

CIOB

TIME AND COST MANAGEMENT CONTRACT

07 CONSULTANCY APPOINTMENT

2015 EDITION



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THE CONSULTANCY APPOINTMENT

This Appointment is for consultancy services where construction is intended to be carried out under the CIOB Time and Cost Management Contract, 2015 Edition. The Appointment is not suitable for use with other forms of construction contract. The document contains

- The Appointment Agreement
- The standard terms of the Appointment
- Schedules 1 to 7
- Schedules 8 and 9, which should be prepared and either attached to the signed Appointment or referred to and initialled.

INTRODUCTION

The Time and Cost Management Consultancy Appointment (Appointment) is written for conformity with the suite's Time and Cost Management Contract and Time and Cost Management Subcontract to provide a consistent approach to time and cost risk management from initiation to completion of building and engineering projects.

NAMING

The Consultancy Appointment is formally called the "CIOB Time and Cost Management Contract Consultancy Appointment, 2015 Edition." However, it may also be referred to as the "Time and Cost Management Consultancy Appointment" or simply TCM/CA15. It is referred to within this document as the "Appointment".

USE OF THE APPOINTMENT

The Appointment is intended for use only in connection with the CIOB Time and Cost Management Contract, 2015 Edition and is not suitable for use with other forms of construction or engineering main forms of contract.

PRICING

The Appointment can be used for any method of pricing of any services. The amount to be paid in total or for particular stages of work, or the method of calculating the amount to be paid, is to be identified in Schedule 9.

SPECIAL TERMS

The standard documentation is expected to be supplemented by Special Terms setting out insurance requirements, bonding and any other matter peculiar to the particular project for which it is used. The Special Terms take priority over these standard conditions.

TIME MANAGEMENT

Where the Consultant is to design, the Appointment requires critical path network modelling, resource allocation and productivity analysis. Non-design consultants are required to plan and record resource allocation and productivity analysis. A design consultant is required to produce a Scheduling Contribution in differing densities updated and revised on the rolling wave principle that constantly predicts the currently attainable completion date, stage completion dates and key dates.

COST MANAGEMENT

Cost management of design consultants' work is by reference to the values attributed to the activities in the Consultant's Scheduling Contribution with progress updated from databased progress records. The updated Scheduling Contribution constantly predicts the out-turn cost of the design services and the value of work done to date. A non-design Consultant's cost management is by reference to the resources used and costs incurred against the planned resources and expenditure.

RISK MANAGEMENT

The Appointment is a collaborative contract requiring the Consultant, its subconsultants, the Employer and the Contractor to work with (where the Consultant does not itself fulfil those roles) the Time Manager, Cost Manager and Contract Administrator and the Employer to constantly appraise time and cost risk and to confer in taking practical action to overcome and avoid their unnecessary consequences. The Appointment contains power to instruct acceleration to both overcome the effects of a delay to progress and bring forward completion dates where practical.

COLLABORATION

The Appointment requires a collaborative approach to design in conformity with the British Standards Institution's BS 1192:2007. Where the Contractor or its Subcontractors have a design role the Construction Contract and Subcontract expressly require any Contractor or Subcontractors with a continuing role in design, administration or quality control during the continuation of the Subcontract Works to participate in decision making, quality control, time management, cost management and risk management in collaboration with the Consultant.

BUILDING INFORMATION MODELLING

The Appointment is suitable for Level 2 Projects¹ and the collaborative production of information throughout the project life cycle. It is compatible with the requirements of the British Standards Institution's PAS 1192: Part 2, 2013 "Specification for information management for the capital/delivery phase of construction projects using building information modelling" and it may be used with any desired Building Information Modelling Protocol.

INFORMATION TRANSFER

The Appointment requires information to be transferred electronically either by readable file or in native file format and in accordance with a File Transfer Protocol compatible with the British Standards Institution's PAS 1192:4 2014 COBie.

STANDARD DOCUMENTATION

Document No. 7, Consultancy Appointment, 2015 Edition comprises

- Appointment Agreement
- Terms of Appointment
- Schedule 1 – Additional Defined Terms
- Schedule 2 – Appointment Particulars
- Schedule 3 – Building Information Modelling
- Schedule 4 – Scheduling Contribution and Development Schedule
- Schedule 5 – Progress of Design Services Records
- Schedule 6 – Time and/or Cost Risks
- Schedule 7 – Issue Resolution
- Schedule 8 – Services
- Schedule 9 – Fees and Expenses

Also available for use with the Contract are

- Document No. 8, Schedules 8 and 9 for the appointment of the Project Time Manager, 2015 Edition, and
- Document No. 9, Schedules 8 and 9 for the appointment of the Contract Administrator, 2015 Edition.

DISCLAIMER

This Appointment has been produced for use where construction is intended to be carried out under the Time and Cost Management Contract. It is suitable for the appointment of professional services in connection with a wide variety of construction and engineering projects. As with any standard form document, however, the unique circumstances of each project will demand careful consideration as to its suitability and that of each provision. The parties will need to rely upon their own skill and judgement (and that of their advisers) in making use of this or any other standard form comprised in, or for use in connection with, this Consultancy Appointment. Neither the Chartered Institute of Building, nor any author or contributor, assumes any liability to anyone for any loss or damage caused by any error or omission, whether such error or omission is the result of negligence or any other cause.

¹ Defined by the UK Government's Construction Strategy for reducing UK construction costs. Cabinet Office, Government Construction Strategy, May 2011, available at www.gov.uk/government.

FEEDBACK

The Chartered Institute of Building would like to receive your comments on the Appointment in use, which should be addressed to:

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GRAPHIC DESIGN

Concept, design and artwork by Thompson Graphics

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The Appointment Agreement

APPOINTMENT DATE

This Appointment Agreement is made on

.....

THE PARTIES

Between

THE EMPLOYER

.....

whose primary address is

.....

.....

and whose email address is

and whose telephone number is

and

THE CONSULTANT

.....

whose primary address is

.....

.....

and whose email address is

and whose telephone number is

SERVICES

This Appointment Agreement is for the performance of

.....
(the Services more particularly described in Schedule 8)

to be commenced on the Commencement Date and completed by the Completion Date

PRICE

The Consultant is to be paid the price and/or at the rates identified in Schedule 9 for the Services

In connection with

THE PROJECT

described as

at

.....

PROJECT START

The Project Start Date is

APPOINTMENT DOCUMENTS

In accordance with the following Appointment Documents

- 1. The Appointment
- 2. The Special Terms identified as*
-

Appointment Documents identified as*

- 3.
- 4.
- 5.
- 6.

* Insert formal title of document

- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.

IT IS HEREBY AGREED AS FOLLOWS

The Consultant shall carry out and complete the Services described in Schedule 8

The Employer shall pay to the Consultant such sums as become payable that are identified and/or calculated in accordance with Schedule 9

THE EMPLOYER'S AUTHORISED REPRESENTATIVE

shall be

whose primary address is

.....
.....

and whose email address is

and whose telephone number is

THE CONSULTANT'S AUTHORISED REPRESENTATIVE

shall be

whose primary address is

.....
.....

and whose email address is

and whose telephone number is

THE TIME MANAGER

shall be

a) the Consultant*

b)

whose representative shall be

and whose primary address is

.....
.....

and whose email address is

and whose telephone number is

THE COST MANAGER

shall be

a) the Consultant*

b)

whose representative shall be

whose primary address is

.....
.....

and whose email address is

and whose telephone number is

* Delete whichever is inapplicable. If not deleted, the relevant functions shall be carried out by the Consultant.

EXECUTED AND DELIVERED AS A DEED

For and on behalf of the Employer

By

Signature

Name of signatory

Being a Director/ Authorised Signatory* of the Employer

And by

Signature

Name of signatory

Being a Director/ Authorised Signatory* of the Employer

For and on behalf of the Consultant

By

Signature

Name of signatory

Being a Director/ Authorised Signatory* of the Consultant

And by

Signature

Name of signatory

Being a Director/ Authorised Signatory* of the Consultant

* Delete as applicable, or insert the status of the signatory.

Terms of Appointment

1. DEFINED TERMS

- 1.1. Unless superseded or supplemented by Schedule 1, the capitalised terms shall have the meanings given in the Construction Contract.

2. INTERPRETATION

- 2.1. The language of the Appointment shall be English.
- 2.2. The Appointment shall be governed and construed in accordance with the Law of the Appointment identified in Schedule 2.
- 2.3. All monetary amounts shall be in the currency identified in Schedule 2.
- 2.4. The Base Date shall be that identified in Schedule 2.
- 2.5. Unless stated otherwise in the Appointment, its interpretation shall be consistent, so far as possible, with the interpretation provisions of the Construction Contract.
- 2.6. Where reference is made to performance by the Consultant in accordance with the Construction Contract, the requirements in the Construction Contract shall be read subject to the following
 - 2.6.1. "Contractor" shall mean "Consultant"
 - 2.6.2. "Works" shall mean "Project"
 - 2.6.3. "work" shall mean "Services".
- 2.7. Where the Appointment requires any document or information to be distributed, it shall be provided in portable document format (PDF) by means of
 - 2.7.1. download by the agreed File Transfer Protocol, or
 - 2.7.2. email

and unless stated or agreed otherwise it shall be distributed to the other party (or if distributed by another, to both parties) and the Listed Persons and, if appointed, the Contract Administrator and the words "distribute", "re-distribute", "distributes", "distributed" and "distribution" shall be construed accordingly.

2.8 Where the Appointment requires any document or information to be published, it shall be provided in native file format by means of

- 2.8.1 the Common Data Environment
- 2.8.3. download by the agreed File Transfer Protocol, or
- 2.8.4. email

and unless stated or agreed otherwise it shall be published to the other party (or if published by another, to both parties) and the Listed Persons and, if appointed, the Contract Administrator and the words “publish”, “re-publish”, “publishes”, “published” and “publication” shall be construed accordingly.

3. THE APPOINTMENT

- 3.1. This Appointment supersedes all previous representations, arrangements, understandings and agreements between the parties.
- 3.2. All the terms of the Appointment are severable. If any term is found to be unenforceable, illegal or void, the remaining terms shall continue in full force and effect.
- 3.3. To the extent that there is any inconsistency between any of the Appointment Documents, for the purpose of interpretation, unless expressly provided otherwise, the documents shall, for the purpose of interpretation, have the following order of priority
 - 3.3.1. the Appointment Agreement
 - 3.3.2. the Special Terms
 - 3.3.3. these Terms of Appointment
 - 3.3.4. the Schedules in numerical order
 - 3.3.5. any other documents forming part of the Appointment Documents, and
 - 3.3.6. the Construction Contract.
- 3.4. The Consultant shall identify and notify to the Employer at the earliest opportunity any actual or potential impossibility, clash, conflict, discrepancy, omission, error, inconsistency and/or ambiguity in and/or between the Appointment Documents, and/or between the Appointment Documents and Applicable Law. Within 10 Business Days of receiving such notice, the

Employer shall issue an instruction for correction. The instruction shall be valued as a Variation unless it requires

- 3.4.1. adoption of a description or data in a higher priority over that in a lower priority document, or
 - 3.4.2. correction of any actual or potential impossibility, clash, conflict, discrepancy, omission, error, inconsistency and/or ambiguity in, and/or between, any Materials and any Appointment Document, or in and/or between any Materials or Appointment Document and Applicable Law.
- 3.5. Where at the date of notice under Clause 3.4 an affected Activity is intended to be started within 20 Business Days, notwithstanding that the corrective instruction is to be valued as a Variation, any delay to progress and/or loss and/or expense caused shall be at the Consultant's risk.

4. OBLIGATIONS OF THE PARTIES

- 4.1. The parties shall work together in the manner required by the Appointment and shall co-operate in a spirit of mutual trust and fairness and in good faith.
- 4.2. Where the Consultant is required to exercise discretion as between the interests of the Employer and any other person, the Consultant shall do so independently and fairly.
- 4.3. The terms of the Construction Contract, and/or any Connected Contract with which the Consultant is to comply, shall either be included in the Special Terms or otherwise provided to the Consultant. In so far as they affect performance of the Services, the Consultant shall comply with all the requirements of the Construction Contract and/or Connected Contract, and shall indemnify the Employer against all claims arising from any failure by the Consultant to do so.
- 4.4. The Consultant shall exercise the level of skill, care and diligence to be expected of a properly qualified and competent professional experienced in performing the Services for projects of a similar size, value and complexity to the Project and shall
 - 4.4.1. carry out the Services in such a way that no act, omission or default of the Consultant shall constitute, cause or contribute to any breach by the Employer of its obligations under the Construction Contract or any Connected Contract, and
 - 4.4.2. comply with all reasonable instructions issued by the Employer.
- 4.5. In carrying out any work in connection with a Design Contribution, including any inspection and/or check, the Consultant shall exercise the diligence, skill and care that is reasonably

to be expected of a professional practitioner experienced in the design of work of a similar similar size, value and complexity to the Project.

- 4.6. The Consultant shall comply with Applicable Law and if and for so long as the Consultant carries out a part of the Services in a country and/or region where the Site is not located, the Consultant shall in respect of that part of the Services comply with the laws of that country and/or region. If the Consultant fails to do so and
- 4.6.1. loss and/or expenditure is incurred by the Employer, the Consultant shall reimburse the same to the Employer, and/or
- 4.6.2. as a result the Employer becomes subject to claims by third parties, the Consultant shall indemnify the Employer in respect of such claims.
- 4.7. The Consultant shall not put the Employer in breach of the terms of any Connected Contract.
- 4.8. Within 10 Business Days of receiving any reasonable request from the Employer to do so the Consultant shall provide such documentary evidence as is required by the Special Terms that financial arrangements have been made, and are being maintained, by the Consultant to enable the Consultant to fund the progress of the Services in accordance with its current Scheduling Contribution.
- 4.9. If the Consultant fails to provide the information required by Clause 4.10, the Employer may instruct the Consultant to suspend all or any of its obligations under the Appointment (from a date not earlier than 10 Business Days after the notice) until such information is provided. The Consultant shall bear the time and cost effect of any such suspension.
- 4.10. Within 10 Business Days of receiving any reasonable request from the Consultant to do so, the Employer shall provide documentary evidence that financial arrangements have been made and are being maintained by the Employer to enable the Employer to pay the Predicted Cost of Services. If the Employer intends to make any change to its financial arrangements which might have a material impact on the Consultant, it shall notify the Consultant and provide detailed particulars of the intended change before making it.
- 4.11. If the Employer fails to provide the information required by Clause 4.8, the Consultant may notify the Employer that (from a date not earlier than 10 Business Days after the notice) it intends to suspend all or any of its obligations under the Appointment and may continue with the suspension until such information has been provided. The Consultant shall include in its notice a statement setting out which obligations it intends to suspend. The Employer shall bear the time and cost effect of any such suspension.

5. COMMENCEMENT AND COMPLETION

- 5.1. The Services shall commence on the earlier of the Commencement Date or the date at which the Consultant is otherwise instructed to commence the Services. The Services shall continue until the Completion Date or earlier termination.
- 5.2. Where the Services are to be performed in Stages
 - 5.2.1. the Stages shall be those described in Schedule 8
 - 5.2.2. the value of each Stage shall be that stated in Schedule 9
 - 5.2.3. the Employer shall provide the Consultant with sufficient information and/or instructions to commence each Stage by the relevant Stage Commencement Date, or the Logical Date for its commencement in the current accepted Scheduling Contribution, whichever is the later, and
 - 5.2.4. unless instructed otherwise, the Consultant shall commence the carrying out of the relevant Stage on the relevant Stage Commencement Date identified in Schedule 2 and shall complete it by the relevant Stage Completion Date identified in Schedule 2.
- 5.3. Where the Special Terms require a part of the Services to be completed by a Key Date stated in Schedule 2, the Consultant shall complete that part by the Key Date.
- 5.4. Where it is reasonably foreseeable that the commencement or completion of any part of the Services is, or is likely to be, dependent upon services or work carried out by others, the logical connection between that part and such other services or work shall be indicated on the Scheduling Contribution and clearly described in the supporting information.
- 5.5. A failure by others to undertake any services or work at a time or in a sequence not identified in accordance with Clause 5.4 shall not constitute an Interference.

6. AUTHORISED REPRESENTATIVES

- 6.1. The person identified in the Appointment as the Consultant's Authorised Representative shall be empowered to act with the Consultant's full authority in all matters relating to the Appointment. If at any time the appointed person is unable to act the Consultant shall appoint another in its place and shall notify the Employer of the name, qualifications, experience and contact details of the replacement.
- 6.2. Unless stated otherwise in the Special Terms, the person identified in the Appointment as the Employer's Authorised Representative shall be empowered to act with the Employer's

full authority in all matters relating to the Appointment. If at any time the appointed person is unable to act, the Employer shall appoint another in its place and shall notify the Consultant of the name and contact details of the replacement.

7. COMMUNICATIONS

- 7.1. Unless the Appointment provides otherwise, whenever any instruction, direction, certificate, submission, proposal, register, record, request, determination, acceptance, approval, notice, reply, consent, non-acceptance, rejection, refusal, warning or any other communication is required by the Appointment, it shall be in writing in the language of the Appointment and provided electronically in portable document format, delivered by hand or sent by pre-paid recorded delivery. Recorded delivery means a form of delivery by post whereby the sender may obtain a record of the delivery.
- 7.2. Email shall be deemed to be received as soon as it is sent provided that it bears the subject code data identified in Schedule 2, and subject to evidence to the contrary.
- 7.3. A communication transmitted in accordance with the File Transfer Protocol shall be deemed to have been received when the recipient is notified that it has been uploaded for file transfer in accordance with the File Transfer Protocol.
- 7.4. A communication sent by recorded delivery has effect when it is received at the last address notified by the recipient for receiving postal communications or, if none is notified, at the address of the recipient stated in the Appointment.
- 7.5. Any submission made or information provided by way of a Common Data Environment shall be deemed to have been received when it is recorded as having been made or provided.
- 7.6. A communication delivered by hand shall be deemed to have taken place when signed for upon delivery.

