

Invitation to Tender MidLothian and East Renfrewshire Joint Schools Project



Midlothian 


East
Renfrewshire
COUNCIL
working for you

MIDLOTHIAN & EAST RENFREWSHIRE JOINT SCHOOLS PROJECT

INVITATION TO TENDER FOR PROFESSIONAL SERVICES

East Renfrewshire Council
Council Offices
Eastwood Park
Rouken Glen Road
Giffnock
G46 6UG

Midlothian Council
Midlothian House
Buccleuch Street
DALKEITH

Part 1 – Instructions to Tenderers

Tender Submission Checklist

The following table lists the items Tenderers must include in their Tender Submission. Please annex a copy of the completed table to your completed Tender Declaration.

Description		Uploaded
		Please ✓
	Signed Tender Declaration	
	Fee Tender	
	Quality Tender	
	Health & Safety Competency Submission	

Please ensure that all the above documents are uploaded into the tenderbox by the Tender Return Date. Failure to do so will result in your Tender being rejected.

INVITATION TO TENDER

CONTENTS

Part 1 Instructions to Tenderers

Part 2 Conditions of Appointment

Part 3 Scope of Services

Part 4 Project Brief

PART 1 – INSTRUCTIONS TO TENDERERS

CONTENTS

- 1 INTRODUCTION
- 2 CONDITIONS OF PARTICIPATION
- 3 PROJECT OVERVIEW & PROCUREMENT STRATEGY
- 4 SCOPE OF APPOINTMENT
- 5 PROCUREMENT PROCESS
- 6 TENDER SUBMISSION REQUIREMENTS
- 7 AWARD CRITERIA AND ASSESSMENT OF TENDERS

PART 1 - APPENDIX 1
FORM OF TENDER & CERTIFICATES

PART 1 - APPENDIX 2
FEE TENDER TABLES

PART 1 - APPENDIX 3
DETAILED QUALITY TENDER SUBMISSION REQUIREMENTS

PART 1 – APPENDIX 4
HEALTH & SAFETY COMPETENCE

PART 1: INSTRUCTIONS FOR TENDERERS

1 INTRODUCTION

1.1 Background

1.1.1 This Invitation is issued pursuant to the contract notice to the Official Journal of the European Union reference 2009/S 221-318294.

1.1.2 This Invitation has been issued to 6 Tenderers.

1.2 Structure

This invitation comprises 4 Parts structured as follows –

- **Part 1(this Part): Instructions for Tenderers comprising –**
 - Introduction (Section 1);
 - conditions of participation (Section 2);
 - overview and procurement strategy (Section 3)
 - scope of services (Section 4 (overview) – for full details see Part 3)
 - procurement process (Section 5)
 - Tender Submission Requirements (Section 6 and Appendices 2,3 & 4).
 - Award Criteria and assessment of Tenders. This includes details of how the Non-Price and Qualitative Price evaluations will be combined to rank Tenderers (Section 7).
 - Tender Declaration (Appendix 1)
 - Fee Tender Tables (Appendix 2)
 - Detailed Quality Tender Submission Requirements (Appendix 3)
 - Health & Safety Competence (Appendix 4)
- **Part 2: Conditions of Appointment**
- **Part 3: Scope of Services**
- **Part 4: Project Brief**

1.3 Tender Return Date and Details

The Tender Return Date is 12 Noon on Friday 12th March. Tenders are to be electronically submitted by uploading to the Tenderbox full details of which are provided in Paragraph 6.5.

1.4 Glossary

Appointment means the appointment between the Employer and the Successful Tenderer to provide the Scope of Services

Conditions of Appointment mean the Conditions of Appointment forming Part 2 including any amendments made by the Employer

Design Team means the design team to be appointed from this tender competition comprising the Successful Tenderer and its sub-consultants

Employer means East Renfrewshire Council and Midlothian Council as joint employers under the Appointment

Evaluation Criteria means the evaluation criteria in 7.1

Fee Tender means the Fee Tender described 6.4

Health & Safety Competency Submission means the submission described in 6.2

Instructions to Tenderers means this Part 1 of the Invitation

Invitation means this tender invitation including all parts and appendices

Invitation Information means the contents of this Invitation and all other information provided by the Employer during the tendering process (including the PQQ stage)

Project has the meaning given in Section 3

Quality Tender means the Quality Tender described in 6.3

Scope of Services means the scope of services described in Part 3

Successful Tenderer means the Tenderer who has submitted the most economically advantageous Tender.

Tender Declaration is the form in Appendix 1 to this Part 1

Tenderer means a party shortlisted from the PQQ process to whom this Invitation has been issued

Tender Return Date means the date and time provided in 1.3

Tender Submission comprises the Tender Declaration, the Fee Tender, the Quality Tender and the Health & Safety Competence Submission

2 CONDITIONS OF PARTICIPATION

2.1 The Invitation Information

- 2.1.1 The Invitation Information is being made available to Tenderers for their sole use and for the sole purpose of assisting them to prepare and submit a tender in accordance with the requirements of this Invitation. It is being made available on condition that it is used only in connection with the Project and for no other purpose.
- 2.1.2 None of the Employer, the SFT, their advisors, or the directors, officers, members, partners, employees, other staff, agents or advisors of any such person:
- (a) makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the Invitation Information. Any persons considering making a decision to enter into contractual relationships with the Employer following receipt of the Invitation Information should make their own investigations and their own independent assessment of the Employer and their requirements for services associated with the Project and should seek their own professional financial and legal advice; or
 - (b) accepts any responsibility for the Invitation Information or for its fairness, accuracy or completeness. Nor shall any of them be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.

2.2 Right to Cancel or Vary the Process

- 2.2.1 The Employer reserves the right to:
- (a) cancel the tender process at any stage;
 - (b) require a Tenderer to clarify its Tender Submission in writing and/or provide additional information, and/or
 - (c) amend the terms and conditions of the tender process.
- 2.2.2 The Employer reserves the right to withdraw from the tender process at any stage. No warranty is given that the Employer will enter into any contract based upon the Conditions of Appointment or otherwise.
- 2.2.3 The Employer reserves the right to issue supplementary documentation at any time during the process in order to clarify any issue or amend any aspect of the Invitation Information. All such further documentation issued by the Employer during the tender process shall be deemed to form part of the Invitation Information and shall supersede any part of the Invitation Information to the extent indicated.
- 2.2.4 Tenderers' attention is drawn to the fact that, by issuing the Invitation, the Employer is in no way committed to accepting any Tender Submission.

Part 1 – Instructions to Tenderers

2.3 Right to Reject and/or Disqualify

2.3.1 The Employer reserves the right to reject or disqualify a Tenderer where:

- (a) the Tender Submission is submitted late, is completed incorrectly, is incomplete or fails to meet the Employer's submission requirements which have been notified to Tenderers; and/or
- (b) the Tenderer or any Relevant Entity is guilty of serious misrepresentation in relation to its application and/or the process; and/or
- (c) the Tenderer or any Relevant Entity contravenes any of the terms and conditions of this Invitation; and/or
- (d) there is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the Tenderer and/or
- (e) the Tenderer places (and refuses to withdraw) confidentiality conditions on the content of the Tender Submission which the Employer (acting reasonably) consider to be unnecessary and contrary to the intention of the FOISA.

2.3.2 The disqualification of a Tenderer will not prejudice any other civil remedies available to the Employer and will not prejudice any criminal liabilities that such conduct by a Tenderer may attract.

2.4 Changes to Tender Period Procedure

Subject to complying with its obligations under procurement law, the Employer reserves the right, at their discretion, to change the basis of, or the procedures for, the process, including the timing, form and substance of the procedure leading to the appointment of the Design Team., Under no circumstances shall the Employer incur any liability in respect thereof. Any changes to the procedure shall be communicated to the Tenderers as quickly as possible.

2.5 Costs and Expenses

All Tenderers are solely responsible for their costs and expenses incurred in connection with the tender process, preparation and submission of their Tender Submissions or any other aspect of the tender process. Under no circumstances will the Employer or SFT, or any of their advisors, be liable for any costs or expenses borne by the Tenderer or advisors in this process or for any economic loss or other loss of profit incurred by any Tenderer in relation to the Project.

2.6 Conflict of Interest

2.6.1 Any conflict of interest of a Tenderer or potential conflict of interest of a Tenderer shall be fully disclosed to the Employer as soon as such conflict or potential conflict becomes apparent to a Tenderer.

2.6.2 In the event of any conflict or potential conflict of interest, the Employer shall, in their absolute discretion, decide on the appropriate course of action.

2.7 Confidentiality

2.7.1 By receiving this Invitation, each Tenderer agrees to keep confidential this Invitation and all Invitation Information (the "Information Provided").

Part 1 – Instructions to Tenderers

- 2.7.2 The Information Provided may be made available to a Tenderer's members, sub –consultants, employees and professional advisors directly involved in the appraisal of such information (who must be made aware of the obligation of confidentiality) but shall not, either in whole or in part, be copied, reproduced, distributed or otherwise made available to any other party in any circumstances without the prior written consent of the Employer, nor may it be used for any purposes other than that for which it is intended.
- 2.7.3 While the Information Provided has been prepared in good faith, it does not purport to be comprehensive or to have been verified by the Employer, the SFT or their advisors. Neither the Employer, the SFT nor their respective advisors, agents or servants shall be liable or responsible for negligence or failure to exercise any degree of skill or care in connection with the production of the Information Provided or for any action taken by any Tenderer as a result of the Information Provided.
- 2.7.4 The Information Provided does not warrant to provide Tenderers with solutions for the attainment of the Employer's objectives under the Project. It is the responsibility of each Tenderer to develop their proposals to ensure that the requirements of the Invitation are fully satisfied.

2.8 Freedom of Information

- 2.8.1 All information submitted to the Employer and/or the SFT may need to be disclosed and/or published by the Employer and/or the SFT. Without prejudice to the foregoing generality, the Employer and/or the Scottish Futures Trust may disclose information in compliance with the FOISA or the Environmental Information Regulations, (the decision of the Employer and/or the Scottish Futures Trust in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure.
- 2.8.2 Further, the Employer and/or the Scottish Futures Trust may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their respective servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties the Employer and/or the Scottish Futures Trust shall if they see fit disclose such information but are unable to impose any restriction upon the information that they provide to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of the appointment.
- 2.8.3 Accordingly, if a Tenderer considers that any of the information included in the Tender Documents or any other information provided to the Employer and/or the Scottish Futures Trust is commercially sensitive/confidential, they shall identify such and explain (in broad terms) what harm might result from disclosure and/or publication. It shall be remembered though, that, even where Tenderers have indicated that information is commercially sensitive/confidential, Employer and/or the Scottish Futures Trust may disclose this information where they see fit.
- 2.8.4 The Employer and/or the Scottish Futures Trust may publish, on its' website, the names and contact details of companies who have been issued with an Invitation.

2.9 Publicity

Part 1 – Instructions to Tenderers

No publicity regarding this Project will be permitted unless and until the Employer have given express written consent to the relevant communication.

2.10 Canvassing

Except as provided in the Invitation, Tenderers shall not approach staff of the Employer or staff of the Employer' advisors with a view to providing information or clarification in respect of any part of their Tender or proposals or attempting to support or enhance their prospect of being selected as Successful Tenderer. Any such approach or attempted approach by a Tenderer may lead to the Tenderer's disqualification.

2.11 Collusion

Any collusion between Tenderers may lead to the exclusion of one or all Tenderers involved at the discretion of the Employer.

2.12 Changes in Circumstances

2.12.1 Each Tenderer shall be required immediately to bring to the Employer' notice any material change in the financial or other circumstances of the members of their consortia or any change in the membership of the consortia since the submission of the Pre-Qualification Questionnaire ("Material Change in Circumstances"). Any change in the membership of the consortia may only be made with the prior written agreement of the Employer. The Employer will not withhold their agreement unreasonably, but such agreement will be subject to the Tenderer continuing to meet the established qualification criteria.

2.12.2 Any Material Change in Circumstances shall be evaluated in accordance with the Pre-Qualification Questionnaire evaluation criteria. Tenderers may be deselected from the competition if as a result of the Material Change in Circumstances they do not comply with the minimum requirements of the Pre-Qualification evaluation criteria or would not have been shortlisted to be invited to take part in the tender had the Material Change in Circumstances been taken into account in the original Pre-Qualification evaluation.

2.13 Conflict of Documents

In the event of conflict between PQQ invitation and any other information provided in relation to the Project and the Invitation Information the provisions of the Invitation Information shall prevail.

2.14 Conditions to acceptance of this Invitation

The acceptance of the Invitation by a Tenderer will imply acceptance of the foregoing provisions by Tenderers without qualification. Any attempt to qualify any of the foregoing provisions in this paragraph, either expressly or impliedly, may result in the Tenderer being disqualified.

3 PROJECT OVERVIEW & PROCUREMENT STRATEGY

PLEASE NOTE THAT THIS SECTION CONTAINS ONLY A BRIEF OVERVIEW: FULL DETAILS OF THE PROJECT BRIEF IS PROVIDED IN PART 4

3.1 Introduction

The Scottish Government announced on 28 September 2009, Schools funding of £800m. Midlothian Council and East Renfrewshire Council have been identified as the pilot for this new investment programme. The Councils are working together and their joint requirement is the replacement of two secondary schools, Lasswade High School in Midlothian and Eastwood High School in East Renfrewshire (the "Project").

The Councils intend to make a single appointment of a multi-disciplinary Design Team to provide a range of services. Successful experience of schools design, the delivery of schools projects, an understanding of physical environments fit for Curriculum for Excellence, and experience of sustainable and energy efficient buildings are regarded by the Councils as essential attributes of the appointed Design Team.

Being the first project in the programme, the Councils will also take the opportunity to assist the Scottish Futures Trust in their programme management role by preparing the ground for the programme through piloting joint working and establishing effective and cost efficient processes and design solutions. The Project will act as a demonstration project and the outputs and outcomes will influence the implementation of the programme going forward.

The context for this is the suite of aims set for the programme which principally are as follows:

- Develop effective and efficient approaches to procurement
- Drive cost efficiency
- Develop sustainable lifecycle solutions
- Deliver improved environmental performance
- Implement the guiding principles included in the Government's Schools Estate Strategy – "Building Better Schools: Investing in Scotland's Future" (September 2009)

To help achieve these aims the combined team for the Project will work closely with the Scottish Futures Trust, as well as Architecture and Design Scotland, The Carbon Trust, Learning and Teaching Scotland, and Grounds for Learning.

A key output required from the Design Team is a specification that can be used in the ongoing school building programme. This specification must be a standalone document with as few cross references to other documents, such as Building Bulletins, as possible.

3.2 Client Project Organisation

The Project is directed by a Project Board whose membership comprises:

- Chief Executive of East Renfrewshire Council
- Chief Executive of Midlothian Council

- Accommodation Director, Scottish Futures Trust

The Project Sponsors are the respective Chief Executives of East Renfrewshire Council and Midlothian Council.

The Project Director is Stuart Gillies and Assistant Project Director is Donald Gillies.

3.3 Funding

The project will be funded by Midlothian and East Renfrewshire Councils. The Councils will receive financial support from the Scottish Government in the form of a capital grant. The Design Team must produce an affordable scheme with the total gross development cost being in the range £60m to £75m at a base date of April 2009.

3.4 Construction Procurement Strategy

It is intended that the two schools will be constructed through a Design & Build Contract using the Competitive Dialogue procedure with dialogue only on a small number of design elements.

The Design Team will develop drawings, room data sheets and specifications, etc and a set of detailed employer's requirement documents. A key success factor to retain control of the finished product will be greater involvement by the Client in developing the initial design information to a level sufficient to remove the element of interpretation.

These documents will form part of the tender documents to be issued to the shortlisted main contractors who would return a lump sum design and build tender price. The best value proposal for each Council (determined through an agreed quality/price formula) will then be accepted and this contractor will manage the planning, warrant, design development through to construction phase and completion.

It is considered at this stage that, with the employers' drawings being suitably advanced in detail, that the Design Team will have initiated the planning approval process prior to the D&B contractor appointment, but that the appointed D&B contractor will take on the responsibility of obtaining planning approval. It is anticipated that adopting this process will enable a reduction to the overall project programme.

It is proposed that Competitive Dialogue will be limited to:-

Non-Negotiables	Negotiables
Internal Room Size & Configuration	Structural Approach
Orientation	Energy consumption
Adjacencies	Whole life costs
Circulation Strategy	Materials
Ventilation strategy	Aesthetics
Daylight & Artificial Strategy	General M&E
Parking Strategy	Elevations
Sustainability Strategy	Parking Solution
	Internal Finishes

4 SCOPE OF SERVICES

The Appointment shall be between the Successful Tenderer and the Employer (comprising East Renfrewshire and Midlothian Councils as joint employers) and shall be on the terms set out in the Conditions of Appointment forming Part 2 of this Invitation. (See Paragraph 5.3 in regard to limited opportunity for Tenderers to submit comments on the Conditions of Appointment.)

The Appointment will be a sole appointment with the Successful Tenderer as Design Team lead. Any service disciplines not provided by the Tenderer (as detailed in their pre-qualification submission) shall be employed by the Successful Tenderer as sub-consultants in accordance with the Conditions of Appointment.

The Appointment shall comprise the professional services required by the Employer in connection with the Project all as described in detail in Part 3 of this Invitation, including the management and execution of the design and procurement process through from feasibility to design and build tender through to construction and completion of the Project facilities. The works will also involve the demolition of the existing schools following completion of the new facilities, together with reinstatement of the sites thereafter.

The service provision shall comprise a range of professional services as outlined in the Part 3 of this invitation, namely Project Manager, Architect, Quantity Surveyor, Structural/Civil Engineer and M&E Engineer (Including BREEAM Assessor).

Post award of main contract services the design team shall be retained to act as Employers Agent.

In addition to the above services, a CDM-C service shall also be provided throughout the contract through to completion and to compilation of the health and safety file.

In addition, post main contract award, a Clerk of Works service will be provided.

The Design Team will provide a comprehensive professional services covering feasibility, design development through to scheme design with certain elements of the design being progressed more than others, as detailed in the Procurement Strategy and Schedule of Services detailed within the tender documents. The construction works will be procured utilising a design & build contractor selected following production, issue and return of appropriate tender documentation which shall utilise competitive dialogue as outlined in the procurement strategy.

The Design Team shall be working under the direction of the Employer's Project Team led by the Project Director but will be expected to integrate and communicate with a variety of stakeholders and interested parties to progress and execute the professional services.

Part 1 – Instructions to Tenderers

5 PROCUREMENT PROCESS

5.1 Timetable for Tendering

Key dates for the tendering process are as follows:

Issue of ITT	Friday 5 th February 2010
Tenderer Briefing (Date To Be Confirmed)	Thursday 25 th February 2010
Deadline for submitting comments on Appointment Contract	Friday 5 th March 2010
Deadline for Tender Clarifications	Friday 5 th March 2010
Tender Return Date	Friday 12 th March 2010
Evaluation of Tender Submissions Completed and Successful Tenderer selected	Monday 15 th March – Thursday 25 th March 2010
Design Team Appointment	Friday 26 th March 2010
End of Standstill Period	Monday 5 th April 2010
Completion of Appointment	Tuesday 6 th April 2010

5.2 Briefing Meeting

Tenderers are invited to a briefing meeting to be held at 11am on Thursday 25th February 2010 (Finalised date to be confirmed) in Eastwood Theatre, Eastwood Park, Rouken Glen Road, Giffnock, G46 6UG, where the overarching project aims and aspirations will be further defined. This will include presentations from the Carbon Trust and Architecture + Design Scotland. There will also be the opportunity for Tenderers to ask questions.

5.3 Opportunity to Submit Comments on Appointment Contract

5.3.1 Tenderers should note that this project is advertised under the restricted procedure described in the Public Contracts (Scotland) Regulations 2006. Consequently, once a Tender has been accepted and a successful Tenderer appointed, the successful Tenderer will be deemed to have accepted the Conditions of Appointment..

5.3.2 In order to ensure Tenderers are able to accept the Conditions of Appointment, Tenderers may submit comments to the Employer. The deadline for receipt of such comments is 5th March 2010.

5.3.3 The Employer and its advisers will review comments received by Tenderers by 26 February and if it is considered appropriate **may** reissue the Conditions of Appointment amended to incorporate some or all of the comments submitted by all Tenderers. **All Tenderers will be required to tender on the basis of the same Conditions of Appointment..**

5.4 Tenderers' Queries and Requests for Clarification

Tenderers must submit queries not later than 7 days before the Tender Return Date. Thereafter tender queries will not be accepted. Tender queries must be submitted by email to the Employer's designated contact person :

Diane.pirie@eastrenfrewshire.gov.uk

Answers to an individual query will, where applicable, be forwarded to all Tenderers in writing.

Requests for additional information available for reference but which is not provided with the tender documents should also be submitted as an e-mail as described above.

5.5 Site Visits

Tenderers shall only visit the proposed construction sites/existing schools with the prior consent of the Employer's designated contact person. Upon request, the contact person will issue a letter of introduction.

5.6 Extensions of Time

Any request for an extension of the period for tendering must be received at least 14 working days before the Tender Return Date, but no undertaking can be given that an extension will be granted.

5.7 Debrief

Unsuccessful Tenderers will if requested be given a debrief in accordance with the procedures in and requirements of the Public Contracts (Scotland) Regulations 2006.

5.8 Contract Award

Following identification of the Successful Tenderer, and subject to their being no outstanding challenge initiated during the standstill period, the Successful Tender will be required to enter into a formal contract with the Employer in accordance with the Conditions of Appointment and their Tender Submission.

6 TENDER SUBMISSION REQUIREMENTS

6.1. Format and Content Required For Tender

- 6.1.1 The Tender Submission (electronically uploaded in accordance with paragraph 6.5) will consist of 4 parts:
- (a) Completed and signed Tender Declaration (Appendix 1)
 - (b) Health and Safety competency submission (see 6.2).
 - (b) Quality Tender with the requested supporting information (see 6.3).
 - (c) Fee Tender (see 6.4).
- 6.1.2 Tender Submissions are to remain open for acceptance for the period stated on the Tender Declaration.
- 6.1.3 This Tender Submission is to be completed in accordance with the requirements and instructions detailed in this Invitation.
- 6.1.4 No alterations to the Tender Declaration or the tables contained in the Fee Tender requirements will be permitted. If any are made, the Tender Submission may be rejected at the sole discretion of the Employer.
- 6.1.5 The Employer shall be entitled to reject any Tender Submission which is qualified or conditional.

6.2 Health & Safety Competency

The Health & Safety Competency Submission shall contain:

- 6.2.1 All Health and Safety competency information as detailed/requested in the Health and Safety Competency Submission Requirements (Appendix 4).
- 6.2.2 Information shall be provided scanned in pdf or equivalent format and clearly marked with the name of the tenderer and "Lasswade and Eastwood High Schools Professional Services Tender – Health and Safety Competency Submission". The file(s) must be appropriately indexed and referenced to correlate to the questions within the competency section and the document(s) suitably labelled/entitled for ease of reference and understanding.

6.3 The Quality Tender

- 6.3.1 The contents of the Quality Tender shall refer as appropriate to the tendering Design Team and all his sub consultants and shall comprise comprehensive information on answers as detailed in the Quality Tender Submission Requirements set out in Appendix 3.
- 6.3.2 The Quality Tender shall be provided scanned in pdf format and clearly marked with the name of the tenderer and "Lasswade and Eastwood High Schools Professional Services Tender – Quality Tender Submission". The file(s) must be appropriately indexed and

referenced to correlate to the questions within the Quality Tender section and the document(s) suitably labelled/entitled for ease of reference and understanding.

6.4 The Fee Tender

- 6.4.1 The Fee Tender shall comprise the completed Fee Tables contained in Appendix 2. The Fee Tender shall be provided scanned in pdf or equivalent format.
- 6.4.2 The prices and rates provided in the Fee Tender must be exclusive of Value Added Tax, which, if applicable, shall be paid by the Employer to the Design Team.
- 6.4.3 The prices and rates provided in the Fee Tender shall be deemed to include for the cost of providing all drawings and documents which the Design Team is required to issue in connection with the Appointment.
- 6.4.4 The prices and rates provided in the Fee Tender shall remain firm for the whole period of the Appointment.
- 6.4.5 The prices and rates provided in the Fee Tender shall be deemed inclusive of all expenses including Office Costs and Expenses as described below:

Expenses are deemed to include (but not limited to):

- Costs of Printing;
- Reproduction or purchase of documents;
- Production of Drawings;
- Purchase of Maps;
- Procuring of Photographs;
- Hotel and Travelling expenses;
- Planning Fees (allow for two separate submissions)
- Building Warrant Fees (allow for two separate submissions)
- (include calculation of all Planning and Warrant fees and advice Employer – Employer will be responsible for payment)
- Carbon Index calculations
- SBEMs
- SERs*
- EPCs
- Office costs

* not to exceed 10% of Warrant Fees

Office Costs are deemed to include:

- Office rental Costs etc.;
- Office and Administrative Staff Costs including:
- Secretarial support;
- Accountancy;
- Administration; and
- Other supporting duties.
- Other similar costs.

Part 1 – Instructions to Tenderers

- Postage
- Delivery of Documents;
- Telephone calls; and
- Other similar expenses.

6.4.5 Tenderers should note the following:

- (a) No additional work for which payment will be sought is to be undertaken without the Employer's approval in writing.
- (b) When the Design Team can demonstrate, to the full satisfaction of the Employer that a variation in Services, or variation of the overall scope has involved the Design Team in additional or abortive work over and above that included in the Services Schedule and which would not be reimbursed by the payment of other fees paid by the Employer to the Design Team and which were not the result of any failure on the part of the Design Team, then, upon the Employer being satisfied, which shall be at the Employer's sole discretion, a lump sum may be agreed between the Employer and the Design Team. Alternatively, reimbursement to the Design Team may be approved on a time-charge basis as per the tendered time charges. Where a fixed fee is agreed upon, this will be done using the Design Team's Offer as a basis for the agreed non-adjustable remuneration payable to the Design Team. Circumstances where a fixed fee is to be agreed shall be at the Employer's sole discretion.
- (c) Where a time charge basis is to be used, the appropriate rate (or rates) contained within hourly rate matrix contained within the Fee Tender shall be used.

