

DATED 18 June 2013

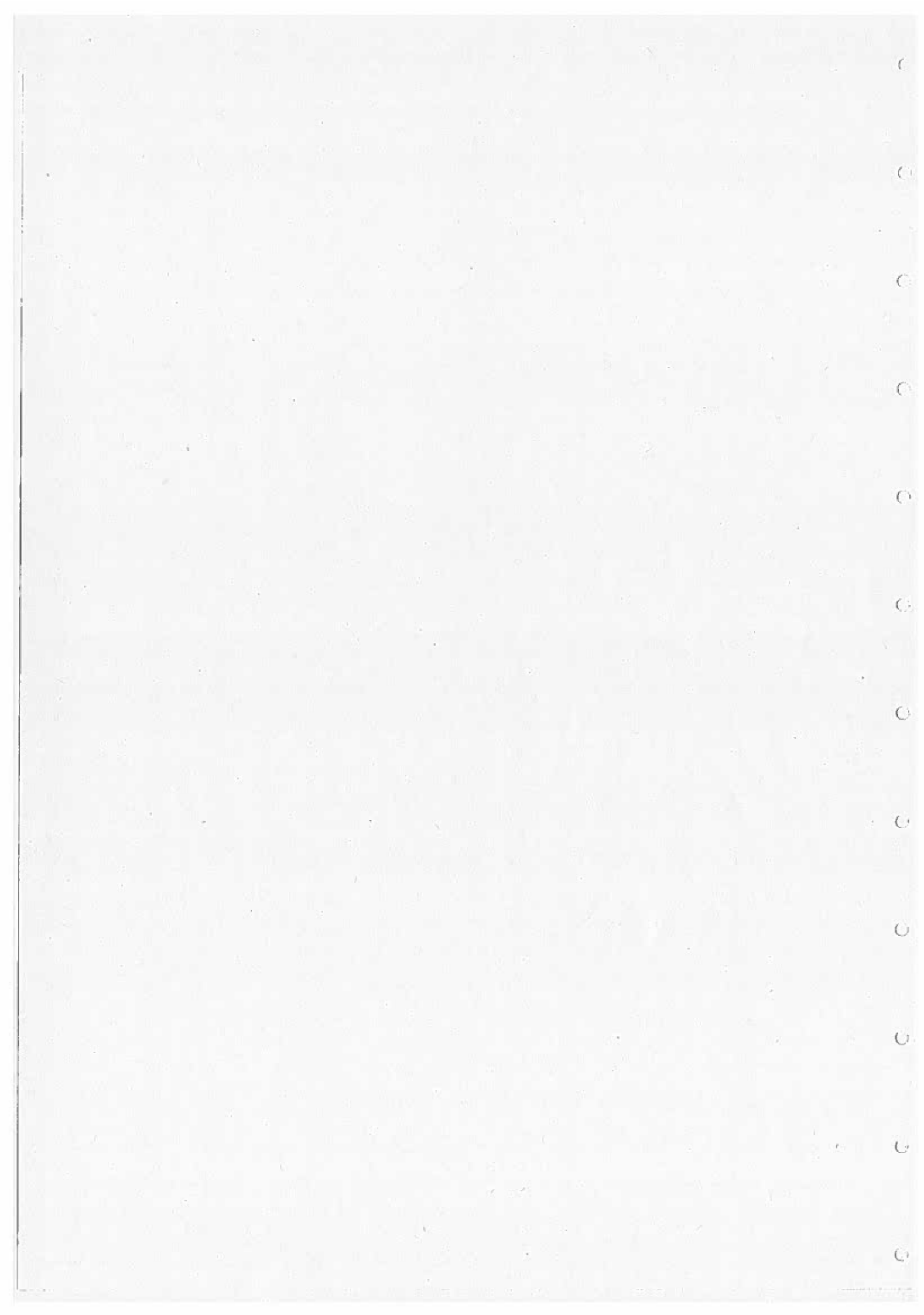
Execution Version

(1) WEST HERTFORDSHIRE HOSPITALS NHS TRUST

(2) KIER PROPERTY DEVELOPMENTS LIMITED

COLLABORATION AGREEMENT
relating to services to be provided to WEST
HERTFORDSHIRE HOSPITALS NHS TRUST


