

TERMS AND CONDITIONS OF ENGAGEMENT

This document sets out the Terms and Conditions of Engagement (the "**Conditions**") which shall govern the appointment of Hurley Palmer Flatt Limited ("**Hurley Palmer Flatt**") by the Client. The operation of the Conditions may only be varied or excluded by express written agreement between the Parties.

1. SERVICES

1.1 The Services

Hurley Palmer Flatt shall perform the Services described in the Letter of Engagement in accordance with the terms set out therein, save to the extent that such terms are inconsistent with these Conditions, in which case, these Conditions shall prevail.

1.2 Additional Services

Hurley Palmer Flatt shall discuss with the Client any extra or additional services ("**Additional Services**") the Client may require Hurley Palmer Flatt to perform in addition to the Services. Hurley Palmer Flatt shall be entitled to reimbursement for the performance of any Additional Services in accordance with the rates set out in the Letter of Engagement. Where rates are not provided or are inapplicable the rates in Schedule 1 herein shall be used.

2. FEES

2.1 Hurley Palmer Flatt is entitled to the payment of the Fee (plus VAT) on the basis set out in the Letter of Engagement. In addition to the Fee, Hurley Palmer Flatt reserves the right to charge for disbursements and expenses (including but not limited to search fees, travel costs and time, subsistence, copying charges and telephone charges) where not expressly included in the Letter of Engagement.

2.2 The Fee shall be adjusted if the performance of the Services is materially delayed or disrupted due to a change in the scope size, complexity or duration of the Project. Unless the Parties agree otherwise, any adjustment of the Fee shall be in accordance with the rates set out in the Letter of Engagement. Where rates are not provided, or are inapplicable, the rates in Schedule 1 herein shall be used.

3. HURLEY PALMER FLATT'S OBLIGATIONS

3.1 Skill and Care

In performing the Services (including any Additional Services), Hurley Palmer Flatt shall exercise the reasonable skill, care and diligence ordinarily used by and to be expected of a qualified and experienced member of Hurley Palmer Flatt's profession undertaking services on works similar in scope, circumstances, time, locality, and character to the Project.

3.2 Specialist Sub-Consultants

Hurley Palmer Flatt may sublet the performance of part of the Services to a specialist Sub-Consultant or Sub-Consultants. Hurley Palmer Flatt shall integrate such Sub-Consultants' services into the Services. Hurley Palmer Flatt shall be responsible for the performance and the payment of any Sub-Consultants directly appointed under this Clause.

3.3 Design Elements by Contractors

Hurley Palmer Flatt may recommend that the detailed design of any part of the Works should be carried out by a Contractor supplier or Sub-Contractor. Consent shall not unreasonably withheld to such recommendation. Hurley Palmer Flatt shall examine such detailed design in accordance with the provisions of the schedule of services.

3.4 Hurley Palmer Flatt's Representative

Hurley Palmer Flatt shall designate a Representative who shall be deemed to have full authority to give and receive notices on behalf of Hurley Palmer Flatt under this Agreement. The Representative will also be responsible for the daily supervision and administration of the Services and who shall be deemed to have full authority to make decisions on behalf of Hurley Palmer Flatt under this Agreement.

3.5 Complaint Handling

Hurley Palmer Flatt have a written complaints procedure that can be provided to the Client on request. In the first instance, any complaint should be addressed to Hurley Palmer Flatt's Representative as set out in the Letter of Engagement. Hurley Palmer Flatt will investigate any complaint promptly, fairly and effectively and, on any complaint being made, Hurley Palmer Flatt will inform the Client how it will be handled, and the timescale within which the Client will receive a substantive response.

4. THE CLIENT'S OBLIGATIONS

4.1 Information Required by Hurley Palmer Flatt

The Client shall supply to Hurley Palmer Flatt, without charge and in such time so as not to delay or disrupt the performance by Hurley Palmer Flatt of the Services, all necessary and relevant data and information (including details of the services to be performed by any Lead Consultant if Hurley Palmer Flatt is not so appointed and any other consultants) in the possession of the Client, the Client's agents, servants, any Lead Consultant if, Hurley Palmer Flatt is not so appointed, any other consultants or any contractors.