6.5 Electronic Submission Of Tenders

The issue of tender documents and submission of Tender Submissions will be facilitated by BiP Solutions using their e-tendering tool called "Vault":

- 6.5.1 The Tender Submission shall be submitted electronically using Delta- ets electronic "Vault" tender boxes. *The address for uploading and information as to how this process is followed is as detailed in the Delta-ets Vault system as directed on your invitation document.* All tender documentation will be uploaded into the tender box.
- 6.5.2 **The Vault will close at 12 noon on Friday 12th March 2010.** It is the sole responsibility of the Tenderer to ensure that the Tender Submission is submitted by the closing time on the date specified. If the Tenderer is uploading multiple documents he will have to individually load one document at a time.
- 6.5.3 Tenderers should ensure that sufficient time is allowed for the uploading of their completed Tender. Documents can be uploaded into the tender box at any time until it is closed. It is strongly recommended to upload well in advance of the closing time designated to allow for any delays due to technical difficulties of any sort, such as software incompatibility issues and difficulties in uploading can be addressed. The tender box will close at the specified time regardless of an upload taking place. **No extension to the closing time and date will be given due to technical difficulties encountered at late notice of any**

sort whilst uploading (“late notice” being deemed to be within 6 hours of the closing date and time).

- 6.5.4 In the event that any difficulty is encountered this must be brought to the immediate attention of the BiP Solutions helpdesk on 0845 270 7050 and the Employer’s designated contact person.
- 6.5.5 Late Tender Submissions will not be considered. The tender box will close automatically at the specified time and the uploading of information will not be possible after the specified time.
- 6.5.6 The Tender Submission must be in English and the Fee Tender amounts must be in pounds sterling.
- 6.5.7 No hard copy Tender Submissions will be accepted.

Part 1 – Instructions to Tenderers

7 AWARD CRITERIA AND ASSESSMENT OF TENDERS

7.1 Award Criteria

7.1.1 Subject to paragraphs 7.2 and 7.3, the Successful Tenderer will be the Tenderer that submits the most economically advantageous Tender Submission in accordance with the criteria and methodology set out in this Invitation.

7.1.2 The tender will be awarded on the basis of 70% quality and 30% price. Quality shall be assessed in accordance with 7.4 and price in accordance with 7.5.

7.1.3 The most economically advantageous tender will be determined by totalling, for each Tenderer, the Final Weighted Quality Score (7.4) and the Weighted Price Score (7.5).

7.1.4 The Quality Criteria, and their weightings, are as follows –

Quality Criteria	Quality Tender Ref	Weighting
Approach to Project Management & Administration	Section 1	20%
Approach to the Project	Section 2	60%
Approach to Energy Efficiency & Environmental Issues	Section 3	20%

Each of the Quality Criteria are covered by a Section of the Quality Tender specified above. Within each Section there are varying numbers of questions. The responses to each of these questions will be weighted within the relevant Sections as follows –

- Section 1: each question (1.1. to 1.12) will be weighted equally (each with unweighted scores out of 10 - see below)
- Section 2: each of the 4 aspects of "Approach to the Project" (2.1, 2.2, 2.3 & 2.4) will be weighted equally (each with unweighted scores out of 10 - see below)
- Section 3: each question (3.1. to 3.27) will be weighted equally (each with unweighted scores out of 10 - see below)

7.1.5 Tenderers will be invited to an interview, prior to selection of the Successful Tenderer. At the interview Tenderers will be required to give a short presentation setting out key aspects of their Tender and to answer questions (see 7.4.4. for more detail). The interview will not be separately scored but will be used to finalise the relevant Quality Score.

7.2 Completeness/Compliance

7.2.1 Tender Submissions will first be checked for compliance with the Tender Submission Requirements. If a Tender Submission does not comply with the Tender Submission requirements or is incomplete, the Employer shall be entitled in its absolute discretion:

- (a) to reject the relevant Tender Submission as non-compliant; or
- (b) without prejudice to the Employer's right to reject the Tender Submission, to seek clarification from the Tenderer in respect of the Tender Submission (subject to the Employer's obligations to ensure equal treatment of Tenderers).

7.3 Health & Safety Competency

Tenderer's Health & Safety Competency Submissions will then be assessed to determine whether or not in the Employer's view Tenderers and their sub-consultants have demonstrated Health & Safety competency in accordance with the criteria laid down as required by the CDM Regulations 2007.

This is a pass/fail assessment and does not form part of the Quality Evaluation described below..

If, following review of Health & Safety competency, the Tenderer and/or any of its sub-consultants has not demonstrated the appropriate level of competency the Tenderer will be removed from the competition.

7.4 Quality Evaluation

7.4.1 The quality evaluation will be conducted by an Evaluation Panel which will consist of officers from both Midlothian and East Renfrewshire Councils with assistance from the Scottish Futures Trust.

7.4.2 The Evaluation Panel will individually assess the responses received in relation to the award criteria set out in 7.1. The process used will be:

- each member of the evaluation panel will score each question (see 7.4.3 for scoring criteria). For this purpose "question" means –
 - in Section 1, each of the headings 1.1 to 1.12 inclusive (to produce an unweighted score out of 120)
 - in Section 2, each of the 4 broad aspects 2.1, 2.2, 2.3 & 2.4 (to produce an unweighted score out of 40)
 - in Section 3, each of the headings in the table (Items No 3.1 to 3.27 inclusive) (to produce an unweighted score out of 270)
- the evaluation panel member's scores for each Section will be collated to produce an average (unweighted) score for each Section.
- If required, the average (unweighted) score for each Section will be adjusted following interview
- the (unweighted) average score for each Section will be multiplied by the relevant weighting shown in 7.1.4 to produce an Unconverted Quality Score
- the highest Unconverted Quality Score will given a Final Unweighted Quality Score of 100
- Final Unweighted Quality Scores will be calculated for each remaining Tenderer as a percentage of the highest Unconverted Quality Score
- the Final Unweighted Quality Scores will then have the quality ratio of 70% applied which will establish the Final Weighted Quality Scores .

7.4.3 The Evaluation Panel will assess the response to each question (as described in 7.4.2) out of 10 as follows:

no information provided or unsatisfactory response	0
only a small part of the info is deemed to be satisfactory	1 – 2
indications are that the supplier will meet only some of the requirements of the contract in a comprehensive manner	3 – 4
satisfactory response with doubts expressed on several aspects	5 – 6
satisfactory response which meets the basic requirements	7 – 8
meets all requirements of the contract in a comprehensive manner	9 -10

7.4.4 Tenderers should note that they will be invited to attend for interview as part of the Quality Assessment –

- (a) Tenderers must be represented by each service discipline. Interviews will take place immediately following evaluation of Quality Tenders with the provisional dates proposed being between **15th to 25th March 2010**. Tenderers shall be given a minimum of one week’s notice of exact time, date and location prior to interview.
- (b) At the interview Tenderers will be required to give a short presentation setting out key aspects of their Tender and to answer questions (standard to all interviewees). This will not be separately scored but the information will be used to finalise the relevant quality score
- (c) The interview panel will consist of representatives from each Council and the Scottish Futures Trust (SFT).
- (d) Interview Agenda:
 - Assessment of Sites
 - Previous experience together with examples and references
 - Initial thoughts on Briefing Document
 - The part design plays in delivering and the Government’s “Curriculum for Excellence”
 - Conceptual Design Approach to massing including relationship with existing buildings where appropriate
 - Phasing, if any
 - Response to SFT “Lessons Learnt“ document
 - Approach to achieving an energy efficient building
 - Approach to Consultation detailing how you have undertaken this previously and your proposals as to how you will undertake this as part of this project

7.5 Price Score

Part 1 – Instructions to Tenderers

7.5.1 For the purposes of determining the Price Score, the "Total Fee" will be the total fee shown in the completed Fee Summary Table 2.1 in the Fee Tender.

7.5.2 The Total Fee will be converted the Weighted Price Score as follows -:

- Lowest Total Fee(LTF) will be awarded a Price Score of 100%
- Other Tenderers scores will be calculated as a percentage of the highest score based on their Total Fee(TF) as follows:-

$$\text{Other Tenderers Score} = \text{LTF/TF} * 100$$

- the price scores will then have the price ratio weighting of 30% applied which will establish the final price scores

PART 1 - APPENDIX 1

TENDER DECLARATION

MIDLOTHIAN COUNCIL &
EAST RENFREWSHIRE COUNCIL

Tender for:

Professional Services for
Lasswade & Eastwood High Schools
Joint Pilot Project

To:

Midlothian and East Renfrewshire Council
(hereinafter referred to as the "Employer")

Sirs,

1 Definitions

In this Tender Declaration capitalised words shall have the same meanings as in the Invitation to Tender issued by you in respect of the above

2 Our Tender Submission

2.1 We offer, to provide such Services as are required by the Employer in accordance with the Conditions of Appointment, the Invitation to Tender and our Tender Submission comprising the documents listed in the annexed Tender Submission Checklist.

2.1 We agree that we will not disclose to any person other than the Employer the amount or approximate amount of our Fee Tender except where such disclosure is necessary to obtain insurance premium quotations required for the preparation of our Tender Submission.

2.3 We certify that no alteration, amendment nor qualification to the Invitation as issued has been made.

2.4 We certify that, to the best of our knowledge having made reasonable inquiry, factual information provided in our Tender Submission is accurate.

2.5 Our Tender Submission remains open for acceptance for 6 months from the Tender Return Date.

3 Bona Fide Tendering

We certify that our Tender Submission is a bona fide tender, intended to be competitive, and that we have not fixed or adjusted the amount of the Fee Tender by or under in accordance with any agreement or arrangement with any other person. We also certify that we have not done and we undertake that we will not do at any time before the returnable date for this tender any of the following acts:

a) communicating to a person other than the person calling for these tenders the amount or approximately amount our Fee Tender.

Part 1 – Instructions to Tenderers

- b) entering into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted.
- c) offering or paying or giving or agreeing to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the sort described above.

The word “person” includes any persons and any body or association, corporate or unincorporated; and “any agreement or arrangement” includes any such transaction, formal or informal, and whether legally binding or not.

4 Pre-Qualification Information

We certify that no changes have occurred in respect of the information contained in the PQQ submitted by us.

OR

We certify that no changes have occurred in respect of the information contained in the PQQ submitted by us except for the following:

DESCRIBE CHANGES BY REFERENCE TO ORIGINAL RESPONSES. PLEASE NOTE THAT CHANGES MAY RESULT IN A REVIEW OF THE PQQ SHORTLISTING WHICH COULD RESULT IN DESELECTION SO TENDERERS ARE ADVISED TO RAISE THESE IN ADVANCE DURING THE TENDER PERIOD AS CONFIDENTIAL QUERIES

Dated the day of 2010

Lead Consultant's Name

Address

Witness

.....

Full name

.....

Address

Signed

.....

Name of signatory

.....

Position in organisation

TENDER DECLARATION ANNEX: TENDER SUBMISSION CHECKLIST

Description		Uploaded
		Please ✓
	Signed Tender Declaration	
	Fee Tender	
	Quality Tender	
	Health & Safety Competency Information	

**PART 1 - APPENDIX 2
FEE TENDER TABLES**

- 2.1 Fee Summary Table**
- 2,2 Fee Matrices**
- 2,3 Time Charge Tables**
- 2.4 Non-core Services**

Part 1 – Instructions to Tenderers

2.1 FEE SUMMARY TABLE

Site	Fee
Lasswade High School <i>Carried From Tender Page 25</i>	£
Eastwood High School <i>Carried From Tender Page 26</i>	£
Non-Core Service Provision <i>Carried From Tender Page 30</i>	£
Total Fee carried to Form of Tender	£

Part 1 – Instructions to Tenderers

2.2 FEE MATRICES

2.2A: LASSWADE HIGH SCHOOL

Fee Totals

Discipline	Core Services	Lump Sum
Project Manager	All Stages	£
Architect	All Stages	£
Quantity Surveyor	All Stages	£
Civil/Structural Engineer	All Stages	£
M&E Engineer (including BREEAM Assessor Services)	All Stages	£
CDM-C	All Stages	£
Clerk of Works	All Stages	£
Others* (insert below any other service disciplines)		
1		
2		
3		
4		
5		
Total Fee for Lasswade High School Carried Forward to Fee Summary Table		£

Fee as Split between Stages

Discipline	Split of Fee Between Stages Per Discipline (Split to be shown as fixed sums correlating with above)					
	Stage 1	Stage 2	Stage 3	Stage 4	Stage 5	Total
Project Manager						
Architect						
Quantity Surveyor						
Civil/Structural Engineer						
M&E Engineer (including BREEAM Assessor Services)						
CDM-C						
Clerk of Works						
Others* (insert below any other service disciplines)						
1						
2						
3						
4						
5						
Total						

Part 1 – Instructions to Tenderers

2.2B: EASTWOOD HIGH SCHOOL

Fee Totals

Discipline	Core Services	Lump Sum
Project Manager	All Stages	£
Architect	All Stages	£
Quantity Surveyor	All Stages	£
Civil/Structural Engineer	All Stages	£
M&E Engineer (including BREEAM Assessor Services)	All Stages	£
CDM-C	All Stages	£
Clerk of Works	All Stages	£
Others* (insert below any other service disciplines)		
1		
2		
3		
4		
5		
Total Fee for Eastwood High School Carried Forward to Fee Summary Table		£

Fee as Split between Stages

Discipline	Split of Fee Between Stages Per Discipline (Split to be shown as fixed sums correlating with above)					
	Stage 1	Stage 2	Stage 3	Stage 4	Stage 5	Total
Project Manager						
Architect						
Quantity Surveyor						
Civil/Structural Engineer						
M&E Engineer (including BREEAM Assessor Services)						
CDM-C						
Clerk of Works						
Others* (insert below any other service disciplines)						
1						
2						
3						
4						
5						
Total						

* Please define here description of other services to be provided as priced above.

Part 1 – Instructions to Tenderers

2.3 Time Charge Tables

Project Manager	£ Per Hour
Partner or Director	
Senior Professional	
Professional	
Senior Technician	
Technician	
Site Inspection Staff	
Other:	
Other:	
Other:	

Architect	£ Per Hour
Partner or Director	
Senior Professional	
Professional	
Senior Technician	
Technician	
Site Inspection Staff	
Other:	
Other:	
Other:	

Quantity Surveyor	£ Per Hour
Partner or Director	
Senior Professional	
Professional	
Senior Technician	
Technician	
Site Inspection Staff	
Other:	
Other:	
Other:	

Civil/Structural Engineer	£ Per Hour
Partner or Director	
Senior Professional	
Professional	
Senior Technician	
Technician	
Site Inspection Staff	

Part 1 – Instructions to Tenderers

Other:	
Other:	
Other:	

M&E Engineer (including BREEAM Assessor)	£ Per Hour
Partner or Director	
Senior Professional	
Professional	
Senior Technician	
Technician	
Site Inspection Staff	
Other:	
Other:	
Other:	

CDM-C	£ Per Hour
Partner or Director	
Senior Professional	
Professional	
Other:	
Other:	
Other:	

Clerk of Works	£ Per Hour
Professional	

Other Consultants - 1	£ Per Hour
Partner or Director	
Senior Professional	
Professional	
Other:	
Other:	
Other:	

Other Consultants - 2	£ Per Hour
Partner or Director	
Senior Professional	
Professional	

Part 1 – Instructions to Tenderers

Other:	
Other:	
Other:	

Other Consultants - 3	£ Per Hour
Partner or Director	
Senior Professional	
Professional	
Other:	
Other:	
Other:	

Other Consultants - 4	£ Per Hour
Partner or Director	
Senior Professional	
Professional	
Other:	
Other:	
Other:	

Other Consultants - 5	£ Per Hour
Partner or Director	
Senior Professional	
Professional	
Other:	
Other:	
Other:	

Part 1 – Instructions to Tenderers

2.4 NON CORE SERVICE PROVISION

Insert below lump sum prices for the following non-core services which may be required if instructed by the Employer

	Description	Eastwood HS	Lasswade HS	Total
A	Provision of computer generated 3D Fly-Through perspectives of the Exemplar Designs at each school; including entrance/reception, dining area, typical teaching areas for each subject, circulation spaces	£	£	£
B	Sample and colour boards representing materials and finishes	£	£	£
C	Provide reports on the impact of climate change (1 at initial design and 1 at tender stage) within the structural life of the building, workplace productivity, minimisation of carbon impact, minimisation of energy consumption (and thus operating/revenue costs)	£	£	£
D	During the project to collate from Employer(s) and Design Team standard project documentation to be used on future school projects including but not limited to information on the advert, tender documentation, evaluation documentation, design briefs, project monitoring, performance standards, cost-in-use-reports, site inspection checklists and occupier evaluation pro-formas for creation of a "Scottish Schools Development Handbook"	£	£	£
E	Provide specialist acoustic report on draft final exemplar designs to reflect acoustic performance recognising summertime overheating.	£	£	£
TOTAL NON CORE SERVICES (carried to fee summary table)				£

**PART 1 - APPENDIX 3
DETAILED QUALITY TENDER SUBMISSION REQUIREMENTS**

CONTENTS

INTRODUCTION

DESIGN TEAM

SECTION 1 – PROJECT MANAGEMENT & ADMINISTRATION

SECTION 2 – APPROACH TO THE PROJECT

SECTION 3 - ENERGY EFFICIENCY & ENVIRONMENTAL ISSUES

COMPETENCE

Part 1 – Instructions to Tenderers

INTRODUCTION

The tenderer is required to read the following information and questions and produce a complete quality tender submission as detailed in the Instructions to Tenderers. It should be noted that this submission should be a single submission only with reference made to sub-consultants as appropriate. (This is in contrast to the information which is required in Appendix 4: Health & Safety , where submissions must be made from each consultant)

An Evaluation Panel will score this submission as detailed in Instructions to Tenderers.

DESIGN TEAM

The tenderer should note that this is a sole Design Team appointment. The Tenderer may employ sub-consultants to perform the services. If this is the case, the tenderer shall list below the sub-consultants proposed to be employed by him in relation to this Appointment. These must be the same as proposed at PQQ stage.

Name of Sub-consultant	Discipline	Address

Part 1 – Instructions to Tenderers

SECTION 1 – Project Management & Administration

This section carries a weighting of 20% in the overall Quality Assessment

1.1 The Sites

Provide a statement detailing your assessment of the proposed sites for the new schools.

1.2 Design Team Structure Chart

Provide a detailed organisation chart and details of the internal relationship between the Design Team Members and whether this may change during the design or construction phases of the contract. This should indicate the levels of seniority of individual staff within the Design Team, their responsibilities, level of authority and their degree of involvement in the project.

1.3 Organogram Chart

Provide a high level organogram showing details of how the Design Team members will integrate and communicate positively with each other. Provide details of the systems they intend to use to execute the Services, and how this would integrate with other consultants working on the project.

1.4 Logistics

Provide details of site logistics between offices including communication processes and logistics particularly in respect of matters requiring immediate attention.

1.5 Quality Management

Provide details of any Project Team Member who is, or is in the process of becoming, accredited to ISO9001 or equivalent, what their relevant assessment level is and the date of their last assessment. Where a Project Team Member is not so accredited, provide details of any alternative quality management standards obtained or for which applications have been submitted.

As this is a major project, all information provided is to be of an auditable standard as information will be required to be open for a full review. Provide details of how you are going to ensure that, as part of your service provision, your entire team can respond within 48 hours and provide full access at your offices within 48 hours and provide all relevant personnel.

1.6 Project Team Relationships

Provide details as to whether the Project Team have worked or are working together on similar projects. Give the date when the Project Team formed and whether the scheme is ongoing has completed construction or has been cancelled. Where new relationships are being formed to create a new team, please provide details. Explain how the stability of the Design Team will be maintained throughout the project.

1.7 Conflicts of Interest

Identify any potential conflicts of interest, which may arise if the Tenderer were selected (taking into account all Design Team members).

1.8 Communication

Provide your proposals for establishing communication links proposed between the two Councils' Joint Project Team and its other Consultants and the Tenderer(s) as appropriate to the various stages of the Appointment;

1.9 Core and Non Core Services

The Tenderer should provide views on the content of the Core Duties and Non Core Duties detailed within this tender document, a demonstration of awareness and understanding of all the duties involved and the ability to achieve completion of each to meet the Employer's programme.

Part 1 – Instructions to Tenderers

1.10 Project Specific Plan

The Tenderer should detail his intentions regarding establishing a Project Specific Plan for managing the contract including quality controls and reporting systems at all levels and stages of the project.

1.11 Risks

The Tenderer should outline how they will manage risk (excluding H&S) with regards to this project. The Tenderer should include a draft risk register.

1.12 Critical Success Factors

The Tenderer should identify what they believe are the Critical Success Factors for the Project.

SECTION 2 – Approach to the Project

This section carries a weighting of 60% in the overall Quality Assessment

2.1 Team Members & How Each Will Contribute

2.1.1 Please provide a brief explanation (not more than 2 sides of A4) of the approach you have used to select your team members.

2.1.2 Please complete the following table in respect of each of your key team members. These should generally be the individuals for whom you provided CVs in your PQQ response. Where substitutes or additional members are proposed, please clearly identify them and provided CVs including details of previous relevant experience. Please divide the table into separate sections for each sub-consultant

Name	Grade	Role	How they will use their skills and experience to add value	App% of their time (based on average month) to be spent on appointment.
Extend as required (Max 10 sheets A4 12 point type)				

2.1.3 **Note:** All staff proposed shall be those who shall actually be employed on the Contract; no replacements will be permitted unless the Employers' Project Team previously confirms in writing that they are acceptable as having at least equivalent education, experience and expertise.

Part 1 – Instructions to Tenderers

2.2 Approach to the Project

2.2.1 Provide a detailed statement of your understanding of the Project Brief. This should include thoughts on how segregating of the construction sites from the operating schools can be achieved. Also, your intentions with regard to the Employer's Service provision requirements as set out within this tender document and its appendices.

2.2.2 Proposals for managing the Appointment including the Tenderers estimate of staff numbers required for each Core and Non Core Service package contained within the Project Brief.

2.2.4 The government publication "Building Better Schools – Investing in Scotland's Future" contains the following guiding principles and objectives:

- Good consultation means better outcomes
- Innovative design and change is better informed by experience
- A more integrated, holistic and longer term approach to change
- Schools whose condition supports and enhances their functions
- More 'suitable' and 'inclusive' schools, better future proofed for flexibility and adaptability
- Schools which are 'greener', more sustainable and environmentally efficient
- A well managed school estate which represents and delivers best value
- Schools which both drive and support effective learning and teaching – Curriculum for Excellence
- Schools which best serve their communities

The tenderer shall provide a statement illustrating awareness and understanding of these principles and the design implications thereof.

2.2.5 Provide a detailed statement commenting on the outline Project Programme.

2.2.6 Provide a statement of the expected approach to the design and planning, which should include quality management, safety, environment and aesthetics.

2.2.7 Provide a statement setting out your thoughts on the "Lessons Learnt" document (as published by the SFT).

2.2.8 Provide a statement on the methodology the Design Team members would adopt in relation to attaining cost certainty throughout the project and beyond. Explain how the Tenderer envisages meeting the principle objectives of the Employer and in respect of public procurement regulations.

2.2.9 What do you consider will be the critical elements of this project and what would be your approach, based on your previous experience, to addressing them?

2.2.10 Specify your understanding of how the CDM and other regulations and approved codes of practice relating to Health and Safety would apply to this project and identify who would undertake the key functions.

2.2.11 Describe how you would achieve and demonstrate sound environmental performance and sustainability of construction.

2.3 Consultation

Provide details of your approach to "Consultation". This should detail how you have undertaken previous Consultation Exercises together with your proposals as to how they will be undertaken as part of this project.

Part 1 – Instructions to Tenderers

Stakeholders of this project include, but are not limited to:-

East Renfrewshire	Midlothian
Teachers	Poltonhall and District Community Council
Pupils	Bonnyrigg and Lasswade Community Council
Parent Council	Rosewell and District Community Council
And approximately 4 other community Groups	Pupils at Feeder Primary Schools
Note that this list is not definitive and further consultation may be required and excludes the mandatory consultations required as part of the revised planning process.	Lasswade HS Pupils
	Lasswade HS Parent Council
	Lasswade HS Staff (teaching, support, janitorial, catering)
	Lasswade HS Sports Centre Staff
	Lasswade HS Sports Centre Users
	Bonnyrigg Library Users Group & Staff
	Bonnyrigg Seniors Forum
	Bonnyrigg Rose Boys Club
	Bonnyrigg Leisure Centre Users
	Bonnyrigg Leisure Centre Staff

2.4 Whole Life Costing

Provide details of your approach to whole life costing in relation to the selection of materials for the project.

Part 1 – Instructions to Tenderers

SECTION 3 Energy Efficiency & Environmental Issues
This section carries a weighting of 20% in the overall Quality Assessment

The Tenderer must supply evidence that the designs will be approached taking cognisance of the aspirations of the Project. These are set out below and must be factual, relate to specific projects and be supported by evidence. It is not necessarily expected that the tenderer will be able to complete every section. If no relevant experience, please mark the Section N/A.

Responses are best presented through a Case Study and Tenderers should link each response to the Case Study and should state clearly which practice within your Project Team undertook the work, from which branch and by which individual.

