject to the agreement of both parties, be referred to arbitration in accordance with the provisions of paragraph 3 and failing such agreement, may be referred to the Courts in accordance with paragraph 4.

3. ARBITRATION

- 3.1 In the event that a Dispute is not resolved pursuant to paragraph 2 (or, where the matter has been referred to adjudication, under paragraph 5), the parties may, if they both agree, refer the matter to arbitration in accordance with this paragraph 3.
- 3.2 The party seeking to initiate the arbitration shall give a written Notice of Arbitration to the other party. The Notice of Arbitration shall –
- 3.2.1 state that the Dispute is referred to arbitration;
 - 3.2.2 state the particulars of this Contract; and
 - 3.2.3 provide a brief summary of the subject of the Dispute.
- 3.3 Unless otherwise agreed in writing by the AUTHORITY and the SERVICE PROVIDER, the provisions of the Arbitration Act 1996 shall govern the arbitration commenced pursuant to this paragraph 3.
- 3.4 Any Dispute, if referred to arbitration in accordance with this paragraph 3, shall be resolved by arbitration under the procedural rules of the London Court of International Arbitration.
- 3.5 It is agreed between the AUTHORITY and the SERVICE PROVIDER that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
- 3.6 For the avoidance of doubt it is agreed by the AUTHORITY and the SERVICE PROVIDER that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made to any body other than the tribunal, the AUTHORITY and the SERVICE PROVIDER, their legal representatives and any person necessary to the conduct of the proceedings, without the agreement of all parties to the arbitration.

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- 3.7 The arbitration proceedings shall take place in London and in the English language and the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.
- 3.8 The AUTHORITY and the SERVICE PROVIDER shall each bear their own costs in relation to any reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both parties unless otherwise directed by the arbitrator.
- 3.9 In the event that the AUTHORITY and the SERVICE PROVIDER do not agree to refer the matter to arbitration, then any Dispute may be referred to the Courts in accordance with paragraph 4.

4. LEGAL PROCEEDINGS

Subject to paragraphs 1 – 3, this Contract shall be subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.

5. ADJUDICATION

- 5.1 The provisions of paragraphs 1 – 4 above shall be without prejudice to either party's right to refer any Dispute to adjudication in accordance with the provisions of this paragraph 5.
- 5.2 The CLIENT or the SERVICE PROVIDER may at any time notify the other of intention to refer a Dispute arising under, out of, or relating to, the Contract to adjudication. Within 7 Days of such notice, the Dispute may by further notice be referred to an adjudicator to be nominated by TeCSA (the Technology and Construction Court Solicitor's Association). Subject only to paragraph 5.5, both the CLIENT and the SERVICE PROVIDER shall accept any such nomination as final and binding.
- 5.3 The notice of referral shall set out the principal facts and arguments relating to the Dispute. Copies of all relevant documents shall be enclosed with the notice. A copy of the notice and enclosures shall at the same time be sent by the party giving the notice to the other party.
- 5.4 If the person nominated as the adjudicator by TeCSA is unable to act, or fails to provide the notification required by paragraph 5.5, or ceases to be independent of the CLIENT or the SERVICE PROVIDER, he shall be replaced by another adjudicator also to be nominated by TeCSA. Again, and subject only to paragraph 5.5, both the CLIENT and the SERVICE PROVIDER shall accept any such further nomination as final and binding.
- 5.5 It shall be a condition precedent to the appointment of an adjudicator that he shall notify both parties that he will comply with this paragraph 5 and its time limits.
- 5.6 The adjudicator shall be appointed within 7 Days of the giving of a notice of intention to refer a Dispute to adjudication under paragraph 5.2. Any replacement adjudicator nominated in accordance with paragraph 5.4 shall likewise be appointed within 7 Days of the need for such a replacement having become apparent. For all such appointments, the form of adjudicator's appointment shall be the Model Form of Adjudicator's Appointment as set out in "GC/Works/5 Model Forms (1998)". A copy of each such appointment shall be supplied to each party. No such appointment shall be amended or replaced without the consent of both parties.

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- 5.7 The CLIENT AND THE SERVICE PROVIDER may submit representations to the adjudicator not later than 14 Days from the receipt of the notice of referral.
- 5.8 The adjudicator shall notify his decision to the CLIENT AND THE SERVICE PROVIDER not earlier than 14 and not later than 28 Days from the receipt of the notice of referral, or such longer period as is agreed by the CLIENT and the SERVICE PROVIDER after the Dispute has been referred. The adjudicator may extend the period of 28 Days by up to 14 Days, with the consent of the party by whom the Dispute was referred. The adjudicator's decision shall state how the cost of the adjudicator's fee or salary (including overheads) shall be apportioned between the parties, and whether one party is to bear the whole or part of the reasonable legal and other costs and expenses of the other relating to the adjudication. Where the adjudicator apportions liability to each party (whether in equal or some other proportion) in relation to the payment of the adjudicator's fee or salary (including overheads), the liability of each party shall be limited to the amount apportioned to it by the adjudicator.
- 5.9 The decision of the adjudicator is binding until the Dispute is finally determined by legal proceedings, by arbitration (if the parties agree to arbitration under paragraph 3.7) or by agreement and the parties do not agree to accept the decision of the adjudicator as finally determining the Dispute.
- 5.10 The adjudicator shall act impartially.
- 5.11 The adjudicator may take the initiative in ascertaining the facts and the law.
- 5.12 If requested by one of the parties to the dispute, the adjudicator shall provide reasons for his decision. Such requests may only be made within 14 Days of the decision being notified to the requesting party.
- 5.13 The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator, unless the act or omission is in bad faith. Any employee or agent of the adjudicator is similarly protected from liability.