Pinsent Masons



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THIS AGREEMENT is dated

18 June

2013

PARTIES

- (1) **WEST HERTFORDSHIRE HOSPITALS NHS TRUST** of Watford General Hospital, Vicarage Road, Watford, Hertfordshire WD18 0HH ("**WHHT**"); and
- (2) **KIER PROPERTY DEVELOPMENTS LIMITED** (incorporated and registered in England and Wales under registration number 00873685), the registered office of which is at Tempsford Hall, Sandy, Bedfordshire SG19 2BD ("**KPDL**");

together the "**Parties**".

RECITALS

- (A) Kier Project Investment Limited (a member of KPDL's Group) and Watford Borough Council have agreed to incorporate Watford Health Campus Partnership LLP (the "**LABV**") to undertake the development of the Watford Health Campus and to deliver associated and other property development.
- (B) WHHT has agreed to enter into a campus agreement along with the LABV and Watford Borough Council in order to regulate their respective responsibilities and the dealings between them in relation to the development of the Watford Health Campus (the "**Campus Agreement**").
- (C) The Parties have agreed to execute this Agreement in order to provide a mechanism for WHHT to seek proposals from KPDL in relation to the delivery of services, works or development opportunities which are not being delivered through the LABV.
- (D) This Agreement will create an opportunity for WHHT to receive works and/or services and/or development services directly from KPDL without the LABV's involvement on any site owned or occupied by WHHT.

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:-

- | | |
|----------------------------|--|
| "Abort Fee" | has the meaning ascribed to it in clause 7.1 |
| "Agreed Terms" | has the meaning ascribed to it in clause 4.10 |
| "Area" | means those areas owned or occupied by WHHT within the administrative areas of Watford Borough Council, St Albans City & District Council and Dacorum Borough Council (including but not limited to Watford General Hospital, St Alban's City Hospital and Hemel Hempstead Hospital) and such other areas as the Parties may agree from time to time |
| "Building Contract" | means a building contract or part thereof including all subsidiary documents which is a Works/Services Contract |
| "Business Day" | means 9.00 am to 5.00pm on any day (other than a Saturday) on which clearing banks in the City of London are open for the transaction of normal sterling banking business and " Business Days " shall be construed |

accordingly

"Campus Development"	means the development of the scheme known as the Watford Health Campus on the site comprising and surrounding the site of Watford General Hospital in accordance with the Masterplan
"Car Parks"	means those car parks within the Area owned or occupied by WHHT and which are the subject of any Works/Services Contract
"Certificate of Practical Completion"	has the meaning given to it in the relevant Building Contract
"Confidential Information"	means any and all information in whatever form whether disclosed orally or in writing (including any electronic or machine readable form) or in any other form including know-how, confidential, commercial and financial information and all other information which should reasonably be treated as confidential, whether marked confidential or otherwise, and any other material made available by a Disclosing Party to the Recipient Party or otherwise obtained by the Recipient Party whether before or after this Agreement is entered into, together with any information derived from such information
"Consents"	means any approval or consent required for the implementation of the Qualifying Services by statute, regulation or binding guidance from the Department of Health, the NHS Trust Development Authority, East of England Strategic Health Authority, their successor bodies or any other statutory body having the function of giving approval to NHS bodies
"Consultancy Advice"	means development management consultancy advice, project management consultancy, development masterplanning, appraising viability of schemes, construction advice, letting or sale advice and planning advice
"Consultancy Fee"	means the fee payable by WHHT to KPDL in consideration for any Consultancy Advice being provided by KPDL payable in accordance with the provisions of clause 6.1.2
"Contractor"	means a private sector contractor or professional engaged by KPDL under a Works/Services Contract to undertake works pursuant to the Agreed Terms on behalf of KPDL
"Development Agreement"	means the development agreement dated on or around the Effective Date and entered into between (1) Watford Borough Council and (2) the LABV as such agreement may be varied or supplemented from time to time
"Development Management Agreement"	means the agreement between (1) the LABV and (2) Kier Property Developments Limited to the provision of services to the LABV