4.2 Decisions

The Client shall give decisions, instructions, consents or approvals on or to all matters properly referred to the Client by Hurley Palmer Flatt in such reasonable time so as not to delay or disrupt the performance of the Services by Hurley Palmer Flatt.

4.3 Client's Representative

The Client shall designate a Client's Representative who shall be deemed to have the full authority of the Client.

4.4 Restrictions

The Client will not, during performance of the Services and for a period of 12 months after the completion of the Services, seek to entice away from Hurley Palmer Flatt or solicit the employment, services or engagement in office of any Hurley Palmer Flatt employee.

4.5 Payment

- (a) The Client shall pay Hurley Palmer Flatt the Fee in instalments as provided in the Letter of Engagement and in accordance with this Clause 4.5.

(b) Hurley Palmer Flatt shall submit a request for payment to the Client in accordance with the dates or on completion of the task or milestone stated in the Letter of Engagement or if no dates, tasks or milestones are stated then at intervals of not less than one calendar month showing:

(i) Hurley Palmer Flatt's assessment of the amount to be paid for Services carried out up to the end of the period for which it is submitted, together with any other scheduled payment as may have become payable;

plus

(ii) the amounts to which Hurley Palmer Flatt considers itself entitled in connection with all other matters for which provision is made under the Agreement;

less

(iii) the total of all sums previously notified by the Client for payment.

Hurley Palmer Flatt's final request for payment shall state that it is his final request for payment.

(c) Unless otherwise stated in the Letter of Engagement, within fourteen days of the receipt of a request for payment, the Client shall notify Hurley Palmer Flatt of his agreement to the sum requested by Hurley Palmer Flatt or otherwise notify Hurley Palmer Flatt of the amount which the Client considers is due Hurley Palmer Flatt in respect of the request for payment. The notification shall show the amount due and the manner in which the sum notified has been calculated. The Client may in any notification delete, correct or modify any sum previously notified by him as he shall consider proper. If no amount is notified by the Client in accordance with the time limits in this Sub-clause (c) the amount of Hurley Palmer Flatt's request for payment shall be the amount due.

(d) The amount due in accordance with Sub-clause (c) will become due for payment fourteen days after the receipt by the Client of Hurley Palmer Flatt's request for payment and the Client shall pay the amount due no later than by a date (the "**Final Date for Payment**") which shall be the date calculated as the number of days stated in the Letter of Engagement (or if no number of days is so stated, twenty-eight days) after the date of Hurley Palmer Flatt's request for payment.

(e) If the Client intends to withhold any amount from or set off any amount against any payment which is due to Hurley Palmer Flatt in accordance with Sub-clause (c) the Client shall notify Hurley Palmer Flatt not later than seven days before the Final Date for Payment stating the amount he proposes to withhold and the reason for withholding payment.

(f) If the Client does not make payment in full accordance with Sub-clause (d) less any amount notified by the Client in accordance with Sub-clause (e), Hurley Palmer Flatt may issue a Notice to the Client stating his intention to suspend performance of part or all of the Services. If such failure shall continue for seven days after the giving of such Notice, then at any time thereafter and provided such failure is still continuing, Hurley Palmer Flatt may suspend further performance of such part or all of the Services until payment is made.

(g) Client recognizes that late payment of invoices results in extra expenses for Hurley Palmer Flatt. Hurley Palmer Flatt retains the right to assess Client interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within twenty-eight (28) days from the date Client receives Hurley Palmer Flatt's invoice.

4.6 **VAT/TAX**

All sums due under this Agreement are exclusive of Value Added Tax, the amount of which shall be paid by the Client to Hurley Palmer Flatt at the rate and in the manner prescribed by law.

