

Conditions of Engagement

CONDITIONS OF ENGAGEMENT
(To Be Attached to Proposal Letter)

1. DEFINITIONS

- 1.1. **"Agreement"** means the Proposal Letter together with these Conditions of Engagement.
- 1.2. **"Amey"** means Amey OWR Limited, whose registered office is at Chancery Exchange, 10 Furnival Street, London, United Kingdom, EC4A 1AB and whose registered number is 01922327
- 1.3. **"Client"** means the person, company or institution described in the Proposal Letter for whom the Services are being carried out.
- 1.4. **"Confidential Information"** means any and all confidential information relating to the Agreement which the disclosing party or its Representatives or any of its Group Companies, or their Representatives directly or indirectly discloses, or makes available, to the receiving party, before, on or after the date of this Agreement. This includes:
- (a) information relating to the business, affairs, customers, clients, suppliers or market opportunities of the disclosing party or of any of its Group Companies, and information relating to the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the disclosing party or of any of its Group Companies, in each case, whether such information is in writing, other documentary form, oral, visual or electronic or machine-readable format, samples, models or otherwise; [and]
 - (b) any analysis, computations, findings or secondary data that is derived or generated from Confidential Information,
- but excludes information that:
- (a) is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the receiving party or its Representatives or by any of the receiving Party's Group Companies or their Representatives in breach of this Agreement;
 - (b) was available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party;
 - (c) was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not under any confidentiality obligation in respect of that information;
 - (d) it was lawfully in the possession of the receiving party before the information was disclosed by the disclosing party; or
 - (e) the parties agree in writing that the information is not confidential.
- 1.5. **"Deliverables"** means any and all documents, drawings, software, models or designs prepared as part of the Services.
- 1.6. **"Fees"** means the remuneration, disbursements, and costs to be paid by the Client to Amey as set out in the Proposal Letter.
- 1.7. **"Group"** means in relation to a company, means that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group;
- 1.8. **"Group Company"** in relation to a company, means any member of its Group;

- 1.9. **"Intellectual Property Rights"** means any and all current and future intellectual or industrial rights (whether legal or equitable), including, patents, copyrights (including related moral rights), design rights, trademarks, service marks, internet domain names, trade-secrets, topography rights, know-how, methodologies, processes, rights in databases, whether registered or unregistered, together with applications for or any right to apply for or register any of the foregoing and any other intellectual property rights of a similar nature or having equivalent effect anywhere in the world.
- 1.10. **"Proposal Letter"** means the letter to which these Conditions of Engagement are attached.
- 1.11. **"Representative(s)"** means, in relation to a company, each of its directors, officers, employees, professional advisers and third party consultants; and
- 1.12. **"Services"** means the services to be provided by Amey as set out in the Proposal Letter.

2. APPOINTMENT AND DURATION

- 2.1. The Client appoints Amey to provide the Services to the Client on the terms and conditions of this Agreement with effect from the earlier of the date of this Agreement and the Services being performed by Amey. Where any of the Services are performed by Amey prior the date of this Agreement, the terms and conditions of this Agreement apply to those prior Services performed.
- 2.2. This Agreement shall continue until the Services are completed (**"Completion Date"**), unless this Agreement is terminated in accordance with clause 9.

3. OBLIGATIONS OF AMEY

- 3.1. Amey shall exercise reasonable skill, care and diligence in the performance of the Services that would be reasonably be expected from an appropriately qualified and experienced consultant operating in the same industry as Amey and providing services of the same nature as the Services.

4. OBLIGATIONS OF THE CLIENT

- 4.1. The Client shall:
- a. supply to Amey, without charge and in such time so as not to delay or disrupt the performance by Amey of the Services, all necessary and relevant data and information in the possession of the Client that Amey may reasonably require for the performance of the Services; and
 - b. ensure that the Client's decisions, instructions, consents or approvals shall be given in such reasonable time as not to delay or disrupt the performance by Amey of the Services.