Item	Topic	Evidence required in submission
3.1	Design integration - Commitment to integration across design professions to minimise capital and revenue costs	Case study of recent project with client reference illustrating how integrated design approach achieved objectives.
3.2	Building layout and orientation – Consideration of sunlight, obstruction from local buildings, local noise sources etc	Day lighting/ventilation modelling from recent project with proof that this was used to optimise façade and day lighting to occupied spaces at an early design stage, i.e. not just measuring an established architectural concept. Confirmation of in house modelling capability at branch of practice undertaking project or method statement detailing how studies will be undertaken remotely whilst retaining control and integration with main design.
3.3	Summer overhear – Evidence of design consideration to minimise summer overhear via passive means such as solar shading, thermal mass of fabric and free overnight cooling.	Evidence of studies of CIBSE AM11 compliant full dynamic thermal modelling used to influence the fundamental design and layout of the building carried out at an early design stage and maintained through to completion. Evidence that this approach resulted in a thermally comfortable building in summer without mechanical cooling, or with much reduced reliance on mechanical cooling if a building different to a school. Reference from client supporting evidence is required.
3.4	Internal planning and quality of internal environment – Identification of need to achieve high quality productive environments	Evidence that the internal planning took into consideration matters such as (but not confined to): Occupied areas having access to a view out, daylighting and natural ventilation. Provision of access to external spaces. Economy of plant spaces and length of distribution runs. Microclimate, effect of external landscaping on internal conditions, heat island effect. The submission should be illustrative using drawings and photographs rather than words to convey the above, and any other relevant principles.
3.5	Energy modelling - 1	Evidence of full dynamic energy modelling capability (e.g. such as energy plus, IES or similar, not just

Part 1 – Instructions to Tenderers

Item	Topic	Evidence required in submission
	Identification of need to achieve high quality productive environments	SBEM) in house at branch undertaking work. Commitment to starting energy model at sketch stage and refining and reporting at each RIBA stage and AEDET review the predicted design and operational energy consumption within agreed targets. Provide capability statement and case study of previous schools.
3.6	Energy modelling - 2 Use of energy modelling tool to influence design	For above case study illustrate with calculations/output from modelling, how modelling was used to influence the design to reduce the energy use of the scheme.
3.7	Energy - 3 Experience in LZC and renewable energy technologies	Provide case study of recent school, using a renewable energy source and the % contribution it made to the total building energy demand.
3.8	Energy -4 Highly insulated and airtight structure	Provide a case study of a building that achieved very high insulation and infiltration standards, state levels achieved, preferably to PassivHaus standard, whilst maintaining user comfort conditions at summertime.
3.9	Energy -5 Innovation	Details of any other innovative technology or methodology used to lower the net energy demand of a building and the % contribution to lowering the demand (or other relevant numerical parameter).
3.10	Internal Acoustics – Recognition of need to properly design acoustics within the building, e.g. reverberation times, acoustic isolation between areas.	Case study of building designed and tested, with brief commentary on measures taken to achieve compliance.
3.11	External Acoustics - Recognition of need to properly design acoustics related to the external noise environment, e.g. from traffic noise and the link with summertime ventilation with open windows.	Illustrated commentary from a specific project on optimisation of façade, internal and external planning related to minimising the impact of external noise without resorting to a sealed building. External noise levels and internal design standards should be stated if possible.
3.12	Structural design – Strategic design decisions include impact of floor to ceiling height on daylighting, and use of thermal mass to minimise summer overhear.	Example of approach used in school – illustrative, with client appraisal of the success of the approach
3.13	Ventilation – Evidence of awareness of ensuring proper draught free ventilation for occupants.	Marked up PDF plans of a building, illustrating that all rooms and offices had adequate natural ventilation in summer and winter, whilst maintaining wintertime thermal comfort for the occupants and without creating draughts. In addition illustrations of mechanical ventilation with full heat recovery solution that reduced energy consumption further than possible with passive ventilation.
3.14	Daylight –	Marked up PDF plans or daylighting model of a

Part 1 – Instructions to Tenderers

Item	Topic	Evidence required in submission
	Awareness of difficulty of designing daylight space that is visually comfortable. Identification that daylight should be the prime source of lighting energy.	building, illustrating that at least 80% of occupied areas have at least 3% average daylight factor, with good uniformity and/or room depth criteria and view of sky. Identification of brightness on the surfaces to achieve a feeling of bright without adding additional light levels to CIBSE guidelines. Identification of how much the daylight is replacing artificial lighting.
3.15	Artificial lighting – Use of efficient light sources, properly controlled such as by light level sensing and occupancy sensing.	Case study of extent and effectiveness of lighting controls in educational environment, ideally with actual or projected energy savings.
3.16	Whole life cost -1 Use of formal methods for whole life costing, such as ISO 2000: 15686 Constructed assets/whole life costs.	Provide an example of a project in which whole life costing was used to make fundamental whole building decisions and the net benefit to the project as a result expressed as £ and if possible kg CO2. Provide summary worked calculation and brief commentary. Should be provided by proposed project QS
3.17	Whole life Cost – 2 Full awareness of the calculation risks and errors when single action / multiple benefit calculations.	Provide an example, identify the main use of tools such as 'Retcreen' to perform such calculations. Identify the key documents in the 'Retcreen' knowledge base.
3.18	Cost approach to sustainability – Skill and willingness to use costing methodologies which support sustainable and low carbon design – demonstrating approach which offers low cost risk, but does not constrain footprint.	Evidence of past projects where the QS has used innovative cost methods to support the use of narrow plan or open aspect design for natural ventilation and daylighting, thermal mass, higher ceiling heights or other similar low carbon design. Provide costed example.
3.19	Sustainability of inputs – construction materials – Commitment to only use materials from sustainable resources.	Brief commentary on the process of selection that will be used to minimise the environmental impact of materials, including all major structural elements.
3.20	Sustainability of inputs – construction waste minimisation – Commitment to minimise site waste.	Commentary with examples from other similar projects on the design measures taken to reduce site waste and the amount saved in % or absolute terms.
3.21	Sustainability of outcomes – biodiversity – Maintenance of bio-diversity, site selection to avoid loss of habitat, habitat enhancement	Provide examples where building design has been specifically arranged to avoid loss of species or habitat, where species and habitat has been specifically enhanced and provide evidence of having worked with an ecologist from inception to optimise the natural environment.
3.22	Sustainability of outcomes – design for end of life	Provide a worked example of a recent project where end of life issues have formed part of the design

Part 1 – Instructions to Tenderers

Item	Topic	Evidence required in submission
	dismantling/re-use.	process.
3.23	Sustainability of outcomes – minimisation of maintenance. – Strategic design and detail design minimises need for capital and revenue maintenance.	Provide evidence of a project where the maintenance and access requirements have been considered from feasibility stage and where all equipment can be removed without any dismantling of the building or adjacent services. Illustrate with examples of drawings of key areas as appropriate.
3.24	Water use – Innovative approaches to minimising water use	Provide examples where innovative methods, devices and technologies have been used in schools to reduce water use.
3.25	Sustainable communities – Experience in multi agency, community working to achieve commonality of facilities, acceptance of scheme in the community, approval by other agencies (all emergency services LA)	Ideally proof that other similar schemes have achieved external recognition such as secured by design, ParkMark, included shared facilities, BREEAM credits for consultation, civic awards, included other agencies in the accommodation. Any examples of these issues or similar should be stated along with the project details.
3.26	Acceptance of certification. – Acceptance of client's checks on design, construction, setting to work, commissioning and operation within the defects liability period, to prove compliance with client brief.	Statement committing to achieving EPC B+ before Renewables through exemplar design, to detailed design and through to post construction review. Evidence that the team has worked together in the past in other sectors to achieve good EPC rated buildings, without solely relying on Renewables.
3.27	Awareness of Employers Environmental policy	Statement and proof of research and awareness of clients' objectives.

PART 1 APPENDIX 4: HEALTH & SAFETY COMPETENCE

Core criteria for demonstration of competence:

CDM Co-ordinators

The Design Team must comply with the Construction (Design and management) regulations 2007 and the Managing Health and Safety in Construction CDM Regulations 2007: Approved Code of practice (published by HSC).

Evidence of competence must be provided by the Tenderer and each sub-consultant to satisfy Appendix 4 of the Approved Code of Practice.

MIDLOTHIAN AND EAST RENFREWSHIRE JOINT SCHOOLS PROJECT

PART 2 CONDITIONS OF APPOINTMENT

(1) [EAST RENFREWSHIRE COUNCIL and MIDLOTHIAN COUNCIL] (Client)

- and -

(2) [] (Professional)

PROFESSIONAL'S APPOINTMENT

[] Services

relating to the [] of []

CONTENTS

2	DEFINITIONS AND INTERPRETATION	3
3	APPOINTMENT AND ENTIRE AGREEMENT	7
4	THE PROFESSIONAL'S GENERAL OBLIGATIONS	8
5	LIMITATIONS ON THE PROFESSIONAL'S AUTHORITY	9
6	THE ROLE OF LEAD PARTNER/DIRECTOR AND ALLOCATION OF PERSONNEL	10
7	SUB-CONTRACTING	10
8	ADDITIONAL SERVICES	12
9	COMPLIANCE WITH INSTRUCTIONS	12
10	COMPLIANCE WITH TERMS AND CONDITIONS	12
11	BUDGETARY CONSTRAINTS AND PROGRAMME REQUIREMENTS	13
12	CO-OPERATION AND GOOD FAITH	14
13	RELATIONSHIP WITH OTHER MEMBERS OF THE PROFESSIONAL TEAM	14
14	SITE ATTENDANCES	14
15	REPORTING REQUIREMENTS	14
16	PROFESSIONAL INDEMNITY INSURANCE	14
17	COPYRIGHT	15
18	COLLATERAL WARRANTIES	15
19	ASSIGNATION	16
21	SUSPENSION AND TERMINATION	16
22	REMUNERATION	19
23	TIME RECORDING	19
24	EXPENSES AND DISBURSEMENTS	20
25	VAT AND TAXES	20
26	CONFIDENTIALITY	20
27	RIGHTS OF THIRD PARTIES	21
28	NOTICES	21
29	WAIVER	21
30	SEVERABILITY	21
31	DISPUTE RESOLUTION	21
32	GOVERNING LAW AND JURISDICTION	22
33	SCHEDULE	23

AGREEMENT

BETWEEN:-

- (1) ¹**EAST RENFREWSHIRE COUNCIL**, a local authority constituted and incorporated under the Local Government etc. (Scotland) Act 1994 having its principal offices at Eastwood Park, Rouken Glen Road, Giffnock, G46 6UG and **MIDLOTHIAN COUNCIL**, a local authority constituted and incorporated under the Local Government etc. (Scotland) Act 1994 having its principal offices at Midlothian House, Buccleuch Street, Dalkeith EH22 1DJ (the said East Renfrewshire Council and the said Midlothian Council are hereinafter referred to as the "Client"); and
- (2) [REDACTED], a company registered in [REDACTED] having Company Number [REDACTED] and with its registered office at [REDACTED] (the "Professional")

WHEREAS:-

- (A) The Client wishes to proceed with the Project (as hereinafter defined).
- (B) The Client wishes to appoint the Professional to perform the Services (as hereinafter defined) in Section 1 of Schedule Part 2 at the Site in relation to the whole or such part of the Project as the Client may from time to time direct.
- (C) The Client may require the Professional by issue of an Instruction to perform the Services in Section 2 of Schedule Part 2 in relation to the whole or such part of the Project as the Client may from time to time direct.
- (D) The Professional agrees to provide the Services upon and subject to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:-

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement the following expressions shall have the following meanings:-

"Additional Fees"	means the additional fees (if any) payable by the Client to the Professional pursuant to Clauses 8.3 and 22 for performing any Additional Services which the Client may instruct the Professional to perform pursuant to Clause 8.2
"Additional Services"	means any and all additional services which the Client may instruct the Professional to perform pursuant to Clause 8.2
"Agreement"	means this appointment contract together with any Instruction issued pursuant to it
"Building Contract"	means the contract or contracts to be entered into pursuant to which the Contractor shall undertake (inter alia) to design and construct the works comprising the Project

¹ The Councils are still to fully consider the issue of joint and several liability and tax implications (for example the requirement to issue VAT invoices to the separate entities) in relation to the joint employer arrangements – additional drafting may be required.

"CDM Co-ordinator"	means the person appointed to act as CDM co-ordinator pursuant to Regulation 14(1) of the CDM Regulations
"CDM Regulations"	means the Construction (Design and Management) Regulations 2007
"Client"	means the person named as Client at the beginning of this Agreement and includes successors and permitted assignees
"Code of Practice on the Selection of Materials"	means the publication entitled "Good Practice in Selection of Construction Materials" produced by Ove Arup & Partners under the guidance of the steering group representing the British Council for Offices and the British Property Federation
"Contractor"	means the contractor or contractors employed or to be employed to design and construct works comprising the Project
"Developer"	means the party appointed or to be appointed by the Client who shall be the developer in respect of the Project and notified as such to the Professional
"Fee"	means the fee set out in Schedule Part 1 as the fee payable by the Client to the Professional for performing the Standard Services in accordance with this Agreement ²
"Funder"	means any party providing finance to the Project
"Funding Agreements"	means any agreement entered into for the provision of finance for the Project
"Group Company"	means in relation to the Client, another body corporate which is a Subsidiary of, or a Holding Company of, or another Subsidiary of a Holding Company of the Client
"Health and Safety File"	means the health and safety plan which the CDM Co-ordinator is required to prepare pursuant to Regulation 20(2)(e) of the CDM Regulations
"Holding Company and Subsidiary"	shall have the meanings ascribed to such expressions by Section 736 of the Companies Act 1985 (as amended) save that the condition in Section 736(1)(a) shall be deemed to be satisfied if one company holds more than one quarter of the voting rights in the other company
"Instruction"	means an instruction from the Client to provide services in connection with the Project, in the form set out in Schedule Part 5

² We have assumed that the ITT will allow for bidders to provide a cost for the performance of all Standard Services whether or not they are instructed by the Client.

"Intellectual Property Rights"	means all current and future and/or equitable interests registered or unregistered trademarks, service marks, patents registered design or utility marks, applications for any of the foregoing copyrights, unregistered designs, knowhow, proprietary information, inventions, and any other intellectual property rights
"Lead Partner/Director"	means the lead partner/director designated in Schedule Part 1 to control, manage and supervise the performance of the Services, or such replacement as shall be approved by the Client in writing
"Legal and Regulatory Requirements"	means any and all legal and regulatory requirements applicable to the Project and/or the performance of the Services which are current at the date or dates on which the Project and/or Services are carried out (including without limitation EU directives and regulations having direct effect within the UK; acts of parliament, acts of the Scottish Parliament and subordinate instruments, orders, rules and/or regulations made thereunder; and/or the rules, regulations and/or bye-laws of any local authority and/or statutory or utility undertaker)
"Necessary Consents"	means any and all consents, permissions, approvals, licences and/or certificates which it is necessary to obtain in order to build, occupy and/or use the Project in the manner envisaged by the Client
"Parent Company"	means, where the Professional is a company, the company which owns or controls the net assets of the Professional or where the Professional comprises more than one company, the net assets of each company comprising the Professional
"Party or Parties"	means the Client and/or the Professional
"Principal Contractor"	means the Contractor or the person appointed by the Client from time to time to act as principal contractor pursuant to Regulation 14(2) of the CDM Regulations
"Project"	means the project described in Schedule Part 1
"Project Brief"	means together the Client's brief, budget/cost plan and programme for the Project
"Professional"	means the person named as Professional at the beginning of this Agreement and such person's successors and permitted assignees
"Professional Team"	means the team of professional consultants engaged from time to time in connection with the Project, the currently appointed members of which are referred to in Schedule Part 1

"Purchaser"	means a purchaser or purchasers of the whole or any part of the Project or the Site or of the share capital of any corporate entity having an interest in the Project or the Site
"Services"	means the Standard Services (which for the avoidance of doubt, shall include the Services in Section 1 and, following issue of an Instruction, those in Section 2 of Schedule Part 2) and any Additional Services instructed by the Client pursuant to Clause 8.2
"Site"	means the site (all as more particularly detailed in the plan attached at Schedule Part 4) of the Project
"Standards and Codes of Practice"	means any and all European and British Standards and/or codes of practice applicable to the design and/or construction of the Project and/or the performance of the Services current at the date or dates on which the Professional performs the relevant Services (including the British Standards and codes of practice published by the British Standards Institution and the Code of Practice on the Selection of Materials)
"Standard Services"	means the services described in Schedule Part 2 (which for the avoidance of doubt, shall include the Services in Section 1 and, following issue of an Instruction, those in Section 2 of Schedule Part 2)
"Technical Data and Documents"	means any and all data and/or documents (whether in hard copy form or stored on electronic media) produced or procured or in the course of being produced or procured by or on behalf of the Professional for all purposes in connection with the Project (including (where applicable) surveys, investigations, enquiries, studies, reports, plans, drawings, specifications, details, models, calculations (including levels and setting out dimensions), bills of quantities, Schedule Parts of work, programmes, method statements, budgets and cost plans)
"TeCSA Adjudication Rules"	means the Procedural Rules for Adjudication published by the Technology and Construction Solicitors Association current at the date on which the dispute or difference is referred to adjudication
"Tenant"	means a person having or acquiring a leasehold interest in the Project or the Site or any part of them, other than a Purchaser

2.2 Save to the extent that the context or the express provisions of this Agreement otherwise require:-

2.2.1 headings and sub-headings are for ease of reference only and are not to be taken into consideration in the interpretation or construction of this Agreement;

- 2.2.2 references to Clauses and Schedule Parts are references to clauses and Schedule Parts of and/or to this Agreement
 - 2.2.3 save for agreed form documents, the Schedule Parts to this Agreement are an integral part of this Agreement and references to this Agreement includes references thereto;
 - 2.2.4 references to specific standards, codes of practice, third party agreements or other instruments shall be construed as including all amendments, supplements, re-drafts and substitutes thereto and shall, in the case of third party agreements, include any and all assignations and/or transfers thereof (including novation) and any charges relating thereto;
 - 2.2.5 references to specific legal or regulatory provisions shall be construed as including any legal or regulatory provision which subsequently amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any and all subordinate instruments, orders, rules, regulations and bylaws made thereunder and any guidelines issues in respect thereof;
 - 2.2.6 any reference to a public organisation or authority shall be deemed to include any successor to such organisation or authority which takes over the functions or responsibilities of such organisation or authority;
 - 2.2.7 "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;
 - 2.2.8 words expressed in the singular shall include the plural and vice versa;
 - 2.2.9 this Agreement shall not be construed or interpreted against or to the disadvantage of the Client on the grounds that this Agreement represents the Client's standard terms and conditions of business and/or that this Agreement and/or any particular term or condition hereof may have originated from the Client; and
 - 2.2.10 in the event of any conflict or discrepancy between clauses in this Agreement on the one hand and Schedule Part 2 (*Description of the Services*) on the other, the clauses in this Agreement shall take precedence.
- 2.3 Where the Professional comprises a firm or partnership or includes one or more firms or partnerships, the liability of the proprietors, partners, members or entities of such firm, or partnership shall be joint and several.
- 2.4 Without prejudice to Clause 1.3 above, where the Professional is a consortium made up of separate entities, each such entity shall be jointly and severally liable for the proper performance by the Professional of its obligations under this Agreement.
3. **APPOINTMENT AND ENTIRE AGREEMENT**
- 3.1 The Client appoints the Professional as [REDACTED] subject to and in accordance with the provisions of this Agreement. If and when the Client requires the Professional to perform any of the Services in Section 2 of Schedule Part 2 in relation to the whole or such part of the Project, the Client shall, at its discretion, issue to the Professional an Instruction.
- 3.2 This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any previous agreements, arrangements or understandings between the Parties in respect of the subject matter hereof.

3.3 Any work, services or supplies performed or provided prior to the date of execution of this Agreement by the Professional for the Client in connection with the subject matter of this Agreement shall be treated as having been performed under and shall be subject to the provisions of this Agreement and any payments made by the Client to the Professional in respect thereof shall be treated as payments on account of the Fee.

3.4 Any and all additions, amendments and/or modifications to the terms and conditions of this Agreement must be in writing and shall only be binding if signed or initialled by the original signatories to this Agreement or other duly authorised representatives of the Client and Professional. All such additions, amendments and/or modifications should be dated and physically attached or appended to this Agreement for safekeeping.

4. **THE PROFESSIONAL'S GENERAL OBLIGATIONS**

4.1 The Professional warrants and undertakes to the Client that he has exercised and will continue to exercise in and about the performance of the Services and each and every obligation under this Agreement all the skill, care and diligence reasonably to be expected of an appropriately qualified and competent professional consultant experienced in performing the same services which the Professional is obliged to perform pursuant to this Agreement in relation to projects of a similar scope, nature, value, complexity and size as the Project.

4.2 The Professional acknowledges that the Client shall be entitled to rely at all times upon the Professional's professional expertise and judgement. Without prejudice to the generality of the foregoing:

4.2.1 No inspection, review, comment, decision, authorisation or approval by the Client or by any person (including other members of the Professional Team) acting on behalf of the Client nor any omission to inspect, review, comment, decide, authorise or to approve shall negate or in any way diminish any duty or liability of the Professional under or in connection with this Agreement; and

4.2.2 The Client gives no warranty or representation as to the accuracy or sufficiency of any information or data contained in any document (including, but not limited to, surveys) made available to the Professional by the Client, or as to any recommendations or conclusions made or reached in any such document. For the avoidance of doubt, the Professional shall be deemed to have obtained all necessary information and fully satisfied himself as to risks and other circumstances which may influence or affect the proper performance of the Services.

4.3 Without prejudice to Clause 3.1 and the generality of Clause 4.1, the Professional shall, upon and subject to the terms and conditions of this Agreement, perform the Services in relation to the whole or such part or parts of the Project as the Client may from time to time direct.

4.4 Without prejudice to the generality of Clause 4.1 in performing the Services, the Professional shall at all times comply with:-

4.4.1 the Legal and Regulatory Requirements;

4.4.2 the Necessary Consents;

4.4.3 the Standards and Codes of Practice;

4.4.4 the terms and conditions of this Agreement;

4.4.5 the Project Brief; and

4.4.6 subject to Clause 9, the Client's instructions (including any Instructions).

- 4.5 The Professional shall proceed with the Services regularly and diligently and in an efficient and cost effective manner.
- 4.6 Without prejudice to or derogation from Clause 4.4.1, the Professional shall at all times comply with the CDM Regulations, the Health and Safety File, the Construction Phase Plan and any and all instructions and/or directions issued by the CDM Co-ordinator and/or the Principal Contractor in relation thereto.
- 4.7 No action of proceedings for any breach of this Agreement shall be commenced by either party after the expiry of 12 years from the last date of practical completion decided/issued/certified under the Building Contract.
- 4.8 Subject to Clause 4.8, the Professional shall provide a parent company guarantee in terms of the draft contained in Schedule Part 7 executed by the Parent Company immediately upon expiry of the 14 day notice period referred to in Clause 3.9.2, unless the Client shall agree otherwise in writing. Where the Professional includes more than one company, a parent company guarantee will required from each Parent Company of each such company. With the said parent company guarantee the Professional shall supply a certified copy of a resolution of the board of the Parent Company (or each Parent Company, where applicable).
- 4.9
- 4.9.1 Prior to the issue of any written notice of intention to call upon the parent company guarantee as detailed in Clause 4.9.2, a registered director of the Professional will be required to attend a meeting within 7 days of being invited with the Client and/or appropriate representatives, whereupon an action plan will be discussed and agreed between the parties with a view to addressing any performance deficiencies;
- 4.9.2 If, at the Client's sole discretion, the action plan referred to in Clause 4.9.1 is not agreed or considered to have been unsuccessful, the Professional shall give to the Professional 14 days prior written notice of its intention to require the Professional to provide a parent company guarantee as set out in Clause 4.8.

5. **LIMITATIONS ON THE PROFESSIONAL'S AUTHORITY**

- 5.1 The Professional shall not, without the prior written consent of the Client:-
- 5.1.1 enter into any contractual or other commitment with any third party for and/or on behalf of the Client;
- 5.1.2 waive, settle or compromise any contractual or other entitlement the Client may have against any third party or which any third party may have against the Client;
- 5.1.3 suspend or terminate any contract entered into by the Client for the performance of any work, services or supplies pursuant to any contract entered into by the Client;
- 5.1.4 make, approve or permit any material alteration or addition to or omission or deviation from those aspects of the design and/or specification of the Project and/or the Project Brief which have previously been approved or agreed by the Client; and
- 5.1.5 do or omit to do anything that would or might cause the amount due to the Contractor under the Building Contract to increase or cause any delay or affect the regular progress of any work under the Building Contract.
- 5.2 The Professional shall not proceed to perform any of the Services in Section 2 of Schedule Part 2 and/or any additional services in relation to the Project unless and until

specifically instructed so to do by the Client either by issue of an Instruction or pursuant to Clause 8.2.

5.3 Issue of an Instruction shall be a condition precedent to payment for performance of the Services in Section 2 of Schedule Part 2.

5.4 Subject to Clause 8.4, the Professional shall only be entitled to Additional Fees for performing Additional Services.

6. **THE ROLE OF LEAD PARTNER/DIRECTOR AND ALLOCATION OF PERSONNEL**

6.1 The Professional warrants and undertakes to the Client that the Lead Partner/Director shall:-

6.1.1 assume and maintain personal control, management and supervision of the Services to be performed by the Professional;

6.1.2 establish and maintain direct and regular personal contact and communication with the Client and, where required, other members of the Professional Team on all matters pertaining to the Professional's responsibilities under this Agreement;

6.1.3 prepare for and make himself available to attend all key meetings with and presentations to (inter alia) public organisations and/or authorities, funders, purchasers, tenants and/or contractors and their representatives as the Client may from time to time reasonably direct; and

6.1.4 abstain from any and all other professional appointments and/or responsibilities which are likely to impede or impair the ability of the Lead Partner/Director to fulfil the aforementioned functions and ensure that the Services are at all times performed in accordance with the requirements of this Agreement.