The amount of any income tax, sales tax, excise tax, Value Added Tax (VAT), gross receipts tax, government fee or any other withholdings that may be imposed on Hurley Palmer Flatt's services will be added to Hurley Palmer Flatt's compensation as reimbursable expenses at the rate and in the manner prescribed by law. If any such amounts are withheld or taxes paid, Client will provide Hurley Palmer Flatt with a copy of the tax receipt in a timely manner as evidence of payment.

4.7 **Cyber Security**

The client agrees that the effectiveness of operational technology systems ("OT Systems") and features designed, recommended or assessed by Hurley Palmer Flatt are dependent upon the Client's continued operation and maintenance of the OT Systems in accordance with all standards, best practices, laws, and regulations that govern the operation and maintenance of the OT Systems. The Client shall be solely responsible for operating and maintaining the OT System in accordance with applicable industry standards and best practices, which generally include but are not limited to, cyber security policies and procedures, documentation and training requirements, continuous monitoring of assets for tampering and intrusion, periodic evaluation for asset vulnerabilities, implementation and update of appropriate technical, physical, and operational standards, and offline testing of all software/firmware patches/updates prior to placing updates into production. Additionally, the client recognises and agrees that OT Systems are subject to internal and external breach, compromise, and similar incidents. Security features designed, recommended or assessed by Hurley Palmer Flatt are intended to reduce the likelihood that OT Systems will be compromised by such incidents. However, Hurley Palmer Flatt does not guarantee that the Client's OT Systems are impenetrable, and the Client agrees to waive any claims against Hurley Palmer Flatt resulting from any such incidents that relate to or affect the Clients OT Systems.

5. **SUSPENSION AND TERMINATION**

5.1 **Suspension by the Client**

The Client may at any time by notice require Hurley Palmer Flatt to suspend the performance of all or any part of the Services. On notice of suspension of all or any part of the Services, Hurley Palmer Flatt shall cease such suspended Services in an orderly and economical manner compatible with a possible order to restart. If the suspension of the performance of all or any part of the Services exceeds six months in aggregate, Hurley Palmer Flatt may, by giving four weeks' notice, treat the Works or the Project or part of the Works or part of the Project as having been abandoned and Hurley Palmer Flatt's appointment in respect of all or any part of the Services affected shall be terminated.

5.2 **Suspension by Hurley Palmer Flatt**

Upon the occurrence of any circumstance beyond the control of Hurley Palmer Flatt that is such as to prevent or significantly impede the performance by Hurley Palmer Flatt of the Services under this Agreement, Hurley Palmer Flatt may, without prejudice to any other remedy, suspend the performance of the Services under this Agreement in respect of all or such parts of the Works as are affected. Hurley Palmer Flatt may, if the suspension exceeds 6 months in aggregate, terminate its appointment forthwith by a further notice in respect of all or any parts of the Services affected.

5.3 **Termination by the Client following a breach by Hurley Palmer Flatt**

In the event of a breach of this Agreement by Hurley Palmer Flatt, the Client may give two weeks' notice of its intention to terminate the appointment of Hurley Palmer Flatt, setting out the acts or omissions of Hurley Palmer Flatt relied upon as evidence of such breach. If Hurley Palmer Flatt does not, to the reasonable satisfaction of the Client, take steps to repair the breach during the notice period, the Client may, on the expiry of the notice period, terminate Hurley Palmer Flatt's appointment by a further notice, setting out the nature of the outstanding acts or omissions of Hurley Palmer Flatt.

5.4 **Termination by Hurley Palmer Flatt in Certain Circumstances**

If circumstances arise for which Hurley Palmer Flatt is not responsible, and which Hurley Palmer Flatt considers make it irresponsible and/or impossible for it to perform all or any part of the Services, Hurley Palmer Flatt shall be entitled to terminate its appointment by two weeks' notice in respect of all or such part of the Services.

5.5 **Termination by Hurley Palmer Flatt following a breach by the Client**

In the event of a breach of this Agreement by the Client, Hurley Palmer Flatt may give two weeks' notice of its intention to terminate the appointment, setting out the acts or omissions of the Client relied upon as evidence of such breach. If the Client does not, to the reasonable satisfaction of Hurley Palmer Flatt, take expeditious steps to repair the breach during the notice period, Hurley Palmer Flatt may on the expiry of the notice period, terminate its appointment by a further notice.