8. COLLATERAL WARRANTIES

- 8.1. Within 15 Business Days of any written request by the Employer to do so, the Consultant shall execute and provide, in the form required by the Special Terms
 - 8.1.1 a Collateral Warranty in favour of any Connected Party identified by the Employer in its request and/or
 - 8.1.2 a Collateral warranty in respect of any Subconsultancy in favour of the Employer

- 8.2. At the same time as entering into the Novation Agreement pursuant to Clause 22.1, the Consultant shall execute and provide, in the form required by the Special Terms, a Collateral Warranty in favour of the Employer.

9. SECURITY FOR CONSULTANT'S PERFORMANCE

- 9.1. Where it is stated in Schedule 2 to be required, the Consultant shall within 5 Business Days of the Appointment Date deliver to the Employer
- 9.1.1. a Holding Company Guarantee, and/or
- 9.1.2. a Performance Bond
- in the form required by the Special Terms.
- 9.2. The guarantor in respect of any Performance Security shall be a financial institution or insurer approved in advance by the Employer, such approval not to be unreasonably withheld or delayed.

10. INSURANCES

- 10.1. The parties shall take out and maintain insurance for the risks, periods and amounts required by the Special Terms.
- 10.2. Upon request by a party, the other party shall provide satisfactory evidence that such insurance is in place. If such evidence is not provided within 15 Business Days, the requesting party may notify the other party and take out any insurance the other party has failed to satisfactorily evidence.
- 10.3. The Consultant shall be liable for, and shall indemnify the Employer against, any expense, loss, claim or proceedings arising in connection with the performance of the Services from
- 10.3.1. personal injury to any person, or the death of any person, except to the extent that the same is caused by any act or neglect of the Employer or those for whom the Employer is responsible, and/or
- 10.3.2. injury or damage to any property (real or personal) to the extent that the same is caused by negligence, breach of Applicable Law, omission or default of the Consultant or those for whom the Consultant is responsible.

11. INFORMATION

- 11.1. The Employer shall provide the Consultant with the information reasonably necessary for the performance of the Services
- 11.1.1. in accordance with the Consultant's Scheduling Contribution, or if none
 - 11.1.2. in accordance with the Development Schedule, or if none
 - 11.1.3. in due time for Completion to be achieved by the Relevant Completion Date.
- 11.2. Where the Employer provides the Consultant with a Reference Design, it shall have the status identified in Schedule 2.
- 11.3. Where the Employer provides the Consultant with any investigation report, data, map, Drawing, historical record or any other information of any kind concerning
- 11.3.1. existing structures
 - 11.3.2. physical ground conditions
 - 11.3.3. subsurface conditions
 - 11.3.4. geology
 - 11.3.5. below ground services of the Site, and/or
 - 11.3.6. other significant physical features
- it shall have the status identified in the Special Terms. If no status is identified, it may be relied upon by the Consultant.
- 11.4. Where the Consultant is required to rely upon information provided by the Employer or any person appointed by the Employer, the Employer warrants that the information so provided is satisfactory for the proper performance of the Services.
- 11.5. If not permitted to rely upon any information to which Clause 11.3 refers, or if the information provided is in any way unsatisfactory, before commencing the relevant Design Services the Consultant shall notify the Employer of the investigations required. Unless specifically instructed otherwise the Consultant shall not commence the Design Services until satisfactory information has been provided by the Employer.
- 11.6. No later than 10 Business Days before the information is stated to be required, the Consultant shall request from the Employer any required information not already in

its possession. The Employer shall respond to such request on or before the date such information is required to be provided by Clause 11.1.

12. SUBMISSIONS

12.1. Where the Consultant is required to provide a submission for acceptance or approval, unless stated otherwise in the Appointment, the submission shall be distributed at least 10 Business Days before the Logical Date by which the Consultant reasonably requires such acceptance or approval.

12.2. Any such submission shall be deemed accepted within 10 Business Days of distribution, unless within that period the Employer notifies the Consultant, with a copy to the Time Manager, stating that the submission

12.2.1. does not comply with the Appointment

12.2.2. imposes an obligation on the Employer that the Appointment does not require the Employer to bear

12.2.3. is contrary to Applicable Law

12.2.4. would have an adverse effect on the Consultant's ability to comply with the Appointment, or

12.2.5. is rejected on any other grounds stated in the Special Terms.

The notice shall also provide particulars supporting the statement.

12.3. A submission may be accepted or approved in part in the notice referred to under Clause 12.2 provided that the notice identifies

12.3.1. the part which is unacceptable

12.3.2. the reason why it is unacceptable, and

12.3.3. the date by which the amended submission is to be received.

12.4. As soon as is reasonably practicable after a submission has been rejected, deemed rejected, or conditionally accepted, the Consultant shall distribute a submission complying with the Appointment. The Consultant shall bear the time and cost effect of any such rejection, conditional acceptance and re-submission.

- 12.5. No comment by the Employer or any other person shall relieve the Consultant of its responsibilities.
- 12.6. If the Consultant considers that any notice under Clause 12.2 conflicts with the Appointment and/or amounts to a Variation, it shall within 10 Business Days of the decision refer the matter for Issue Resolution. If the Consultant does not do so it shall be deemed to be agreed that the decision is compliant with the Appointment and does not amount to a Variation.
- 12.7. The Time Manager shall maintain a database of submissions identifying in respect of each submission
- 12.7.1. the submission identifier
 - 12.7.2. a description of the submission
 - 12.7.3. the date of its receipt
 - 12.7.4. the method of its delivery
 - 12.7.5. whether it is accepted, approved, rejected or conditionally accepted or approved, and
 - 12.7.6. the document comprising the notice.
- 12.8. No later than 5 Business Days before each Progress Meeting, the Time Manager shall publish a current copy of the database of submissions.

13. INTELLECTUAL PROPERTY

- 13.1. The Consultant shall
- 13.1.1. warrant that it has the intellectual property rights in the Materials
 - 13.1.2. indemnify the Employer against any loss or damage sustained by the Employer as a result of infringement of any intellectual property rights in the Materials by the Consultant or any Subconsultant, and
 - 13.1.3. retain all intellectual property rights in the Materials, except that the Consultant hereby irrevocably waives any moral rights it may have.

- 13.2. The Consultant grants the Employer a perpetual, transferable, irrevocable, non-exclusive, sub-licensable, royalty-free licence to copy, use and modify the Materials and to reproduce the Materials in connection with
- 13.2.1. the Project
 - 13.2.2. resolving any issue or dispute arising out of, or in connection with, the Appointment, the Construction Contract or any Connected Contract
 - 13.2.3. commissioning, maintaining and operating the Project
 - 13.2.4. promotional activity, advertising, leasing or selling, and/or
 - 13.2.5. repairing, altering or reconstructing the Project, irrespective of who designs such repairs, alterations or reconstruction.
- 13.3. For any part or parts of the Materials in which the Consultant does not hold all relevant intellectual property rights, the Consultant warrants and undertakes that it has been granted, or shall obtain for itself, a licence or licences on the terms required by Clause 13.2. The Consultant hereby grants, or (in respect of any licences yet to be obtained) shall grant, a sub-licence or sub-licences to the Employer on terms no less favourable than those of the Consultant's own licence or licences.

14. DESIGN EXECUTION PLAN

- 14.1. Where Schedule 8 requires the Consultant to undertake Design Services, the Consultant shall distribute for acceptance by the Employer its Design Execution Plan no less than 20 Business Days before the Date for Commencement. The Design Execution Plan shall identify the timing of submissions and any other matters required by Schedule 8. The submission shall be accompanied by sufficient information to facilitate its interpretation and evaluation.
- 14.2. The Consultant's Design Execution Plan, and any revision made to it, shall not constitute or cause
- 14.2.1. a breach of the Appointment
 - 14.2.2. a breach of the Construction Contract and/or any Connected Contract
 - 14.2.3. an illegal operation
 - 14.2.4. a hazard to health and/or safety

- 14.2.5. a hazard to the safety and/or stability of the Works, Temporary Work or any other property
 - 14.2.6. a method or sequence of working which is not conducive to effective time and/or cost control, or
 - 14.2.7. a fraudulent misrepresentation or any unethical conduct.
- 14.3. If the Consultant wishes to revise its Design Execution Plan at any time then, no later than 20 Business Days before the relevant work is scheduled to be carried out, the Consultant shall distribute for acceptance the Consultant's revised intentions for its Design Execution Plan.
- 14.4. Where the current Scheduling Contribution indicates that any Activity affected by a submission under Clause 14.3 is intended to be started within 20 Business Days, any delay to progress and/or loss and/or expenditure caused by the submission shall be at the Consultant's risk.
- 14.5. The Consultant shall consult over and consider with the Time Manager the Design Execution Plan and any revision to it. If the Time Manager considers that any submission does not comply with the Appointment, within 10 Business Days of its receipt the Time Manager shall
- 14.5.1. reject the submission in accordance with Clause 12.2, or
 - 14.5.2. issue a conditional acceptance of the submission in accordance with Clause 12.3.
- 14.6. If not rejected, and subject always to any condition of acceptance, the Design Execution Plan (and any revision of it) shall be deemed to be agreed to be conclusive evidence of the Consultant's intentions for the future performance of the Services at the Data Date of its acceptance. The accepted Design Execution Plan and any revision of it shall be incorporated in the Consultant's Scheduling Contribution under Clause 30 or Revised Scheduling Contribution under Clause 34, as the case may be.
- 14.7. The Consultant shall not carry out any Services described in the Design Execution Plan before acceptance. If the Consultant carries out, or attempts to carry out, any Services before acceptance, the Employer may instruct the Consultant to suspend performance of the Services. The suspension shall continue until the Design Execution Plan has been confirmed as acceptable, and adequate records have been made of any resources and services carried out before acceptance. The cost and time effect of any such suspension, investigation or record keeping shall be borne by the Consultant.

15. DESIGN CONTRIBUTION

- 15.1. Any Consultant's Design Contribution shall
 - 15.1.1. comply with Applicable Law
 - 15.1.2. comply with Standards
 - 15.1.3. be of good quality
 - 15.1.4. be prepared in accordance with any Design Stage identified in Schedule 8
 - 15.1.5. incorporate the requirements and benefits of the preceding Design Stage, and
 - 15.1.6. permit the Works to be
 - 15.1.6.1. safe to construct and operate, and
 - 15.1.6.2. fit for the purpose required by the Construction Contract.
- 15.2. The Consultant shall inspect and check its Design Contribution to establish that there is no potential or actual clash, conflict, discrepancy, omission, error, inconsistency and/or ambiguity in its Design Contribution and, where it designs a part of the Project, between the Consultant's Design Contribution and any other part of the design affected by it.
- 15.3. Where the Consultant is required to make a Design Contribution based upon information provided by the Employer or any Listed Person, and the Consultant considers that, if made in compliance with that information its Design Contribution is likely to be in conflict with its obligations, it shall immediately notify the Employer, seeking modified information. Upon receiving such notice, the Employer shall modify, cancel or confirm the information provided. The Consultant shall not proceed with its Design Contribution unless such information is modified to minimise or remove the conflict, or it is confirmed.
- 15.4. Unless stated otherwise in the Special Terms or the Employer otherwise instructs, the Consultant may not commence any Design Stage until the previous Design Stage has been confirmed as complete.
- 15.5. At the completion of each Design Stage, the Design Contribution shall be signed by the Employer and the Consultant solely for the purpose of demonstrating that the Design Stage has been satisfactorily completed and without relieving the Consultant of its obligations under the Appointment.
- 15.6. The Consultant shall amend its Design Contribution to incorporate any Variations, so that the

Consultant's Design Contribution is consistent with that of any other Design Contributor.

- 15.7. The Consultant shall distribute its Design Contribution
 - 15.7.1. at the completion of each required Design Stage, and
 - 15.7.2. whenever the Consultant's Design Contribution is updated or revised.
- 15.8. Except where the Design Contribution is one to which Clause 16 applies and/or is maintained in a Common Data Environment
 - 15.8.1. the Time Manager shall make and maintain a database of the Consultant's submissions in connection with the Design Services, and
 - 15.8.2. no less than 5 Business Days before each Progress Meeting, the Time Manager shall publish a current copy of the database of submissions.

16. BUILDING INFORMATION MODELLING

- 16.1. Where the Appointment requires the Project to be designed using Building Information Modelling, unless stated otherwise in the Appointment
 - 16.1.1. the Consultant may not modify, transmit or use any Model for any purpose whatsoever, except in connection with and for the purposes of the Project and in accordance with Schedule 3 and the Building Information Modelling Protocol
 - 16.1.2. to the extent that any information is required for analysis, review, tender, bidding and/or construction purposes, it shall be extracted from the Model and/or Federated Model in accordance with Building Information Modelling Protocol
 - 16.1.3. the Model and/or Federated Model shall be maintained in accordance with the Building Information Modelling Protocol, and
 - 16.1.4. the Consultant shall
 - 16.1.4.1. provide its Design Contribution in compliance with the Building Information Modelling Protocol
 - 16.1.4.2. maintain and update the Model and/or Federated Model as required throughout the course of the Project

- 16.1.4.3. indemnify the Employer against any loss, whether direct or consequential, or damage the Employer may suffer and against any liability, whether direct or indirect, arising out of, or in connection with, the use of the Model and/or Federated Model by other Design Users
 - 16.1.4.4. warn the Employer of any potential or actual clash, conflict, discrepancy, or inconsistency, error, omission and/or ambiguity between the Consultant's Design Contribution and that of any other Design Contributor
 - 16.1.4.5. publish each Model and/or the Federated Model required by the Building Information Modelling Protocol
 - 16.1.4.6. select and remain solely responsible for the suitability and integrity of the selected software, and any information, drawings, specifications or other information extracted from any Model, and
 - 16.1.4.7. archive each Model in accordance with the requirements stated of the Building Information Modelling Protocol.
- 16.2. To the extent that there is any clash, conflict, discrepancy and/or inconsistency between the terms of this Clause 16 and the Building Information Modelling Protocol, save to the extent stated otherwise in the Appointment, the terms of this Clause 16 shall prevail.

17. CONTINUING DESIGN SERVICES

- 17.1. Where the Design Execution Plan indicates that any Design Services are to continue after commencement of the Works and the Consultant is the Time Manager or Contract Administrator
- 17.1.1. within 5 Business Days of acceptance of a revised Design Contribution or Revised Scheduling Contribution, the Time Manager shall provide a copy of the accepted revised submission to the Contract Administrator. The Time Manager shall notify the Contract Administrator of the instructions to be issued to the Contractor as a Variation, and
 - 17.1.2. within 5 Business Days of acceptance of a progress update of a Design Contribution or Scheduling Contribution, the Time Manager shall provide a copy of the accepted submission to the Contract Administrator. The Contract Administrator shall instruct the Contractor to update its as-built data for the Works accordingly.

- 17.2. If, after commencement of the Works, the Consultant is required to carry out, or otherwise continues, any Design Services which are not identified as continuing during the Works in the Design Execution Plan, whether by Building Information Modelling or otherwise
- 17.2.1. references to the Development Schedule shall include the Working Schedule
- 17.2.2. immediately upon becoming aware of the need for design to continue during construction, the Consultant shall notify the Time Manager of the revisions necessary to coordinate the provision of Design Services with construction of the Works, and
- 17.2.3. the Time Manager shall notify the Contract Administrator of any instructions to be issued to the Contractor as a Variation.

18. CONFIDENTIALITY

- 18.1. Except as regards the Contractor (where the Appointment is to be novated to the Contractor pursuant to Clause 22.1) or where required by Applicable Law, the Employer shall keep confidential the fees and expenses referred to in Schedule 9.
- 18.2. The Employer shall promptly notify the Consultant of any request for disclosure of any Materials required by Applicable Law.
- 18.3. Subject to Clauses 18.4 and 18.8, the Employer shall not use the Materials for any purpose other than in connection with the Project or for the determination of the rights and liabilities of any party arising under, or in connection with, the Appointment, the Construction Contract or any Connected Contract.
- 18.4. The Consultant may use the Contractor's Progress Records only for the purposes stated in Schedule 2.
- 18.5. The Employer, Time Manager, Cost Manager and the Consultant may use the data contained in the database referred to in Clause 44.1 for any purpose connected with the Project.
- 18.6. The Employer, Time Manager, Cost Manager and the Consultant may use the data contained in the database referred to in Clause 32.1 for any purpose whatsoever, whether or not in connection with the Project.
- 18.7. Except in respect of a request for information required by Applicable Law to be disclosed, or for the purposes identified in Clause 18.3, neither the Employer nor the Listed Persons, nor any person appointed in connection with the Project, shall divulge or use any of the Materials.