"Disclosing Party"	means a party disclosing or otherwise making available Confidential Information
"Disposal"	means a transfer, disposal or grant of any legal or equitable estate or interest in or over any land or property including by way of lease
"Effective Date"	means the date first stated at the top of this Agreement
"Employer's Representative"	means such appropriately qualified, experienced and competent firm or company of quantity surveyors or project managers as may be nominated by KPDL
"Expert"	<p>means:</p> <ul style="list-style-type: none"> (a) (where a dispute or difference hereunder is on a point of law or legal drafting) a Queen's Counsel practising in English real property law or construction law or partnership law or banking law (as applicable) being such Counsel as may be appointed by the Parties (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society; or (b) (where a matter concerns a planning matter) a Queen's Counsel practising at the planning bar being such Counsel as may be appointed by the Parties (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society; or (c) (where a matter concerns a financial dispute or difference) a qualified accountant from the Institute of Chartered Accountants in England and Wales may be jointly appointed by the Parties (acting unanimously) or, failing agreement, such accountant as shall be appointed at the request of either or both of the Parties by or on behalf of the President of the ICAEW or CIPFA; (d) (in the case of any other matter) a senior Chartered Surveyor having at least 10 years' post-qualification experience in the development and/or management of premises in the south east region of England as may be jointly appointed by the Parties (acting unanimously) or, failing agreement, such surveyor as shall be appointed at the request of either or both of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Royal Institution of Chartered Surveyors, such experience to be in relation to dealing with disputes of a kind of those which may be referred to him or her hereunder, <p>and "failing agreement" shall for these purposes mean failing any such joint appointment by the Parties of an Expert within 5 Business Days of notice by one Party to the other that the dispute or difference is to be referred</p>

to an Expert

"Good Industry Practice"	means such practice as may be expected of a properly qualified, competent and experienced private sector service delivery partner accustomed to carrying out services of the same or a similar nature, scope and complexity to the Qualifying Services, such practice to be carried out in a proper, prompt and business like manner using all the skill, expertise and attention as is to be expected of such a private sector service delivery partner
"Group"	means KPDL and any company in relation to which KPDL is a Holding Company or Subsidiary or a Subsidiary of any such Holding Company
"Holding Company"	has the meaning given in section 1159 of the Companies Act 2006
"Masterplan"	means the masterplan for the Watford Health Campus agreed by WHHT pursuant to the Campus Agreement and as may be amended from time to time in accordance with the Members' Agreement and the Campus Agreement
"Material Breach"	means a breach (including anticipatory breach) of this Agreement which has a serious effect on the benefit the non-defaulting party would otherwise derive from the Agreement and which, where capable of remedy, has not been remedied within 30 days following notice of the breach from the non-defaulting party requesting remedy
"Members' Agreement"	means the members' agreement dated on or around the Effective Date and entered into between (1) Watford Borough Council (2) Kier Project Investment Limited and (3) the LABV as such agreement may be varied or supplemented from time to time
"Office Accommodation Viability Study"	means the viability study undertaken by Integrated Health Projects dated April 2012
"Outline Qualifying Services Proposal"	has the meaning ascribed to it in clause 4.6
"Planning Conditions"	means any conditions imposed by the relevant local planning authority in relation to a successful planning application
"Practical Completion"	means the date on which the last of the anticipated Certificate of Practical Completion in respect of works pursuant to a Building Contract is issued
"Professional Team"	means the relevant consultants and professionals appointed by KPDL
"Qualifying Services"	has the meaning ascribed to it in clause 4.5.1
"Qualifying Services Fee"	means the fee payable by WHHT to KPDL in consideration for the Qualifying Services being provided

by KPDL payable in accordance with the Agreed Terms

"Qualifying Services Proposal"

has the meaning ascribed to it in clause 4.9

"Qualifying Services Requirements"

has the meaning ascribed to it in clause 4.5.1

"Recipient Party"

means a party in receipt of or coming into possession of Confidential Information

"Representatives"

means the WHHT Representative and/or the KPDL Representative (as applicable)

"Statutory Requirements"

means insofar as they relate to or affect the Qualifying Services the requirements of any statute or subordinate legislation

"Subsidiary"

has the meaning given in section 1159 of the Companies Act 2006

"Works/Services Contract"

means any works and/or services contract entered into between a Contractor and KPDL pursuant to clause 8 (which for the avoidance of doubt may be a Building Contract)

1.2 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.3 A reference to a party is to a party to this agreement.