6.2 The Professional shall allocate to the Project sufficient and appropriate numbers of appropriately qualified and experienced personnel and shall ensure (where appropriate) such continuity of personnel as is or may be necessary to ensure at all times the proper, effective and efficient performance of the Services in accordance with the requirements of this Agreement.

6.3 Without prejudice to the generality of Clause 6.2, the Professional's employees with responsibility for the Project are [REDACTED] and [REDACTED]. He/she/they will retain his/her/their involvement in the Project until completion of the Services under this Agreement unless otherwise agreed with the Client.

6.4 The Client shall be entitled, after consultation with the Professional, to require the replacement of any person employed by the Professional in the performance of the Services who, in the Client's reasonable opinion, has failed to perform satisfactorily or who has misconducted himself in any way. The Professional shall promptly replace such person with an appropriately qualified and experienced substitute at no cost to the Client.

7. **SUB-CONTRACTING**

7.1 Except where the Client has accepted a sub-letting proposal as detailed in Clause 7.2 below, the Professional shall not sub-let or delegate the whole or any part of his duties under this Agreement without the Client's prior written consent (in his absolute discretion).

7.2 The Professional shall obtain the prior written consent of the Client (in his absolute discretion) to the selection, appointment and/or use of a sub-consultant(s).

7.3 The Professional shall ensure that the terms of each appointment entered into with each sub-consultant will enable it to fulfil its obligations under this Agreement. Each sub-consultant's appointment shall include *inter alia*:

- 7.3.1 such provisions as may be necessary to enable the Professional to fulfil his obligations to the Client under this Agreement;
 - 7.3.2 such provisions as will impose on the sub-consultant obligations similar to those imposed on the Professional under this Agreement (taking into account the sub-consultant's particular role and responsibilities in respect of the Project);
 - 7.3.3 a provision to the effect that no part of the sub-consulted or delegated duties shall be further sublet without the prior written consent of the Client;
 - 7.3.4 such provisions which allow the Client to take over the sub-consultants' appointment by way of assignation or other transfer in the event of termination of this Agreement for any reason provided that any such assignation or transfer shall be on terms which shall not prejudice the Client's rights or claims against the sub-consultant accrued prior to such assignation or transfer of the Client's ability to recover from the sub-consultant in respect thereof. For the avoidance of doubt, the Professional shall remain liable to the Client, notwithstanding any take over of the sub-consultants' appointment by the Client;
 - 7.3.5 provisions relating to payment which are compliant with the Housing Grants Construction and Regeneration Act 1996;
 - 7.3.6 a provision for the execution and delivery by the sub-consultant, in each case as and when requested by the Professional promptly and in any event within 14 days of such requirement, of such collateral warranties specified in Clause 7.6 below.
- 7.4 The Professional shall procure that the sub-consultants identified in Schedule Part 1 maintain with an insurer of good repute for a period of not less than 12 years from the last date of practical completion decided/issued/certified under the Building Contract professional indemnity insurance with a limit of indemnity of not less than the sum referred to in Schedule Part 1 for each and every claim to cover any negligent act, omission or default (including breach of statutory duty) on the part of each of the sub-consultants provided and to the extent that such insurance is generally available in the insurance market at commercially reasonable rates.
- 7.5 Where the Client consents to the sub-letting or delegation of the whole or any part of the Professional's duties under this Agreement such consent shall be without prejudice to the Professional's continuing obligation to ensure that the sub-let and/or delegated Services are and continue to be performed at all times in accordance with the requirements of this Agreement. For the avoidance of doubt the Professional shall be responsible for the breaches, acts, omissions, negligence or other default of any sub-consultant in so far as they relate to the Services and obligations under this Agreement as fully as if they were the breaches, acts, omissions, negligence or other default of the Professional, its agents or employees. The Fee and costs, expenses and disbursements payable to the Professional in accordance with this Agreement shall not be increased by any amounts payable to the sub-consultants.
- 7.6 The Professional shall as and when the Client from time to time requires promptly (and in any event within 14 days of such requirement) procure from each such sub-consultant and deliver to the Client collateral warranties in favour of each, any or all:
- (a) Funders;
 - (b) Occupiers;
 - (c) Tenants;
 - (d) Purchasers;
 - (e) the Client; and

(f) the Contractor

in the agreed form set out in Schedule Part 3, Part B.

7.7 The Professional shall not terminate any sub-consultant's appointment without prior written agreement with the Client.

7.8 If, in the Client's reasonable opinion, the performance of any sub-consultant employed by the Professional is materially and demonstrably detrimental to the Project, the Client may require the exclusion of that sub-consultant from the Project and the Site and the Professional shall replace that sub-consultant with an alternative sub-consultant of comparable expertise subject to prior written approval of the Professional as set out in Clause 7.2 above.

7.9 The Professional shall keep the Client fully, properly and promptly apprised during the process of replacement of any sub-consultant in accordance with this Clause 7.

8. **ADDITIONAL SERVICES**

8.1 The Professional shall immediately advise the Client in writing of any circumstances which, in the Professional's reasonable opinion, have arisen or which are likely to arise which require or may require the Professional to perform or the Professional or Client to procure the performance of any additional services.

8.2 Whether on the advice of the Professional or otherwise, the Client shall be entitled to instruct the Professional to perform any and all additional services in relation to the Project which it is within the general competence of the Professional to perform. Subject to Clause 8.3 the Professional shall comply with the Client's instructions and any Additional Services instructed by the Client pursuant to this Clause shall form part of the Services which the Professional is obliged to perform under and in accordance with this Agreement.

8.3 Subject to Clause 8.4, the Professional shall be entitled to additional remuneration for performing Additional Services. The Parties shall endeavour to agree a specific lump sum Additional Fee for performing the Additional Services, failing which the Professional shall be entitled to be paid for time properly, effectively and efficiently spent in performing the Additional Services at the pre-agreed hourly rates set out in Schedule Part 1.

8.4 The Professional shall not be entitled to additional remuneration for performing Additional Services where and to the extent such Additional Services were necessitated, in whole or in part, by any negligence, omission or default on the part of the Professional.

9. **COMPLIANCE WITH INSTRUCTIONS**

The Professional shall at all times comply with the Client's reasonable instructions, including any Instructions, in relation to the Project and/or the performance of the Services, provided always that if at any time the Professional has a discretion exercisable as between the Client, the Developer, the Funders, the Client, the Contractor and/or any other third party under any agreement between the Client and such party which he is legally and/or contractually obliged to exercise fairly and impartially and/or independently of the Client, the Professional shall exercise his discretion fairly and impartially and/or independently of the Client as the circumstances require.

10. **COMPLIANCE WITH THE TERMS AND CONDITIONS OF OTHER AGREEMENTS**

10.1 The Professional may be supplied from time to time with copies of or extracts from various other agreements (including but not limited to those entered into by the Client and various third parties) concerning the Project, including planning and/or other statutory agreements, the Building Contract, agreements with other members of the Professional Team, Funding Agreements, security documentation, agreements for lease and/or sale. Insofar as is consistent with the performance of the Services and subject to the Professional having

received copies of and/or relevant extracts from such agreements in sufficient time for the Professional to be able to have regard thereto and comply therewith:-

- 10.1.1 the Professional shall so perform his duties under this Agreement so as not, by any breach of this Agreement or negligent action or omission on his part, to cause or contribute towards any breach of the duties and/or obligations under such agreement; and
 - 10.1.2 where and to the extent any such agreement so requires, the Professional shall be responsible for the issue of certificates, notices or statements as to progress with and/or the state of completion and/or readiness for handover, fitting out and/or beneficial occupation of the works or any part or parts of the works comprising the Project for which the Professional is responsible under this Agreement and/or any such similar requirements; and
 - 10.1.3 the Professional shall comply with any and all procedures laid down in any such agreement for the approval of changes in design, specification or materials and/or the testing, commissioning and/or inspection of the works or any part or parts of the works comprising the Project for which the Professional is responsible under this Agreement whether as a pre-condition to the issue of any certificate, notice or statement of completion, handover and/or completion of making good defects or the drawdown of funding and/or any such similar procedural requirements.
- 10.2 The Professional shall immediately advise the Client in writing if compliance with any agreement copied to the Professional by the Client pursuant to this Clause is or would be incompatible with any of the Professional's other duties and/or responsibilities under this Agreement. The Professional shall not in such circumstances be obliged to comply with such agreement until such time as the Client issues instructions directing the Professional as to how such discrepancy is to be resolved. The Professional shall comply with any and all instructions issued by the Client as to how such discrepancy is to be resolved provided always that where the Client makes a choice between compliance with this Agreement or the discrepant Agreement the Professional shall not be in breach of those discrepant provisions which the Professional is instructed to disregard and where such instruction involves the Professional in Additional Services Clause 8 shall apply. Clause 9 shall apply to such instructions in any event.

11. **BUDGETARY CONSTRAINTS AND PROGRAMME REQUIREMENTS**

The following provisions are without prejudice to the Professional's obligation to carry out the Services in accordance with this Agreement:-

- 11.1 The Professional shall comply with any and all budgetary constraints imposed upon the Project and/or the performance of the Services by the Client from time to time, whether through the Project Brief or otherwise. The Professional shall immediately advise the Client of any elements of the Project Brief or any subsequent instructions (which shall include any Instructions) issued by the Client which the Professional has reason to believe may result in the Client's budget being exceeded. The Professional shall not do or permit to be done anything that would or might cause the Client's budget to be exceeded without first obtaining the Client's prior written consent thereto.
- 11.2 The Professional shall comply with any and all key dates for the commencement and/or completion of tasks imposed upon the Project and/or the performance of the Services by the Client from time to time. The Professional shall use all reasonable endeavours to ensure that the Services are performed so as not to cause such key dates to be missed or exceeded.
- 11.3 The Professional shall keep the Client fully, properly and promptly apprised in writing of any and all programme slippages and/or anticipated programme slippages and the likely consequences thereof.

12. **CO-OPERATION AND GOOD FAITH**

- 12.1 The Professional shall at all times co-operate with and act in good faith towards the Client and the other members of the Professional Team and any public organisations and/or authorities, Funders, funders and/or contractors and their representatives with whom the Client is or may be in consultation.

13. **RELATIONSHIP WITH OTHER MEMBERS OF THE PROFESSIONAL TEAM**

The following provisions are without prejudice to the Professional's obligation to carry out the Services in accordance with this Agreement:-

- 13.1 The Professional Team have been or may be appointed to advise and assist in connection with the Project. Further consultants may be appointed as necessary or desirable.
- 13.2 The Professional shall, insofar as is applicable to and forms part of the Services, at all times co-operate with and act in good faith towards the other members of the Professional Team and other consultants who may be appointed and pro-actively provide whatever advice and/or assistance as may reasonably be required from the Professional, having regard to the Professional's role, in and about the fulfilment of their duties and responsibilities.

14. **SITE ATTENDANCES**

The following provision is without prejudice to the Professional's obligation to carry out the Services in accordance with this Agreement:-

During the construction period the Professional shall visit the Site as and when necessary and/or appropriate in accordance with the Services in order to monitor progress, the quality of construction and conformity with the requirements of the Building Contract and, if applicable, to carry out valuations of the works or any part or parts of the works comprising the Project for which the Professional is responsible under this Agreement.

15. **REPORTING REQUIREMENTS**

Without prejudice to the Professional's obligation to carry out the Services in accordance with this Agreement, the Professional shall keep the Client fully, properly and promptly apprised of any and all pertinent developments concerning those matters which are the Professional's responsibility under this Agreement as and when they occur.

16. **PROFESSIONAL INDEMNITY INSURANCE**

- 16.1 The Professional shall maintain with an insurer of good repute for a period of not less than 12 years from the last date of practical completion decided/issued/certified under the Building Contract professional indemnity insurance with a limit of indemnity of not less than the sum referred to in Schedule Part 1 for each and every claim to cover any negligent act, omission or default (including breach of statutory duty) on the part of the Professional provided and to the extent that such insurance is generally available in the insurance market at commercially reasonable rates.
- 16.2 When he is required to do so by the Client, the Professional shall produce a valid broker's certificate to confirm compliance with Clause 16.1. If the Professional fails to provide a valid broker's certificate, the Client shall be entitled to effect such insurance cover and recover the cost thereof from the Professional on demand as a debt.
- 16.3 In the event such insurance ceases to be generally available in the insurance market at commercially reasonable rates, the Professional shall immediately inform the Client in order that the Professional and the Client can discuss the means of best protecting the respective positions of the Professional and the Client in the absence of such insurance.

17. **COPYRIGHT**

17.1 The Professional hereby grants to the Client an irrevocable, perpetual, transferable, non-exclusive, royalty-free, assignable licence (carrying the right to grant sub-licences whether to the Carbon Trust, the Scottish Futures Trust or otherwise) on the same terms as the main licence):

17.1.1 to copy, use, reproduce, amend, adapt, merge, extend, and modify all Intellectual Property Rights in the Technical Data and Documents for all purposes in connection with the Project including without limitation the design, construction, completion, maintenance, advertisement, reinstatement, repair, alteration, use, letting and sale of the same;

17.1.2 to copy, use, reproduce, amend, adapt, merge, extend, and modify all Intellectual Property Rights in the Technical Data and Documents insofar as produced during [Stages [1-2][A-C]amend as appropriate] for any purposes connected to the procurement or development of educational establishments in Scotland.

17.2 The Professional waives any right to be identified as the author of the Technical Data and Documents in accordance with Section 77 of the Copyright Designs and Patents Act 1988 and any right not to have the design documents subjected to derogatory treatment in accordance with Section 80 of that Act as against the Client or any sub-licensee or successor/permitted assignee of the Client.

17.3 The Professional warrants to the Client that the rights granted under this Agreement do not and will not infringe the rights of any third party.

17.4 In the event that a third party infringes the Professional's rights in relation to the Technical Data and Documents the Professional hereby undertakes, if the Client so requests, to take such action and institute such proceedings as may be reasonably necessary to ensure that the Professional's rights are upheld and respected and the Client's interests therein are not in any way prejudiced.

17.5 The Professional shall be liable to the Client for any and all expenses, liabilities, losses, claims or proceedings the Client may incur in the event:-

17.5.1 that the rights granted by the Professional pursuant to this Clause are found to be invalid, ineffective or impaired in any way; and/or

17.5.2 in the event of any claim by any third party (whether upheld or not) that the exercise of the rights granted by the Professional pursuant to this Clause infringe the rights of such third party.

17.6 The Professional shall not be held liable for any use of the Technical Data and Documents by the Client for any purpose other than that for which they were prepared or provided by or on behalf of the Professional.

18. **COLLATERAL WARRANTIES**

18.1 The Professional shall as and when the Client from time to time requires promptly (and in any event within 14 days of such requirement) execute and deliver of warranties in favour of each, any or all:

(a) Funders;

(b) Occupiers;

(c) Tenants;

(d) Purchasers; and

(e) the Contractor.

The warranties referred to in this Clause 18.1 shall be in the agreed form set out in Schedule Part 3, Part A.

18.2 If the Professional is in default of its obligations under Clauses 7.6 and/or 18.1, the Client shall be entitled to retain £5,000 for each document not delivered from any sums otherwise due to the Professional pursuant to this Agreement until the Professional has remedied its default.

19. **ASSIGNATION**

19.1 The Client shall be permitted to assign or charge this Agreement (in whole or in part) to a Funder or to a Group Company or to a party taking over the Client's interest (in whole or in part) in the Project without the prior written consent of the Professional. All other assignments and/or charges will require the prior written consent of the Professional (such consent not to be unreasonably withheld or delayed).

19.2 The Professional shall not assign or charge or purport to assign or charge this Agreement without the prior written consent of the Client (in its absolute discretion).

20. **NOT USED**

21. **SUSPENSION AND TERMINATION**

21.1 The Client may, at any time, by written notice to the Professional, forthwith or upon such longer notice period specified in such written notice suspend the performance of any or all of the Services for such time or times and in such manner as the Client may specify.

21.2 If the whole of the Services are suspended by the Client for a period exceeding 12 months, the Professional may by written notice to the Client request permission to resume performance of the Services. If within 28 days from receipt of such request the Client does not grant such permission, the Professional may (but is not bound to) terminate the Professional's engagement under this Agreement by giving not less than 28 days further prior written notice to the Client.

21.3 The Client may, at any time, by 14 days prior written notice to the Professional, forthwith or upon such longer notice period specified in such written notice terminate the Professional's engagement under this Agreement. For the avoidance of doubt, such notice may be given whilst the performance of the Services is suspended pursuant to this Clause 21.

21.4 21.4.1 If the Client has failed to make payment to the Professional of any sum due under this Agreement by the final date for payment of that sum and has also failed to serve a notice of intention to withhold payment in accordance with Clause 22.6, the Professional shall be entitled to (but is not bound to) suspend the performance of the Services under this Agreement, provided that:-

(a) such suspension shall not be exercised without first giving the Client not less than 7 days notice of the Professional's intention to do so, stating the ground or grounds on which its intention to suspend is or are based; and

(b) the Professional shall cease such suspension immediately upon payment by the Client of the sum due.

21.4.2 If the Client shall have failed to make payment of any sum referred to in Clause 21.4.1 within 28 days of the date upon which the Professional commences

suspension pursuant to Clause 21.4.1, the Professional may (but is not bound to) terminate the Professional's engagement under this Agreement, provided that:-

- (a) the Professional shall not exercise such termination without giving the Client not less than a further 14 days prior written notice of his intention to do so; and
- (b) if payment of the sum is made within the notice period referred to in paragraph (a) of this Clause 21.4.2, the Professional shall no longer be entitled to terminate his engagement under this Agreement pursuant to this Clause 21.4.2 in respect of the Client's initial failure to pay such sum.

21.5 Upon any suspension of the performance of the Services pursuant to Clause 21.1 or termination of the Professional's engagement under Clauses 21.2, 21.3, 21.4 or 21.10 of this Agreement:-

21.5.1 the Professional shall take immediate steps to bring the performance of the Services to a halt in a safe and orderly manner but with all reasonable speed and economy (including advising and assisting the Client in relation the protection and preservation of the Project) and shall also relinquish any lien upon and deliver to the Client within 7 days of such suspension or termination any and all Technical Data and Documents, correspondence, minutes of meetings, records and/or any other documents or data of any kind in its possession, custody or control relating to the Project;

21.5.2 subject to Clause 21.7, the Professional shall be entitled to be paid a fair and reasonable proportion of the Fee commensurate with the proportion of the Standard Services properly carried out by the Professional prior to the date of such termination or suspension plus, subject to Clause 21.5.3, any Additional Fees to which the Professional is entitled under Clauses 8.3 and 22 in respect of Additional Services properly carried out by the Professional prior to the date of such termination or suspension less any part of the Fee and/or Additional Fees which have been paid prior to the date of such termination or suspension;

21.5.3 for the avoidance of doubt, where only part of the Additional Services for which a specific lump sum Additional Fee has been agreed pursuant to Clause 8.3 have been properly performed by the Professional prior to the date of such termination or suspension, the amount of Additional Fee which the Professional is entitled to be paid in respect of such Additional Services shall be a fair and reasonable proportion of the agreed lump sum Additional Fee commensurate with the proportion of the Additional Services to which the agreed lump sum Additional Fee relates or, in the case of Additional Services performed on the basis of the agreed hourly rates, such Additional Fee as may be payable in respect of the time properly, effectively and efficiently spent by the Professional in performing the Additional Services prior to the date of termination or suspension;

21.5.4 neither suspension of the performance of the Services nor termination of the Professional's engagement under this Agreement shall render the Client liable to the Professional for any claim for any additional compensation such as loss of profit, loss of fees, loss of expectation, loss of opportunity or any other such similar losses; and

21.5.5 the Professional shall be entitled to submit an invoice to the Client for any sums which it is entitled to be paid pursuant to this Clause 21.5 at the end of the calendar month in which the suspension or termination occurred.

21.6

21.6.1 Without prejudice to any of its other rights or remedies including its rights pursuant to Clauses 21.1 to 21.5, if the Professional:

- (a) is unable to pay its debts as they fall due; or
- (b) makes a composition or arrangement with its creditors; or
- (c) a winding up order of the Professional is made (except for the purposes of amalgamation or reconstruction); or
- (d) a resolution for its voluntary winding up is passed; or
- (e) a provisional liquidator, receiver, administrator or manager of its business or undertaking is appointed; or
- (f) an administration order is made pursuant to the Insolvency Act 1986; or
- (g) possession is taken by or on behalf of any debenture secured by a floating charge of any property of material value comprised in or subject to the floating charge;

the Client may forthwith terminate the Professional's engagement under this Agreement without compensation to the Professional and expel the Professional from the Site. The Client shall not be liable to make any further payments to the Professional until the Project has been completed as certified under the Building Contract and all costs associated with the Project have been ascertained by the Client. The Client shall be entitled to deduct from sums otherwise due or to become due to the Professional: (a) the direct costs, losses and/or expenses; and/or (b) the loss of profit, loss of use, loss of production and/or loss of revenue (as may be applicable), incurred or suffered in consequence of the termination and shall be entitled to recover such sums as a debt.

- 21.6.2 The Professional shall relinquish any lien upon and deliver to the Client within 7 days of such termination any and all Technical Data and Documents, correspondence, minutes of meetings, records and/or any other documents or data of any kind in its possession, custody or control relating to the Project.
- 21.7 For the avoidance of doubt, Clauses 22.3, 22.4, 22.5 and 22.6 shall apply in relation to any invoice submitted to the Client pursuant to Clause 21.5 and to any sum due in respect of such invoice just as they apply to invoices submitted and sums due under Clauses 22.1 and/or 22.2.
- 21.8 Suspension of the performance of the Services and/or termination of the Professional's engagement under this Agreement shall be without prejudice to the continuing operation of Clauses 16 to 19, 23, 26, 27, 28, 29, 30, 31 and 32 and without prejudice to any rights and remedies of either Party in relation to any negligence, omission or default of the other prior to such suspension or termination.
- 21.9 Following a suspension of the Services under Clause 21.1, the Client may at any time require the Professional to resume the performance of the Services in accordance with this Agreement and any payments made in respect of any invoice submitted under and in accordance with Clause 21.5 shall be treated as payments on account.
- 21.10 The Professional shall be entitled to terminate this Contract by 30 days prior written notice to the Client:
 - 21.10.1 if the Client has committed a material breach of this Agreement which is not capable of remedy;
 - 21.10.2 if the Client has committed a material breach of this Agreement which is capable of remedy, and the Client has failed to remedy such a breach within 14 days of being required by the Professional in writing to do so.

22. **REMUNERATION**

- 22.1 In consideration of the performance of the Standard Services the Client shall pay the Fee to the Professional in instalments at the times and/or in the manner indicated in Schedule Part 1.
- 22.2 The Client shall pay any Additional Fees to the Professional at the times and/or in the manner agreed between the Parties, or, failing agreement, upon completion of the Additional Service to which the Additional Fee relates.
- 22.3 The Professional shall send the Client a fully particularised VAT invoice at the end of each calendar month in which an instalment of the Fee and/or any Additional Fees become payable.
- 22.4 The due date for payment and final date for payment shall be as set out in Schedule Part 1.
- 22.5 The Client shall notify the Professional in writing not later than 5 days after the date on which a payment becomes due, or would have become due:-
- 22.5.1 if the Professional had performed his obligations under and in accordance with this Agreement; and
- 22.5.2 no set-off or abatement was permitted by reference to any sum claimed to be due;
- specifying the amount (if any) of the payment made or proposed to be made, and the basis on which such amount is calculated.
- 22.6 The Client shall notify the Professional in writing not later than 3 days before the final date for payment of any amount which it intends to withhold from the Professional's account and the reasons why.
- 22.7 Before the Client shall make any payment to the Professional, which includes any amount due to any sub-consultant pursuant to Clause 6, the Client shall be entitled to demand from the Professional reasonable proof that the Professional has paid such amounts due to any sub-consultants and included in such previous payments. Unless the Professional shall satisfy the Client in writing that a valid withholding notice (in accordance with the Housing Grants Construction and Regeneration Act 1996) has been served in respect of any amount due to a sub-consultant but not paid to that sub-consultant, the Client shall be entitled to pay such sub-consultant direct all amounts which the Professional has failed to pay such sub-consultant and to deduct by way of set-off the amount so paid to the Professional from any sums due, or which become due from the Client to the Professional, or may recover the same from the Professional as a debt.

23. **TIME RECORDING**

The following provisions are without prejudice to the Professional's obligation to carry out the Services in accordance with this Agreement:-

- 23.1 the Professional shall maintain accurate and detailed records of all time spent by his professional and technical staff (including partners/directors) in performing each service performed by such member of staff under this Agreement.
- 23.2 the Professional shall, as and when requested by the Client, (both during the currency of this Agreement and following suspension, termination or the conclusion of the Professional's engagement hereunder) make such records available to the Client or his appointee for inspection and shall provide the Client with such copies thereof as the Client may reasonably request.

24. **EXPENSES AND DISBURSEMENTS**

- 24.1 Save for the categories of expense and disbursement specifically acknowledged as being reimbursable in Schedule Part 1, all expenses and disbursements incurred by the Client are deemed to have been provided for and included in the Fee and/or Additional Fees.
- 24.2 The Client shall reimburse the Professional the categories of expense and disbursement specifically acknowledged as being reimbursable in Schedule Part 1 on the bases and/or at the rates therein specified.
- 24.3 Save as provided for in Schedule Part 1 the Professional shall not be entitled to recover any expenses and/or disbursements incurred by the Professional in connection with the Project and/or the performance of the Services.