- 18.8. Nothing in this clause shall prevent disclosure of information to the employees of the Employer, Contractor and Listed Persons, who have first given an undertaking in the terms of this clause to their respective employers, to the extent necessary
- 18.8.1. for the execution of
 - 15.8.1.1. the Construction Contract
 - 15.8.1.2. any Connected Contract
 - 15.8.1.3. the Appointment
 - 18.8.2. under Applicable Law, or
 - 18.8.3. in connection with an award or decision under Clause 62.6.
- 18.9. Disclosure of information that has, except as a result of breach of confidentiality, become available or generally known to the public shall not constitute a breach of this Clause 18.
- 18.10. The obligations under this clause shall cease upon the later of
- 18.10.1. the subject information ceasing to be commercially and/or security sensitive, or
 - 18.10.2. three years after
 - 18.10.2.1. the Termination Date, or
 - 18.10.2.2. Completion.

19. PERSONNEL

- 19.1. The Consultant shall provide all personnel necessary for the performance of the Services and, where necessary, replacement personnel.
- 19.2. All personnel engaged by the Consultant in connection with the Services shall be appropriately qualified, skilled and experienced in their respective professions or occupations.
- 19.3. The Consultant shall be responsible for obtaining and maintaining valid entry and working visas and other permits required by personnel employed in connection with the Services.
- 19.4. If requested by the Consultant, the Employer shall use reasonable endeavours to assist the Consultant in any applications for visas and/or permits required.

- 19.5. If the Employer becomes aware that any person employed by the Consultant
- 19.5.1. has performed, or is performing, incompetently or negligently
 - 19.5.2. has failed, or is failing, to comply in any way with the provisions of the Appointment, and/or
 - 19.5.3. has behaved, or is behaving, in a manner which is prejudicial to the health and safety of others, or is prejudicial to the protection of the environment,
- the Employer shall notify the Consultant. If the default continues, or is repeated at any time, the Employer may instruct the Consultant to exclude that person from performance of the Services.
- 19.6. If the Employer considers it necessary, the Employer shall
- 19.6.1. instruct the Consultant to appoint a suitable replacement, or
 - 19.6.2. omit the relevant services and without further notice employ others to perform the services omitted and any other work incidental to them. These shall be valued as an omission.
- 19.7. The Employer may recover from the Consultant any expenditure and/or loss the Employer suffers as a consequence of a breach by the Consultant of this Clause 19.

20. ACCESS AND ACCOMMODATION

- 20.1. Unless stated otherwise in the Special Terms, the Consultant shall be permitted to have access to the Site during all Working Hours on Business Days. The Consultant shall be permitted to have access at any other time on giving no less than one Business Day's notice to the Contractor or, if none, the Employer.
- 20.2. Where it is indicated in Schedule 8 that the Consultant is required to have personnel based on the Site, the Consultant shall maintain appropriate personnel on the Site during Business Days.
- 20.3. The Employer shall, whenever necessary, provide safe and secure accommodation on the Site suitable for use by the Consultant's personnel and for the storage of any equipment.

21. PERMITS AND LICENCES

- 21.1. Unless otherwise stated in in the Special Terms, the Consultant shall apply for and use its best endeavours to obtain all applicable permits, licences and approvals necessary for the carrying out of the development and occupation of the completed Project.
- 21.2. If requested by the Consultant, the Employer shall use reasonable endeavours to assist the Consultant in any applications for permits, licences or approvals made pursuant to Clause 21.1.

22. ASSIGNMENT, SUBCONSULTING AND NOVATION

- 22.1. Where the Consultant is required to undertake Design Services, and if the Employer so instructs, the Consultant shall within 10 Business Days enter into the Novation Agreement and deliver it to the Employer.
- 22.2. The Employer may assign or transfer the benefit of the Appointment in whole, or in part, without the Consultant's consent.
- 22.3. The Consultant may not assign or transfer the benefit of the Appointment without the prior approval of the Employer, except that as security in favour of a bank or financial institution the Consultant may assign without approval its right to any monies due or to become due under the Appointment. The Consultant shall promptly notify the Employer of any such assignment.
- 22.4. The Consultant may not sublet any part of the Services without the Employer's prior approval, such approval not to be unreasonably withheld. Notwithstanding any Subconsultancy, the Consultant shall remain fully responsible for performance of the Services.
- 22.5. The Consultant shall provide the Employer with a complete copy of all Subconsultancies relating to the Appointment.
- 22.6. Unless agreed otherwise, neither party shall recruit or attempt to recruit human resources from the other party.

23. PROGRESS MEETINGS

- 23.1. The Consultant shall attend Progress Meetings arranged by the Time Manager at the intervals stated in Schedule 2 in respect of which

- 23.1.1. the time and place shall be notified by the Time Manager after consultation with the proposed attendees, and
 - 23.1.2. the Time Manager shall, no later than 5 Business Days after each meeting, distribute the minutes with a copy to all attendees and the Employer. The minutes shall be deemed to be agreed unless notice of any objection is delivered to the Time Manager within 5 Business Days of their issue.
- 23.2. When required to do so the Consultant shall attend Progress Meetings arranged by the Contract Administrator in connection with the Construction Contract.

24. EMPLOYER'S INSTRUCTIONS

- 24.1. The Employer shall issue to the Consultant instructions as required by the Appointment and may, at its sole discretion, at any time issue instructions for the safe, timely and cost-efficient performance of the Services.
- 24.2. If the Employer purports to issue any instruction which is likely to inhibit or prevent the proper performance of the Services required by the Appointment, the Construction Contract and/or any Connected Contract, the Consultant shall immediately notify the Employer seeking modified instructions. Upon receiving such notice, the Employer shall modify, cancel or confirm its instruction. The Consultant shall not implement the instruction unless it is modified to minimise or remove the conflict, or it is confirmed.
- 24.3. Subject to Clauses 24.2 the Consultant shall comply with all instructions properly issued by the Employer, including any requirement as to the timing of compliance. For the avoidance of doubt
- 24.3.1 the Employer may not issue instructions with which it is impossible or illegal to comply, and
 - 24.3.2 compliance shall not be considered impossible solely by reason of the cost of compliance.
- 24.4. If the Consultant breaches Clause 24.3, the Employer may at any time notify the Consultant and may without further notice employ others to execute the instruction, and any other services incidental to it, and
- 24.4.1 such services shall be valued as an omission
 - 24.4.2 the Consultant shall bear all risk as to time and cost which may arise as a consequence, and

- 24.4.3. the Employer may recover from the Consultant any expenditure and/or loss the Employer suffers as a consequence.

25. SUSPENSION OF SERVICES

- 25.1. The Employer may at any time instruct the suspension of the performance of the Services or any part of them.
- 25.2. During the period of suspension, the Consultant shall be entitled to be paid at the rate identified in Schedule 9.
- 25.3. If, upon resumption of the Services, the Consultant is required to carry out any additional services which, but for the suspension, would not have been required, they shall be treated as a Variation.

26. VARIATIONS

- 26.1. The Employer may, at any time prior to Completion, instruct the Consultant to carry out a Variation which does not conflict with the requirements of the Appointment, the Construction Contract or any Connected Contract.
- 26.2. As soon as reasonably practicable after receiving such instruction, the Consultant shall provide the Employer with its calculation of the value in accordance with Schedule 9 of and the time and cost effect (if any) in accordance with Clause 36 of the Variation. The calculation of the direct cost shall be based upon the rates, fees and expenses identified in Schedule 9.

27. EARLY WARNING

- 27.1. If at any time the Consultant becomes aware that any delay to progress of the Services is likely to be or is being caused by an Interference, the Consultant shall notify the Employer, the Time Manager and, if appointed, the Contract Administrator, of the material circumstances.
- 27.2. As soon as the Contract Administrator or, if none, the Time Manager becomes aware that any Interference is likely to occur, or is occurring, and/or on receiving a notice under Clause 27.1, the Contract Administrator, or if none, the Time Manager, shall prepare a description of the Interference and its likely effect on progress of the Services and any Due Date in accordance with Clause 35. The Contract Administrator, or if none, the Time Manager shall distribute that description and publish the Impacted Development Schedule as an Early Warning.

28. RISK MANAGEMENT

- 28.1. Within 5 Business Days of receiving an Early Warning, the Contract Administrator or, if none, the Time Manager shall
- 28.1.1. add the identified risk to the Risk Register
 - 28.1.2. convene a risk management meeting with the Consultant, the Time Manager, the Cost Manager (and any other person likely to be involved in the resolution of the risk)
 - 28.1.3. determine what steps, if any, can reasonably be taken to avoid, or reduce the likelihood of, the occurrence and/or to minimise the predicted consequential effects of the identified risk, and
 - 28.1.4. issue any instructions it considers necessary.
- 28.2. Within 5 Business Days of any risk management meeting, the Contract Administrator or, if none, the Time Manager, shall update and revise the Risk Register identifying
- 28.2.1. the new Data Date
 - 28.2.2. the revision of risks identified
 - 28.2.3. any agreement made, and/or
 - 28.2.4. any instructions issued,
- and shall re-issue the revised Risk Register to the Consultant, the Time Manager, the Cost Manager and the Listed Persons.
- 28.3. If any instruction issued under Clause 28.1.4 or Clause 28.2.4 requires a revision of the Consultant's Scheduling Contribution, the Consultant shall submit a Revised Scheduling Contribution in accordance with Clause 34.

29. FAILURE TO PROVIDE RISK MANAGEMENT INFORMATION

- 29.1. If the Consultant fails to publish anything required by the Appointment to be published, the Time Manager shall notify the Employer. The Employer may at any time notify the Consultant, specifying the Consultant's default and the date of its occurrence, and instruct the Consultant to make good the default within 5 Business Days of the notice.

- 29.2. During any period when the Consultant is in default of its obligation to publish a submission in accordance with the Appointment, the Employer may employ and pay others to make whatever reasonable investigations the Employer sees fit. Without limitation, the investigations may include entering any premises of the Consultant where the Services are being carried out, and making and keeping any progress records or schedules the Employer requires to assist in the management of risks. The cost of such investigations, record keeping and/or schedule preparation shall be borne by the Consultant.
- 29.3. Any records or schedules prepared pursuant to Clause 29.2 shall be conclusive evidence of the progress of the Services at the Data Date when they are made.

30. SCHEDULING CONTRIBUTION

- 30.1. Where the Consultant is required to make a Design Contribution, no less than 20 Business Days before commencing Design Services the Consultant shall publish its Scheduling Contribution in the form and manner identified in Schedule 2.
- 30.2. The Consultant shall take into consideration in its Scheduling Contribution the accepted Design Execution Plan, the interface with the Scheduling Contribution of any other relevant Design Contributor and, where required by Clause 17, the interface with any relevant part of the Works.
- 30.3. With each submission, the Consultant shall provide sufficient information to identify the assumptions and calculations in the relevant Scheduling Contribution, and to facilitate its interpretation by the Time Manager.
- 30.4. The Consultant's Scheduling Contribution and any revision to it shall not constitute or cause
- 30.4.1. an illegal operation
 - 30.4.2. a breach of the Construction Contract and/or any Connected Contract
 - 30.4.3. a breach of the Appointment
 - 30.4.4. a hazard to health and/or safety
 - 30.4.5. a hazard to the safety and/or stability of the Works, Temporary Work or any other property
 - 30.4.6. a method or sequence of working which is not conducive to effective time and/or cost control, or

- 30.4.7. a fraudulent misrepresentation or unethical conduct.
- 30.5. For every Activity planned to be started within the period of 60 Business Days after the Data Date, the Draft Scheduling Contribution shall indicate
- 30.5.1. the services planned to be carried out
- 30.5.2. the calculated duration
- 30.5.3. the planned value,
- and, where Schedule 9 requires payment to be made by reference to the resources used and the hours worked,
- 30.5.4. the resources planned to be used
- 30.5.5. the productivity expected to be achieved.
- 30.6. If the Time Manager considers that any Draft Scheduling Contribution does not comply with the Appointment, the Time Manager shall within 10 Business Days of its publication
- 30.6.1. reject the submission in accordance with Clause 12.2, or
- 30.6.2. issue a conditional acceptance of the submission in accordance with Clause 12.3.
- 30.7. If not rejected, and subject always to any condition of acceptance, the Draft Scheduling Contribution shall be deemed to be agreed to be conclusive evidence of the Consultant's intentions for the future performance of the Services at the Data Date of the submission.
- 30.8. The Consultant may not carry out any services not described in its Draft Scheduling Contribution. If the Consultant carries out, or attempts to carry out, any services before acceptance of the Draft Scheduling Contribution, the Employer may instruct the Consultant to suspend performance of the Services. The suspension shall continue until a satisfactory Scheduling Contribution has been accepted, and adequate progress records have been made of any resources and services carried out before acceptance. The cost and time effect of any such suspension, investigation or record keeping shall be borne by the Consultant.
- 30.9. The Time Manager shall maintain a database of submissions in accordance with Paragraph S 4.13 of Schedule 4. No later than 5 Business Days before each Progress Meeting the Time Manager shall publish a current copy of the database of submissions.

31. INCORPORATION OF SCHEDULES 8 AND 9

- 31.1. Whether Services are intended to be performed by the Consultant or a Subconsultant, the Scheduling Contribution shall illustrate the Services described in Schedule 8, and the value of each Activity, in accordance with Schedule 9, ignoring any advance mobilisation costs.
- 31.2. At Low Density and Medium Density the quantity of services and planned value of each Activity shall be calculated according to the best data available at the Data Date of the Scheduling Contribution.
- 31.3. At High Density the planned value of each Activity shall be calculated by reference to the services to be performed, the Materials to be prepared and, if applicable, the resources planned to be required to achieve its completion.
- 31.4. Levels of Effort of appropriate description and value shall be included in the Scheduling Contribution, logically linked to the Activities to which they apply in respect of
 - 31.4.1. each constituent part of Preliminaries, and
 - 31.4.2. Overheads and Profit.
- 31.5. If no rate for Preliminaries and/or Overheads and Profit is identified in Schedule 9, it shall be deemed to be agreed that the Consultant is not entitled to recover such Preliminaries and/or Overheads and Profit as a part of any loss and/or expense incurred as a result of any Interference.
- 31.6. Any planned advance payment or proportionate repayment of mobilisation costs identified in the Special Terms shall be represented in the Scheduling Contribution by Activities logically linked to the Activities to which they relate, and reflecting the Logical Date upon which such payments are planned to be made.
- 31.7. The aggregate value of all the planned Activities, Levels of Effort, mobilisation and repayment of mobilisation identified in the Scheduling Contribution shall be equal to the Predicted Cost of Services.
- 31.8. Where there is a difference between the Consultant's price for an Activity and the cost to the Consultant of the allocated resources calculated in accordance with Schedule 9, the difference shall be represented as an Activity on the Scheduling Contribution. The time and cost risk of the representative Activity shall be borne by the Consultant.

- 31.9. The method of calculating the value of each Activity, and Level of Effort at the Data Date of the relevant Scheduling Contribution, shall be fully described in the supporting information to the Time Manager's reasonable satisfaction.
- 31.10. If on publication of a Scheduling Contribution the Cost Manager considers that
- 31.10.1. the Services and/or the value of each Activity and/or Level of Effort have not been properly calculated in accordance with Schedule 9
 - 31.10.2. the value has not been reasonably and properly attributed to the Activity and/or Level of Effort in the Scheduling Contribution
 - 31.10.3. any Level of Effort has not been logically linked to appropriate Activities
 - 31.10.4. the method of calculating the value is inappropriate for the effective cost management of the Services
 - 31.10.5. the allocation of values has not been properly and reasonably described, or
 - 31.10.6. the attribution of the service, value and, where applicable, resource and/or planned productivity does not otherwise comply with the Appointment,
- the Cost Manager shall within 5 Business Days of publication of the Scheduling Contribution either
- 31.10.7. reject the submission in accordance with Clause 12.2, or
 - 31.10.8. issue a conditional acceptance of the submission in accordance with Clause 12.3.
- 31.11. If not rejected, and subject always to any condition of acceptance, the values attributed shall be deemed to be agreed to be conclusive evidence of the value of the Activities and Levels of Effort illustrated at the Data Date of the relevant Scheduling Contribution.

32. PROGRESS OF DESIGN SERVICES RECORDS

- 32.1. Where the Consultant is required by Clause 30.1 to publish a Scheduling Contribution, the Consultant shall accurately maintain Progress of Design Services Records in accordance with the requirements of Schedule 5.
- 32.2. At no less than the status interval stated in Schedule 2, the Consultant shall publish for acceptance by the Time Manager the database of Progress of Design Services Records for each working day of the interval.

- 32.3 If the Time Manager considers that any of the Progress of Design Services Records published by the Consultant for acceptance under Clause 32.2 does not reflect the progress actually achieved, or if applicable, the resources actually used, or does not otherwise comply with the Appointment, the Time Manager shall within 5 Business Days of publication of the submission either
- 32.3.1. reject the submission in accordance with Clause 12.2, or
 - 32.3.2. issue a conditional acceptance of the submission in accordance with Clause 12.3.
- 32.4. If not rejected, and subject always to any condition of acceptance, the Progress of Design Services Records shall be deemed to be agreed to be conclusive evidence of the Consultant's progress at the Data Date of their submission.
- 32.5 The Time Manager shall maintain a database of submissions in accordance with Paragraph S 5.9 of Schedule 5. No less than 5 Business Days before each Progress Meeting, the Time Manager shall publish a current copy of the database of submissions.