5.6 **Termination for Insolvency**

The appointment of Hurley Palmer Flatt may be terminated forthwith in the event of insolvency of the other party. Notice of termination shall be given to the party that is insolvent by the other party. For the purposes of this Clause 5.6, "insolvency" shall mean going bankrupt, going into liquidation (either voluntary or compulsory unless part of a bona fide scheme of reconstruction or amalgamation), being dissolved, entering into a voluntary arrangement or having a receiver, an administrative receiver or an administrator appointed in respect of the whole or any part of its assets.

Termination of the appointment of Hurley Palmer Flatt under this Agreement shall not prejudice or affect the accrued rights or claims of either party to this Agreement.

6. **COPYRIGHT**

6.1 The copyright in all drawings, reports, specifications, calculations and other documents and information (including any stored electronically) (the "**Documents**") prepared by Hurley Palmer Flatt in connection with the Services shall remain vested in Hurley Palmer Flatt. Subject to the payment of all fees which become due, Hurley Palmer Flatt shall grant the Client an irrevocable, non-exclusive licence to use the Documents for any purposes for which they were originally produced. Such a licence shall not entitle the Client to copy and use the Documents for any extension of the Project to which the Services relate, and shall not include a licence to reproduce the designs contained in them for any Project to which the Services do not relate.

6.2 Hurley Palmer Flatt shall not be responsible for the use of the documents for any purpose other than that for which they were originally prepared.

7. **CONFIDENTIALITY**

7.1 Save as provided in Clause 7.2, or as may be necessary for the proper performance of the Services, neither party shall disclose to any other person any information regarding the Services or the Project

to which they relate, without the other Party's prior written consent, such consent not to be unreasonably withheld or delayed.

7.2 Information regarding the Services or the Project may be disclosed by the Parties to their banks, lenders, legal advisors, accountants or auditors, or may be disclosed as required by law.

8. **LIABILITIES AND INSURANCE**

8.1 Hurley Palmer Flatt shall maintain professional indemnity insurance of not less than five million pounds sterling (£5,000,000) for each and every claim for a period of six years from the completion of the Services, provided that such insurance remains available from a reputable insurance company based within the United Kingdom at commercially reasonable rates and terms.

8.2 **Limitation of Liability**

No action or proceeding under or in connection with this Agreement, whether in contract or in tort or in negligence or for breach of indemnity or breach of statutory duty or otherwise, shall be commenced against Hurley Palmer Flatt after the expiry of six years from the completion of the Services.

8.3 Notwithstanding anything to the contrary contained in this Agreement, and save in respect of (i) death or personal injury caused by Hurley Palmer Flatt's negligence, or (ii) fraud or fraudulent misrepresentation:

(a) Hurley Palmer Flatt's total liability under or in connection with this Agreement, whether in contract, or in tort, in negligence, for breach of warranty or breach of indemnity or breach of statutory duty or otherwise, shall not exceed the sum of five million pounds sterling (£5,000,000) in aggregate;

(b) Hurley Palmer Flatt's liability for any claim or claims arising out of or in connection with pollution or contamination, terrorism and/or asbestos shall be £nil.

8.4 Neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; and/or fines or penalties), loss of profits or revenue arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

8.5 **Net Contribution**

Subject to Clause 8.3 of this Appointment, the liability of Hurley Palmer Flatt for any loss or damage suffered by the Client shall be the amount that is reasonable for Hurley Palmer Flatt to pay having regard to the extent of Hurley Palmer Flatt's responsibility for the loss or damage on the basis that other parties responsible for such loss or damage are deemed to have paid to the Client such proportion of the loss and damage which it would be reasonable for them to pay having regard to the extent of their responsibility for the loss and damage.