25. **VAT AND TAXES**

In addition to the Fee, Additional Fees and reimbursable expenses and disbursements provided for in this Agreement the Client shall pay such value added tax in relation thereto as may from time to time be prescribed by Scottish Law. The Professional shall be deemed to have taken account of all other taxes or duties payable by the Professional whatsoever within the Fee and/or Additional Fees.

26. **CONFIDENTIALITY**

- 26.1 Save as may be reasonably necessary for the proper performance of the Services pursuant to this Agreement or as the Client may allow in writing, the Professional shall treat as confidential and shall not disclose to any person (other than the Professional's legal and insurance advisers and auditors) any information relating to the Client, the Project, this Agreement or any other Project related agreement or contract disclosed to and/or acquired by the Professional during the currency of the Project.
- 26.2 The Professional shall not, without the prior written consent of the Client, publish alone or in conjunction with any other person any articles, illustrations, photographs or videos relating to the Project.
- 26.3 The Professional shall assist the Client in meeting any reasonable requests for information in relation to this Agreement and/or the Project which are made to the Client (i) by the Funder or any other regulatory or government authority in relation to any audit or inspection or as may otherwise reasonably required by the Funder and/or (ii) in connection with the Freedom of Information (Scotland) Act 2002 or any statutory modification or re-enactment thereof or any related guidelines or codes of practice. The Client may, from time to time, serve on the Professional an information notice requiring the Professional within such time and in such form as is specified in the information notice, to furnish to the Client such information as the Client may reasonably require relating to such requests for information. The Professional acknowledges that in responding to such requests for information, the Client shall be entitled to provide information relating to the Agreement including the Technical Data and Documents. Although the Professional shall not be entitled to any additional fees in respect of providing such information under this clause, the Client shall however reimburse the Professional for its reasonably incurred photocopying costs in respect of providing the same.
- 26.4 Notwithstanding anything to the contrary contained in this Agreement, the Professional acknowledges and accepts that the Client, the Funder and/or any other regulatory or government authority shall be entitled under the Freedom of Information (Scotland) Act 2002 and/or any code applicable from time to time relating to access to information held by public bodies to disclose, entirely at its own discretion, such information in order to comply with the said Act and code.

27. **RIGHTS OF THIRD PARTIES**

Except as otherwise provided herein, nothing in this agreement confers or purports to confer any rights or benefits on any third party.

28. **NOTICES**

28.1 Any notice by the Client may be sent by first class post or facsimile transmission or delivered to the Professional at the address specified in Schedule Part 1. Where the Professional comprises more than one firm, partnership or company, delivery of any notice to the address specified in Schedule Part 1 in accordance with the provisions of this Clause 27 shall be deemed to have been properly served on each and every proprietor, partner, member or entity of the Professional.

28.2 Any notice by the Professional shall be sent by first class post or facsimile transmission or delivered to the Client at the above address.

28.3 A notice by first class post shall be deemed served on the second day after posting.

28.4 A notice by facsimile transmission shall be deemed served at the time of sending only if transmission and receipt can be proven, and in the absence of such proof of receipt only where a duplicate notice is sent by first class post the same day, which shall be subject to Clause 28.3.

28.5 Any notice given in accordance with the above but received on a non-working day or after business hours in the place of receipt shall be deemed given on the next working day.

29. **WAIVER**

Failure by either Party at any time to enforce any provision of this Agreement against the other shall not be construed as a waiver of such entitlement and shall not affect the validity of this Agreement or any part or parts hereof or the right of the relevant Party to enforce any provision in accordance with its terms. The rights and/or remedies of either Party may only be waived by formal written waiver which is signed by a duly authorised representative of the Party waiving its rights and which makes express and unequivocal reference to the waiver being made pursuant to this Clause 29.

30. **SEVERABILITY**

If any term or condition of this Agreement is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Agreement and the validity and enforceability of the remainder of this Agreement shall not be affected or impaired thereby.

31. **DISPUTE RESOLUTION**

31.1 The parties may by agreement seek to resolve any dispute or difference arising under this Agreement through mediation.

31.2 Any dispute or difference arising under or in respect of this Agreement may be referred at any time to adjudication in accordance with the TeCSA Adjudication Rules subject to the Rules being modified to provide that the Rules shall be governed by Scottish Law and that the adjudication shall be subject to the jurisdiction of the Scottish Courts.

31.3 Clause 31.1 is and shall be without prejudice to either Party's right to refer any issue, dispute or difference for immediate determination by the Scottish Courts, whether the issue, dispute or difference has already been referred to adjudication, or not. Adjudication is not intended to be, and shall not be, a pre-condition to the commencement of proceedings in the Scottish Courts.

31.4 Without prejudice to the generality of their powers, the Scottish Courts shall have the power to direct such measurements and/or valuations as may in their opinion be desirable in order to determine the rights of the Parties under this Agreement and to open up, review and revise any measurement, valuation, statement, opinion, direction, decision or award of any third party, including those of the adjudicator, upon which the rights of the Parties under this Agreement may be dependant and to determine all matters in issue, dispute and/or difference which shall be submitted to them in the same manner as if no measurement, valuation, statement, opinion, direction, decision or award had been given by such third party.

32. GOVERNING LAW AND JURISDICTION

32.1 This Agreement shall be governed by and construed in accordance with Scottish Law.

32.2 The Parties both hereby submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents on this and the preceding [] pages together with the Schedule, duly annexed as relative hereto, are executed by the parties as follows:-

SUBSCRIBED for and on behalf of **the Client**

At.....

on theday of 20....

by

..... Director

in the presence of this witness

..... Witness

..... Full name

..... Address

SUBSCRIBED for and on behalf of **the Professional**

At.....

on the day of 20....

by

..... Director

in the presence of this witness

..... Witness

..... Full name

..... Address

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING APPOINTMENT AGREEMENT
BETWEEN [] AND []

SCHEDULE PART1

CONTRACT PARTICULARS

The Professional:-

The current proprietors/partners owning/comprising the firm of [*Insert name of firm*] are as follows:-

• [*Insert name of partner*];

• [*Insert name of partner*];

• [*Insert name of partner*];

• [*Insert name of partner*].

Recital A:-

The **Project** comprises the design and construction of [].

Clause 1.1 :-

The **Fee** payable by the Client to the Professional for performing the Standard Services in accordance with this Agreement will be £[• *Insert agreed fee*]³ (exclusive of VAT) payable in instalments in accordance with Clause 22.1.

The **Lead Partner / Director** designated to control, manage and supervise the performance of the Services will be [• *Insert name of lead partner / director*], or such replacement as shall be approved by the Client in writing.

For description of **Project** see Recital A above.

The currently proposed/appointed members of the **Professional Team** are as noted elsewhere in the Invitation to Tender Documentation:-

Project Manager []

Other Disciplines []

----- []

³ The comment at footnote 2 refers – Fee may require to be broken down between Section 1 and Section 2 Services.

The Site is [REDACTED].

Clause 8.3:-

The **Pre-Agreed Hourly Rates** for the performance of Additional Services are as follows:-

Lead Partner / Director	£[● <i>Insert hourly rate</i>] per hour;
Other Partners / Directors	£[● <i>Insert hourly rate</i>] per hour;
Senior Professional	£[□ <i>Insert hourly rate</i>] per hour;
Professional	£[● <i>Insert hourly rate</i>] per hour.
Assistant/Technician/amend as relevant	£[● <i>Insert hourly rate</i>] per hour.

Clause 13.1:-

See Clause 1.1 above for the currently proposed/appointed members of the **Professional Team**.

Clause 16.1:-

The Professional warrants to the Client that he has in force a policy of professional indemnity insurance covering his liabilities under or in connection with this Agreement, with a limit of indemnity of not less than £5,000,000 for each and every claim.

Clause 22.1:-

The Fee shall be paid in instalments as follows:-

On completion of identified stages.

Client to confirm timescales.

NOTE: THIS MAY REQUIRE TO BE BROKEN DOWN TO CORRELATE WITH THE RELEVANT SERVICES AS THE SAME MAY BE INSTRUCTED.

Clause 22.4:-

The **due date for payment** shall be 20 days after the date of submission of a properly particularised VAT invoice in accordance with Clause 21.3 and the **final date for payment** shall be 25 days thereafter.

Clause 24.1:-

The Professional shall be entitled to be reimbursed the following categories of expenses and disbursements on the following bases and/or at the following rates:-

- [*Insert description of reimbursable expense / disbursement and basis and/or rate of reimbursement*];
- [*Insert description of reimbursable expense / disbursement and basis and/or rate of reimbursement*];
- [*Insert description of reimbursable expense / disbursement and basis and/or rate of reimbursement*].

Clause 28:-

Any notice shall be sent to the following address:

[]

SCHEDULE PART 2
DESCRIPTION OF SERVICES

SCHEDULE PART 3

PART A - AGREED FORM OF PROFESSIONAL COLLATERAL WARRANTY

PART B – AGREED FORM OF SUB-CONSULTANT COLLATERAL WARRANTY

PART A - AGREED FORM OF PROFESSIONAL COLLATERAL WARRANTY

(1) [] (PROFESSIONAL)

(2) [] (CLIENT)

(3) [] (BENEFICIARY)

(PROFESSIONAL – COLLATERAL WARRANTY)

relating to []

WARRANTY

BETWEEN:-

- (1) [The Professional] [incorporated under the laws of [REDACTED] whose company number is [REDACTED] and whose registered office is situated at [REDACTED] or [a firm, whose place of business is situated at [REDACTED] ("the **Professional**");
- (2) [REDACTED] ("the **Client**"); and
- (3) [REDACTED] incorporated under the laws of [REDACTED] whose company number is [REDACTED] and whose registered office is situated at [REDACTED] ("the **Beneficiary**").

RECITALS:-

- (A) The Client has entered into the Professional Appointment with the Professional.
- (B) The Beneficiary [is the Client][has entered or is about to enter into a contract for the [lease/funding/purchase][is the occupier] of the Project or part thereof.
- (C) The Professional [and the Client] have agreed to enter into this agreement with the Beneficiary in connection with the Professional's duties and obligations under the Professional Appointment.

1. DEFINITIONS

"Building Contract"	means the contract or contracts to be entered into pursuant to which the Contractor shall undertake (inter alia) to design and construct the works comprising the Project
"Client"	means [REDACTED] [the party designated as such at the beginning of this Agreement]
"Contractor"	means the contractor or contractors employed or to be employed to design and construct works comprising the Project
"Funding Agreement"	means any agreement entered into for the provision of finance for the Project
"Insurance Amount"	means [(£[to be completed])]
"Intellectual Property Rights"	means all current and future and/or equitable interests registered or unregistered trademarks, service marks, patents registered design or utility marks, applications for any of the foregoing copyrights, unregistered designs, knowhow, proprietary information, inventions, and any other intellectual property rights
"Professional Appointment"	means the appointment dated [REDACTED] and entered into between the Client and the Professional appointing the Professional to carry out the Services (which shall include any or all Instructions (as defined in the Professional Appointment) issues pursuant thereto)
"Professional"	means the party designated as such at the beginning

of this Agreement

"Project"	means the design and construction of [REDACTED]
"Services"	means the professional services more particularly defined in the Professional Appointment
"Technical Data and Documents"	means any and all data and/or documents (whether in hard copy form or stored on electronic media) produced or procured or in the course of being produced or procured by or on behalf of the Professional for all purposes in connection with the Project (including (where applicable) surveys, investigations, enquiries, studies, reports, plans, drawings, specifications, details, models, calculations (including levels and setting out dimensions), bills of quantities, Schedule Parts of work, programmes, method statements, budgets and cost plans)

NOW IT IS AGREED as follows:-

2. WARRANTY AND UNDERTAKING

The Professional warrants and undertakes to the Beneficiary that it has carried out and shall continue to carry out its duties and obligations in each and every respect in accordance with the Professional Appointment.

3. [BENEFICIARY'S AUTHORITY⁴

The Beneficiary has no authority to issue any direction or instruction to the Professional in relation to the performance of the Professional's duties and obligations under the Professional Appointment unless and until the Beneficiary gives notice under [Clause 4 or]⁵ Clause 5.

4. TERMINATION OF THE FUNDING AGREEMENT⁶

4.1 The Professional agrees that in the event of any event of default under the Funding Agreement, or if any amounts due and owing under the Funding Agreement have been accelerated and/or enforcement procedures have been commenced thereunder, the Professional shall if so required by written notice from the Beneficiary, forthwith accept the instructions of the Beneficiary, or its nominee, to the exclusion of the Client in respect of the carrying out and completion of the Services upon the terms and conditions of the Professional Appointment.

4.2 The Client acknowledges that the Professional shall be entitled to rely on a notice given to the Professional by the Beneficiary under this Clause 4 and shall not be in breach of the Professional Appointment by complying with the obligations imposed by this Clause 4.

5. TERMINATION OF PROFESSIONAL APPOINTMENT

5.1 The Professional agrees that it will not without first giving the Beneficiary not less than 28 (twenty eight) days written notice (7 (seven) days in respect of suspension), specifying the details of the default upon which the Professional is relying, exercise any right it may have to

⁴ Clauses 3, 4, 5 and 6 only applicable where step in rights are being granted. Where step-in is granted to more than one beneficiary then a ranking provision or agreement will require to be entered into.

⁵ Only applicable in the funder warranty

⁶ Only applicable in the funder warranty

determine its employment under the Professional Appointment or to treat the Professional Appointment as having been repudiated by the Client or to discontinue or suspend the performance of its duties and obligations under the Professional Appointment, or any part thereof.

- 5.2 The Professional's right to determine its employment under the Professional Appointment or treat the Professional Appointment as having been repudiated or to discontinue or suspend performance shall cease if within the period of notice referred to in Clause 4.1 the Beneficiary shall give written notice to the Professional, and in such event the Professional shall forthwith accept the instructions of the Beneficiary, or its nominee, to the exclusion of the Client in respect of the carrying out and completion of the Services upon the terms and conditions of the Professional Appointment.
- 5.3 Notwithstanding any other provision in the Professional Appointment for the exercise by the Professional of a right of determination, any notice of determination to be given under the Professional Appointment shall be deemed extended as may be necessary in order to give the Beneficiary not less than 28 (twenty eight) days written notice as prescribed in Clause 5.1.
- 5.4 Compliance by the Professional with the provisions of Clause 5.1 shall not be treated as a waiver by the Professional of any breach on the part of the Client giving rise to the right of determination nor otherwise prevent the Professional from exercising its rights after the expiration of the notice (under Clause 5.1) unless the right of determination shall have ceased under the provisions of Clause 5.2.
- 5.5 The Client acknowledges that the Professional shall be entitled to rely on a notice given to the Professional by the Beneficiary under this Clause 5 and shall not be in breach of the Professional Appointment by complying with the obligations imposed by this Clause 5.

6. PAYMENT AND SET-OFF

- 6.1 The Professional acknowledges that the Beneficiary has no liability to the Professional under the Professional Appointment unless and until the Beneficiary gives notice under [Clause 4 or] Clause 5 and in such event, subject to Clause 5.2.
- 6.2 Upon the Beneficiary serving any written notice under [Clause 4.1 or]⁷ Clause 5.2:-
- 6.2.1 the Professional Appointment shall continue in full force and effect as if no right of the Professional to determine, repudiate, discontinue or suspend the Professional Appointment had arisen (in the case of any written notice under Clause 5.2);
- 6.2.2 the Professional shall be responsible to the Beneficiary, or its nominee, as the case may be, for the performance of its duties and obligations in lieu of the Client ab initio; and
- 6.2.3 the Beneficiary, or its nominee, shall accept liability for all interim payments which become due and payable, and any other duties and obligations of the Client, after the issue of such notice **provided always** that the Beneficiary or its nominee shall have no obligation or liability to the Professional in respect of any payment or other obligation or liability which accrued or arose under the Professional Appointment prior to the issue of such notice.
- 6.3 The Professional shall not be entitled to claim any set-off or exercise any right of retention against the Beneficiary in respect of any claim by the Professional against the Client.]

7. COPYRIGHT

⁷ References to clause 4 are only applicable in the funder warranty

7.1 The Professional hereby grants to the Beneficiary an irrevocable, perpetual, transferable, non-exclusive, royalty-free, assignable licence (carrying the right to grant sub-licences in the same form as the main licence) to copy, use, reproduce, amend, adapt, merge, extend and modify all Intellectual Property Rights in the Technical Data and Documents for all purposes in connection with the Project including without limitation the design, construction, completion, maintenance, advertisement, reinstatement, repair, alteration, use, letting and sale of the same.

7.2 The Professional shall provide to the Beneficiary a copy of any of the Technical Data and Documents as soon as reasonably practicable after receipt by the Professional of a written request from the Beneficiary to do so. The Beneficiary agrees to pay the reasonable copying charges of the Professional for provision of the same to the Beneficiary.

8. **PROFESSIONAL INDEMNITY INSURANCE**

8.1 The Professional shall maintain with an insurer of good repute professional indemnity insurance in respect of any negligent act, omission or default (including breach of statutory duty) by the Professional with a limit of indemnity of not less than the Insurance Amount in respect of each and every claim and the Professional shall maintain such insurance at no less than such amount throughout the period the Professional retains liability under the Professional Appointment provided and to the extent that such cover is generally available in the insurance market at commercially reasonable rates.

8.2 When he is required to do so by the Beneficiary, the Professional shall produce a broker's certificate to confirm compliance with Clause 8.1. If the Professional fails to provide a broker's certificate, the Beneficiary shall be entitled to effect such insurance cover and recover the cost thereof from the Professional on demand as a debt.

8.3 In the event such insurance ceases to be generally available in the market at commercially reasonable rates, the Professional shall immediately inform the Beneficiary in order that the Professional and the Beneficiary can discuss the means of best protecting the respective positions of the Professional and the Beneficiary in the absence of such insurance.

9. **VARIATION OF AGREEMENT**

The Professional and the [Client] agree not to vary or agree to vary the terms of the Professional Appointment without the previous written consent of the Beneficiary.

10. **INDEPENDENT ENQUIRIES**

The liability of the Professional under this agreement shall not be released or diminished by any independent investigation or enquiry made by or on behalf of the Beneficiary nor by any independent advice received by the Beneficiary whether or not such investigation, enquiry or advice might give rise to an independent liability of any third party to the Beneficiary nor by any comment, approval, consent, inspection or witnessing of testing in relation to the Project or attendance at site meetings by the Beneficiary, or its representatives.

11. **NOTICES**

11.1 Any notice by the Beneficiary may be sent by first class post or facsimile transmission or delivered to the Professional at the above address or the Professional's address last known to the Beneficiary. Where the Professional comprises more than one firm, partnership or company, delivery of any notice to the aforementioned address shall be deemed to have been properly served on each and every proprietor, partner, member or entity of the Professional.

11.2 Any notice by the Professional shall be sent by first class post or facsimile transmission or delivered to the Beneficiary at the above address.

11.3 A notice by first class post shall be deemed served on the second day after posting.

11.4 A notice by facsimile transmission shall be deemed served at the time of sending only if transmission and receipt can be proven, and in the absence of such proof of receipt only where a duplicate notice is sent by first class post the same day, which shall be subject to Clause 11.3.

11.5 Any notice given in accordance with the above but received on a non-working day or after business hours in the place of receipt shall be deemed given on the next working day.

12. **GOVERNING LAW AND JURISDICTION**

This agreement shall be governed by and construed in accordance with the laws of Scotland and the parties hereby agree to submit to the exclusive jurisdiction of the Scottish courts as regards any dispute or difference arising out of or in connection with this agreement.

13. **ASSIGNATION**

13.1 The Beneficiary is entitled to assign this agreement in whole but not in part twice without the consent of the Professional. Any further assignation shall require the written consent of the Professional, not to be unreasonably withheld or delayed.

13.2 The Professional shall not in any circumstances be entitled to assign this agreement in any manner whatsoever.

14. **CONTINUING EFFECT**

Notwithstanding the completion of the Project the provisions of this agreement shall continue to have effect.

15. **LIMITATION**

15.1 No action or proceedings whatsoever for any breach of this agreement shall be commenced against the Professional after the expiry of 12 years from the last date of practical completion decided/issued/certified under the Building Contract.

15.2 The Professional shall have no greater liability to the Beneficiary hereunder than he would have had to the Beneficiary under the Professional Appointment had the Beneficiary been named as joint client with the Client thereunder. The Professional's duties and obligations to the Beneficiary shall be no greater or of longer duration than the duties it owes to the Client under the Professional Appointment.

15.3 The Professional shall be entitled to raise equivalent rights of defence in any action or proceedings raised under this agreement to those it would be entitled to raise under the Professional Appointment **provided always** that the Professional shall not be entitled to raise in defence of any action or proceedings brought by the Beneficiary under this agreement the fact that the Client has not suffered any loss or has suffered a different loss from that suffered by the Beneficiary.

16. **RIGHTS OF THIRD PARTIES**

Except as otherwise provided herein, nothing in this agreement confers or purports to confer any rights or benefits on any third party.

17. **JOINT AND SEVERAL LIABILITY**

Where the Professional is a firm, references in this agreement to "the Professional" shall be deemed to include reference to each and every present and future partner of such firm and the liability of each and every partner under this agreement shall be deemed to be joint and several.

18. **DUTY OF CARE**

18.1 The rights and remedies conferred upon the Beneficiary by this agreement are in addition to any other rights and remedies it may have against the Professional, including without prejudice to the generality of the foregoing, any remedies in delict.

18.2 The Professional acknowledges that the Beneficiary shall be deemed to have relied upon the skill and judgement of the Professional in respect of the Project.

IN WITNESS WHEREOF these presents consisting of [] are subscribed as follows:

By the Professional:

EXECUTED by

.....

At

on the day of 20.....

by

Print name:.....

[Director/Authorised Signatory]

in the presence of this witness

..... Witness signature

..... Print full name

..... Address

By the Client:

EXECUTED by

.....

At

on the day of 20.....

by

Print name:.....

[Director/Authorised Signatory]

in the presence of this witness

..... Witness signature

..... Print full name

..... Address

By the Beneficiary:

EXECUTED by

.....

At

on the day of 20.....

by

Print name:.....

[Director/Authorised Signatory]

in the presence of this witness

..... Witness signature

..... Print full name

..... Address

PART B – AGREED FORM OF SUB-CONSULTANT COLLATERAL WARRANTY

- (1) [] (SUB-CONSULTANT)
- (2) [] (PROFESSIONAL)
- (3) [] (BENEFICIARY)

(SUB-CONSULTANT – COLLATERAL WARRANTY)

relating to []

WARRANTY

BETWEEN:-

- (1) [] incorporated under the laws of [] whose company number is [] and whose registered office is situated at [] ("the **Sub-Consultant**")
- (2) [The Professional] [incorporated under the laws of [] whose company number is [] and whose registered office is situated at [] or [a firm, whose place of business is situated at [] ("the **Professional**"); and
- (3) [] incorporated under the laws of [] whose company number is [] and whose registered office is situated at [] ("the **Beneficiary**").

RECITALS:-

- (A) The Client has entered into the Professional Appointment with the Professional.
- (B) The Professional has appointed the Sub-Consultant to carry out and complete the Sub-Contract Services at the Project.
- (C) The Beneficiary [is the Client][has entered or is about to enter into a contract for the [lease/funding/purchase][is the occupier] of the Project or part thereof.

1. DEFINITIONS

"Building Contract"	means the contract or contracts to be entered into pursuant to which the Contractor shall undertake (inter alia) to design and construct the works comprising the Project
"Client"	means []
"Contractor"	means the contractor or contractors employed or to be employed to design and construct works comprising the Project
"Funding Agreement"	means any agreement entered into for the provision of finance for the Project
"Insurance Amount"	means [(£[to be completed])]
"Intellectual Property Rights"	means all current and future and/or equitable interests registered or unregistered trademarks, service marks, patents registered design or utility marks, applications for any of the foregoing copyrights, unregistered designs, knowhow, proprietary information, inventions, and any other intellectual property rights
"Sub-Consultant Appointment"	means the appointment dated [] and entered into between the Professional and the Sub-Consultant appointing the Sub-Consultant to carry out the Sub-Consultant Services
"Professional"	means [] or [the party designated as such at the beginning of this Agreement]

"Project"	means the design and construction of [REDACTED]
"Sub-consultant Services"	means the professional services more particularly defined in the Sub-Consultant Appointment
"Technical Data and Documents"	means any and all data and/or documents (whether in hard copy form or stored on electronic media) produced or procured or in the course of being produced or procured by or on behalf of the Sub-Consultant for all purposes in connection with the Project (including (where applicable) surveys, investigations, enquiries, studies, reports, plans, drawings, specifications, details, models, calculations (including levels and setting out dimensions), bills of quantities, Schedule Parts of work, programmes, method statements, budgets and cost plans)

NOW IT IS AGREED as follows:-

2. WARRANTY AND UNDERTAKING

The Sub-Consultant warrants and undertakes to the Beneficiary that it has carried out and shall continue to carry out its duties and obligations in each and every respect in accordance with the Sub-Consultant Appointment.

3. [BENEFICIARY'S AUTHORITY]⁸

The Beneficiary has no authority to issue any direction or instruction to the Sub-Consultant in relation to the performance of the Sub-Consultant's duties and obligations under the Sub-Consultant Appointment unless and until the Beneficiary gives notice under [Clause 4 or] Clause 5.

4. TERMINATION OF THE FUNDING AGREEMENT⁹

4.1 The Sub-Consultant agrees that in the event of any event of default under the Funding Agreement, or if any amounts due and owing under the Funding Agreement have been accelerated and/or enforcement procedures have been commenced thereunder, the Sub-Consultant shall if so required by written notice from the Funder, forthwith accept the instructions of the Funder, or its nominee, to the exclusion of the Professional in respect of the carrying out and completion of the Services upon the terms and conditions of the Professional Appointment.