33. UPDATED SCHEDULING CONTRIBUTION

- 33.1. The Draft Updated Scheduling Contribution shall incorporate the accepted, or deemed accepted Progress of Design Services Records at the Data Date of their publication.
- 33.2. Within 5 Business Days of acceptance or deemed acceptance under Clause 33.4 of the Consultant's Progress of Design Services Records, the Time Manager shall publish for acceptance by the Consultant the Draft Updated Scheduling Contribution.
- 33.3. If, as a result of anything other than an Interference the Draft Updated Scheduling Contribution predicts that any Due Date is unlikely to be achieved, the Time Manager shall meet with the Consultant to identify what revisions to its Scheduling Contribution may be made to overcome or reduce the likely delay. Any revisions to the Scheduling Contribution shall be made in accordance with Clause 34.
- 33.4. If the Consultant considers that the Draft Updated Scheduling Contribution published for acceptance under Clause 33.2 conflicts with the accepted Progress of Design Services Records, the Consultant shall within 5 Business Days of receipt notify the Time Manager. If the Consultant does not do so, it shall be deemed to be agreed that the submission complies with the Appointment.
- 33.5. Within 5 Business Days of notice under Clause 33.4, the Time Manager shall revise the Updated Scheduling Contribution to comply with the Consultant's notice and re-publish it, or reject the notice in whole or in part, giving reasons.

- 33.6. If not rejected, and subject always to any condition of acceptance, the Updated Scheduling Contribution shall be deemed to be agreed to be conclusive evidence of the Consultant's intentions for the future conduct of the Services at the Data Date of the submission, and shall become the current Scheduling Contribution.
- 33.7. Within 5 Business Days of acceptance or deemed acceptance under Clause 33.4 or Clause 34.6, the current Scheduling Contribution shall be published by the Time Manager.
- 33.8. If the Consultant considers that any decision under Clause 33.4 conflicts with the provisions of the Appointment and/or amounts to a Variation, it shall within 5 Business Days of its receipt, refer the matter for Issue Resolution. If the Consultant does not do so, it shall be deemed to be agreed that the decision is compliant with the Appointment and does not amount to a Variation.

34. REVISED SCHEDULING CONTRIBUTION

- 34.1. At no less than the status interval stated in Schedule 2 the Consultant shall publish for acceptance by the Time Manager its Draft Revised Scheduling Contribution. For every Activity not completed by the Data Date, or planned to be started within the period of 60 Business Days after the Data Date, the Draft Revised Scheduling Contribution shall identify in High Density
- 34.1.1. the services planned to be performed
 - 34.1.2. the calculated duration
 - 34.1.3. the calculated value,
- and, where Schedule 9 requires payment to be made by reference to the resources used and the hours worked,
- 34.1.4. the resources planned to be used, and
 - 34.1.5. the productivity expected to be achieved.
- 34.2. Notwithstanding Clause 34.1, the Consultant's Scheduling Contribution shall be reviewed and revised by the Consultant
- 34.2.1. to reflect any changed intentions for the performance of the Services pursuant to Clauses 14, 28, 38, 39, 40 and/or 41

- 34.2.2. so that the Scheduling Contribution accurately reflects the best available information about the Consultant's intentions for the future performance of the Services and, where applicable, the resources intended to be made available and the productivity estimated to be achievable.
- 34.3. If the Draft Revised Scheduling Contribution predicts a delay to completion of any part of the Services after any Due Date, the Time Manager shall meet with the Consultant to identify what revisions to its Draft Revised Scheduling Contribution may be made to overcome or reduce the likely delay.
- 34.4. If, as a result of anything other than an Interference, the Time Manager considers that any Draft Revised Scheduling Contribution does not comply with the Appointment, the Time Manager shall within 5 Business Days of receiving the submission either
- 34.4.1. reject the submission in accordance with Clause 12.2, or
- 34.4.2. issue a conditional acceptance of the submission in accordance with Clause 12.3.
- 34.5. If not rejected, and subject always to any condition of acceptance, the Draft Revised Scheduling Contribution shall be deemed to be agreed to be conclusive evidence of the Consultant's intentions for the future conduct of the Services at the Data Date of the submission and shall become the current Scheduling Contribution.

35. CALCULATION OF EFFECT OF INTERFERENCE ON TIME

- 35.1. On becoming aware that an Interference is likely to occur, is occurring or has occurred, for each and every Interference the Consultant shall notify the Time Manager of
- 35.1.1. the details required by Clause 27.2 and the date and reference of any notice issued under Clause 27.1
- 35.1.2. the record identifier of the Interference in accordance with Schedule 4, Paragraph S 4.12
- 35.1.3. the identity of the Interference
- 35.1.4. a statement as to whether the Interference is likely to occur, is occurring or has occurred
- 35.1.5. the Initiation Date of the Interference
- 35.1.6. the identification of any document and fact relied upon

- 35.1.7. a description of the Fragnet to be prepared under Clause 35.2, or the period of suspension identified under Clause 35.3, and
 - 35.1.8. the result of the calculations carried out under Clause 35.4.
- 35.2. For each Interference which is likely to cause, is causing or has caused a change in a planned Activity, or an additional Activity, the Consultant shall identify in its notice under Clause 35.1
- 35.2.1. the period or periods required for any preliminary activity, permission or approval before any service can commence
 - 35.2.2. the resources used and/or expected to be used
 - 35.2.3. the estimated or actual value of the resources used or expected to be used
 - 35.2.4. the predicted logical or calendar start and finish date, and
 - 35.2.5. the links to any logical predecessor Activity and/or successor Activity, Level of Effort and/or Milestone, with a description of any changes to the logic of each such Activity, Level of Effort and/or Milestone.
- 35.3. For each Interference which is likely to cause, is causing or has caused a suspension of progress, the Consultant shall identify in its notice under Clause 35.1
- 35.3.1. the Activities affected, and
 - 35.3.2. the periods of suspension relating to each Activity.
- 35.4. The Time Manager shall prepare the Impacted Scheduling Contribution and Impacted Development Schedule by
- 35.4.1. creating the Impacted Scheduling Contribution by adding the relevant non-working period or Fragnet to the Consultant's Scheduling Contribution
 - 35.4.2. adding the Impacted Scheduling Contribution to create the Impacted Development Schedule
 - 35.4.3. re-calculating the Critical Path of the Impacted Scheduling Contribution, and of the Impacted Development Schedule, by re-scheduling, and
 - 35.4.4. identifying the effect of the non-working period or Fragnet upon the Impacted Scheduling Contribution and the Impacted Development Schedule.

- 35.5. No less than 5 Business Days before the next Progress Meeting the Time Manager shall distribute the information provided under Clauses 35.1 to 35.3 and shall publish for acceptance by the parties the Impacted Scheduling Contribution and Impacted Development Schedule.
- 35.6 For the avoidance of doubt
- 35.6.1. if any Interference occurs less than 5 Business Days before a Progress Meeting, or if for any reason it is not possible within the time available before a Progress Meeting to properly calculate the time effect of the Interference, the information required by this Clause 35 shall be distributed no less than 5 Business Days before the next Progress Meeting, and
- 35.6.2 if more than one Interference has occurred between Progress Meetings
- 35.6.2.1. each Interference shall be impacted sequentially, in chronological order of the Initiation Date
- 35.6.2.2. the impact of each Interference shall be calculated and identified in a separate description, and
- 35.6.2.3. the aggregate effect of all Interferences occurring in the interval shall be recorded in the distribution referred to in Clause 35.5.
- 35.7. If either party considers that the Impacted Scheduling Contribution does not comply with the Appointment, within 5 Business Days of its distribution, that party shall
- 35.7.1. reject the submission in accordance with Clause 12.2, or
- 35.7.2. issue a conditional acceptance of the submission in accordance with Clause 12.3.
- 35.8. If not rejected, and subject always to any condition of acceptance, the Impacted Scheduling Contribution shall be deemed to be agreed to be conclusive evidence of the effect of the Interference notified under Clause 35.1.

36. CALCULATION OF EFFECT OF INTERFERENCE ON COST

- 36.1. If the Impacted Scheduling Contribution distributed in accordance with Clause 35.5 indicates that the progress of any part of the Services, or the productivity of any resources, has been, is being, or is likely to be adversely affected and
- 36.1.1. either the delay to progress or reduced productivity has caused, is causing or is likely to cause loss and/or expense to be incurred, or

- 36.1.2. any part of the Services is unlikely to achieve Completion by a Due Date,
the Consultant shall notify the Cost Manager with a copy to the Employer and Time Manager.
- 36.2. The Consultant shall include in its notice under Clause 36.1 or as soon as the information required becomes available
- 36.2.1. any details provided under Clause 27.2 and the date and reference of any notice issued under Clause 27.1
- 36.2.2. a description of the Interference
- 36.2.3. a valuation of the Interference
- 36.2.4. subject to Clause 31.5, the quantification of any loss and/or expense caused by the Interference
- 36.2.5. the identification of any document supporting the facts relied upon, and
- 36.2.6. any further information, documents or statements that the Time Manager and/or the Cost Manager may request in order to verify the occurrence of the Interference or its consequences.
- 36.3. If the Consultant fails to provide the information requested to enable the Cost Manager to calculate contemporaneously the amount of the Consultant's entitlement to compensation for Interference, the amount shall be calculated after Completion using such records and/or schedules
- 36.3.1. as have been prepared under Clause 29.2, or, in their absence,
- 36.3.2. in its absolute discretion the Cost Manager considers appropriate for the purposes of this Clause 36.3.
- 36.4. If any Interference occurs less than 5 Business Days before a Progress Meeting, or if it is not possible within the time available before the Progress Meeting to properly calculate its cost effect, the information required by Clause 36.2 shall be submitted before the next Progress Meeting.

37. FLOAT AND TIME CONTINGENCIES

- 37.1. Each Employer's Time Contingency described in the Special Terms shall be identified as a separate Activity in the Development Schedule and in any Scheduling Contribution to which it relates.

- 37.2. Where an Employer's Time Contingency is not described in the Special Terms, and unless instructed otherwise, for all Activities necessary to carry out and complete the Services for which an Employer's Cost Contingency is included in the Special Terms the Consultant shall, based on the information then available,
- 37.2.1. calculate a reasonable time contingency by reference to the personnel and Materials estimated to be required and the productivity reasonably expected to be achievable in performing each Activity, and
 - 37.2.2. include and separately identify such time contingency and calculations in the Scheduling Contribution.
- 37.3. An Employer's Time Contingency shall be expended, reduced, increased, or amalgamated with other time contingencies, or omitted, as the Employer may instruct from time to time, in order to reduce the risk of delay to completion by a Due Date being caused by one or more Interferences.
- 37.4. Where in accordance with Clause 29 the Consultant is required to make a Scheduling Contribution, the Consultant shall include in its Scheduling Contribution all necessary Consultant's Time Contingencies against the Consultant's risks under the Appointment. Subject to Clause 40, such Consultant's Time Contingencies shall be expended, reduced, increased or amalgamated with other Consultant's Time Contingencies, or omitted, in order to manage the Consultant's time risks under the Appointment.
- 37.5. Free Float and Total Float shall not be for the exclusive use of either party and, to the extent that any is or becomes available at any time, it shall be available to both parties (and, if appointed, to the Contractor) to use or absorb in order to manage risks prior to Completion.

38. CONSULTANT'S IMPROVEMENT OF PROGRESS

- 38.1. If the Consultant wishes to proceed, or has proceeded, at a greater pace with Design Services than that identified in the currently accepted Scheduling Contribution, or has not used the Consultant's Time Contingencies allocated against the Consultant's risks, and the Consultant does not wish to achieve an earlier completion of any Due Date, it shall no later than 10 Business Days before the next Progress Meeting allocate in its Revised Scheduling Contribution one or more Consultant's Time Contingencies to replace any float created.
- 38.2. Any proposed changes to the Scheduling Contribution required as a result of the implementation of Clause 38.1 shall be published in accordance with Clause 34.

39. EMPLOYER'S IMPROVEMENT OF PROGRESS

- 39.1. If the Consultant is able to proceed at a greater pace with Design Services than that identified in the currently accepted Scheduling Contribution as a result of instructions to omit, in whole or in part, any Services, but the Employer does not wish to achieve an earlier Due Date, the Employer shall no later than 10 Business Days before the next Progress Meeting instruct the Consultant to allocate in its Scheduling Contribution one or more Employer's Time Contingencies to replace any float created.
- 39.2. Any proposed changes to the Scheduling Contribution required as a result of the implementation of Clause 39.1 shall be published in accordance with Clause 34.

40. INSTRUCTED RECOVERY

- 40.1. If, as a result of delay to progress in Design Services caused by anything other than an Interference, the Consultant's Scheduling Contribution indicates that any part of the Services is likely to be completed later than a relevant Due Date, the Time Manager shall meet with the Consultant to discuss possible ways to overcome or avoid the predicted delay to any Due Date. The Time Manager shall (using its discretion, but having regard to the discussion) notify the Employer stating whether, in the Time Manager's opinion, the Consultant may be instructed to
- 40.1.1. omit (in whole or in part), amend or re-allocate one or more of the Consultant's Time Contingencies identified in accordance with Clause 37.4
 - 40.1.2. re-schedule one or more specific Activities, sequence of Activities, or part of the Services, to be carried out in a different order or sequence, and/or
 - 40.1.3. take any other action necessary to illustrate how the Consultant's obligation to achieve any Due Date is intended to be achieved.
- 40.2. Provided always that the Time Manager considers it practicable and reasonable for the Consultant to comply with the notice given under Clause 40.1 (such compliance not to be considered impracticable or unreasonable solely by reason of the likely cost thereof), the Employer shall, within 5 Business Days of receipt of and in accordance with the Time Manager's notice, instruct the Consultant to publish a Draft Revised Scheduling Contribution in accordance with Clause 34. The Consultant shall comply with such instructions at no cost to the Employer.
- 40.3. For the avoidance of doubt, the Employer may instruct the Consultant to recover from a delay to progress of the Services, or any Stage, but not to complete earlier than any Due Date by means of proposals made or implemented under this Clause 40.

41. INSTRUCTED ACCELERATION

- 41.1. If as a result of any delay to progress of the Design Services caused or likely to be caused by an Interference, the Consultant's Scheduling Contribution indicates that the Services are, or any Stage is, likely to be completed later than a relevant Due Date, the Employer may instruct the Consultant to attend a meeting with the Time Manager to assist in drafting proposals to avoid (whether in whole or in part) the predicted delay. The Time Manager shall (using its discretion, but having regard to any discussion with the Consultant under this Clause 41.1) notify the Employer whether, in the Time Manager's opinion, the Consultant may be instructed to implement a Variation to
- 41.1.1. omit (in whole, or in part), amend or re-allocate one or more of the Employer's Time Contingencies identified in accordance with Clause 37.1 or Clause 37.2
 - 41.1.2. re-schedule one or more specific Activities, sequence of Activities, or part of the Scheduling Contribution to be carried out in a different order or sequence, and/or
 - 41.1.3. take any other action necessary to mitigate the likely effect of the Interference in order to reduce or eliminate the likely delay to a Due Date.
- 41.2. Provided always that the Time Manager considers it practicable for the Consultant to comply with an instruction under Clause 41.1, the Employer shall, within 5 Business Days of receipt of and in accordance with the Time Manager's notice, instruct the Consultant to publish a Draft Revised Scheduling Contribution in accordance with Clause 34.
- 41.3. For the avoidance of doubt, the Employer may instruct the Consultant to accelerate the progress of the Services, or any Stage, to achieve completion by a date earlier than any relevant Due Date by means of proposals made or implemented under this Clause 41.
- 41.4. The Consultant shall keep and deliver to the Employer the calculation of the costs of preparing any required proposals, and of the costs or savings resulting from compliance with any instruction issued under Clause 41.2 to implement such proposals.

42. FAILURE TO COMPLY WITH AN INSTRUCTION TO RECOVER OR ACCELERATE

- 42.1. If the Consultant considers that the Appointment does not empower the issue of instructions under Clause 40 or Clause 41, or that such instructions cannot be complied with, it shall within 5 Business Days of receiving the relevant instruction refer the matter for Issue Resolution. If the Consultant does not do so the instruction shall be deemed to be agreed to have been issued in accordance with the Appointment.

- 42.2. If the Consultant fails to comply with an instruction under Clause 40 or Clause 41, the Consultant shall reimburse the Employer any expenditure and/or loss that the Employer actually incurs as a result of delay to a Relevant Date for Completion which could have been avoided if the Consultant had complied with the instruction. For the avoidance of doubt, the Employer's entitlement under this Clause 42.2 shall be separate from, and additional to, any entitlement to Liquidated Delay Damages recoverable or deductible pursuant to Clause 46, subject always to the Employer giving credit where appropriate for any damages already deducted or paid as Liquidated Delay Damages under Clause 46.

43. EXTENSION OF TIME

- 43.1. If on receiving notice under Clause 35.1 the Time Manager considers that
- 43.1.1. the Interference has occurred
 - 43.1.2. the Interference is one for which the Consultant is entitled to an extension of time for performance of the Services
 - 43.1.3. the information required by Clause 35.2 is either an accurate record of the Activities and the resources, durations and sequences arising from the Interference, or is a reasonable estimate of the Services, Activities and the resources, productivity, durations and sequence likely to flow directly from the Interference
 - 43.1.4. any non-working period identified in accordance with Clause 35.3 is either an accurate record of the duration of any period of suspension which occurred as a result of the Interference, or is a reasonable estimate of the duration of suspension likely to flow directly from the Interference, and
 - 43.1.5. the Interference is likely to prevent the Services, or any Stage, from being completed by any Due Date after the Relevant Date for Completion has passed,
- the Time Manager shall, with the Impacted Scheduling Contribution and Impacted Development Schedule published in accordance with Clause 35.5, notify the Employer of
- 43.1.6. the impact described in Clause 43.1.5, and/or
 - 43.1.7. the instructions which may be issued under Clause 41 in order to reduce the time required for any part of the Services to be carried out, together with any residual consequential impact of the notified Interference.