5. FEES AND PAYMENT

- 5.1. In consideration of the provision of the Services by Amey, the Client shall pay Amey the Fees as set out in the Proposal Letter and according to the arrangements specified therein and in this Clause 5.
- 5.2. All amounts due to Amey shall be paid within 28 calendar days of the date of Amey's invoice.
- 5.3. All sums due under this Agreement are exclusive of Value Added Tax and any other applicable duty or tax, the amount of which shall be paid by the Client to Amey at the rate and in the manner prescribed by law.
- 5.4. If the Client is in breach of its obligations as to payment under clause 5.2:
 - a. without prejudice to Amey's other rights or remedies, Amey has the right to suspend performance of any or all of its obligations under this Agreement until payment is received from the Client, provided that Amey first provides not less than seven (7) calendar days' notice of its intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance.
 - b. Any payment due from the Client to Amey which is not paid by the due date shall bear interest at the rate of 3% per annum above the base lending rate of HSBC Bank plc from the due date for payment until the date when payment is made.
 - c. In case of suspension of the services, and following full payment by the Client, Amey will agree an acceptable re-mobilisation process and period including the consideration of the appropriate available staff to continue to successfully carry out the Services.
- 5.5. Without prejudice to its rights under clause 5.4, if the Client fails to pay a sum due to Amey by the final date for payment, Amey has the right to terminate this Agreement in accordance with the provisions of clause 9.
- 5.6. Upon termination of this Agreement for any reason, the Client shall pay Amey the Fees for and in connection with the Services performed up to and including the effective date of termination, and the Client shall make full payment of such pro-rated Fees within 28 calendar days of receipt of Amey's invoice.

6. ADDITIONAL WORK

- 6.1. Either party may request a change to the scope of the Services by agreement. Amey has no obligation to perform any changed or additional services unless and until the parties have agreed the necessary variations to its Fees and the scope of the Services.
- 6.2. If Amey has to carry out additional work and/or suffers disruption in the performance of the Services because of any delay by the Client in fulfilling its payment obligations under clause 5, the Client shall compensate Amey by making an additional payment to Amey in respect of the additional work carried out and/or the disruption suffered, which is to be calculated on the basis of reasonable time based fees.

7. COPYRIGHT AND INTELLECTUAL PROPERTY

- 7.1. The Intellectual Property Rights of and in any Deliverables shall vest in and remain the sole and exclusive property of Amey.
- 7.2. Subject to clause 7.1, Amey grants to the Client an irrevocable, royalty-free, non-exclusive licence to use, copy and reproduced the Deliverables for the purpose for which they were produced including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of any works to which they relate.

8. DATA PROTECTION

- 8.1. For the purposes of this Clause 8:

"Data Protection Law" means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the *Data Protection Act 2018* ("**DPA 2018**"); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including,

without limitation, the privacy of electronic communications);

“**Personal Data**” has the meaning given to that term in the UK GDPR; and

“**UK GDPR**” has the meaning given to it in the DPA 2018.

8.2. The parties agree to comply with their respective obligations under Data Protection Law.

8.3. The Client shall ensure that the Personal Data which it supplies or discloses to Amey pursuant to this Agreement has been obtained fairly and lawfully and that it has obtained all necessary consents to enable:

- a. it to supply or disclose the Personal Data to Amey; and
- b. for Amey to process the Personal Data in accordance with this Agreement.

8.4. If either party supplies or discloses Personal Data to one another, the other shall:

- a. ensure that such Personal Data is used only as instructed by the party who is the controller of that Personal Data; and
- b. notify the other party of any request it receives from data subjects for subject access or changes to the Personal Data or any correspondence with the Information Commissioner.

9. TERMINATION

9.1. Without prejudice to the parties’ other rights or remedies, either party may terminate this Agreement immediately at any time by written notice to the other party if:

- a. the other party commits a substantial breach of any of the material terms of this Agreement and, if that breach is capable of being remedied, that party fails to remedy that breach within 30 days after receipt of a written notice requiring the breaching party to show cause; or

- b. if the other party is an individual and has:

9.1.b.1. presented a petition for bankruptcy or had a bankruptcy order made against them;

9.1.b.2. had a receiver appointed over their assets or entered into any arrangement or scheme for the benefit of creditors (including an individual voluntary arrangement under the Insolvency Act 1986) or has applied for any order preventing or restricting the enforcement of their debts;