4.2 The Professional acknowledges that the Sub-Consultant shall be entitled to rely on a notice given to the Sub-Consultant by the Funder under this Clause 4 and shall not be in breach of the Sub-Consultant Appointment by complying with the obligations imposed by this Clause 4.

5. TERMINATION OF SUB-CONSULTANT APPOINTMENT¹⁰

5.1 The Sub-Consultant agrees that it will not without first giving the Beneficiary not less than 28 (twenty eight) days written notice (7 (seven) days in respect of suspension), specifying the details of the default upon which the Sub-Consultant is relying, exercise any right it may have to determine its employment under the Sub-Consultant Appointment or to treat the

⁸ Clauses 3, 4, 5 and 6 only applicable where step in rights are being granted. Where step-in is granted to more than one beneficiary then a ranking provision or agreement will require to be entered into.

⁹ Only applicable in the Funder warranty – any references to clause 4 are only applicable in the funder warranty.

¹⁰ Only applicable where step in is to be granted and where step-in is granted to more than one beneficiary then a ranking provision or agreement will require to be entered into. This may impact on clause 4 also.

Sub-Consultant Appointment as having been repudiated by the Professional or to discontinue or suspend the performance of its duties and obligations under the Sub-Consultant Appointment, or any part thereof.

- 5.2 The Sub-Consultant's right to determine its employment under the Sub-Consultant Appointment or treat the Sub-Consultant Appointment as having been repudiated or to discontinue or suspend performance shall cease if within the period of notice referred to in Clause 4.1 the Beneficiary shall give written notice to the Sub-Consultant, and in such event the Sub-Consultant shall forthwith accept the instructions of the Beneficiary, or its nominee, to the exclusion of the Professional in respect of the carrying out and completion of the Sub-Consultant Services upon the terms and conditions of the Sub-Consultant Appointment.
- 5.3 Notwithstanding any other provision in the Sub-Consultant Appointment for the exercise by the Sub-Consultant of a right of determination, any notice of determination to be given under the Sub-Consultant Appointment shall be deemed extended as may be necessary in order to give the Beneficiary not less than 28 (twenty eight) days written notice as prescribed in Clause 5.1.
- 5.4 Compliance by the Sub-Consultant with the provisions of Clause 5.1 shall not be treated as a waiver by the Sub-Consultant of any breach on the part of the Professional giving rise to the right of determination nor otherwise prevent the Sub-Consultant from exercising its rights after the expiration of the notice (under Clause 5.1) unless the right of determination shall have ceased under the provisions of Clause 5.2.
- 5.5 The Professional acknowledges that the Sub-Consultant shall be entitled to rely on a notice given to the Sub-Consultant by the Beneficiary under this Clause 5 and shall not be in breach of the Sub-Consultant Appointment by complying with the obligations imposed by this Clause 5.

6. **PAYMENT AND SET-OFF¹¹**

- 6.1 The Sub-Consultant acknowledges that the Beneficiary has no liability to the Sub-Consultant under the Sub-Consultant Appointment unless and until the Beneficiary gives notice under [Clause 4 or] Clause 5 and in such event, subject to Clause 5.2.
- 6.2 Upon the Beneficiary serving any written notice under [Clause 4.1 or] Clause 5.2:-
- 6.2.1 The Sub-Consultant Appointment shall continue in full force and effect as if no right of the Sub-Consultant to determine, repudiate, discontinue or suspend the Sub-Consultant Appointment had arisen (in the case of any written notice under Clause 5.2);
- 6.2.2 the Sub-Consultant shall be responsible to the Beneficiary, or its nominee, as the case may be, for the performance of its duties and obligations in lieu of the Professional ab initio; and
- 6.2.3 the Beneficiary, or its nominee, shall accept liability for all interim payments which become due and payable, and any other duties and obligations of the Professional, after the issue of such notice **provided always** that the Beneficiary or its nominee shall have no obligation or liability to the Sub-Consultant in respect of any payment or other obligation or liability which accrued or arose under the Sub-Consultant Appointment prior to the issue of such notice.
- 6.3 The Sub-Consultant shall not be entitled to claim any set-off or exercise any right of retention against the Beneficiary in respect of any claim by the Sub-Consultant against the Professional.]

¹¹ Only applicable where step in is to be granted.

7. **COPYRIGHT**

7.1 The Sub-Consultant hereby grants to the Beneficiary an irrevocable, perpetual, transferable, non-exclusive, royalty-free, assignable licence (carrying the right to grant sub-licences in the same form as the main licence) to copy, use, reproduce, amend, adapt, merge, extend and modify all Intellectual Property Rights in the Technical Data and Documents for all purposes in connection with the Project including without limitation the design, construction, completion, maintenance, advertisement, reinstatement, repair, alteration, use, letting and sale of the same.

7.2 The Sub-Consultant shall provide to the Beneficiary a copy of any of the Technical Data and Documents as soon as reasonably practicable after receipt by the Sub-Consultant of a written request from the Beneficiary to do so. The Beneficiary agrees to pay the reasonable copying charges of the Sub-Consultant for provision of the same to the Beneficiary.

8. **PROFESSIONAL INDEMNITY INSURANCE**

8.1 The Sub-Consultant shall maintain with an insurer of good repute professional indemnity insurance in respect of any negligent act, omission or default (including breach of statutory duty) by the Sub-Consultant with a limit of indemnity of not less than the Insurance Amount in respect of each and every claim and the Sub-Consultant shall maintain such insurance at no less than such amount throughout the period the Sub-Consultant retains liability under the Sub-Consultant Appointment provided and to the extent that such cover is generally available in the insurance market at commercially reasonable rates.

8.2 When he is required to do so by the Beneficiary, the Sub-Consultant shall produce a broker's certificate to confirm compliance with Clause 8.1. If the Sub-Consultant fails to provide a broker's certificate, the Beneficiary shall be entitled to effect such insurance cover and recover the cost thereof from the Sub-Consultant on demand as a debt.

8.3 In the event such insurance ceases to be generally available in the market at commercially reasonable rates, the Sub-Consultant shall immediately inform the Beneficiary in order that the Sub-Consultant and the Beneficiary can discuss the means of best protecting the respective positions of the Sub-Consultant and the Beneficiary in the absence of such insurance.

9. **VARIATION OF AGREEMENT**

The Sub-Consultant and the Professional agree not to vary or agree to vary the terms of the Sub-Consultant Appointment without the previous written consent of the Beneficiary.

10. **INDEPENDENT ENQUIRIES**

The liability of the Sub-Consultant under this agreement shall not be released or diminished by any independent investigation or enquiry made by or on behalf of the Beneficiary nor by any independent advice received by the Beneficiary whether or not such investigation, enquiry or advice might give rise to an independent liability of any third party to the Beneficiary nor by any comment, approval, consent, inspection or witnessing of testing in relation to the Project or attendance at site meetings by the Beneficiary, or its representatives.

11. **NOTICES**

11.1 Any notice by the Beneficiary may be sent by first class post or facsimile transmission or delivered to the Sub-Consultant at the above address or the Sub-Consultant's address last known to the Beneficiary. Where the Sub-Consultant comprises more than one firm, partnership or company, delivery of any notice to the aforementioned address shall be deemed to have been properly served on each and every proprietor, partner, member or entity of the Sub-Consultant.

- 11.2 Any notice by the Sub-Consultant shall be sent by first class post or facsimile transmission or delivered to the Beneficiary at the above address.
- 11.3 A notice by first class post shall be deemed served on the second day after posting.
- 11.4 A notice by facsimile transmission shall be deemed served at the time of sending only if transmission and receipt can be proven, and in the absence of such proof of receipt only where a duplicate notice is sent by first class post the same day, which shall be subject to Clause 11.3.
- 11.5 Any notice given in accordance with the above but received on a non-working day or after business hours in the place of receipt shall be deemed given on the next working day.

12. **GOVERNING LAW AND JURISDICTION**

This agreement shall be governed by and construed in accordance with the laws of Scotland and the parties hereby agree to submit to the exclusive jurisdiction of the Scottish courts as regards any dispute or difference arising out of or in connection with this agreement.

13. **ASSIGNATION**

- 13.1 The Beneficiary is entitled to assign this agreement in whole but not in part twice without the consent of the Sub-Consultant. Any further assignment shall require the written consent of the Sub-Consultant, not to be unreasonably withheld or delayed.
- 13.2 The Sub-Consultant shall not in any circumstances be entitled to assign this agreement in any manner whatsoever.

14. **CONTINUING EFFECT**

Notwithstanding the completion of the Project the provisions of this agreement shall continue to have effect.

15. **LIMITATION**

- 15.1 No action or proceedings whatsoever for any breach of this agreement shall be commenced against the Sub-Consultant after the expiry of 12 years from the last date of practical completion decided/issued/certified under the Building Contract.
- 15.2 The Sub-Consultant shall have no greater liability to the Beneficiary hereunder than he would have had to the Beneficiary under the Sub-Consultant Appointment had the Beneficiary been named as joint client with the Professional thereunder. The Sub-Consultant's duties and obligations to the Beneficiary shall be no greater or of longer duration than the duties it owes to the Professional under the Sub-Consultant Appointment.
- 15.3 The Sub-Consultant shall be entitled to raise equivalent rights of defence in any action or proceedings raised under this agreement to those it would be entitled to raise under the Sub-Consultant Appointment **provided always** that the Sub-Consultant shall not be entitled to raise in defence of any action or proceedings brought by the Beneficiary under this agreement the fact that the Professional has not suffered any loss or has suffered a different loss from that suffered by the Beneficiary.

16. **RIGHTS OF THIRD PARTIES**

Except as otherwise provided herein, nothing in this agreement confers or purports to confer any rights or benefits on any third party.

17. **JOINT AND SEVERAL LIABILITY**

Where the Sub-Consultant is a firm, references in this agreement to "the Sub-Consultant" shall be deemed to include reference to each and every present and future partner of such firm and the liability of each and every partner under this agreement shall be deemed to be joint and several.

18. **DUTY OF CARE**

18.1 The rights and remedies conferred upon the Beneficiary by this agreement are in addition to any other rights and remedies it may have against the Sub-Consultant, including without prejudice to the generality of the foregoing, any remedies in delict.

18.2 The Sub-Consultant acknowledges that the Beneficiary shall be deemed to have relied upon the skill and judgement of the Sub-Consultant in respect of the Project.

IN WITNESS WHEREOF these presents on this and the preceding [] pages are executed by the parties as follows:-

SUBSCRIBED for and on behalf of

At

on the day of 20.....

by

..... Director

in the presence of this witness

..... Witness

..... Full name

..... Address

SUBSCRIBED for and on behalf of

At

on the day of 20.....

by

..... Director

in the presence of this witness

..... Witness

..... Full name

..... Address

SUBSCRIBED for and on behalf of

At

on the day of 20.....

by

..... Director

in the presence of this witness

..... Witness

..... Full name

..... Address

SCHEDULE PART 4

PLAN

SCHEDULE PART 5

INSTRUCTION

TO BE TYPED ON [REDACTED] HEADED PAPER

To [insert name of contact and
full name and address of consultant]

Dear [REDACTED]

[Services] Professional's Appointment

This Instruction is supplemental to the agreement dated [REDACTED] between [REDACTED] (referred to as "the Client" in this letter) and [REDACTED] whose registered office is at [REDACTED] (referred to as "the Professional" in this letter) ("the Agreement").

Words and phrases used in this Instruction commencing with a capital letter shall where the context permits have the same meaning as words and phrases so used in the Agreement.

References to Schedule Parts in this Instruction are references to the Schedule Parts attached unless otherwise stated.

The Client wishes to have carried out the Services identified in Schedule Part A.

The parties have agreed as follows:

1. The Professional is hereby instructed to carry out the services identified in Schedule Part A for the Fee set out in Schedule Part A.
2. In performing the services the terms and conditions of the Agreement shall apply in their entirety to this Instruction.
3. This Instruction shall be governed and continued according to the laws of Scotland and parties agree to submit to the exclusive jurisdiction of the Scottish Courts.

Instructed by:

Instruction Accepted by:

This is the Schedule referred to in the foregoing Instruction between [redacted] and [redacted]

SCHEDULE PART A

General Project Details

- 1.1 The "Employer's Representative" is [redacted]
- 1.2 The "Fee" is the lump sum of £[redacted]
- 1.3 The "Professional Team" are: [redacted]
- 1.4 The "Project" is [full description]
- 1.5 The Services required in connection with the Project are as set out in Schedule Part 2 to the subject to the following additions/omissions:
[redacted]
- 2. The Sub Consultant and the services to be provided by them are:
[redacted]
- 3. The personnel to be used by the Professional in relation to the Project are [redacted].
- 4. The Fee is payable in instalments as follows:

Work Instalments	Stage/Monthly	Amount Due [state percentage of Fee or Figure]	Cumulative

SCHEDULE PART 6

NOT USED

SCHEDULE PART 7

(1) [REDACTED] (Guarantor)

(2) [REDACTED] (Client)

**PARENT COMPANY GUARANTEE OF PROFESSIONAL'S
OBLIGATIONS**

relating to
the design and construction of [REDACTED] at
[REDACTED]

AGREEMENT

BY

- (1) [REDACTED] a company incorporated under the laws of England, company number [REDACTED] whose registered office is at [REDACTED] (the "**Guarantor**");

IN FAVOUR OF

- (2) [REDACTED] (the "**Beneficiary**")

WHEREAS

- (A) By an appointment dated on or around the date of this Agreement (the "**Appointment**"), the Beneficiary has appointed [*Professional*] of [address] (the "**Professional**") to provide [*insert description of services*] in relation to [REDACTED].
- (B) The Professional is a wholly owned subsidiary of the Guarantor.
- (C) The Guarantor has agreed, in consideration of the Beneficiary entering into the Appointment with the Professional, to guarantee the due performance by the Professional of all of the Professional's obligations under the Appointment.
- (D) It is the intention of the parties that this document be executed and take effect as an Agreement.

IT IS AGREED

In consideration of the Beneficiary entering into the Appointment, the Guarantor agrees with the Beneficiary as follows:

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 unless defined elsewhere in this Agreement or the context requires otherwise, capitalised terms shall have the same meaning as ascribed to them in the Appointment;
- 1.2 the capitalised terms below shall have the following meanings:
- 1.2.1 "**Business Day**" means any day (except a Saturday, Sunday or Bank Holiday) upon which clearing banks in the [REDACTED] are open to customers for business;
- 1.2.2 "**Guaranteed Obligations**" means all obligations of the Professional to the Beneficiary under the Appointment together with all obligations owed by the Professional to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Appointment (including the payment of monies due and payable by the Professional under, and damages for any breach of, the Appointment);
- 1.2.3 "**Insolvency of the Professional**" means the occurrence in respect of the Professional of any of the events specified in clause [21.6.1] of the Appointment; and

- 1.2.4 **"Losses"** means all losses, damages, liabilities, costs, and expenses;
- 1.3 references to this Agreement and any provisions of this Agreement or to any other document or agreement (including the Appointment) are to be construed as references to this Agreement, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
- 1.4 words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 a reference to any Law shall include a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.7 in construing this Agreement, the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly any phrase introduced by the words "including", "includes", "in particular", "for example" or similar shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.8 references to liability are to include any liability whether actual, contingent, present or future; and
- 1.9 clause headings are for ease of reference only and are not to affect the interpretation of this Agreement.

2. **GUARANTEE AND INDEMNITY**

2.1 The Guarantor irrevocably and unconditionally guarantees, the due, proper and punctual performance by the Professional of all of the Guaranteed Obligations now or at anytime due, owing or incurred by the Professional to the Beneficiary.

2.2 If at any time the Professional shall fail to perform or shall breach any of the Guaranteed Obligations ("**Breach**") or if the Appointment is terminated on the grounds of the Insolvency of the Professional ("**Termination**"), the Guarantor shall:

2.2.1 on demand, fully, punctually and specifically perform or procure to be performed the Guaranteed Obligations (which in the circumstances of Termination shall be all obligations of the Professional to the Beneficiary under the Appointment which shall survive termination) as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Appointment had been entered into directly between the Guarantor and Professional; and

2.2.2 be liable to the Beneficiary for any and all Losses of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever by reason of such Breach or Termination

provided that, subject to the other provisions of this Agreement, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Professional under the Appointment.

2.3 As a separate and independent obligation, the Guarantor agrees to indemnify and keep the Beneficiary indemnified on demand against all Losses (including VAT thereon, and including, without limitation, all court fees and all legal fees on a solicitor and own client basis, together with any disbursements) of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any Guaranteed Obligation is or becomes unenforceable, invalid or illegal as if such Guaranteed Obligation had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall

be no greater than the Professional's liability would have been if the Guaranteed Obligation had not become unenforceable, invalid or illegal.

3. DEMANDS AND NOTICES

3.1 Any demand or notice served by the Beneficiary on the Guarantor under this Agreement shall be in writing, signed by or on behalf of the Beneficiary and shall be served by:

3.1.1 delivering it by hand or by courier;

3.1.2 sending it by pre-paid first class, recorded or special delivery post; or

3.1.3 fax;

to:

or such other address or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Agreement as being an address or facsimile number for the receipt of such demands or notices.

3.2 A notice shall be deemed to have been received:

3.2.1 if delivered by hand or by courier, at the time of delivery if delivered before 4.00 pm on any Business Day, and otherwise at 9.00 am on the next Business Day;

3.2.2 in the case of pre-paid first class, recorded or special delivery post, two Business Days from the date of posting; or

3.2.3 in the case of fax, on the day of transmission if sent before 4.00pm on any Business day and otherwise at 9.00am on the next Business Day provided that, at the time of transmission of the fax, an error-free transmission report has been received by the sender.

3.3 In proving service, it shall be sufficient to prove that the envelope containing the demand or notice was:

3.3.1 addressed to the Guarantor at its address previously notified for the receipt of demands and notices (or as otherwise notified by the Guarantor); and

3.3.2 delivered either to that address or into the custody of the postal authorities as pre-paid first class, recorded or special delivery post; or

3.3.3 transmitted by fax to the fax number of the Guarantor at its fax number previously notified for the receipt of notices and demands (or as otherwise notified by the Guarantor).

4. BENEFICIARY'S PROTECTIONS

4.1 This Agreement shall be a continuing security for the Guaranteed Obligations and the Guarantor shall not be discharged or released from this Agreement by any of the following (whether or not known to, or assented to by, the Guarantor):

4.1.1 any variation or amendment to, or termination of, the Appointment or the services to be performed thereunder;

4.1.2 any arrangement made between the Professional and the Beneficiary;

- 4.1.3 any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in respect of the Guaranteed Obligations;
 - 4.1.4 any partial performance (except to the extent of such partial performance) by the Professional of the Guaranteed Obligations or any omission or delay on the part of the Beneficiary in exercising its rights under this Agreement;
 - 4.1.5 any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Professional or any other person;
 - 4.1.6 any of the Guaranteed Obligations being or becoming void, illegal, invalid or unenforceable; or
 - 4.1.7 any act or omission of the Beneficiary and any other thing or circumstances which but for this Clause might otherwise exonerate the Guarantor from its liabilities under this Agreement.
- 4.2 The rights of the Beneficiary against the Guarantor under this Agreement are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 4.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Agreement as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of any Breach or Termination shall not preclude the Beneficiary from making a further demand in respect of the same or some other Breach in respect of the same Guaranteed Obligation or Termination, provided that the Beneficiary shall not be entitled to recover sums payable under this Agreement more than once.
- 4.4 The Beneficiary shall not be obliged before taking steps to enforce this Agreement against the Guarantor to obtain judgment against the Professional or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Professional or any third party, or to take any action whatsoever against the Professional or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor under this Agreement.
- 4.5 The Beneficiary's rights under this Agreement are cumulative and not exclusive of any rights provided by law and may be exercised from time to time as the Beneficiary deems expedient.
- 4.6 Any waiver by the Beneficiary of any terms of this Agreement, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 4.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Agreement subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

5. **GUARANTOR RESTRICTIONS**

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Professional and/or any default by the Guarantor in the performance of any of its obligations under this Agreement, exercise any rights it may have: (i) of subrogation and indemnity, (ii) to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Professional's obligations and (iii) to prove in the liquidation or insolvency of the Professional, only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Professional and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this clause on trust for the Beneficiary.

6. **PAYMENTS AND SET-OFF**

6.1 All sums payable by the Guarantor under this Agreement shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

6.2 The Guarantor shall pay interest on any amount due under this Agreement from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to [X%] above the base rate of the Bank of England from time to time in force. provided always that any payment of such interest shall discharge, to that extent any liability which the Professional may have to the Beneficiary under the Appointment to pay interest in respect of the relevant Guaranteed Obligation.

6.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Guarantee.

7. **ASSIGNATION**

7.1 The Beneficiary shall be entitled to assign or charge the benefit of this Agreement, in whole or in part, without the consent of the Guarantor.

7.2 The Guarantor shall not be entitled to contend that any person to whom this Agreement is assigned is precluded from recovering under this Agreement any Loss incurred by such assignee resulting from any breach of this Agreement by reason that such person is an assignee and not named as a party hereunder.

8. **SEVERANCE**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

9. **THIRD PARTY RIGHTS**

Unless otherwise provided herein, a person who is not a party to this Agreement shall have no right to enforce any term of this Agreement.

10. **GOVERNING LAW**

10.1 This Agreement, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in all respects in accordance with Scots law.

10.2 The Parties agree that the Scottish Courts shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Agreement (including any non-contractual obligations arising out of or in connection with it) and hereby irrevocably submit themselves to the jurisdiction of such courts

IN WITNESS WHEREOF these here presents executed on this and the preceding [] pages together with the Schedule, duly annexed as relative hereto, are executed as follows:

SUBSCRIBED for and on behalf of []

at

on the day of 20

by

.....Signature of Director/Authorised Signatory*

.....Print Full Name of Director/Authorised Signatory*

before this witness

.....Witness Signature

.....Print Full Name of Witness

.....Occupation

.....Address

.....

SUBSCRIBED for and on behalf of []

at

on the day of 20

by

.....Signature of Director/Authorised Signatory*

.....Print Full Name of Director/Authorised Signatory*

before this witness

.....Witness Signature

.....Print Full Name of Witness

.....Occupation

.....Address

.....

SUBSCRIBED for and on behalf of []

at

on the day of 20

* Delete job title as appropriate.

* Delete job title as appropriate.

by

.....Signature of Director/Authorised Signatory*

.....Print Full Name of Director/Authorised Signatory*

before this witness

.....Witness Signature

.....Print Full Name of Witness

.....Occupation

.....Address

.....

* Delete job title as appropriate.

SCHEDULE PART 8

NOT USED

MIDLOTHIAN AND EAST RENFREWSHIRE JOINT SCHOOLS PROJECT

PART 3 SCOPE OF SERVICES

Part 3: Scope of Service

PART 3 SCOPE OF SERVICES

CORE DUTIES OF PROFESSIONAL SERVICES TEAM

This Schedule of Services is drafted to:

- 1 Define the core project management and design services required by the Employers;
- 2 Provide costs for provision of non-core activities and a basis for instruction of other services by Employers and SFT;
- 3 This appointment is for a sole Consultant and all communication and recovery of fees are to be directed between the sole Consultant and the Employer.

The Schedule of Services should be read as follows with the following order of hierarchy (i.e. if there is conflict (1) core services takes precedence over (2) non-core services.

Note: The works will be procured using Contractors Design and Build Contract. As a consequence the scope of services given for each professional discipline may not correspond across each stage (eg Project Manager, Quantity Surveyor) . Nevertheless, the scope of services identified will be required to be undertaken to facilitate a Design and Build Contract Procurement.

The Schedule of Services are based upon the following:

- RIBA Plan of Work
- RIBA Form of Appointment for Project Manager (for a Construction Project)
- ACE Agreement for Consulting Engineers
- Construction (Design & Management) Regulations 2007

The core services of each discipline should be co-ordinated with the requirement to comply with the RIBA Plan of Work.

Core Services

These are defined by splitting the services into differing disciplines but these should be read as one service (as it will be provided). The Schedule of Services/Duties listed herein are repetitive and duplicate in many respects for each service discipline listed. The Consultant shall review the services/duties with his team and ensure that all services/duties listed are carried out by the relevant members of his team without duplication. The Consultant's fees will be deemed to have taken this into consideration when completing the pricing section of this document.

RIBA Stage	Project Manager	Architect	Quantity Surveyor	Civil/ Structural Engineer	Mechanical/ Electrical Engineer	CDM-C	Clerk of Works
A							
B							
C							
D		•			•		
E		•			•		
F		•			•		
G		•			•		
H		•			•		
J		•			•		
K		•			•		
L		•			•		

Design Team	
D&B Contractor	
Consultant retained as Advisor to Employer	•

Part 3: Scope of Service

The services to be provided by the Consultant are broken down as follows:

- Annex 1 - Duties of the Project Manager
- Annex 2 - Duties of the Architect
- Annex 3 - Duties of the Quantity Surveyor
- Annex 4 - Duties of the Civil/Structural Engineer
- Annex 5 - Duties of the Mechanical/Electrical Engineer (inclusive BREEAM Assessor)
- Annex 6 - Duties of the CDM-C
- Annex 7 - Duties of the Clerk of Works

Note: In the fee tender pricing schedule the following service disciplines have been combined:

- Mechanical/Electrical Engineers
- Structural/Civil Engineers

Part 3: Scope of Service

Stage		RIBA Plan of Work Equivalent
Stage 1	Covering inception of the Project	RIBA Plan of Work Stages A to C
Stage 2	Covering the development of the scheme design and the preparation of tender documentation	RIBA Plan of Work Stages D to G
Stage 3	Covering tender stage	RIBA Plan of Work Stages H and J
Stage 4	Covering the construction and operations on site	RIBA Plan of Work Stage K
Stage 5	Covering completion	RIBA Plan of Work Stage L

Note 1: The following schedules of services are all encompassing services covering all areas of work expected for a fully comprehensive professional services provision from inception to completion.