- 43.2. Within 5 Business Days of receiving the notice referred to in Clauses 43.1.6 and/or 43.1.7, the Employer shall either
- 43.2.1. extend the time for completion by fixing a new Relevant Completion Date reflecting the impact described in Clause 43.1.5, or
 - 43.2.2. issue instructions under Clause 41 for a reduction of the time required for any part of the Services and shall, commensurate with the predicted impact of the Interference in the light of such instructions, either
 - 43.2.2.1. confirm the Relevant Completion Date, or
 - 43.2.2.2. extend the time for completion by fixing a new Relevant Completion Date,
- and shall immediately notify the Consultant of the Employer's decision with a copy to the Time Manager.
- 43.3. Where, in accordance with Clauses 43.1.3 and/or 43.1.4, a calculation of entitlement is made on the basis of an estimate, unless the Employer and Consultant agree otherwise, that estimate shall be revised to conform to the relevant Progress of Design Services Records as and when they become available, and any extension of time granted shall be adjusted accordingly.
- 43.4. For the avoidance of doubt
- 43.4.1. nothing shall prevent the Employer from extending the time for completion by fixing
 - 43.4.1.1. an earlier or later Relevant Completion Date in accordance with Clause 41, or
 - 43.4.1.2. a later Relevant Completion Date after a Relevant Completion Date has passed, and
 - 43.4.2. where in relation to a suspension, according to Applicable Law or the Law of the Appointment, there is a right to relief other than under the Appointment, such relief shall be in substitution for, and not in addition to, any contractual relief.
- 43.5. If the Consultant fails to provide the information required by Clause 35 to enable the Time Manager to calculate contemporaneously the Consultant's entitlement to an extension of time for Interference, the Consultant's entitlement shall be calculated after Completion

by reference to the Completion Date that could have been achieved if the Interference had not occurred, using such records and/or schedules

43.5.1. as have been prepared under Clause 29.2, or (if none)

43.5.2. in its absolute discretion the Time Manager considers appropriate for the purposes of this Clause 43.4.

44. PROGRESS OF NON-DESIGN SERVICES RECORDS

44.1. Except where the Consultant is required to undertake Design Services, the Consultant shall maintain a database record of time and resources expended as follows

44.1.1. each record shall have

44.1.1.1. a unique data entry identifier

44.1.1.2. the date of entry

44.1.1.3. the identity of the person entering the data, and

44.1.2. for each day on which work is performed a record shall be kept of

44.1.2.1. the name of the resource

44.1.2.2. any employee identifier

44.1.2.3. the charge out rate of the resource

44.1.2.4. the Activity carried out

44.1.2.5. the Service against which the Activity is carried out, by reference to Schedule 8

44.1.2.6. the start date of the Activity, and

44.1.2.7. the finish date of the Activity.

44.2. No less than 5 Business Days before each Progress Meeting the Consultant shall publish a copy of the database.

- 44.3 If a delay in the progress of Non-Design Services caused by an Interference results in the Completion of the Non-Design Services being extended, the Consultant shall be entitled to an adjustment of its fee for the Non-Design Services pro rata the fee stated in Schedule 9 in relation to the relevant Stage in which the progress of the Non-Design Services was delayed.

45. FAILURE TO COMPLETE

- 45.1. If the Consultant fails to complete the Services, or any Stage, by the Relevant Completion Date, the Employer shall issue to the Consultant a Notice of Failure to Complete.
- 45.2. If, after a Notice of Failure to Complete has been issued, the time for completion is further extended, the Notice previously issued shall be of no effect and
- 45.2.1. to the extent that the Employer would not have been entitled to withhold, deduct or be paid Liquidated Delay Damages had the time for completion been further extended, any Liquidated Delay Damages withheld, deducted or paid pursuant to the Notice of Failure to Complete shall be released or repaid to the Consultant, and
- 45.2.2. where the extension of time referred to in Clause 45.2.1 is to a date earlier than the Completion Date, or Stage Completion Date, as the case may be, the Employer shall issue a further Notice of Failure to Complete in accordance with Clause 45.1.

46. LIQUIDATED DELAY DAMAGES

- 46.1. If in Schedule 2 Liquidated Delay Damages are stated to apply, they shall be calculated by reference to the relevant rate stated in Schedule 2 from the Relevant Completion Date up to the date that Completion is achieved.
- 46.2. If in Schedule 2 Liquidated Delay Damages are stated to apply in relation to any Stage, subject to any limit on the period of delay identified there, they shall be calculated by reference to the relevant rate from the date in the Certificate of Failure to Achieve Completion up to the relevant Stage Completion Date.
- 46.3. If Liquidated Delay Damages do not apply, the Employer may recover from the Consultant as general damages any loss the Employer incurs as a result of delay between the date in the Certificate of Failure to Achieve Completion up to the Completion Date or relevant Stage Completion Date, as the case may be.

- 46.4. The parties acknowledge the difficulty of determining the exact loss likely to be suffered by the Employer in the event of a failure by the Consultant to complete by a Due Date. Nevertheless, the parties agree that if Liquidated Delay Damages are applicable, the rate identified in Schedule 2 is a genuine pre-estimate of such loss.
- 46.5. If for any reason applicable Liquidated Delay Damages are found to be unenforceable (whether as a penalty or otherwise), the amount payable for the period of delay shall act as a cap on any general damages recoverable for delay.
- 46.6. Provided always that the Employer has issued a Notice of Failure to Complete, the Employer may in respect of the sum due
- 46.6.1. deduct it within the calculation contained in the Notice of Payment Due under Clause 52
 - 46.6.2. withhold it in a notice of intention to pay less under Clause 54.3.2, and/or
 - 46.6.3. recover it from the Consultant as a debt.
- 46.7. On receiving the Final Notice of Payment Due, the Employer shall re-calculate the final amount of Liquidated Delay Damages due from the Consultant in respect of the Services, or any Stage, giving due credit for any Liquidated Delay Damages previously deducted, withheld or paid.

47. LIMIT OF LIABILITY

The overall Limit of Liability of the Consultant to the Employer under, or in connection with, the Appointment shall be that stated in Schedule 2.

48. DEVELOPMENT SCHEDULE

- 48.1. Where Schedule 2 requires the Time Manager to prepare a Development Schedule
- 48.1.1. the Development Schedule shall be prepared in accordance with the requirements of Schedule 5, and
 - 48.1.2. at the status intervals indicated in Schedule 2 the Time Manager shall prepare and distribute the Development Schedule (and any update and/or revision of it) incorporating all Scheduling Contributions accepted, or deemed accepted, under Clauses 30, 33 and/or 34 at the Data Date of distribution.

49. PREDICTED COST OF SERVICES

- 49.1. The Predicted Cost of Services shall be the total cost indicated against all the Activities and Levels of Effort in the latest accepted Scheduling Contribution, adjusted to take account of
- 49.1.1. any Activity to be carried out by others and/or for which the Consultant is not otherwise entitled to payment under the Appointment
 - 49.1.2. Variations valued in accordance with Schedule 9
 - 49.1.3. any change in a Level of Effort and any other loss and/or expense ascertained under Clause 36.2.4 arising from an Interference
 - 49.1.4. any expense incurred by the Consultant arising from the calculation of the effect of an Interference
 - 49.1.5. any instructions for the expenditure or omission of any Prime Cost or Provisional Sum and/or Employer's Cost Contingency described in the Special Terms
 - 49.1.6. any taxes, licence fees, duties or other payments legally required to be paid by the Consultant pursuant to the Appointment which are not otherwise recovered, and
 - 49.1.7. any fluctuations since the Base Date in prices or rates identified in Schedule 9.

50. CURRENT VALUE OF SERVICES

- 50.1. At the intervals stated in Schedule 2, the Consultant shall issue to the Employer a statement of the Current Value of Services.
- 50.2. The Current Value of Services shall be the Predicted Cost of the Services less only
- 50.2.1. the value of any Activities not yet carried out, and
 - 50.2.2. the value of Activities carried out not in compliance with the Appointment.

51. FINAL VALUE OF SERVICES

- 51.1. The Final Value of Services shall be the Current Value of Services calculated at the date upon which the Services have achieved Completion.

52. COST MANAGER'S NOTICE OF PAYMENT DUE

- 52.1. The Cost Manager shall, not later than the Notice Date, issue a Notice of Payment Due to the Consultant in respect of each of the statements of
- 52.1.1. Current Value of Services, and
 - 52.1.2. Final Value of Services.
- 52.2. A Notice of Payment Due shall identify the
- 52.2.1. final date for payment, and
 - 52.2.2. amount due to be paid.
- 52.3. The amount to be paid shall be the Predicted Cost of Services calculated in accordance with Clause 49, less any deductions and adjustments made in respect of
- 52.3.1. Liquidated Delay Damages deducted under Clause 46 and calculated up to the date of the Notice of Payment Due
 - 52.3.2. any sum in respect of those matters identified at Clauses 50.2.1 and 50.2.2
 - 52.3.3. any actual expenditure and/or loss incurred by the Employer as a direct consequence of any default by the Consultant, and/or
 - 52.3.4. any amount previously paid.
- 52.4. If the aggregate amount to be deducted under Clause 52.3 exceeds the Predicted Cost of Services, the Cost Manager shall notify the parties of the amount due from the Consultant to the Employer.

53. CONSULTANT'S NOTICE OF PAYMENT DUE

- 53.1. If the Cost Manager fails to issue a Notice of Payment Due by the Notice Date, the Consultant may issue to the Employer with a copy to the Cost Manager a Notice of Payment Due setting out the
- 53.1.1. sum that it considers to be due, or to have been due, at the date payment became due in accordance with Clause 54.1

- 53.1.2. basis of the calculation of the value of the Services for which payment is then claimed, and
- 53.1.3. basis on which the sum is claimed to be due.

54. PAYMENT

- 54.1. Except as provided by Clause 54.2, a payment shall become due on the latest date by which issue is required or, if issued earlier, the date of issue of the statement of
 - 54.1.1. Current Value of Services, or
 - 54.1.2. Final Value of Services.
- 54.2. If the Notice of Payment Due is issued by the Consultant under Clause 53.1, the final date for payment shall be postponed by the number of days between the Notice Date and the date of such notice.
- 54.3. Where a Notice of Payment Due requires the Employer to pay the Consultant
 - 54.3.1. the Employer shall, on or before the final date for payment stated in Schedule 2, pay the Consultant the amount notified in the Notice of Payment Due subject to Clause 54.3.2, or
 - 54.3.2. if the Employer intends to pay the Consultant less than the amount stated in the Notice of Payment Due, unless prohibited by Applicable Law the Employer may pay less provided that the Employer notifies the Consultant no later than 5 Business Days prior to the final date for payment of
 - 54.3.2.1. its intention to pay less
 - 54.3.2.2. the sum that it considers to be due at the date of such notice, and
 - 54.3.2.3. the basis on which that sum has been calculated.
- 54.4. If payment is not made in full by the final date for payment, the Consultant may notify the Employer that (from a date not earlier than 10 Business Days after the notice) it intends to suspend all or any of its obligations under the Appointment until full payment has been made, and may continue the suspension until full payment has been made. The Consultant shall include in its notice a statement setting out which obligations it intends to suspend and the reason for the suspension. The cost and time effect of any such suspension shall be borne by the Employer.

- 54.5. Where a Notice of Payment Due requires the Consultant to pay the Employer,
- 54.5.1. the Consultant shall, on or before the final date for payment stated in Schedule 2, pay the Employer the amount notified in the Notice of Payment Due subject to Clause 54.5.2, or
 - 54.5.2. if the Consultant intends to pay the Employer less than the amount stated in the Notice of Payment Due, unless prohibited by Applicable Law the Consultant may pay less provided the Consultant notifies the Employer no later than 5 Business Days prior to the final date for payment, of
 - 54.5.2.1. its intention to pay less
 - 54.5.2.2. the sum that it considers to be due at the date of such notice, and
 - 54.5.2.3. the basis on which that sum has been calculated.
- 54.6. If, as a result of any failure by the Consultant to comply with the Appointment, the Employer incurs expenditure and/or loss, the Employer may in respect of such expenditure and/or loss
- 54.6.1. deduct it in a Notice of Payment Due under Clause 52,
 - 54.6.2. withhold it in a notice that complies with Clause 54.5.2, and/or
 - 54.6.3. recover it from the Consultant as a debt due on demand.

55. INTEREST

- 55.1. Notwithstanding any other rights the parties may have under the Appointment, unless it is prohibited by Applicable Law interest shall be added to any amount due but not paid within the time provided for by the Appointment, from the date the payment becomes due until payment in full.
- 55.2. The parties acknowledge that interest at the Interest Rate stated in Schedule 2 is intended to constitute a substantial remedy and represents fair compensation for the consequences of late payment.

56. TERMINATION WITHOUT FAULT

- 56.1. If the Employer wishes to terminate the Consultant's employment under the Appointment other than in accordance with Clauses 57 or 59, it shall be entitled to do so provided that notifies the Consultant that (from a date not earlier than 5 Business Days after the notice) the Consultant's employment shall be terminated, stating
- 56.1.1. that the termination is under this Clause 56.1, and
 - 56.1.2. the Termination Date.
- 56.2. Within 60 Business Days of the Termination Date, the Consultant shall issue to the Employer a statement of the Current Value of Services at the Termination Date including
- 56.2.1. Overheads and Profit on Services not completed at the Termination Date, subject to Schedule 2
 - 56.2.2. the cost of removal from the Site of any equipment
 - 56.2.3. the value of any equipment then remaining on the Site, and
 - 56.2.4. any costs incurred by the Consultant arising directly from the termination.
- 56.3. If any value cannot be determined from the Working Schedule, the Development Schedule and/or Schedule 9, then it shall be calculated on a fair and reasonable basis.

57. TERMINATION FOR CONSULTANT INSOLVENCY OR DEFAULT

- 57.1. If at any time before Completion of the Services the Consultant
- 57.1.1. becomes bankrupt or insolvent
 - 57.1.2. goes into liquidation
 - 57.1.3. has a receiving or administration order made against it
 - 57.1.4. compounds with its creditors
 - 57.1.5. carries on business under a receiver, trustee or manager for the benefit of its creditors, or
 - 57.1.6. anything occurs which under Applicable Law has the effect of depriving the Consultant of the power to manage its financial affairs,

the Employer may notify the Consultant that the Consultant's employment is immediately terminated, stating

57.1.7. that the termination is under this Clause 57.1, and

57.1.8. the Appointment Termination Date.

57.2. If, at the Appointment Termination Date stated under Clause 57.1.8, the Consultant has failed to provide in accordance with Clause 10.1.2 any requested Subconsultant Collateral Warranties in favour of the Employer, that include step-in rights which would allow the Employer to take over the Subconsultancies and complete the Works by the time of termination for insolvency, then to the extent it is in breach of contract by failing to do so and to the extent the failure is not due to Subconsultant insolvency, the Employer may withhold a reasonable proportion of any sums owing to the Consultant until such Collateral Warranties are provided.

57.3. If the Consultant

57.3.1. fails to comply with its obligations under Clause 9.1

57.3.2. refuses or neglects to comply with

57.3.2.1. an Employer's instruction

57.3.2.2. any Employer's request under Clause 8

57.3.3. fails to carry out the Services in accordance with

57.3.3.1. Applicable Law

57.3.3.2. any other law relevant to the Appointment and/or the parties in respect of

57.3.3.2.1. health and safety, or

57.3.3.2.2. corruption

57.3.4. without reasonable cause, suspends the carrying out of the Services, or

57.3.5. contrary to the provisions of Clause 22 sublets or assigns the Appointment or a substantial part of it,

the Employer may within 10 Business Days of the Consultant's default notify the Consultant specifying

- 57.3.6. the nature of the default
 - 57.3.7. the date of its occurrence, and
 - 57.3.8. the action required to remedy the default or, if appropriate, that the Employer considers that the default cannot be remedied.
- 57.4. Subject to Clause 57.5, if the Consultant fails to remedy the default within 10 Business Days of notice, the Employer may notify the Consultant that (from a date not earlier than 5 Business Days after the notice) the Consultant's employment shall be terminated, stating
- 57.4.1. that the termination is under this Clause 57.4, and
 - 57.4.2. the Appointment Termination Date.
- 57.5. Notwithstanding that the Employer considers that the Consultant's default cannot be remedied, the Consultant may, within 5 Business Days of receiving notice under Clause 57.4, propose a solution to the Employer, which the Consultant reasonably considers would adequately remedy the default. The Employer shall, at its sole discretion and within 5 Business Days of receiving the proposal, notify the Consultant that
- 57.5.1. it is accepted as an adequate remedy (in which case Clause 57.3 shall apply, with the 10 Business Day period required by Clause 57.3 being deemed to commence on the date on which the Employer issues its notice under Clause 57.5)
 - 57.5.2. it is rejected, or
 - 57.5.3. the Consultant is required to provide details of its proposal within 10 Business Days, so that the Employer may consider further whether the proposal would adequately remedy the default.
- 57.6. If the Consultant fails to provide the details required by Clause 57.5.3, or the Employer notifies the Consultant that its proposal is rejected, the Employer may notify the Consultant that (from a date not earlier than 5 Business Days after the notice) the Consultant's employment shall be terminated, stating
- 57.6.1. that the termination is under this Clause 57.6, and
 - 57.6.2. the Appointment Termination Date.
- 57.7. Notwithstanding the Consultant's remedy of the specified default, if the Consultant repeats the default at any time, within 15 Business Days after such repetition the

Employer may notify the Consultant that (from a date not earlier than 5 Business Days after the notice) the Consultant's employment shall be terminated, stating

57.7.1. that the termination is under this Clause 57.7, and

57.7.2. the Appointment Termination Date.