9.1.b.3. a receiver is appointed under the Mental Health Act 1983 or the individual becomes incapable of managing his affairs; or

9.1.b.4. died (R4B); or

- c. If the other Party is a company or partnership and has:

9.1.c.1. had a winding-up order made against it;

9.1.c.2. a monitor appointed or any document is filed at court to obtain or apply for a moratorium or order is made for a moratorium to come into force;

9.1.c.3. had a provisional liquidator appointed to it or a resolution is passed for winding-up (other than in order to solvently amalgamate or reconstruct);

9.1.c.4. had an administration order made against it or an administrator is appointed under any provision of the Insolvency Act 1986 (in the case of a partnership as applied by an order under section 420 of that Act);

9.1.c.5. had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets;

9.1.c.6. made any arrangement, compromise or composition with a creditor including a voluntary

arrangement under any provision of the Insolvency Act 1986 (in the case of a partnership as applied by an order under section 420 of that Act);

9.1.c.7.been or is in the process of being dissolved by order of the court or otherwise, or

9.1.c.8.made or is in the process of making a scheme of arrangement under Part 26 of the Companies Act 2006 (R9C).or threatens to cease to trade (either in whole, or as to any part or division involved in the performance of this Agreement), or becomes or is deemed insolvent, is unable to pay its debts as they fall due, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its business or assets.

9.2. Without affecting any other right or remedy available to it, Amey may terminate this Agreement for its sole convenience by giving not less than 1 weeks' written notice to the Client for any reason whatsoever.

9.3. On termination of this Agreement for any reason, the accrued rights and liabilities of the parties as at termination shall not be affected.

9.4. On termination of this Agreement (however arising) the following clauses shall survive and continue in full force and effect: Clause 7 (Copyright and Intellectual Property), Clause 9 (Termination) Clause 10 (Liability and Insurance), Clause 11 (Confidentiality), Clause 12 (Non-Solicitation), Clause 20 (Governing Law and Jurisdiction) and Clause 21 (Severability).

10. LIABILITY AND INSURANCE

10.1. Amey shall not be liable to the Client under or in connection with this Agreement for any:

- a. loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of anticipated savings, loss of, damage to or corruption of data, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the Parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise;
- b. use of the Services for any purpose other than that for which they were prepared or provided by Amey as expressly stated in the Proposal; and
- c. delay or failure by Amey to perform or comply with any obligation under or term of this Agreement to the extent that such delay or failure is attributable to any act or omission of or by the Client or any of its employees, agents, contractors or other consultants or suppliers (including without limitation any breach by the Client of any obligation under or term of this Agreement).

10.2. Subject to clause 10.4, Amey's maximum aggregate liability to the Client under or in connection with this Agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, shall in no circumstances exceed 100% of the Fees payable hereunder.

10.3. Without prejudice to clauses 10.1 and Clause 10.2, Amey's liability to the Client shall be limited to such sum as it would be fair and equitable to pay having regard to the extent of Amey's responsibility for Amey's loss or damage and on the assumption that there are no joint or co-insurance arrangements between the Client and any third party who is responsible to any extent for that loss or damage.

10.4. Nothing in this Agreement shall exclude or in any way limit Amey's liability for:

- a. fraud;
- b. death or personal injury caused by its negligence;
- c. breach of terms regarding title implied by s.12 *Sale of Goods Act 1979* and/or s.2 *Supply of Goods and Services Act 1982*; or
- d. any liability to the extent the same may not be excluded or limited as a matter of law.

10.5. Amey shall make all reasonable efforts to maintain insurance coverage against legal liabilities arising out of or in connection with the performance, or otherwise, of its obligations under this Agreement, subject always

to the availability of such insurance on commercially reasonable terms.

11. CONFIDENTIALITY

11.1. Each party undertakes that it shall not disclose to any person any Confidential Information, except as permitted by Clause 11.2.

11.2. Each party may disclose the other party's Confidential Information:

- a. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 11; and
- b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3. No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

12. NON-SOLICITATION

12.1. The Client shall not, without the prior written consent of Amey, at any time from the date of this Agreement to the expiry of 12 months after the termination or expiry of this Agreement, solicit or entice away from Amey or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Amey in the provision of the Services.