They must be interpreted in conjunction with the procurement strategy provided herein and as such some of the services listed may/may not be required.

Note 2: It is re-emphasised that the appointment is for a sole consultant and that one of the disciplines will be the sole consultant and all other disciplines will be considered sub consultants.

Required Outputs

Note: The Outline Design proposals are to incorporate the requirements contained within the Project Brief.

It should be noted that the following required outputs are specifically required from the Design Team:

- 1 Fully detailed layout plans and drawings incorporating Items 10a – 10ee
- 2 Tender document for the main contract works
- 3 Full Room Data Sheets for each Classroom type
- 4 Demonstrate that the design complies with the requirements of the statutory authorities
- 5 Outline planning consent to prove acceptance by planning to the shape, form, layout and height of the building
- 6 Transportation proposals and demonstrate that these are acceptable to the relevant authorities' roads and transportation department
- 7 Confirmation from utility companies that each service can be provided to meet the design incorporated within the tender and to the development budget
- 8 Detailed cost plan
- 9 Site investigation and outline design solution suggested to resolve any issues in relation to both stability and contamination issues
- 10 Plans (Colour where applicable) to provide sufficient detail of the building to be understood:
 - a Location plan
 - b Site plan
 - c Externals plan

Part 3: Scope of Service

- d Outline hard and soft landscape proposals
- e Building layout plans at 1:100
- f Roof plans
- g All classroom and specialist room layouts
- h Building sections
- i Generic internal room layout plans at 1:20 scale incorporating indicative locations for M&E components
- j Generic internal room elevations at 1:20 scale incorporating indicative locations for M&E components
- k Indicative fire escape routes and strategy
- l Indicative containment layouts
- m Indicative electrical layouts
- n Indicative designs for plant room
- o Outline lighting layouts for each room
- p Ensure all M&E components are clearly shown on room elevations and compliment within the M&E specification with a component schedule
- q Indicative plumbing and mechanical layouts
- r Detailed ventilation strategy and layout
- s Detailed daylighting strategy
- t Detailed performance specification for mechanical and electrical works providing material specifications for each element on an equal or approved basis. Note the consultants should ensure that they consult with the Project Team to ensure that these specifications are easily integrated into the councils' current systems
- u Detailed performance specification for the architectural elements providing outline specifications for each material and component on an equal or approved basis
- v Detailed performance specification for the roads and transportation elements providing outline specifications for each material and component on an equal or approved basis
- w Provide detailed performance specification for the Civil and structural engineering elements of foundations
- x Outline layouts and specification for the FF&E requirements within each room with materials being specified on an equal or approved basis
- y Outline programme for the project in Gantt chart format with critical path highlighted
- z Bream requirements and standards and how the concept meets these
- aa SEPA consultation and SUDS strategy
- bb External lighting requirements
- cc Pitch specification and details
- dd Whole life cost model for the design model
- ee Project risk register up to tender stage

*Note all specifications to be to NBS Standards

Part 3: Scope of Service

ANNEX 1 - DUTIES OF THE PROJECT MANAGER

STAGE 1	RIBA PLAN OF WORK EQUIVALENT STAGE A-C
A1.1.1	Preparation of Strategic Brief by or on behalf of the Client confirming key requirements and constraints. Identification of procedures, organisation structure and range of Consultants and others to be engaged for the Project
A1.1.2	Commencement of development of Strategic Brief into full Project Brief. Preparation of outline proposals. Review of procurement route.
A1.1.3	Receive an initial brief from the Employer and assist in identifying possible options and expenditure limits.
A1.1.4	Develop and submit to the Employer confirmation of Project procurement strategy and, following approval by the Employer, carry out the Services and obligations necessary to achieve the satisfactory completion of the Project at or below the approved cost limit which Services and obligations shall include, but shall not be limited to, the Services and obligations set out in this Annex and as may be stated or inferred in the Project Brief.
A1.1.5	Make recommendations to the Employer on the need for any further site investigations or tests to be undertaken including any tests to ascertain the presence of contaminated ground and implement any decision taken by the Employer.
A.1.1.6	Make recommendations to the Employer on the need to appoint additional Consultants to the Project Team and on the scope of their Services. Subsequently assist the Employer in all matters leading to their appointment and prepare detailed briefs covering the scope of the Services for which they will be responsible.
A1.1.7	Establish contact with any additional Consultants following their appointment and establish formal communication procedures and hierarchy of responsibility between them and introduce procedures to ensure that they work closely as a team.
A1.1.8	Arrange for the professional services team to undertake preliminary feasibility studies based on the Employer's brief and if these studies highlight the need to amend that brief, discuss with the Employer and obtain instructions.

Part 3: Scope of Service

A1.1.9	Co-ordinate the views of the professional services team in order to submit a detailed report to the Employer on the recommended scope of the Works together with a recommended programme and anticipated costs the report to include reviewing alternative design and construction solutions together with estimates of cost of those options and provide assistance to the Employer in selecting the preferred option and in formulating the brief.
A1.1.10	Confirm the final brief with the Employer which shall include a detailed programme for completion of the Project and an agreed cost limit.
A1.1.11	Communicate the details of the agreed brief to all team members and ensure that the team members confirm in writing their commitment to the brief. If this highlights the possibility of difficulty in implementing the brief, take the necessary action to resolve such difficulties and, if this proves to be impossible, report to the Employer making recommendations.
A1.1.12	Where there is duplication between the Services provided under the terms of this Appointment and the Services of another consultant commissioned in connection with this project, resolve the duplicated Services by agreement with the Consultant concerned, confirm the matters in writing and copy to the Employer.
A1.1.13	Assess the need to take action to protect the interests of the Employer in respect of neighbouring properties and accordingly make recommendations to the Employer.
A1.1.14	Undertake risk assessments.
A1.1.15	Undertake value management exercises.
A1.1.16	Prepare formal design/cost report for Client consideration
A1.1.17	Co-ordinate preparation and evaluation of the Pre Qualification Questionnaire for selection of Contractors to be invited to tender.
A1.1.18	Obtain the Employer's approval to proceed to Stage 2.

Part 3: Scope of Service

STAGE 2	RIBA PLAN OF WORK EQUIVALENT STAGE D-G
A1.2.1	Completion of development of the Project Brief. Preparation of detailed proposals. Application for detailed planning approval.
A1.2.2	Preparation of final proposals for the Project sufficient for co-ordination of all components and elements of the Project.
A1.2.3	Preparation of production information in sufficient detail to enable a Contractors Design and Build Tender/Tenders to be obtained. Application for statutory approvals.
A1.2.4	Preparation of further production information required under the building contract.
A1.2.5	Identification and collation of tender documentation in sufficient detail to enable a Contractors Design and Build Tender/Tenders to be obtained for the construction of the Project.
A1.2.6	Ensure that a cost plan is prepared for the project based on the approved cost limit and ensure that copies of the cost plan are given to all Consultants and that they confirm their agreement to the content applying to their own discipline.
A1.2.7	Submit to the Employer a projected cashflow based on the approved cost limit for the Project and the anticipated programme and update as necessary until completion of the Works keeping the Employer informed at all times of any changes.
A1.2.8	In co-operation with the other members of the Project Team prepare a detailed programme for the production of design information leading up to obtaining Contractors Design and Build Tender/Tenders for the Works and obtain the Consultants commitment to that programme in writing.
A1.2.9	Establish rigorous cost control procedures and ensure that designs are strictly monitored against the agreed cost plan and that any difficulties are rectified and the approved cost limit is maintained.

Part 3: Scope of Service

A.1.2.10	Establish rigorous management procedures to monitor the production of design information produced by the members of the Project Team in order that any shortcomings are immediately highlighted and rectified and continue to implement the monitoring procedure until completion of the Project. Where difficulties are encountered which cannot be satisfactorily resolved, inform the Employer of those difficulties.
A1.2.11	Establish and chair regular meetings with the other members of the Project Team and others in order to monitor progress and to highlight any shortfall in design information and take any action necessary to correct any deficiencies. Circulate minutes of the meetings to the Employer and to the members of the Project Team. The minutes shall record the action taken to rectify any deficiencies and shall indicate who is to be responsible for taking that action.
A1.2.12	Establish regular reporting procedures with the Employer, identify those matters which require Employer approval and introduce procedures to obtain those approvals.
A1.2.13	In conjunction with the other members of the Project Team, make recommendations to the Employer on the need for specialist contractors to design and execute any sections of the Works or for specialist suppliers to provide any materials or equipment and obtain the Employer's approval and take any action necessary to implement the Employer's decision.
A1.2.14	Co-ordinate the production of all design work, ensure that the designs are fully integrated and are tested throughout the design phase against cost targets and that the designs fully comply with all Statutory requirements or Regulations including, but not confined to requirements concerning Health and Safety, Planning, Fire, Building Control etc, and take any action necessary to rectify deficiencies. Include attendance at meetings with any other parties involved, consultant issues and the like. Produce presentation documents/drawings as required for any presentation any the Employer
A1.2.15	At monthly intervals, submit a written report to the Employer showing the progress made against the agreed design programme and the present estimated cost of the Project relative to the approved cost limit and, if required by the Employer, arrange to meet the Employer in order to discuss the content of the report and to receive instructions.

Part 3: Scope of Service

A1.2.16	Agree materials and construction specifications with the Consultants and keep the Employer fully informed.
A1.2.17	Ensure that statutory approvals for the Project are obtained and that all utilities and other necessary services are in place both for the construction phase and for permanent operation following completion of the Project and, where action by the Employer is necessary, assist the Employer to take that action.
A1.2.18	Give the Employer sufficient notice of all approvals, decisions or other matters which require action by the Employer and, where appropriate, assist the Employer by providing information and by making recommendations.
A1.2.19	Where difficulties are highlighted during the design phase which may not be capable of being resolved and which may result in a failure to meet the Employer's brief, submit a report to the Employer giving recommendations and options.
A1.2.20	Receive and certify all applications from the members of the Project Team for the payment of fees and pass to the Employer for payment.
A1.2.21	Ensure that all notices required under EC regulations are given at the proper time and that all procedures comply with EC legislation.
A1.2.22	Ensure that life cycle costings and environmental assessment techniques are applied to the development of Consultants designs and adopt solutions giving the best overall value for money and, where this may result in the cost limit for the project being exceeded, make recommendations to the Employer and obtain instructions.
A1.2.23	Make recommendations to the Employer on the preferred method of procuring the construction and completion of the Works and obtain the Employer's instructions.
A1.2.24	Arrange for any required submissions of designs, drawings, models, calculations or other material to regulatory bodies and expedite any necessary approvals.

Part 3: Scope of Service

A1.2.25	Act as lead at any consultation, alternatively, act on the Employers behalf to arrange for other appointed Consultants to do so and manage their activities.
A1.2.26	Ensure that all drawings, specifications, schedules, bills of quantities or other documents necessary for the placing of contracts are completed and are fully co-ordinated, are in accordance with the brief approved by the Employer and are available on the programmed date.
A1.2.27	Discuss with the Employer the general arrangements for obtaining target costs and implement the action approved.
A1.2.28	In co-operation with the other members of the Project Team manage the project procurement processes.
A1.2.29	Ensure that a pre-tender estimate is prepared based on the tender documentation and check against the cost target for the Project approved by the Employer and report to the Employer accordingly.
A1.2.30	Undertake risk assessments.
A1.2.31	Undertake value management exercises.
A1.2.32	Prepare formal design/cost report for Client consideration
A1.2.23	Obtain the Employer's approval to proceed to Stage 3.
STAGE 3	RIBA PLAN OF WORK EQUIVALENT STAGE H-J
A1.3.1	Identification and evaluation of potential contractors and/or specialists for the construction of the Project. Obtaining and appraising Contractors Design and Build Tender/Tenders and submission of recommendations to the Client.

Part 3: Scope of Service

A1.3.2	Ensure that Contractors Design and Build Tender/Tenders are invited on the programmed date and in accordance with the Employer's instructions and arrange for tenders to be returned direct to the Employer in accordance with the Employer's procedure.
A1.3.3	Accompany tendering contractors or sub-contractors or the representative of the Employer or occupying Department to the site of any works being undertaken in connection with this Appointment.
A1.3.4	Ensure that all enquiries from contractors during the tendering period are answered satisfactorily and ensure that any clarification on the content of the documentation given to a tenderer is copies to other firms tendering.
A1.3.5	Copy to the Employer all correspondence concerning the obtaining of tenders.
A1.3.6	Where full time site inspection staff are to be appointed, ensure that arrangements are made in good time to implement that instruction.
A1.3.7	Co-ordinate tender appraisals from the other members of the Project Team and submit a report to the Employer with recommendations. If the lowest tender obtained is higher than the approved cost for the Works, obtain whatever advice is necessary from other consultants in order to make recommendations to the Employer and arrange to implement the Employer's instructions.
A1.3.8	Arrange for any tender under consideration for acceptance to receive an arithmetical/technical and compliance with Employers requirements check and ensure that any errors are resolved in accordance with the Employer's procedure.
A1.3.9	Obtain the Employer's decision regarding the acceptance of a tender or tenders and implement the Employers instructions.
A1.3.10	Co-ordinate the collection of documents from the other members of the Project Team to enable the Employer to enter into Contract and ensure that any adjustments have been made to the documents in order that they conform to the approval given by the Employer.

Part 3: Scope of Service

A1.3.11	Arrange for unsuccessful tenderers to be notified in compliance with Council policy.
A1.3.12	Ensure that the site will be available to the Contractor on the programmed date and in the event of any difficulty, keep the Employer fully informed.
A1.3.13	Undertake risk assessments.
A1.3.14	Undertake value management exercises.
A1.3.15	Before Stage 4 is implemented ensure that the Employer has accepted the selected Contractor's tender, and that the Employer approves that the matters referred to in Stage 4 can proceed.
STAGE 4	RIBA PLAN OF WORK EQUIVALENT STAGE K
A1.4.1	Administration of the building contract up to and including practical completion.
A1.4.2	Provision to the contractor of further information as and when reasonably required.
A1.4.3	Administer the terms of the construction contract whilst the Project is under construction, undertaking the full range of duties imposed on the Project Manager by the Works contract in accordance with the timescales therein, including (but not limited to) all activities in connection with the adjudication of disputes between the Employer and the Contractor.
A1.4.4	Agree a detailed programme for the Works with the Contractor which specifies completion by the agreed date.
A1.4.5	Agree a date with the Contractor and the Employer for the commencement of work on site.

**Lasswade & Eastwood High Schools
Tender for Professional Services**

Part 3: Scope of Service

A1.4.6	Establish and chair regular meetings with the Contractor and Consultants as necessary in order to monitor the progress of the Works and the production of design information to the Contractor and circulate minutes of the meeting to the Employer and to others. The minutes shall record the action to be taken to rectify any deficiencies and shall indicate who is to be responsible for taking that action. Inform the Employer if any delay in the production of design information cannot be resolved in time to prevent a delay to the Works.
A1.4.7	Until completion of the Project, provide formal reports to the Employer at monthly intervals.
A1.4.8	Ensure that rigorous safety policies are in place and are implemented by the Contractor and Sub-contractors working on the site and that there is adequate protection for the public and others.
A1.4.9	Ensure that rigorous quality management procedures are in place throughout the construction phase.
A1.4.10	Arrange for any special inspections or tests necessary to ensure that proper and adequate standards of construction are maintained and that all Works are constructed in accordance with the contract documents.
A1.4.11	Throughout the construction phase and until all construction accounts are settled, inform the Employer of any contractual claims which have been received or are likely to arise. Make recommendations to the Employer and implement the Employer's instructions.
A1.4.12	Continue to monitor the construction phase and take any necessary action in order to ensure that the Project will be completed within the cost approved by the Employer and by the programmed completion date. When matters arise which effect the contract completion date or the approved cost, keep the Employer fully informed.
A1.4.13	Ensure that adequate records are maintained and photographs of the Works are taken throughout the construction phase recording progress of the Works and, particularly, highlighting any delays including those resulting from interaction between Contractors or Sub-Contractors working on the site.

Part 3: Scope of Service

A1.4.14	Keep accurate records of all payments and other matters relating to the service provided under this Appointment and retain all vouchers and invoices and, if requested, make these available to the Employer.
A1.4.15	Ensure that Consultants observe the provisions of their Appointment regarding cost control procedures and the procedures for obtaining the Employer's approval to introduce variations. On behalf of the Employer, receive the Consultants financial statements and submissions in accordance with the Condition and submit to the Employer with recommendations.
A1.4.16	Ensure that Certificates are issued in accordance with the terms of the contract.
A1.4.17	Co-ordinate site visits of consultants and ensure that the frequency of those visits is satisfactory.
A1.4.18	Arrange for any necessary spare equipment, 'as built' record drawings, maintenance manuals and general guidance on the operation of the Building and Services to be made available in good time in order that they can be provided to the Employer on completion of the Project.
A1.4.19	Inform the Employer four weeks prior to the anticipated date of completion of the Works.
A1.4.20	Co-ordinate the preparation and issue of Certificates relating to the completion of the Works.
A1.4.21	Ensure that lists of incomplete/defective lists are issued at the appropriate time under the Works contract.
STAGE 5	RIBA PLAN OF WORK EQUIVALENT STAGE L
A1.5.1	Administration of the building contract after practical completion.
A1.5.2	Advise the Employer on the resources and skills required to operate and maintain the completed Works and make recommendations on the timing of their appointment or on the need for any maintenance agreements.

Part 3: Scope of Service

A1.5.3	Ensure that all incomplete/defective works are rectified.
A1.5.4	Ensure that the Works are cleaned, tested and commissioned prior to handover to the Employer.
A1.5.5	Ensure that all statutory Certificates and Approvals are given to the Employer.
A1.5.6	Ensure that an appropriate Certificate is issued to the Contractor when all defects have been made good.
A1.5.7	Make recommendations to the Employer regarding any outstanding claims, counterclaims, liquidated damages or other contractual issues and receive and implement the Employer's instructions.
A1.5.8	Co-ordinate the production of Final Accounts and the issue of Final Certificates and, accordingly, make recommendations to the Employer.
A1.5.9	Prepare a completion report to the Employer showing: <ul style="list-style-type: none">• a comparison between the out-turn cost and the approved budget costs;• the actual expenditure against sums included in the contract for specialist works and provisionally measured work;• the costs included against any Variation of Price Condition;• the expenditure against approved variations and additional Works authorised by the Employer;• a comparison of programme dates against actual dates achieved;• any lessons obtained from the scheme which could be applied to future Projects;• the performance of Project participants.
A1.5.10	Assist the Employer in dealing with any outstanding insurance claims.
A1.5.11	In the event of any arbitration or litigation resulting from the Project, prepare any necessary documentation and reports and act as witness.

Part 3: Scope of Service

A1.5.12	Ensure compilation of Health and Safety File and this is submitted to the Client.
---------	---

Part 3: Scope of Service

ANNEX 2 - DUTIES OF THE ARCHITECT

STAGE 1	RIBA PLAN OF WORK EQUIVALENT STAGE A-C (AND ADDITIONAL SERVICES)
A2.1.1	Receive an initial brief from the Employer and assist in identifying possible options and expenditure limits.
A2.1.2	Carry out an inspection of the site and subsequently consult as necessary with any local or other authority on matters relating to the proposed Works.
A2.1.3	Arrange for the carrying out of any site investigation authorised by the Employer, interpret the result and, if necessary, make recommendations to the Employer.
A2.1.4	Arrange with the other members of the Project Team to undertake preliminary feasibility studies based on the Employer's brief, discuss with the Employer and obtain instructions.
A2.1.5	Liaise with the other members of the Project Team and undertake such further studies as may be necessary in order to submit proposals and options to the Employer including an anticipated programme and costs and undertake all work necessary to obtain the Employer's approval to proceed on the basis of the Employer's approved brief.
A2.1.6	Make all necessary submissions to Statutory Authorities and obtain approvals.
A2.1.7	Where necessary act as a witness at any hearing or planning enquiry or the like.
A2.1.8	Undertake risk assessments.
A2.1.9	Undertake value management exercises.
A2.1.10	Undertake DDA Audit of proposals and produce report for Client approval.

Part 3: Scope of Service

A2.1.11	Develop the proposals including 1:20 room layouts room data sheets (Architectural, Mech/Electrical, fixed and loose furniture) under direct from the Project Manager contribute and prepare a detailed Stage C report describing the design proposals, to include the exterior design (incl. landscape) interior finishes, general standards of construction, quality of materials, standards of workmanship and costs. Co-ordinate any design work carried out by Consultants, specialist contractors, sub contractors and suppliers. Preparation of presentation drawings for Design Team and Employer use.
A2.1.12	Advise the Project Manager of any special investigations which may need to be carried out by others.
A2.1.13	Participate in cost checks as necessary and advise the Project Manager of the consequences of any subsequent changes on the cost and programme.
A2.1.14	Attend Client and Stakeholder meetings as required.
A2.1.15	Confirm to the Project Manager that the design/cost report complies with the full brief.
A2.1.16	Assist in the compilation and evaluation of the Pre-Qualification Questionnaire for selection of Contractors to be invited to tender.
A2.1.17	Receive formal Client approval of outline proposals.
STAGE 2	RIBA PLAN OF WORK EQUIVALENT STAGE D-G
A2.2.1	Assist in the evaluation of Contractors proposals and production of formal report for Client Approval.
STAGE 3	RIBA PLAN OF WORK EQUIVALENT STAGE H-J
A2.3.1	Assist in the evaluation of Contractors proposals and production of formal report for Client Approval.
STAGE 4	RIBA PLAN OF WORK EQUIVALENT STAGE K
A2.4.1	Assist in the evaluation of Contractors proposals/construction works and production of formal report for Client Approval.

Part 3: Scope of Service

STAGE 5	RIBA PLAN OF WORK EQUIVALENT STAGE L
A2.5.1	Assist in the evaluation of Contractors completed works and production of formal report for Client Approval.

Part 3: Scope of Service

ANNEX 3 - DUTIES OF THE QUANTITY SURVEYOR

STAGE 1	RIBA PLAN OF WORK EQUIVALENT STAGE A-C
A3.1.1	Receive an initial brief from the Employer.
A3.1.2	Contact other Consultants on the Project Team and ensure that the Services listed hereunder are fully co-ordinated with the Services provided by those Consultants.
A3.1.3	In discussion with the Employer provide such cost advice as is necessary in order to assist the Employer in establishing a brief for the Project and financial limits.
A3.1.4	Provide a preliminary cost plan and expenditure profile for the Project in sufficient detail to assist the other members of the Project Team to develop their design within the overall cost limit approved by the Employer.
A3.1.5	In liaison with the other members of the Project Team, undertake such further cost studies as may be necessary in order to submit proposals and options to the Employer including an anticipated programme and costs and, in co-operation with the other members of the Project Team, undertake all work necessary to obtain the Employer's approval to proceed on the basis of the agreed proposals.
A3.1.6	Undertake risk assessments.
A3.1.7	Undertake value management exercises.
A3.1.8	Undertake whole life cycle cost exercise.
A3.1.9	Attendance at Client and Stakeholder meetings as required.
A3.1.10	Assist in the compilation and evaluation of the Pre-Qualification Questionnaire for selection of Contractors to be invited to tender.
A3.1.11	Obtain the Employer's approval to proceed with the services identified in Stage 2.

Part 3: Scope of Service

STAGE 2	RIBA PLAN OF WORK EQUIVALENT STAGE D-G
A3.2.1	Monitor design development against approved cost targets and continue that monitoring up to tender stage.
A3.2.2	Provide such cost advice on alternative design solutions up to tender stage as is necessary and ensure that the final solutions adopted are within the overall cost for the Project approved by the Employer.
A3.2.3	Prepare a final cost plan for the Project based on the approved cost and the anticipated start and completion dates and, thereafter, monitor the development of the scheme design against that cost plan up to tender stage and report any anticipated difficulty to the Employer including proposals for overcoming that difficulty and obtain the Employer's instruction in sufficient time to allow corrective action to be taken.
A3.2.4	Obtain drawings or other necessary information from the other members of the Project Team and prepare schedules, Employers Requirements or other documents necessary for the pricing of contracts.
A3.2.5	In liaison with the other members of the Project Team, make recommendations to the Employer on the suitability of firms who may be invited to submit tenders for the Works and any specialist works and obtain instructions.
A3.2.6	In liaison with the other members of the Project Team, ensure that all schedules, tender documents or other documents necessary for placing of contracts are completed and fully co-ordinated, are in accordance with the brief approved by the Employer and are available on the programmed date.
A3.2.7	Ensure that a pre target cost check is prepared based on the contract documentation and inform the Employer of the result of that check.
A3.2.8	Agree with the Employer final arrangement for the obtaining of tenders.
A3.2.9	Undertake risk assessments.

Part 3: Scope of Service

A3.2.10	Undertake value management exercises.
A3.2.11	Review whole life cycle cost exercise.
A3.2.12	Attendance at Client and Stakeholder Meetings as required.
A3.2.13	Obtain the Employer's approval to proceed to Stage 3.
STAGE 3	RIBA PLAN OF WORK EQUIVALENT STAGE H-J
A3.3.1	In liaison with the other members of the Project Team, invite tenders via OJEU process from contractors and arrange for tenders to be returned direct to the Employer in accordance with the Employer's tendering procedures. N.B. Design and Build Contract.
A3.3.2	Copy all correspondence regarding the obtaining of tenders direct to the Employer.
A3.3.3	As the Employer may require, provide costs for the purposes of calculating the fees of other consultants.
A3.3.4	Receive and evaluate Contractors proposals against Employers requirements.
A3.3.5	Carry out an arithmetical and technical check on the target cost prior to producing a report to the Employer.
A3.3.6	In liaison with the other members of the Project Team, report on the tenders received, make recommendations to the Employer and advise on any corrective action which may be required if the lowest tender is higher than the approved cost for the Works and obtain the Employer's instructions.
A3.3.7	Obtain the Employer's decision regarding the acceptance of a tender.
A3.3.8	In liaison with the other members of the Project Team, provide the Employer with documents necessary for entering into the Work's contract.