57.8. The Consultant shall not remove its equipment and/or Materials from the Site. The Employer may take whatever steps are reasonably necessary to secure the Site, and to prevent the removal of the Consultant's equipment and/or Materials from the Site.

57.9. Within 60 Business Days of the Appointment Termination Date, or within 60 Business Days of Completion by another consultant, whichever is the later, the Employer shall issue a statement of the Final Value of Services. The Final Value of Services shall include the value of any equipment not returned to the Consultant, less

57.9.1. any expenditure and/or loss incurred by the Employer and arising directly from the termination, and

57.9.2. any additional cost to the Employer of completing the Services.

57.10. Within 10 Business Days of issue of a statement of Final Value of Services under this Clause 57, the Cost Manager shall issue a Notice of Payment Due in accordance with Clause 52.

58. TERMINATION FOR EMPLOYER INSOLVENCY OR DEFAULT

58.1. If at any time before Completion of the Services the Employer

58.1.1. becomes bankrupt or insolvent

58.1.2. goes into liquidation

58.1.3. has a receiving or administration order made against it

58.1.4. compounds with its creditors

58.1.5. carries on business under a receiver, trustee or manager for the benefit of its creditors, or

58.1.6. anything occurs which under Applicable Law has the effect of depriving the Employer of the power to manage its financial affairs,

the Consultant may notify the Employer that the Consultant's employment is immediately terminated, stating

58.1.7. that the termination is under this Clause 58.1, and

58.1.8. the Appointment Termination Date.

58.2. If the Employer

58.2.1. contrary to the provisions of Clause 22 assigns the Appointment or a substantial part of it

58.2.2. interferes with or obstructs the issue of any communication

58.2.3. fails to

58.2.3.1. make payment of the amount due to the Consultant by the final date for payment, or

58.2.3.2. comply with Applicable Law in respect of

58.2.3.2.1. health and safety, or

58.2.3.2.2. corruption,

the Consultant may within 10 Business Days of the Employer's default notify the Employer, with a copy to the Time Manager, specifying

58.2.4. the nature of the default

58.2.5. the date of its occurrence, and

58.2.6. the action required to remedy the default or, if appropriate, that the Consultant considers that the default cannot be remedied.

58.3. If the Employer fails to remedy the default within 10 Business Days of receiving notice under Clause 58.2, the Consultant may notify the Employer that (from a date not earlier than 5 Business Days after the notice) the Consultant's employment shall be terminated, stating

58.3.1. that the termination is under this Clause 58.3, and

58.3.2. the Appointment Termination Date.

- 58.4. Notwithstanding that the Consultant considers that the Employer's default is incapable of being remedied, the Employer may, within 5 Business Days of the notice under Clause 58.2, propose a solution to the Consultant which the Employer reasonably considers would adequately remedy the default. The Consultant shall, at its sole discretion and within 5 Business Days of receiving the proposal, notify the Employer that
- 58.4.1. it is accepted as an adequate remedy (in which case Clause 58.2 shall apply, with the 10 Business Day period required by Clause 58.2 being deemed to commence on the date on which the Employer issues its notice under this Clause 58.3)
 - 58.4.2. it is rejected, or
 - 58.4.3. the Employer is required to provide details of its proposal within 10 Business Days, so that the Consultant may consider further whether the proposal would adequately remedy the default.
- 58.5. If the Employer fails to provide any required details within the period stated in Clause 58.4.3, or the Consultant notifies the Employer that its proposal is rejected, the Consultant may notify the Employer that (from a date not earlier than 5 Business Days after the notice) the Consultant's employment shall be terminated, stating
- 58.5.1. that the termination is under this Clause 58.5, and
 - 58.5.2. the Appointment Termination Date.
- 58.6. Notwithstanding the Employer's remedy of the specified default, if at any time the Employer repeats the default the Consultant may notify the Employer that (from a date not earlier than 5 Business Days after the notice) the Consultant's employment shall be terminated, stating
- 58.6.1. that the termination is under this Clause 58.5, and
 - 58.6.2. the Termination Date.
- 58.7. Within 60 Business Days of termination under this Clause 58, or within 20 Business Days of receiving a Notice of Payment Due, whichever is the later, the Employer shall pay to the Consultant the value of the Services properly completed at the Termination Date, including
- 58.7.1. Overheads and Profit on Services not completed at the Termination Date
 - 58.7.2. the cost of removal from the Site of any equipment
 - 58.7.3. the value of any equipment then remaining on the Site, and

- 58.7.4. the cost incurred by the Consultant and arising directly from termination under this Clause 58.

59. TERMINATION FOR IMPOSSIBILITY, ILLEGALITY, OR PROLONGED SUSPENSION

- 59.1. If at any time before Completion of the Services

59.1.1. without fault on the part of the Consultant it becomes impossible or illegal to continue performance of the Services, or

59.1.2. part or the whole of the Services is suspended by reason of any Interference for a continuous period of 120 Business Days or more,

either party may notify the other that if the impossibility, illegality or suspension continues for a further 5 Business Days, it intends to terminate the Consultant's employment under the Appointment.

- 59.2. Unless during the period of notice the impossibility, illegality or suspension ceases, either party may notify the other of the termination of the Consultant's employment. The notice shall identify

59.2.1. that the termination is under this Clause 59.2, and

59.2.2. the Appointment Termination Date.

- 59.3. Within 60 Business Days of termination under this Clause 59, the Consultant shall issue to the Employer a statement of the Final Value of Services, including the value of any of the Consultant's equipment remaining on the Site.

- 59.5. Within 10 Business Days of the issue of the statement of Final Value of Services under Clause 59.3, the Cost Manager shall issue a Notice of Payment Due in accordance with Clause 52.

60. CONSEQUENCES OF TERMINATION

- 60.1. Upon termination of its employment the Consultant shall publish the Materials and notify the Employer of any access codes, provided that

60.1.1. the Employer has subject to any effective pay less notice, or where termination is under Clause 56, paid in full all sums of which Notice of Payment Due has been issued, and

60.1.2. the Consultant has not been instructed otherwise.

60.2. Where in Schedule 8 the Consultant is required to maintain personnel on the Site, the Consultant shall vacate the Site on or before the Termination Date. On vacating the Site, unless

60.2.1 stated otherwise

60.2.2 instructed otherwise, or

60.2.3 where doing so might be a hazard to health or safety or might endanger the safety of the Works or other property,

the Consultant shall remove all of its equipment from the Site.

60.3 For the avoidance of doubt, after termination the Consultant shall not be entitled to

60.3.1 any payment except payment becoming due in accordance with Clauses 56.2, 57.9, 58.7 or 59.3, or

60.3.2 any other compensation, including without limitation consequential loss or damages for termination under Clauses 56, 57 or 59.

61. ISSUE RESOLUTION

61.1. Unless the Appointment requires an issue arising under or in connection with the Appointment to be referred for Issue Resolution within a particular time, either party may within 20 Business Days of the issue arising notify the other that they wish the issue to be referred to Issue Resolution.

61.2. All notices requiring Issue Resolution shall be issued to the other party with a copy to their Authorised Representative.

61.3. Within 5 Business Days of receiving notice under Clause 61.1, the Consultant's and the Employer's Authorised Representatives shall meet to try to resolve the issue. If the Employer's or the Consultant's Authorised Representative is unavailable for the meeting, the relevant party shall promptly notify the other and shall use all reasonable endeavours to send a director, partner or senior employee who shall have authority to resolve the issue.

- 61.4. If within 10 Business Days of receiving the Consultant's or the Employer's Authorised Representative's notice under Clause 61.1 the issue is not resolved by agreement, the Principal Expert shall be appointed to resolve the issue by Determination.
- 61.5. The Principal Expert may consult any expert identified in Schedule 2, or such other expert as it considers reasonably necessary, to assist in the Issue Resolution.
- 61.6. In dealing with the Issue Resolution, the Principal Expert shall follow the procedure in Schedule 7.
- 61.7. As soon as it is able to do so, and in any event within 20 Business Days of being appointed, the Principal Expert shall issue its Determination to both parties, with a copy to their Authorised Representatives. The Determination shall set out those reasons for the Determination which the Principal Expert considers may help the parties to avoid further issues.
- 61.8. If within 10 Business Days of its issue the Principal Expert discovers, or has it brought to its attention, that the Determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or any defect of form, the Principal Expert shall issue a corrected Determination to the parties with a copy to their Authorised Representatives.
- 61.9. Neither the Principal Expert nor any other expert appointed for the purposes of this Clause 61 shall be liable in any way for any error, omission or misconduct in the Issue Resolution.
- 61.10. Unless the parties agree otherwise, the parties shall
- 61.10.1. each bear their own costs of the Issue Resolution, and
- 61.10.2. bear equally the fees and expenses of the Principal Expert and any other expert consulted by the Principal Expert.
- 61.11. A Determination may be relied upon by either party in any dispute resolution proceedings and the Principal Expert and/or any other consultant expert consulted by the Principal Expert may be called as a witness by either party or the tribunal.

62. DISPUTE RESOLUTION

- 62.1. The parties may settle any dispute by mediation or negotiation.
- 62.2. Unless Applicable Law requires that a party may refer a dispute to adjudication at any time, the parties hereby agree that no dispute shall arise and no adjudicator shall be appointed

under Clause 62.8 unless and until the Principal Expert has issued its Determination under Clause 61.7.

62.3. If the Principal Expert fails to issue a Determination within the time required in the Appointment, either party shall be entitled to treat any matter referred to the Principal Expert as having given rise to a dispute.

62.4. A Determination by the Principal Expert shall be final and binding on the parties unless

62.4.1. it is issued late, and/or

62.4.2. either party issues a notice of adjudication or arbitration within 20 Business Days of the delivery of the Determination.

62.5. Except where anything

62.5.1 is deemed to be agreed

62.5.2 is stated to be conclusive as to the rights of the parties, or

62.5.3 has been decided by Issue Resolution

the adjudicator or arbitrator may open up, review and revise any measurement, valuation, record, decision, extension of time, or certificate issued under the Appointment.

62.6. Any adjudicator's decision or arbitral award in respect of the Appointment shall be a public document unless

62.6.1. the parties agree otherwise

62.6.2. in consolidated proceedings to which Clause 62.14 applies, the consent of all other Consenting Parties has not been obtained, or

62.6.3. in proceedings to which Clause 62.15 applies, another contract expressly prohibits any arbitration award from being a public document.

62.7. Where the parties have agreed in Schedule 2 that adjudication is applicable and have agreed the adjudication rules, either party may refer any dispute to adjudication in accordance with the agreed adjudication rules. If the parties have not agreed that disputes may be determined by adjudication, but Applicable Law requires that a party may refer a dispute to adjudication, then either party may refer any dispute to adjudication in accordance with Applicable Law. In such circumstances, the adjudication rules shall be the default adjudication rules of the Applicable Law. If no adjudication rules are agreed in Schedule 2, and the Applicable Law

does not provide any default adjudication rules, the adjudication rules shall be the Scheme for Construction Contracts, modified as necessary to meet any requirements of adjudication under Applicable Law not provided for.

- 62.8. The adjudicator shall be that person identified in Schedule 2.
- 62.9. The adjudicator's decision shall be binding on the parties, unless and until the dispute is finally determined by arbitration or by agreement.
- 62.10. No party may give more than one notice of adjudication in respect of any dispute. If, having issued a notice of adjudication, the referring party fails to deliver its referral documents on time, or within such extended time as may be agreed by the parties, the referral shall lapse and the subject dispute shall not be referred to adjudication.
- 62.11. Unless indicated otherwise in Schedule 2, the final dispute resolution mechanism for any dispute shall be arbitration. Arbitration shall be in accordance with the rules stated in Schedule 2, and the procedural law of the arbitration shall be the same as the Law of the Contract.
- 62.12. The arbitrator shall be that person identified in Schedule 2.
- 62.13. Each Consenting Party shall be bound to all other Consenting Parties in respect of Clause 62.14.
- 62.14. Any Consenting Party may be joined as an additional party to an arbitration involving any other Consenting Party, under any contract between the Employer and the other Consenting Party. If more than one arbitration has begun under any such contract, and the Employer notifies the other relevant Consenting Parties and arbitrators that two or more arbitrations are substantially related in issues of law and/or fact, and that the issues should be heard in one arbitration, the arbitrator selected in the first-filed arbitration shall determine (as soon as reasonably practicable) whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator.
- 62.15. If an arbitration has begun under any contract (including the Appointment) to which the Employer or the Consultant is a party, and either party notifies the other and the relevant arbitrator that the arbitration is substantially related in issues of law and/or fact to one or more arbitrations under another contract, or other contracts, between them, and that the issues should be heard in one arbitration, the arbitrator selected in the first-filed arbitration shall determine (as soon as reasonably practicable) whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator.

SCHEDULE 1 – ADDITIONAL DEFINED TERMS *

Activity	A process or task forming part of the Services consuming time and/or resources and having the attributes specified in Schedule 4
Applicable Law	Any and all of the following in force at the Base Date in the region, state or other jurisdiction in which the Site is situated and, to the extent the Services are not performed on the Site, which govern the Consultant in performing the Services <ul style="list-style-type: none"> ● any laws, regulations, decrees, decisions, orders and/or other legal requirements of any government authority ● all orders, rules, regulations, ordinances, notices, guidance notes, schemes, warrants, by-laws, directives, franchises, licences, permits, circulars and codes of practice raised under, or in connection with, any of the foregoing ● any amendment, updating or re-enactment of any of the foregoing, and ● any ruling, judgment or order of any Court having jurisdiction
Appointing Body	The Appointing Body identified as such in Schedule 2
Appointment	The appointment of the Consultant in accordance with the Appointment Agreement, the Terms of the Appointment and Special Terms, including those documents listed as Appointment Documents in the Appointment Agreement
Appointment Agreement	The signed agreement identifying the Appointment Date, the Parties to the Appointment and their Representatives, the Project, Services, Price, Appointment Documents, the Time Manager and the Cost Manager
Appointment Documents	The documents listed in the Appointment Agreement as Appointment Documents
Appointment Date	The date identified as such in the Appointment Agreement
Base Date	The date identified as such in Schedule 2 and by reference to which, the Services have been priced
Building Information Modelling Protocol	The Protocol identified as such in Schedule 2

* Defined terms not included in this Schedule are as defined in Appendix A to the Construction Contract

Collateral Warranty	A collateral agreement or direct agreement entered into by the Consultant with a third party in the form and manner identified or referred to in the Special Terms
Commencement Date	The date identified as such in Schedule 2
Completion	The satisfactory and complete performance of the Services or any Stage
Completion Date	The date identified as such in Schedule 2, as extended under Clause 43, or brought forward under Clause 41
Connected Contract	Any contract between the Employer and a third party, a copy, or relevant extracts, of which are included in the Special Terms
Construction Contract	The contract between the Employer and the Contractor or, if no Contractor has been identified at the Appointment Date, the current edition of the Time and Cost Management Contract published by the Chartered Institute of Building at the Base Date
Consultant	The party identified as such in the Appointment Agreement
Consultant's Authorised Representative	The person identified as such in the Appointment Agreement, or such other person as the Consultant shall appoint and confirm to the Employer
Contract Administrator	That person identified as such in the Construction Contract, or identified by the Employer as to be appointed as the Contract Administrator, or such other person as the Employer shall, from time to time, appoint and confirm to the Consultant
Cost Manager	That person identified as such in the Appointment Agreement or such other person as the Employer shall, from time to time, appoint and confirm to the Consultant
Current Value of Services	The Predicted Cost of Services as adjusted in accordance with Clause 50
Date for Completion	The Logical Date for completion of the Services calculated by the current accepted Scheduling Contribution
Date for Commencement	The Logical Date for commencement of the Services calculated by the current accepted Scheduling Contribution

Date for Stage Commencement	The Logical Date for commencement of the relevant Stage calculated by the current accepted Scheduling Contribution
Date for Stage Completion	The Logical Date for completion of the relevant Stage calculated by the current accepted Scheduling Contribution
Design Services	Those Services described in Schedule 8 which require the Consultant to prepare a Design Contribution
Development Schedule	The Employer's critical path network schedule which identifies the process of project procurement from inception to completion and which functions as the Employer's time and cost model for the Project
Draft Revised Scheduling Contribution	The revised Scheduling Contribution submitted for acceptance in accordance with Clause 34
Draft Scheduling Contribution	The Scheduling Contribution submitted for acceptance in accordance with Clause 30
Draft Updated Scheduling Contribution	The updated Scheduling Contribution submitted for acceptance in accordance with Clause 33
Due Date	Any Key Date, Completion Date, or Stage Completion Date identified as such in Schedule 2 as extended under Clause 43 or brought forward under Clause 41
Early Warning	A warning given pursuant to Clause 27.2
Employer	The party identified as such in the Appointment Agreement
Employer's Authorised Representative	The person identified as such in the Appointment Agreement, or such other person as the Employer shall appoint and confirm to the Consultant
Impacted Development Schedule	The impacted Development Schedule published by the Time Manager in accordance with Clause 35.5
Impacted Scheduling Contribution	The impacted Scheduling Contribution published by the Time Manager in accordance with Clause 35.5
Interference	Any Event identified in Appendix F of the Construction Contract and/or identified in Schedule 6 as being at the Employer's Risk as to time and/or cost
Law of the Appointment	The law identified as such in Schedule 2