13. DISPUTE RESOLUTION AND ADJUDICATION

13.1. In the event a difference, disagreement or dispute arises between the parties concerning this Agreement or the subject matter thereof (hereafter a '**Dispute**'), the parties duly authorized representatives with authority to settle the Dispute shall confer at least once to seek to resolve the Dispute.

13.2. In the event any Dispute or difference is not resolved within 30 days of either party notifying the other a Dispute, the parties agree that the Dispute shall be referred to resolution through adjudication in accordance with clause 13.3.

13.3. Either party may refer any a dispute to an Adjudicator for adjudication in accordance with the following provisions:

- a. if the parties are unable to agree on a person to act as adjudicator then the adjudicator shall be nominated at the request of either party by the President or Vice President for the time being of the Technology and Construction Bar Association; and
- b. the Adjudicators decision is binding until the dispute or difference is finally determined by the Courts of competent jurisdiction.

14. ENTIRE AGREEMENT

14.1. This Agreement constitutes the whole agreement between the parties and supersedes and extinguishes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

14.2. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (a "**Representation**") of any person (whether a party to this agreement or not) other than as expressly set out in this Agreement. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided

in this Agreement.

14.3. Nothing in this clause shall limit or exclude any liability for fraud.

15. FORCE MAJEURE

15.1. Neither party shall be in breach of this Agreement where any failure or non-performance is due to circumstances beyond their reasonable power to control due to acts of God, exceptionally inclement weather, fire, flood, industrial action, war, riot, civil commotion, acts or threats of terrorism (an "**Event of Force Majeure**"). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Agreement by giving 21 days written notice to the affected party.

16. VARIATION

16.1. No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

17. ASSIGNMENT AND SUBCONTRACTING

17.1. Subject to clause 17.2, neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

17.2. Amey may subcontract the Services or any part of this Agreement to any Group Company of Amey.

18. NO PARTNERSHIP OR AGENCY

18.1. Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

19. NOTICES

19.1. Any notice or other communication to be made pursuant to the terms and conditions of this Agreement shall be in writing and shall be sufficiently made if:

a. sent by pre-paid first-class post which, in the case of a notice sent by the Client to Amey, with a copy sent to secretariat@amey.co.uk on the same day as it is posted; or

b. delivered by hand,
and shall except in the case of delivery by hand, be deemed to have been delivered two business days after the communication was posted. If delivered by hand the delivery shall be deemed to have occurred on the same day.

19.2. The address for notices for each party is the registered address.

19.3. Any notice or communication of a routine administrative or operational nature to be given under this Agreement may be made by email to the email address notified by the party from time to time. The sending party and the receiving party shall notify each other in writing of the address to which such electronic mail shall be sent and/or any other information required to enable the sending and receipt of information by that means.

19.4. Any electronic communication made between under Clause 19.3 shall be effective only when actually received by the receiving party in readable form.

19.5. The provisions of this clause 19 shall not apply to the service of any process or other documents in any legal action or proceedings.

20. GOVERNING LAW AND JURISDICTION

20.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with

the law of England and Wales, and the parties here submit to the exclusive jurisdiction of the English courts.

21. Severability

21.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision is, to the extent required, deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement are not affected.

21.2. If any invalid, unenforceable or illegal provision of this contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

SIGNING PAGE

This Agreement is made the day of 20.....

Between:

Amey OWR Limited, a company registered in England under number 03033245 whose registered office is at Chancery Exchange, 10 Furnival Street, London, United Kingdom, EC4A1AB ("**Amey**")

And

xxxxxxx (registered number xxxxxxxx) located at xxxxxxxxx and whose registered office is xxxxxxxxxxxx ("**Client**")

The Parties hereto have caused this Agreement to be executed in duplicate on the date first stated above, as follows:

SIGNED for and on behalf of:

AMEY OWR LIMITED

By:

Authorised signatory

Printed Name

SIGNED for and on behalf of:

.....

By

Authorised signatory

Printed Name