Part 3: Scope of Service

A3.3.9	Report to the Employer on the anticipated cashflow.
A3.3.10	Undertake risk assessments.
A3.3.11	Undertake value management exercises.
A3.3.12	Review whole life cycle cost exercise.
A3.3.13	Attendance at Client and Stakeholder Meetings as required.
A3.3.14	Assist in the preparation of formal design/cost report in conjunction with other members of Design Team.
A3.3.15	Obtain the Employer's approval to proceed to Stage 4.
STAGE 4	RIBA PLAN OF WORK EQUIVALENT STAGE K
A3.4.1	In collaboration with the other Project Team Members, assist the Project Manager in administering the terms of the Works contract during operations on site and relating to the completion of the Works including (but not limited to) all activities in connection with the adjudication of disputes between the Employer and the Contractor.
A3.4.2	Attend the regular meetings with the Contractor and other members of the Project Team and provide advice on the cost position of the Project relative to the overall cost of the Works approved by the Employer and recommend any corrective action which may be necessary.
A3.4.3	In liaison with the other members of the Project Team, ensure that rigorous post contract cost control procedures are established in order to ensure financial control covering the issue of instructions which vary the Works and the issue of cost reports to the Project Manager.
A3.4.4	Visit the site at such intervals as are necessary in order to be fully aware of all matters which could affect the cost of the Works.

Part 3: Scope of Service

A3.4.5	Produce financial statements at monthly intervals or at such other intervals as shall be agreed showing the current financial position of the Project and forecast of the cost at completion and submit directly to the Project Manager and copy to the Employer and the other Consultants on the Project Team.
A3.4.6	Value work in progress including the adjustment for variations in accordance with the construction contract and make recommendations to the Project Manager or direct to the Employer as applicable.
A3.4.7	Throughout the course of the Works contract, liaise with the Contractor and, as necessary, with others, in order to ensure that settlement of all accounts for the works are achieved within the stipulated period.
A3.4.8	Alert the Employer, the Project Manager and the other members of the Project Team to the possibility of receiving claims from the Contractor and, if such claims are submitted, keep the Employer and others fully informed at all stages.
A3.4.9	Assist in the evaluation of claims and make recommendations (where required in co-operation with the other members of the Project Team concerned).
A3.4.10	Provide estimates of cost of proposed variations to the Project (where required in co-operation with the other members of the Project Team concerned).
A3.4.11	Attendance at Client and Stakeholder Meetings as required.
A3.4.12	At such intervals as may be necessary, update the forecast of cashflow and inform the Employer accordingly.
STAGE 5	RIBA PLAN OF WORK EQUIVALENT STAGE L
A3.5.1	Prepare a final account or accounts for the Contractor and any specialist Sub-Contractors in accordance with the terms of the contract.

Part 3: Scope of Service

A3.5.2	Provide a detailed statement of final cost to the Project Manager and the Employer.
A3.5.3	Make recommendations for final payment.
A3.5.4	In the event of any arbitration or litigation resulting from the Project prepare any necessary documentation and reports and, if required by the Employer, attend any hearings acting as a witness.

Part 3: Scope of Service

ANNEX 4 - DUTIES OF THE CIVIL/STRUCTURAL ENGINEER

STAGE 1	RIBA PLAN OF WORK EQUIVALENT STAGE A-C
A4.1.1	See the Brief and instructions from the Client describing his requirements in respect of the Works, what they are intended to achieve, their cost and programme.
A4.1.2	Discuss with the Client the role of the Consultant and his relationship with the Project Manager and any Other Consultants, the various Contractors and Sub-Contractors and any planning supervisor appointed in accordance with the Construction (Design and Management) Regulations.
A4.1.3	Discuss with the Client the likely requirements for Site Staff; these shall be considered again prior to and following the appointment of Contractors.
A4.1.4	Seek from the Client all information and documents to be provided by the Client.
A4.1.5	Prepare a questionnaire for the Client following study of the above information to seek his strategic brief confirming key objectives and constraints.
A4.1.6	Outline the effects of limitations of the site on the Works caused by the topography and any reasonably identifiable previous uses thereof and the presence or possible presence of contaminants as a result of such uses where such matters are apparent from the documents and other information provided by the Client.
A4.1.7	Advise the Client on any limitations on road and public transport access to the site, both during construction of the Works and on completion which may affect design options.
A4.1.8	Obtain such information as is reasonably available from documents on the existence and extent of public services such as water, gas, electricity, sewerage, culverts, tunnels and telecommunications services and comment to the Client on any effect that these may have on the Works, both during construction of the Works and on completion.
A4.1.9	Comment to the Client on any physical site restrictions which may affect the engineering options for the works.

Part 3: Scope of Service

A4.1.10	Prepare a desk study of the site. If necessary, and with the Client's agreement, bring forward from the next stage a full site investigation.
A4.1.11	Collaborate with the Project Manager and any Other Consultants in seeking from the Client any further information needed so that they can perform their services under their various agreements with the Client.
A4.1.12	Collaborate with the Project Manager and any Other Consultants in making initial recommendations to the Client on the technical viability of the Works.
A4.1.13	Seek through the Project Manager the Client's consent to proceed to the Outline Proposals Stage.
A4.1.14	Visit the site and study data and information relating to the Project and relevant to the Works which are reasonably accessible to the Consultant, and consider reports relating to the Works which have either been prepared by the Consultant or have been prepared by others and made available to the Consultant by the Client.
A4.1.15	Advise the Client through the Project Manager on the need for arrangements to be made for geotechnical investigations of the site. Arrange as agent for the Client when authorised by him for such investigations to be undertaken, certify the amount of any payments to be made by the Client to the persons or firms carrying out such investigations and advise the Client on the results of such investigations.
A4.1.16	Advise the Client through the Project Manager on the need for arrangements to be made for and define the extent of topographical and dimensional surveys of the site, surveys to obtain details of construction in existence on or adjacent to the site, special investigations or model tests. Arrange as agent for the Client when authorised by him for such works to be undertaken, certify the amount of any payments to be made by the Client to the persons or firms carrying out such works, and advise the Client on the results of such works.
A4.1.17	Consult any local or other authorities about matters of principle in connection with the design of the Works.

Part 3: Scope of Service

A4.1.18	Consider alternative outline solutions for the Works.
A4.1.19	Develop the Client's Brief into a full Brief for the Works in consultation with the Client, the Project Manager and any Other Consultants. Such Brief shall described the Client's requirements in respect of the Services and both the Client and the Consultant shall work to the Brief. Discuss and agree with the Client any changes to the arrangements for payments to be made to the Consultant (as given in the Memorandum of Agreement) which may have become necessary as a result of changes to the Brief. Comment to the Project Manager on any restrictions the Brief may impose on any future use of the Works suggested by the Client.
A4.1.20	Provide sufficient preliminary information in relation to the Works in the form of advice, sketches, reports or outline specifications to enable the Project Manager to prepare his outline proposals and assist any Other Consultant to prepare the outline Cost Plan.
A4.1.21	Attendance at Client and Stakeholder meetings as required.
A4.1.22	Undertake Risk Assessments.
A4.1.23	Undertake Value Management exercises.
A4.1.24	Assist in the compilation and evaluation of the Pre-Qualification Questionnaire for selection of Contractors to be invited to tender.
A4.1.25	After review, seek through the Project Manager the Client's approval of the outline proposals and the Client's consent to proceed to the Detailed Proposals Stage.
STAGE 2	RIBA PLAN OF WORK EQUIVALENT STAGE D-G
	No service required
STAGE 3	RIBA PLAN OF WORK EQUIVALENT STAGE H-J
	No service required.

Part 3: Scope of Service

STAGE 4	RIBA PLAN OF WORK EQUIVALENT STAGE K
	No service required.
STAGE 5	RIBA PLAN OF WORK EQUIVALENT STAGE L
	No service required.

Part 3: Scope of Service

ANNEX 5 - DUTIES OF THE MECHANICAL ELECTRICAL ENGINEER

STAGE 1	RIBA PLAN OF WORK EQUIVALENT STAGE A-C
A5.1.1	Obtain an outline brief from the Employer including the timescale for the Project and the financial limits.
A5.1.2	Contact the other Consultants on the Project Team and ensure that the Services listed in Annex 5 are fully co-ordinated with the other Professional Services provided by other Consultants.
A5.1.3	Visit the site and arrange for the carrying out of any investigations authorised by the Employer, interpret the results and, if necessary, make recommendations to the Employer.
A5.1.4	Investigate the various alternatives in order to select the most suitable solution and prepare outline drawings and specifications to illustrate the proposals.
A5.1.5	In co-operation with the other members of the Project Team undertake such studies as may be necessary in order to submit proposals on the building services and existing utilities together with options and recommendations to the Employer including an anticipated programme and installation and operational costs and undertake all further work necessary to obtain the Employer's approval to proceed on the basis of the agreed proposals.
A5.1.6	Provide evidence of environmental modelling to satisfy strategies previously listed.
A5.1.7	Attend Client and Stakeholder meetings as required.
A5.1.8	Undertake value management exercises.
A5.1.9	Undertake risk assessments.
A5.1.10	Assist in the compilation and evaluation of the Pre-Qualification Questionnaire for selection of Contractors to be invited to tender.

Part 3: Scope of Service

A5.1.11	Obtain the Employer's approval to proceed to Stage 2 which will include the preparation of preferred detailed design option up to tender stage.
STAGE 2	RIBA PLAN OF WORK EQUIVALENT STAGE D-G
A5.2.1	Assist in the evaluation of Contractors proposals and production of formal report for Client approval.
STAGE 3	RIBA PLAN OF WORK EQUIVALENT STAGE H-J
A5.3.1	Assist in the evaluation of Contractors proposals and production of formal report for Client approval.
STAGE 4	RIBA PLAN OF WORK EQUIVALENT STAGE K
A5.4.1	Assist in the evaluation of Contractors proposals/construction works and production of formal report for Client approval.
STAGE 5	RIBA PLAN OF WORK EQUIVALENT STAGE L
A5.5.1	Assist in the evaluation of Contractors completed works and production of formal report for Client approval.

Part 3: Scope of Service

ANNEX 5 - SUPPLEMENTARY (DUTIES OF THE BREEAM ASSESSOR)

STAGE 1	RIBA PLAN OF WORK EQUIVALENT STAGE A-C
A5.1.12	Receive an initial brief from the Council and assist in identifying possible options and expenditure limits. This Brief will include exemplar design and cost information provided by the Council, taken from detailed feasibility studies/previous sites. Re-utilisation and adaptation of existing design is generally expected rather than full redesign. Services and structural design elements together with the full planning and design of the external/site/substructure works will be required.
A5.1.13	Liaise with other members of the Design Team and ensure that the Services listed in Annex 8 are fully co-ordinated with the Services provided by other Consultants.
A5.1.14	Obtain a BREEAM Assessment Checklist and Assessment Criteria from BRE specifically drafted for School Buildings.
A5.1.15	Carry out an inspection of the site and subsequently consult as necessary with any local or other authority on matters relating to the proposed Works.
A5.1.16	Undertake hazard identification.
A5.1.17	Obtain the Council's approval to proceed to Stage 2.
STAGE 2	RIBA PLAN OF WORK EQUIVALENT STAGE D-G
A5.2.2	Throughout the early stages of the design provide advice to the design team on how to maximise the BREEAM rating.
A5.2.3	Where applicable, co-operate with the other members of the Project Team in the preparation of a Cost Plan for the Works based on the overall cost approved by the Council.

Part 3: Scope of Service

A5.2.4	Provide advice and guidance with regard to ensure that life cycle costings. Ensure environmental assessment techniques are applied to the Works and give advice and guidance to enable the design team to adopt solutions giving the best overall value for money and, where this may result in the cost limit for the Works being exceeded, make recommendations to the Employer and obtain instructions. These recommendations to be submitted as part of the proposals at the proposed Tender Sum stage.
A5.2.5	Provide advice and guidance to the design team to enable them to see that the BREEAM rating of "EXCELLENT" is attained for the project.
A5.2.6	Prepare such calculations, details and reports relating to the Works as may be required for submission to any appropriate authority and obtain any necessary approvals.
A5.2.7	Where the Council has indicated the possibility of a change to the agreed brief during the design phase, inform the Employer of any implications with regard to the Environmental Assessment and obtain the Council's instructions.
A5.2.8	Obtain the Council's approval to proceed to Stage 3.
STAGE 3	RIBA PLAN OF WORK EQUIVALENT STAGE H-J
A5.3.2	In liaison with other members of the Design Team report on the need for site inspection staff and obtain instructions from the Council.
STAGE 4	RIBA PLAN OF WORK EQUIVALENT STAGE K
A5.4.2	Ensure that any design work undertaken by the contractor as part of a Contractor's Design Portion is fully compliant with design intent information, Employers requirements, and performance specification, and that the design is fully co-ordinated with all other elements of the Works.
A5.4.3	Attend the regular meetings with the Design Team as necessary in order to monitor the progress of the Works and the Contractors need for design information.
A5.4.4	Visit the site at regular intervals during the construction of the Build in order to inspect the quality of the work and to ensure that the Works are executed in accordance with the Works.

Part 3: Scope of Service

A5.4.5	Advise the Project Manager on the need for special inspection and tests and, following approval, arrange for the inspection and tests to be undertaken.
A5.4.6	Inform the Project Manager of any contractual difficulties which may arise during the course of the construction contract and obtain the Project Manager's instructions.
STAGE 5	RIBA PLAN OF WORK EQUIVALENT STAGE L
A5.5.2	Ensure that a Post Construction Review is carried out. This will involve the assessor reviewing the initial Design and Procurement report in order to verify that all of the requirements committed to at the design stage have been included/adopted in the completed building.
A5.5.3	In the event of any arbitration or litigation resulting from the Works, prepare any necessary documentation and reports and, if required by the Council, attend any hearings acting if necessary, (acting as witness shall be subject to the payment of an additional fee in accordance with Conditions 3.2 and 9.1 of the Framework Agreement).

Part 3: Scope of Service

Annex 6 - DUTIES OF THE CDM-CO-ORDINATOR

General Matters

- 1 The CDM-C will be required to comply in all aspects with the requirements of the Construction (Design and Management) Regulations 2007 (the CDM Regulations) hereafter called "the Regulations", in as much as they apply to the duties of the CDM-C.
- 2 Any discrepancies within these duties is to be notified to the Project Director.
- 3 The Services of the CDM-C will be retained by the Client until Completion.

STAGE 1	RIBA PLAN OF WORK EQUIVALENT STAGE A-C
A6.1.1	Notify the HSE before commencement of the existence of the Project in accordance with Regulation 21.
A6.1.2	Give suitable and sufficient advice and assistance to the client on undertaking the measures he needs to take to comply with these Regulations during the project (including, in particular, assisting the client in complying with Regulations 9 and 16).
A6.1.3	Ensure that suitable arrangements are made and implemented for the co-ordination of health and safety measures during planning and preparation for the construction phase, including facilitating: <ol style="list-style-type: none"> i co-operation and co-ordination between persons concerned in the project in pursuance of Regulations 5 and 6; and ii the application of the general principles of prevention in pursuance of Regulation 7.
A6.1.4	Assist in the compilation and evaluation of the Pre-Qualification Questionnaire for selection of Contractors to be invited to tender.
STAGE 2	RIBA PLAN OF WORK EQUIVALENT STAGE D-G
A6.2.1	If not already provided, give suitable and sufficient advice to the Employer on the competence of all designers with regard to health and safety matters.
A6.2.2	Take all reasonable steps to ensure that designers continue to co-operate with each other, the Client and the Principal Contractor, when appointed.

Part 3: Scope of Service

A6.2.3	Take all reasonable steps to ensure that designers continue to comply with their statutory duties under the Regulations.
A6.2.4	Ensure that the pre-tender health and safety information is being collated.
A6.2.5	Commence preparation of the health and safety file.
A6.2.6	Ensure that all necessary safety measures have been taken and that adequate time and financial provisions have been made for complying with the Regulations.
A6.2.7	Take all reasonable steps to identify and collect the pre-construction information; promptly provided in a convenient form to <ul style="list-style-type: none"> i every person designing the structure; and ii every contractor who has been or may be appointed by the client (including the principal contractor), such of the pre-construction information in his possession as is relevant to each.
A6.2.8	Prepare, where none exists, and otherwise review and update a record (“the health and safety file”) containing information relating to the project which is likely to be needed during any subsequent construction work to ensure the health and safety of any person, including the information provided in pursuance of Regulations 17(1), 18(2) and 22(1)(j).
A6.2.9	Ensure that the Client carries out his duties under the CDM Regulations.
A6.2.10	Ensure that the Principal Contractor carries out his duties under the CDM Regulations.
STAGE 3	RIBA PLAN OF WORK EQUIVALENT STAGE H-J
A6.3.1	Ensure designers continue to co-operate.
A6.3.2	Take all reasonable steps to ensure that designers continue to comply with their statutory duties under the Regulations.

Part 3: Scope of Service

A6.3.3	Continue preparation of the health and safety file.
STAGE 4	RIBA PLAN OF WORK EQUIVALENT STAGE K
A6.4.1	Liaise with the Principal Contractor regarding the information which the Principal Contractor needs to prepare the Construction Phase Plan.
A6.4.2	Ensure designers continue to co-operate.
A6.4.3	Take all reasonable steps to ensure that designers continue to comply with their statutory duties during the contract.
A6.4.4	Continue the preparation of the health and safety file.
A6.4.5	Liaise with the Principal Contractor in performing duties in Regulation 20(2)(d) during the construction phase in relation to any design or change to a design.
A6.4.6	Ensure that welfare facilities sufficient to comply with the requirements of Schedule 2 are provided throughout the construction phase.
A6.4.7	Where necessary for health and safety, draw up rules which are appropriate to the construction site and the activities on it (referred to in these Regulations as "site rules").
A6.4.8	Utilise the APS sign off forms on behalf of the Client for suitability of the Construction Phase Plan and the permission to commence works on site.
A6.4.9	Prepare, in conjunction with the Principal Contractor a Fire Safety Plan for each site before commencement of the works and deliver a copy to the Client.

Part 3: Scope of Service

A6.4.10	<p>Prepare a Site Waste Management Plan in accordance with SPP10 and include the following:</p> <ul style="list-style-type: none"> a) Appointment of a Principal Contractor (<u>not</u> the PC noted in CDM) b) Project description c) Estimate of waste likely to be produced d) Record of any decisions taken to minimise waste production from Designers and P Contractor. e) Arrangements for management of the Site Waste Management Plan.
A6.4.11	<p>Obtain the signature of both the Client and Principal Contractor is required for the Site Waste Management Plan before commencement on site.</p>
A6.4.13	<p>It is a requirement of the Client that the CDM-C undertakes periodic site visits to ensure that the Principal Contractor and Designers are carrying out their duties. This requirement is in addition to the CDM 2007 Regulations. Site visits should be quarterly throughout the duration of the Contract.</p>
Stage 5	RIBA PLAN OF WORK EQUIVALENT STAGE L
A6.5.1	<p>Prepare, where none exists, and otherwise review and update a record (“the health and safety file”) containing information relating to the project which is likely to be needed during any subsequent construction work to ensure the health and safety of any person, including the information provided in pursuance of Regulations 17(1), 18(2) and 22(1)(j).</p>
A6.5.2	<p>At the end of the construction phase, pass the health and safety file to the client with a covering letter explaining about the file.</p>
A6.5.3	<p>Ensure that the health and safety file contained a disk of <u>all</u> items within the file including the O&M manuals, to which the file will make reference.</p>
A6.5.4	<p>Note: the health and safety file <u>must</u> be delivered to the Client <u>2 weeks before</u> Practical Completion is issued by the Contract Administrator.</p>

Part 3: Scope of Service

ANNEX 7 - DUTIES OF THE CLERK OF WORKS

STAGE 1	RIBA PLAN OF WORK EQUIVALENT STAGE A-C
	Stage 1 services are not required.
STAGE 2	RIBA PLAN OF WORK EQUIVALENT STAGE D-G
	Stage 2 services are not required.
STAGE 3	RIBA PLAN OF WORK EQUIVALENT STAGE H-J
	Stage 3 services are not required
STAGE 4	RIBA PLAN OF WORK EQUIVALENT STAGE K
A7.4.1	Duties with the Project Manager or the person to whom he has delegated his powers and agree the extent of any powers to be delegated to the Clerk of Works, the procedure for the issue of Clerk of Works Instructions in accordance with the Building Contract, the procedure to be followed in dealing with queries raised on site by the Contractor, the duties and relationship of the various members of the design/contract administration team.
A7.4.2	Attend the pre-site meeting, meet the Contractor's and Sub Contractor's staff, receive copies of the Contract Documents.
A7.4.3	Attend the meeting for handing over the site to the Contractor.
A7.4.4	Liaise with the Contractor in the provision of offices, stores, compound, etc for compliance with the Contract Documents.
A7.4.5	Liaise with the Contractor in the identification of the correct benchmarks, building line and other setting out points, inspect transferred benchmarks.
A7.4.6	Inspect the taking of a grid of levels over the site prior to the commencement of any work, record on site plan, or as appropriate, obtain the Contractor's agreement that levels and boundaries are as recorded in the Contract Documents. Bring any disagreement to the attention of the Project Manager immediately. Record position and extent of any fly tipping present at the time of handover of site.

Part 3: Scope of Service

A7.4.7	Verify details of testing requirements with Project Manager and ensure that the Contractor is fully aware of these.
A7.4.8	Establish office procedures, drawing and document files etc.
A7.4.9	Inspect setting out and level for compliance with the Contract Documents.
A7.4.10	Inspect materials delivered to site, including those of Sub Contractors, for compliance with the Contract Documents. Inform the Project Manager and Contractor in writing of any materials found not to comply.
A7.4.11	Inspect all works in progress, including those of Sub Contractors, throughout the execution of the Building Contract, for compliance with the Contract Documents, inform the Project Manager and Contractor in writing of any materials found not to comply.
A7.4.12	Make inspections, prepare reports or give general advice on the condition of premises.
A7.4.13	Prepare schedule of dilapidations.
A7.4.14	Inspect demolition works.
A7.4.15	Provide inspection and testing services to the Project Manager on design and build/package deal contracts.
A7.4.16	Inspect the fixing etc of built-in furniture and equipment, floor finishes and coverings, blinds, signs etc, the erection of fencing, landscaping work, etc, which are installed or executed outside the Building Contract.
A7.4.17	Visit, as agreed with the Project Manager, including those of Sub Contractors, throughout the execution of the Building Contract, for compliance with the Contract Documents, inform the Project Manager and Contractor in writing of any materials found not to comply.

Part 3: Scope of Service

A7.4.18	Keep record of, and mark up drawings with the dates of installation/erection of the various elements of the structure, services, satisfactory test dates of drains etc and record the positions, levels, etc, as fixed, of drains and other external services.
A7.4.19	Maintain records of variations and hidden work for the information of the Project Manager.
A7.4.20	Check day worksheets submitted by the Contractor and sign or reject as appropriate.
A7.4.21	Prepare and submit a report on the general progress of the works, labour force, weather etc to the Project Manager weekly. Prepare and submit detailed reports of any incidents, variations, unusual circumstances, information required, etc as necessary to the Project Manager.
A7.4.22	Maintain a diary of the progress of the works, delays, unsatisfactory workmanship and materials, visitors to site and weather, daily or as appropriate to the circumstances.
A7.4.23	Witness tests required by the Project Manager, including re-tests, maintain records of location, dates, results and other relevant information, report as necessary, maintain register of test cubes and contact Project Manager for instructions in the event of unsatisfactory test results.
A7.4.24	In consultation with the Project Manager interpret to the Contractor's staff, as necessary, drawing details, specification clauses and Project Manager's instructions. Prepare sketches of possible solutions where difficulties on points of detail arise and submit to the Project Manager. Survey and prepare records of parts of the works where specialist or other details may be required for the use of the Project Manager.
A7.4.25	Record the details of any occurrence or situation thought likely to cause delay or of any delays which do not occur in relation to the Building Contract and inform the Project Manager.
A7.4.26	Provide practical advice as necessary to the Project Manager in relation to the project designated in the Building Contract.

Part 3: Scope of Service

A7.4.27	Submit any queries on the drawings and specification to the Project Manager. Draw the attention of the Project Manager to any apparent discrepancies noted on the drawings between drawings and/or Specification/Employers Requirements.
A7.4.28	Issue Clerk of Works Instructions in relation to the Building Contract covering urgent matters in close collaboration with the Project Manager.
A7.4.29	Carry out inspections at completion stages, prepare schedules of defects for the use of the Project Manager.
STAGE 5	RIBA PLAN OF WORK EQUIVALENT STAGE L
A7.5.1	Assist Project Manager/Project Manager in handover of building.

Part 3: Scope of Service

NON CORE SERVICES

A	Provision of computer generated 3D Fly-Through perspectives of the Exemplar Designs at each school; including entrance/reception, dining area, typical teaching areas for each subject, circulation spaces.
B	Sample and colour boards, representing materials and finishes.
C	Provide reports on the impact of climate change (1 at initial design and 1 at tender stage) within the structural life of the building, workplace productivity, minimisation of carbon impact, minimisation of energy consumption (and thus operating/revenue costs).
D	During the project to collate from Employer(s) and Design Team standard project documentation to be used on future school projects including but not limited to information on the advert, tender documentation, evaluation documentation, design briefs, project monitoring, performance standards, cost in use reports, site inspection checklists and occupier evaluation pro-formas for creation of a 'Scottish Schools Development Handbook'.
E	Provide specialist acoustic report on draft final exemplar designs to reflect acoustic performance recognising summertime overheating.