Limit of Liability	The sum identified as such in Schedule 2. This is the overall limit on the Consultant's financial liability to the Employer for any loss and/or damage including, without limitation, any Liquidated Delay Damages, loss and/or expenditure, and/or other consequential loss, incurred by the Employer as a result of any breach by the Consultant of the Appointment, or otherwise to the extent permitted by Applicable Law
Listed Persons	Those persons identified as such in the Construction Contract, or identified and notified to the Consultant as persons intended to be appointed as Listed Persons under the Construction Contract, or such other persons as the Employer may, from time to time, appoint in their place and notify to the Consultant
Materials	Any work product of the Consultant prepared for, or in connection with, the Services
Notice of Failure to Complete	A notice issued in accordance with Clause 45
Notice of Payment Due	A notice issued in accordance with Clause 52 or Clause 53
Novation Agreement	The agreement identified in the Special Terms or, if none, the City of London Law Society Standard Form Novation Agreement, first published in 2004, or such later edition as may be current at the Base Date
Novated Appointment	The Appointment as novated by the Novation Agreement
Official Dealing Rate	The interest rate set by the institution identified in Schedule 2
Predicted Cost of Services	The predicted cost of all the Services calculated in accordance Clause 49
Principal Expert	The person identified as such in Schedule 2
Progress Records	The database referred to in Clause 33.2 of the Construction Contract
Progress of Design Services Records	The database records of the progress of Design Services required to be maintained under Clause 32
Progress of Non-Design Services Records	The database records of the progress of Services required to be maintained under Clause 44
Project	The project identified as such in the Appointment Agreement

Project Start Date	The date identified as such in the Appointment Agreement
Relevant Completion Date	Any Due Date as extended under Clause 43, or brought forward under Clause 41
Relevant Date for Completion	The Logical Date for completion of the relevant Services or Stage, calculated by the current accepted Scheduling Contribution
Revised Scheduling Contribution	The Scheduling Contribution revised in accordance with Clause 34
Schedule	A schedule to the Appointment
Scheduling Contribution	A Fragnet of the sequence of Activities, Milestones and Levels of Effort necessary for the performance and integration of the Services with those of others identified in the Appointment, the Construction Contract and/or any Connected Contract, and prepared in accordance with Schedule 4, together with a description of the calculations and assumptions used in its preparation
Scheduling Contribution Data	A description of the proposed content of the Scheduling Contribution sufficient for the Time Manager to prepare the Scheduling Contribution
Services	Those services identified as such in Schedule 8
Special Terms	The Special Terms identified as such as an Appointment Document in the Appointment Agreement
Stage	A stage of the Services identified as such in Schedule 8
Stage Commencement Date	Any date identified as such in Schedule 2
Stage Completion	The satisfactory and complete performance of any Stage
Stage Completion Date	Any date identified as such in Schedule 2, as extended under Clause 43 or brought forward under Clause 41
Subconsultant	Any consultant performing Services, or any part of the Services, under a Subconsultancy in relation to the Project
Subconsultancy	Any contract between the Consultant and any Subconsultant

Time Manager

The person identified as such in the Appointment Agreement, or such other person as the Employer shall appoint, from time to time, and confirm to the Consultant

Updated Scheduling Contribution

The Scheduling Contribution updated with progress in accordance with Clause 33

Variation

- The alteration or modification of
 - the quality or quantity of the Services including
 - the addition, omission or substitution of any service
 - the alteration of the kind, or standard, of any service,
 and /or
 - the Scheduling Contribution,

so as avoid the occurrence of any Interference, or to reduce, overcome or avoid the likely effects of any delay to progress caused by an Interference including, but not limited to, the alteration or modification of

 - the duration, sequence, or timing of any Activity
 - any period of time whether by reference to a lead, lag, or otherwise
 - any Key Date
 - the resources to be used in connection with any Activity, and/or
 - the requirements of the Appointment for publication, content and/or character of the Scheduling Contribution, Progress of Design Services Records, Progress of Non-Design Services Records and Design, and/or
- The imposition by the Employer of any obligations or restrictions in regard to the carrying out of the Services, or the addition to, alteration or omission of any such obligations or restrictions so imposed or imposed by the Employer in the Appointment Documents, in regard to
 - access to the Site, or any part or Section
 - limitations of working hours
 - approval or acceptance, or conditional approval or conditional acceptance, of a submission

- the execution of the Services or any Stage or part, in any specific sequence, order or time
- compliance with the Construction Contract and/or a Connected Contract, a copy of which has not been provided to the Consultant,
- the specification of a particular Subconsultant to provide any Service which is priced by the Consultant in Schedule 9 for execution by the Consultant, and/or
- the taking out of insurances, pursuant to Clause 10.2, which the Employer has failed to take out and/or to maintain in accordance with Clause 10.1

SCHEDULE 2 –APPOINTMENT PARTICULARS

Law of the Appointment is

(Clause 2.2)
(if none is stated, it shall be English Law)

Monetary currency is

(Clause 2.3)
if none is stated, it shall be the pound sterling)

Base Date is

(Clause 2.4) (if none is stated, it shall be 20 Business Days before
the Commencement Date)

Commencement Date is

(Clause 4.1)
(if none is stated, it shall be the Appointment Date, or the date on which the Services under this
Appointment are first performed, whichever is the earlier)

Completion Date is

(Clause 4.1)
(if none is stated, it shall be the date stated in the Appointment Agreement)

Stage Commencement and Stage Completion Dates are

(Clauses 5.2.1 and 5.2.4)

Stage No.	Description of Stage	Stage Commencement Date	Stage Completion Date

The Key Dates are

(Clause 5.3)

Key Date Description	Activity ID	Key Date

The status of the Reference Design is that it is

(Clause 11.2)

- Option 1. provided for information purposes only and may not be relied upon by the Consultant for any purpose, or
- Option 2. prepared to Design Stage or Design Level of Development, or
- Option 3. defined in the Special Terms

(Delete whichever two Options are inapplicable. If two of the three Options are not deleted, or if no Design Stage or Design Level of Development is identified against Option 2, Option 1 shall apply)

Holding Company Guarantee

(Clause 9.1.1) shall/shall not apply* (if not stated shall be deemed not to apply)

Performance Bond

(Clause 9.1.2) shall/shall not apply* (if not stated shall be deemed not to apply)

The Building Information Modelling Protocol shall be

(Clause 16)

(If none is stated, it shall be the AIA Document G202-2013 BIM Information Modelling Protocol Exhibit, published by the American Institute of Architects, or such later edition as may be current at the Base Date)

Progress Records

(Clause 18.4)

The Consultant may use the Contractor’s Progress Records contained in the database referred to in Clause 33.2 of the Construction Contract

- Option 1. for any purpose whatsoever, whether or not in connection with the Appointment, or
- Option 2. only in connection with the Appointment

(Delete whichever Option is inapplicable. If none deleted, it shall be for any purpose whatsoever, whether or not in connection with the Appointment)

Interval for Progress Meetings shall be

(Clause 23.1) Business Days after the Date of Contract/Access Date*
(If none is stated, it shall be 20 Business Days from the earlier of the Appointment Date and the Commencement Date) and at intervals of Business Days thereafter
(If none is stated, the interval shall be 20 Business Days)

Scheduling Contribution

(Clause 30.1)

The Consultant shall

- Option 1. consult with the Time Manager and provide the Time Manager with the Consultant's Scheduling Contribution Data, or
- Option 2. publish the Scheduling Contribution as a Fragnet

(Delete whichever Option is inapplicable. If Option 2 is not deleted, Option 1 shall apply)

Status interval for publication of Progress of Design Services Records is

(Clause 32.2) Business Days after the Commencement Date (If none is stated, it shall be 30 Business Days) and at intervals of Business Days thereafter
(If none is stated, the interval shall be 20 Business Days)

Status interval for publication of the Draft Revised Scheduling Contribution is

(Clause 34.1) Business Days after the Commencement Date (If none is stated, it shall be 35 Business Days) and at intervals of Business Days thereafter
(If none is stated, the interval shall be 20 Business Days)

Liquidated Delay Damages

(Clause 46.1) shall / shall not apply* (if none is stated, Liquidated Delay Damages shall not apply)

Liquidated Delay Damages for failure to complete a Stage are

(Clauses 5.2.1, 5.2.2 and 46.1) (if any of the Stage, description, value or rate is not stated, Liquidated Delay Damages shall not apply)

* Delete whichever is inapplicable

Interval of statement of Current Value of Services is

(Clause 50.1) Business Days from the Project Start Date and at the same interval thereafter until Completion of Appointment (If none is stated it shall be 5 Business Days after distribution of the Development Schedule, and any update of the Development Schedule)

Final date for payment is

(Clause 54.3.1) Business Days after receipt of a Notice of Payment Due under Clause 50 (If none is stated, then within 20 Business Days of the date of the Notice)

Interest Rate is

(Clause 55.2) per month/year, simple/compound.* (If none is stated, then the rate is 5% per annum above the Official Dealing Rate)

Official Dealing Rate

(Clause 55.2) That set by

(if none is stated, it shall be that set by the Governor and Company of the Bank of England at the date that the payment became overdue)

Limit on Overheads and Profit on Services not completed at the Termination Date

(Clause 59.2.1) Overheads and Profit may be recovered for the period of Business Days after termination under Clause 59. (If none is stated, then the period for which is 60 Business Days)

Principal Expert is

(Clause 61.4)

(If none is stated, or if the identified person is unable to act, such other person as the parties agree, or in default of such agreement, on the application of either party, the person appointed by the relevant Appointing Body)

* Delete whichever is inapplicable

Appointing Body is

(Clauses 61.4, 62.8 and 62.12)

Discipline	Appointing body	Appointing body if none is stated
Principal Expert (Clause 61.4)		Academy of Experts, 3 Gray's Inn Square, London WC1R 5AH, United Kingdom (www.academy-experts.org)
Adjudicator (Clause 62.8)		Chartered Institute of Building, 1 Arlington Square, Downshire Way, Bracknell, Berkshire, RG12 1WA, United Kingdom, (www.ciob.org)
Arbitrator (Clause 62.12)		Chartered Institute of Building, 1 Arlington Square, Downshire Way, Bracknell, Berkshire, RG12 1WA, United Kingdom, (www.ciob.org)

Experts are

(Clause 61.5)

Discipline	Name	Email	Time zone	Telephone
Architecture				
Civil Engineering				
Cost Engineering				
Commissioning Engineering				
Drainage Engineering				
Electrical Engineering				
Mechanical Engineering				
Structural Engineering				
Interior Design				
Law				
Landscaping				
Project Management				
Time Management				

* Delete whichever is inapplicable

Adjudication

(Clause 62.7) shall/shall not apply*

The adjudication rules are

(Clause 62.7)

Adjudicator is

(Clause 62.8)

(If none is stated, or if the identified person is unable to act, such other person as the parties agree, or in default of such agreement, on the application of either party, the person appointed by the Appointing Body for the Adjudicator identified above)

The final dispute resolution mechanism shall be

(Clause 62.11)

(if none is stated, final dispute resolution shall be by arbitration)

Rules of Arbitration are

(Clause 62.11)

(If none is stated, those current at the Base Date of the London Court of International Arbitration, 70 Fleet Street, London, EC4Y 1EU, United Kingdom. (<http://www.lcia.org>))

Arbitrator is

(Clause 62.12)

(If none is stated, or if the identified person is unable to act, such other person as the parties agree, or in default of such agreement, on the application of either party, the person appointed by the Appointing Body for the Arbitrator identified above)

* Delete whichever is inapplicable

SCHEDULE 3 – BUILDING INFORMATION MODELLING

Design Stages, Levels of Development, geometry, content and uses

S 3.1. The Model shall not be used for any purpose not identified in Table 1 against the relevant Design Level of Development.

Design Contributors and Design Elements

S 3.2. The Design Contributor responsible for each Design Element at each Design Stage and Design Level of Development shall be as indicated in Table 2¹.

¹ Table 2 should refer to design elements particular to the Contract, or be replaced entirely by another matrix to suit the project type and be consistent with the requirements of the Building Information Modelling Protocol identified in Schedule 2

Table 1 - Levels of Development, Design and Uses

S 3				
Design Level of Development	Design Stage	Geometry	Content	Analysis
100	Preparation	Conceptual	Overall massing indicative of area, height, volume, location and orientation	Conformity with general performance data
200	Design	Approximate	Generalised systems and assemblies that indicate approximate quantities, size, shape, location and orientation, including product information where available	Conformity of systems and Design Elements with general performance criteria, including energy usage
300	Pre-construction	Precise	Design Elements and assemblies accurate in size, shape, location, orientation and quantity, including product information where available	Conformity of systems and Design Elements with specific element-related performance criteria, including energy usage and sustainability
400	Fabrication	Detailed	Design Elements and assemblies accurate in size, shape, location, orientation and quantity, with complete fabrication, detail and product information	Conformity of systems and Design Elements with specific element-related performance criteria, including fire control, health and safety, energy usage and sustainability
500	Construction	Recorded	Design Elements modelled as constructed assemblies accurate in size, shape, location, orientation and quantity and resources, with complete fabrication, detail, product information, cost and time data	Changes and design development during construction,
600	Use	Recorded	As constructed Design element assemblies accurate in size, shape, location, orientation and quantity	Using, maintaining, altering and adding to the project in conformity with licensing agreement, if any.

Cost Control	Time Control	Construction	Other Uses
Estimating based upon cost per square metre, per cubic metre, or other conceptual standard such as per hospital bed, per hotel key, etc.	Low density project phasing and overall predicted duration.	May be used to generate drawings sufficient in detail for permission for development in outline and similar licensing	
Estimating based upon approximate data for area, volume and quantity of Element of Design	Low density timing of major Design Elements, zones of operation, project phasing and overall predicted duration.	May be used to generate drawings sufficient in detail for development control and similar licensing	
Estimating based upon approximate data for area, volume and quantity of Element of Design	Low density timing of Design Elements, zones of operation, project phasing and overall predicted duration.	May be used to generate drawings sufficient in detail for building control and similar licensing	May be used to generate traditional construction drawings, specifications and schedules
Estimating based upon standard rates for measured data for items, linear measure, area, volume and quantity of Design Elements	Low and Medium density timing of Design Elements, zones of operation, project phasing, methods of construction, phased access and completion, key dates and overall predicted duration. High Density planning of construction in the short term	Tender and bidding	The information comprises a virtual model of the Design Elements and is suitable for construction purposes
Predicted Cost of Services in accordance with Clause 49. Current Value of Services in accordance with Clause 50, and Final Value of Services in accordance with Clause 51	High Density planning of construction including, where required, all resources and productivity planned to be achieved. Productivity achieved and in accordance with Progress Records and contemporaneous time management, including delay and disruption analysis.	Occupational permits, fire authority and Health and Safety Executive permissions	The information comprises a virtual as-built model of the Design Element and is relied upon for retrospective analysis Actual record of resources used and productivity achieved, for benchmarking and feedback.
		Occupational permits, fire authority and Health and Safety Executive permissions	The information comprises a virtual as-built model of the Design Elements and is relied upon for cooperation and maintenance Can be relied upon for all purposes in connection with facilities management and the future use and maintenance of the project

SCHEDULE 4 – SCHEDULING CONTRIBUTION AND DEVELOPMENT SCHEDULE

Software

S 4.1. The Consultant’s Scheduling Contribution and any Fragnet required for, or in connection with, the Consultant’s Scheduling Contribution and/or the Development Schedule shall be prepared and maintained using

software

version²

Standards

S 4.2. The Consultant’s Scheduling Contribution and Development Schedule shall be prepared in accordance with the Appointment and the recommendations of the CIOB Guide.

Content

S 4.3. The Consultant’s Scheduling Contribution and Development Schedule shall be supported by a statement of the calculations and assumptions used in its preparation, and shall describe the durations and sequence of all Activities planned to be carried out in the future, and those completed in whole or in part, and in so far as it is relevant, is to contain

- a). all Activities necessary for the effective completion of the Appointment
- b). all allowances for Prime Cost, Provisional Sums and/or Employer’s Time and/or Cost Contingencies required by the Employer, and/or those engaged or employed by it
- c). Activities representing any work to be carried out in connection with the Appointment by
 - i. the Employer, details of which are contained in the Special Terms
 - ii. those engaged or employed by the Employer, details of which are contained in the Special Terms
 - iii. utility companies
 - iv. Statutory Undertakers and/or Statutory Authorities
- d). all Consultant’s Time Contingencies required by the Consultant and/or any Subconsultant

² The software and version must be identical to that used for the Working Schedule under the Construction Contract.

- e). the identity of any Subconsultant appointed to carry out any Activity
- f). the resources planned to be used, and the resources actually used, in whole or in part
- g). the value of all Activities, Level of Effort items and Milestones
- h). the Level of Effort items for Preliminaries and Overheads and Profit
- i). the interface between the Services and any other services or other work to be carried out by others, including that of other Consultants and/or the Contractor or any Subconsultant
- j). any date by which the Employer warrants that it will provide
 - i. acceptance or approval of a Design Stage or Design Level of Development of Design Contribution
 - ii. the supply by the Employer of Drawings, instructions, or other information
 - iii. the supply of anything the Employer is to provide, or
 - iv. work to be carried out by the Employer or those engaged or employed by it
- k). the Logical Date by which the Employer is to provide
 - i. acceptance or approval of a Design Stage or Design Level of Development of a Design Contribution
 - ii. the supply by the Employer of Drawings, instructions, or other information
 - iii. the supply of anything the Employer is to provide, or
 - iv. work to be carried out by the Employer or those engaged or employed by it
- l). the duration and sequence of any Interference
- m). the duration and sequence of any Consultant's risk events
- n). the Key Dates for anything to be provided by the Employer or the Listed Persons
- o). the Key Dates for anything to be provided by the Consultant and any Subconsultant, Statutory Undertaking, Statutory Authority, utility provider, or Employer's contractor

- p). the following Milestones in connection with the Construction Contract, if any
- i. Access Date
 - ii. Date for Substantial Completion
 - iii. Dates for Sectional Access
 - iv. Dates for Sectional Completion
 - v. the start and finish of the work of all Subconsultant and suppliers
 - vi. the start and finish of testing and Completion Testing
 - vii. Key Dates.