8.6 **Liability of Employees**

The Client shall only look to Hurley Palmer Flatt, and not to any of Hurley Palmer Flatt's personnel, for redress if the Client considers that there has been a breach of this Agreement. The Client agrees not to pursue any claims in contract, in tort or statute (including negligence) against any of Hurley Palmer Flatt's personnel, as a result of carrying out of Hurley Palmer Flatt's obligations under, or in connection with this Agreement at any time and whether or not any of Hurley Palmer Flatt's personnel are named expressly in this Agreement and/or the Letter of Engagement.

9. **COLLATERAL WARRANTIES**

Where Hurley Palmer Flatt has expressly agreed in the Letter of Engagement to provide collateral warranties to third parties, Hurley Palmer Flatt shall only enter into such collateral warranties provided that it does not give any greater benefit to those to whom they are issued than owed to the Client under this Agreement. It shall be a condition precedent of the provision of such collateral warranties that all fees due to Hurley Palmer Flatt at the date of execution of the collateral warranty have been paid. Where the form of collateral warranty is not known at the date of entering into the Agreement, the Client undertakes to pay to Hurley Palmer Flatt £750 per beneficiary for the review and approval of such collateral warranties.

10. **ASSIGNMENT**

Neither Party may assign the benefit of this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

11. **DISPUTE RESOLUTION**

Without prejudice to the parties' right to adjudicate at any time, any dispute or difference of whatsoever nature arising under or in connection with this Agreement shall be the subject of a meeting between senior management of both Parties within fourteen (14) days of one party giving written notice to the other of such dispute or difference, and the Parties shall use reasonable endeavours to resolve such dispute or difference.

11.1 **Adjudication**

- (a) Either Party may give the other written notice of its intention to refer a dispute or difference to Adjudication at any time. The Adjudication shall be conducted in accordance with the TeCSA Adjudication Rules from time to time in force.
- (b) The Parties agree the Adjudicator shall subject only to the acceptance by the proposed adjudicator of the proposed appointment be selected from the following list (in any order):
 - Rosemary Jackson, QC Keating Chambers
 - John Wright, John Wright ADR
 - Anneliese Day QC, Fountain Court Chambers
 - Mark Pontin, Navigant
 - Gary Peters, Blackrock PM
- (c) If the parties are unable to agree the appointment of any person referred to above then upon the application of either Party, the Chairman of TeCSA shall appoint an Adjudicator.

12. **NOTICES**

Any notice to be given under this Agreement shall be in writing and given in person or by sending the same by first class letter to the Client's Representative on behalf of the Client, or Hurley Palmer Flatt's Representative on behalf of Hurley Palmer Flatt at the addresses stated in the Letter of Engagement. Notices shall take effect when they have been received by the Client or Hurley Palmer Flatt if delivered by hand, or 2 days after posting by first class post. For the avoidance of doubt, any notice sent by email shall not be an effective notice under the terms of this Agreement.

13. **SEVERABILITY**

If any provision of this Agreement is, or becomes to any extent, invalid or unenforceable under any applicable law, then the remainder of this Agreement shall continue in full force and effect.

14. **THIRD PARTY RIGHTS**

Nothing in the Contracts (Rights of Third Parties) Act 1999 shall operate to give any third party the right to enforce any provision of this Agreement or confer any benefit on any third party.

15. **BRIBERY ACT COMPLIANCE**

15.1 The Parties shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption practices including the Bribery Act 2010 and any guidance issued under Section 9 of such Act.

15.2 The Client shall promptly report to Hurley Palmer Flatt any request or demand for any financial or other advantage of any kind offered, promised or given to the Client in connection with the performance of this Agreement.

15.3 The Client shall notify Hurley Palmer Flatt in writing in the event that a foreign public official becomes an officer or employee of the Client or acquires a direct or indirect interest in the Client and the Client warrants that no officer, employee or director or indirect owner of it is a foreign public official as at the date of this Agreement.

16. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the law of England and Wales, and subject to Clause 11 the Parties agree that all differences or disputes of whatever nature arising under or in connection with this Agreement shall be tried in the Technology and Construction Court in London.