Design Contribution

S 4.4. Where the Consultant is required by Schedule 8 to produce a Consultant's Design Contribution, unless specified otherwise in the Appointment, the Consultant's Scheduling Contribution shall incorporate the Design Execution Plan and shall include provision for Activities of adequate duration, linked (where relevant) to the construction Activities to which they relate for

- a). submission for acceptance
- b). period for consideration
- c). period for corrections and amendments
- d). period for reconsideration and acceptance

in relation to each of the following Stages, where relevant

- e). Preparation
- f). Design
- g). Pre-construction
- h). Fabrication

and where the Design Contribution is made by reference to a Model, in relation to each of the following Levels of Development where relevant

- i). Design Level of Development 100
- j). Design Level of Development 200
- k). Design Level of Development 300
- l). Design Level of Development 400

and shall include Activities of adequate duration, linked to the appropriate Stages or Levels of Development for every licence or approval, including those of Statutory Authorities necessary in connection with that design, or any relevant part thereof for

- m). preparation of submission
- n). submission
- o). consideration, and
- p). approval.

Design Elements

S 4.5. The Activities shall be coded according to the Design Element to which each activity relates, by reference to

- a). Option 1. Table 2 of Schedule 3
- b). Option 2. the details provided in the Special Conditions to the Construction Contract
- c). Option 3. the details provided in the Special Terms to this Appointment
- d). Option 4.

(Identify how the Design Elements of the Project are, or are to be, identified, by deleting the Option which does not apply and, if relevant, completing Option 4).

Conformity with Building Information Modelling

S 4.6. In so far as it relates to the same Design Element, where the design is produced by a Model from which the Scheduling Contribution is not extracted, the coding structure for the Scheduling Contribution is to be identical to that in the Model.

Density

- S 4.7. The duration of planned Activities shall not exceed the following
- a) For the High Density period between the Data Date and 3 months after the Data Date
..... Business Days (If none is stated, the period shall be 10 Business Days)
 - b) For the Medium Density period between 3 months and 9 months after the Data Date
..... Business Days (If none is stated, the period shall be 20 Business Days)
 - c) For the Low Density period more than 9 months after the Data Date
..... Business Days (If none is stated, the period shall be unlimited).
- S 4.8. For the High Density part of the Working Schedule, the duration of planned Activities shall be estimated on the basis of the best information available, except that where payment is to be made by reference to the resources used and hours worked, it shall be calculated by reference to the resources planned to be employed, and the productivity anticipated by those resources. The Planning Method Statement is to identify the source of data used and explain each such calculation.

Work Breakdown Structure

- S 4.9. The Activities shall be coded according to a Work Breakdown Structure, as follows
- Level 1: the whole of the Works
 - Level 2: Sections
 - Level 3: subsection
 - Level 4: level
 - Level 5: zone
 - Level 6: Design Element
 - Level 7: Design Consultant, Subconsultant, Contractor, Subcontractor or supplier.

Sections, subsections, levels and zones

S 4.10. The Sections, subsections, levels and zones of the Project are

Option 1. illustrated and described on

.....
.....
.....

Option 2. to be determined by

.....

(Identify how the Sections, subsections, levels and zones of the Project are, or are to be, identified, by deleting the Option which does not apply and completing the details).

Project-specific data fields

S 4.11. Where project specific data fields, Activity codes, or resource codes are used, they are to be unique and distinctive mnemonics, and are to be described in the supporting information to the Consultant’s Scheduling Contribution.

Standard data fields³

S 4.12. Every Activity, Milestone and Level of Effort item shall have attributed to it a permanent unique description and alphanumeric Activity ID, and shall have available the following standard data fields attributed as relevant

a) “Design Contributor” coded “DC” and allow 99 separate alphanumeric identities for each of the following field values to which they relate

- A: Architect
- B: Building Surveyor
- C: Civil Engineer
- D: Drainage, Highways Engineer
- E: Electrical Engineer

³ The standard data fields must be identical to those used or to be used for the Working Schedule under the Construction Contract.

- F: Facilities Manager
- G: Geographical and Land Surveyor
- H: Heating, Ventilation and Air Conditioning Engineer
- I: Interior Designer
- K: Employer
- L: Landscape Architect
- M: Mechanical Engineer
- P: Public Health Engineer
- T: Development Planner
- W: Contractor
- X: Subcontractor or supplier
- Y: Specialist Designer
- Z: General (non-disciplinary)
- J:
- N:
- R:
- U:
- V:

b). "Milestones" coded "MS". Allow for 999 separate alphanumeric identities for each of the following field values to which they relate

- AD: Access, Sectional Access, and possession dates
- CM: Contractor's start and finish dates

EM: Dates of supply by the Employer

EW: Dates of Start and Finish of Employer's work

SD: Sectional and Substantial Completion Dates

SM: Subconsultants start and finish dates

KD: Key Dates

FS: Date of start of interface

FF: Date of finish of interface

- c). "Section" coded "SE". Allow for 999 separate alphanumeric values
- d). "Subsection" coded "SS". Allow for 999 separate alphanumeric values
- e). "Level" coded "LV". Allow for 999 separate alphanumeric values
- f). "Zone" coded "ZO". Allow for 999 separate alphanumeric values
- g). "Design Element" coded "DE". Allow for alphanumeric values in accordance with Schedule 3, Table 2, and any additional or substituted table
- h). "Cost Account" coded "CA". Allow for 999 separate alphanumeric identities for each of the following field values to which they relate

ES: Estimate

EX: Expenses

LB: Labour

EQ: Equipment

OH: Overheads and Profit

PR: Preliminaries

SR: Subconsultant

TX: Licences, permits, duties and taxes

- i). "Interference" coded "EV". Allow for 999 separate alphanumeric identities for each of the following field values to which they relate

ECC: Employer's Cost Contingency

ECR: Employer's Cost Risk Event

ETR: Employer's Time Risk Event

ETC: Employer's Time Contingency

EEE: Employer's Time and Cost Risk Event

- j). "Consultant's risks" coded "CR". Allow for 999 separate alphanumeric identities for each of the following field values to which they relate

CCC: Consultant's Cost Contingency

CCR: Consultant's Cost Risk Event

CTR: Consultant's Time Risk Event

CTC: Consultant's Time Contingency

CEE: Consultant's Time and Cost Risk Event.

Submissions Archive

S 4.13. The Time Manager shall archive each submission of the Scheduling Contribution and/or the Development Schedule with a unique file name, including its Data Date, and shall maintain a database of submissions including, but not limited to, the following data fields

- a). The identity of the party making the submission
- b). The date of the submission
- c). The nature of the submission
- d). The name of the submission
- e). The Data Date of the submission
- f). The file name of the submission

- g). The location of the archive of the submission
- h). The size of the submission in bytes
- i). The number of Activities in the submission
- j). Whether accepted, rejected, or conditionally accepted
- k). The date of decision on the submission
- l). The date on which the conditions were complied with
- m). The file name of the decision
- n). The location of the archive of the decision.

SCHEDULE 5 – PROGRESS OF DESIGN SERVICES RECORDS

Record categories

- S 5.1. Progress of Design Services Records are the historical data of the timing and progress of the Design Services including, where payment is made by reference to the resources used and hours worked, the resources actually used in the design of the Project, and shall include records of
- a. Services performed
 - b. Resources used
 - c. Quality control
 - d. Information flow
 - e.
 - f.
 - g.

Software

- S 5.2. Progress of Design Services Records shall be maintained using
 database software
 version³

Cross reference to Consultant’s Scheduling Contribution

- S 5.3. Progress Records are to be fully cross-referenced to the Consultant’s Scheduling Contribution. Each database record shall have
- a. A unique data entry identifier
 - b. The date of entry
 - c. The identity of the person entering data

³ The software and version must be identical to that used or to be used for the Progress Records under the Construction Contract

- d. The reporting period dates
- e. Scheduling Contribution Activity ID
- f. Scheduling Contribution Activity description.

Submissions

S 5.4. The Consultant shall submit to the Time Manager sufficient information as may be reasonably necessary to enable it to check and evaluate the Progress of Design Services Records.

Content of Progress of Design Services Records

S 5.5. For each Business Day, from the date of commencement of the Consultant's Design Contribution until the Services achieve Completion, the Consultant is to record the production data in the following data fields

- a. In relation to a planned Activity on the Scheduling Contribution
 - i. The design speciality
 - ii. The name of the Design Contributor
 - iii. The Activity description
 - iv. The Design Element
 - v. The Activity ID
 - vi. The Design Stage or Design Level of Development
 - vii. The date the Activity started
 - viii. The date the Activity finished
 - ix. If the Activity has started but not finished, the estimated time to complete or, if payment is to be made by reference to the resources used and hours worked, the name and status of each employee allocated to an Activity in progress, and the hours worked by each on the Activity
 - x. The quantity of work completed
 - xi. The value of work completed

- xii. If not started as planned, the reason for non-commencement
 - xiii. If the Activity is started, but without progress during the reporting period, the reason for the absence of progress
- b. In relation to a change of, or unplanned, design Activity not contemplated on the Scheduling Contribution
- i. The design speciality
 - ii. The name of the Design Contributor
 - iii. The Design Element
 - iv. The Activity description
 - v. The Activity ID reference and designated coding
 - vi. The identity of any Interference which is the direct cause of the unplanned Activity
 - vii. The reason for executing the Activity
 - viii. The Design Stage or Design Level of Development
 - ix. The date the new Activity started
 - x. The date the new Activity finished
 - xi. If the Activity has started but not finished, the estimated time to complete or, if payment is to be made by reference to the resources used and hours worked, the name and status of each employee allocated to an Activity in progress, and the hours worked by each on the Activity
 - xii. The quantity of work completed
 - xiii. The value of work completed
 - xiv. If started but without progress during the reporting period, the reason for the absence of progress
 - xv.

- xvi.
- xvii.

Information Flow

S 5.6. Each database record shall contain the following data fields

- a. In relation to Drawings, approvals, information, details or instructions requested
 - i. Activity description
 - ii. Activity ID
 - iii. Unique identifier of the request
 - iv. Description of the request
 - v. Date of the request
 - vi. Date the response is required by
 - vii. Name and status of the person responsible for compiling and/or making the request
 - viii. The Activity ID and description of the Activity directly dependent upon the data requested
 - ix.
 - x.
 - xi.

- b. In relation to Drawings, approvals, information, details or instructions supplied
 - i. Activity description
 - ii. Activity ID
 - iii. Unique identifier of the request to which the supply relates, if any
 - iv. Description of the request

- v. Date of the request, if any
- vi. Description of the information, Drawings, details or instructions supplied
- vii. Date of issue of the data
- viii. Name and status of the person responsible for supplying the data
- ix. The Activity ID and description of the Activity directly dependent upon the data supplied
- xii.
- xiii.
- xiv.

Quality Control

S 5.7 In relation to quality control of the Works under the Construction Contract, if any each record shall contain the following data fields

- a. Activity description
- b. Activity ID
- c. Any inspections or tests carried out, including Completion Testing and the result thereof, listing deficiencies identified, together with the corrective action taken or to be taken
- d. Job safety evaluations
- e. Photographic records taken
- f. Identity of any Consultant’s employees visiting the Site
- g. Date of any visit
- h.
- i.
- j.

Interferences

S 5.8 In relation to unplanned occurrences each record shall contain the following data fields

- a. Event Activity description
- b. Event Activity ID
- c. Description of the occurrence
- d. Any standing time, or unproductive resources, and the reason for such loss of productivity
- e. The identity of any Interference, which is the cause of the lost productivity or standing time
- f.
- g.
- h.

Submissions archive

S 5.9. Unless maintained in a Common Data Environment in which submissions are recorded automatically, the Time Manager shall archive each submission of the database of Progress of Design Services Records with a unique file name, including its Data Date. The Time Manager shall maintain a log of submissions including, but not limited to, the following data fields

- a. The identity of the party making the submission
- b. The date of the submission
- c. The file name of the submission
- d. The location of the archive of the submission
- e. The Data Date of the submission
- f. The size of the submission in bytes
- g. The number of records in the submission

- h. The ID of the latest record
- i. The date of entry of the latest record
- j. Whether accepted, rejected, or conditionally accepted
- k. The date of decision on the submission
- l. The file name of the decision
- m. If conditionally accepted, the date of compliance with the conditions
- n. The location of the archive of the decision.

SCHEDULE 6 – TIME AND/OR COST RISKS *

Event No	Event Description	Employer's Time Risk Event	Employer's Cost Risk Event
S 6.1	An act or omission by the Employer or another consultant or other person employed by the Employer, which interferes with the progress of the Services		
S 6.2	An act or omission by the Contractor or other person employed by the Contractor, which interferes with the progress of the Services	Yes	Yes
S 6.3	The suspension of the performance of the Consultant's obligations pursuant to Clause 4.9 or Clause 54.4, or the suspension of the Consultant's obligations, or any part thereof, as a result of instructions issued under Clause 25.1	Yes	Yes
		Yes	Yes
S 6.4		Yes/No*	Yes/No*
S 6.5		Yes/No*	Yes/No*
S 6.6		Yes/No*	Yes/No*
S 6.7		Yes/No*	Yes/No*
S 6.8		Yes/No*	Yes/No*
S 6.9		Yes/No*	Yes/No*
S 6.10		Yes/No*	Yes/No*

* These Employer's Time and/or Cost Risk Events are in addition to those identified as such in Appendix F of the Construction Contract.

SCHEDULE 7 – ISSUE RESOLUTION

Purpose

- S 7.1. The purpose of Issue Resolution is to assist the parties in the management of their risks in executing the Services and to reduce the possibility of formal dispute resolution proceedings. Accordingly, the Principal Expert must issue its Determination on the basis of its own investigations and shall not be limited by the submissions of the parties

Questions

- S 7.2. For each Issue, the Principal Expert must give its Determination on the following questions (to the extent that they are applicable to the Issue)
- a) Whether the Consultant's submission properly conforms to the Appointment and if not, with which term or terms of the Appointment is it not in conformance?
 - b) Whether the rejection of the submission, valuation, or measurement, if any, was proper in the circumstances?
 - c) Whether the conditions applied to acceptance, if any, would properly have rendered the submission, valuation, or measurement not in conformance with the Appointment?
 - d) Whether the conditions applied to acceptance, if any, amount to a Variation of the Appointment?
 - e) Whether and, if so, what other conditions should reasonably be applied to acceptance?
 - f) Any other questions identified or required by the parties, having regard to the nature of the Issue.

Submissions

- S 7.3. The procedure for submissions to the Principal Expert is as follows
- a) the referring party must make a submission in respect of the Issue, with its notice under Clause 61.1
 - b) all submissions, responses, replies, requests and comments must be in writing and served electronically in accordance with the File Transfer Protocol or, if none has been agreed prior to the Issue arising, then by email. If a party to the Appointment gives information to the Principal Expert, it must at the same time give a copy to the other party. All documents to be copied to either party under this procedure must be sent to the relevant person

- c) the other party must respond within 5 Business Days after receiving a copy of that notice and submission, or such longer period as the other party may reasonably require, having regard to the nature and complexity of the Issue and the volume of the submission. If the parties do not agree the requested extended period, the Principal Expert will promptly determine any extra time that may reasonably be permitted, bearing in mind the complexity and seriousness of the Issue in relation to the effective management of risk, the progress of the Services and, if relevant, the progress of the Works.

Consultation with other experts

- S 7.4. Having regard to the nature of the Issue referred and the expert knowledge reasonably required for the Issue Resolution, the Principal Expert shall consult with such other experts as it considers necessary.

Further information

- S 7.5. The Principal Expert may request further information from either party, to be provided within a time limit. The Principal Expert must send a copy of the request and the response to the other party, and give the other party a reasonable opportunity to comment upon the response.

Conference

- S 7.6. The Principal Expert may request a conference with the parties to the Appointment and any other Listed Persons or expert who, in its absolute discretion, the Principal Expert deems appropriate. The request must identify an agenda setting out the matters to be discussed.

Status

- S 7.7. The Principal Expert shall act as an expert and not as an arbitrator or adjudicator.

SCHEDULE 8 – SERVICES

S 8.1. The Services which the Consultant is required to perform should be

1. written here, or
2. prepared as a separate document and attached to this Appointment

or, if not a separate document which is not attached,

3. identified here and initialled.

S 8.2. Model Schedule 8 is available for the appointment of

- the Time Manager
- the Contract Administrator

S 8.3. If a Model Schedule 8 is used in a modified form, the amendments to it should be initialed by the parties.

SCHEDULE 9 – FEES AND EXPENSES

S 9.1. The Fees and Expenses which the Employer is required to pay for the Services identified in Schedule 8 should be

1. written here, or
2. prepared as a separate document and attached to this Appointment,

or, if a separate document which is not attached

3. identified here and initialled.

S 9.2. Model Schedule 9 is available for the appointment of

- the Time Manager
- the Contract Administrator

S 9.3. If a Model Schedule 9 is used in a modified form, the amendments to it should be initiated by the parties.



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