1.4 A person includes a corporate or unincorporated body.

1.5 The expressions subsidiary company and holding company shall have the meanings given in section 1159 of the Companies Act 2006.

1.6 References to clauses, sub-clauses and Schedules are to clauses, sub-clauses and schedules in this Agreement unless otherwise stated.

1.7 Headings are for convenience only and shall not affect the interpretation of this Agreement.

1.8 In this Agreement references to the masculine include the feminine and the neuter, and the singular shall include the plural, and vice versa as the context admits or requires.

1.9 In this Agreement references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.10 All the schedules shall be part of this Agreement and all the obligations of the parties contained therein are legal and binding obligations in this Agreement.

2. SCOPE

This Collaboration Agreement (this "**Agreement**") shall commence on the Effective Date and shall continue until terminated in accordance with the provisions of this Agreement.

3. **POTENTIAL WORKS AND SERVICES**

3.1 KPDL agrees to make available to WHHT the range of potential works and services set out in Schedule 1 within the Area (subject to Agreed Terms being reached between the Parties) in return for the Qualifying Services Fee which shall be payable by WHHT to KPDL in accordance with clause 6.

3.2 In the event that WHHT requires Consultancy Advice and KPDL agrees to provide such advice in return for a Consultancy Fee and the terms on which such Consultancy Advice shall be provided and the terms of the Consultancy Fee have been agreed between the Parties, such Consultancy Fee shall be payable in accordance with clause 6.

4. **SERVICE DELIVERY**

4.1 The Parties shall each appoint one Representative within ten Business Days of the Effective Date.

4.2 The first Representatives shall be:-

(a) WHHT Representative: [REDACTED]

(b) KPDL Representative: [REDACTED]

4.3 Each Party is entitled to:

(a) remove and replace the Representative appointed by it and appoint a further Representative;

(b) appoint persons as alternate representatives to replace any absent Representative appointed by it (an "**Alternate Representative**") to do all such things as the absent Representative would be entitled to do in their capacity as Representative and to remove or replace any Alternate Representative appointed by it and, unless otherwise expressly stated or unless the context requires otherwise, subsequent references in this Agreement to a Representative shall be interpreted as also referring to any Alternate Representative.

4.4 Any appointment, replacement or removal by a Party of a Representative appointed or intended to be appointed by it shall be effected by notice in writing to the other Party signed by or on behalf of the relevant Party and, subject to any contrary intention expressed in the notice, shall take effect when the notice is delivered to the other Party.

4.5 In the event that:-

4.5.1 WHHT wishes to request potential works or services to be carried out which would fall within the scope of the potential works and services set out in Schedule 1 and such works or services are not being provided by the LABV (the "**Qualifying Services**"); and

4.5.2 both Representatives agree that the works or services are Qualifying Services,

the WHHT Representative shall provide details of WHHT's requirements in relation to the Qualifying Services (the "**Qualifying Services Requirements**") to the KPDL Representative and, within 5 Business Days of receipt of the Qualifying Services Requirements, the KPDL Representative shall confirm at its discretion whether or not KPDL wishes to put forward a proposal as to how the Qualifying Services Requirements could be met, provided that failure by the KPDL Representative to

provide such confirmation within the required timescale shall be deemed to be confirmation that KPDL does not wish to put forward a proposal as to how the Qualifying Services Requirements could be met.

4.6 Where the KPDL Representative confirms pursuant to clause 4.5 that KPDL does wish to put forward a proposal as to how the Qualifying Services Requirements could be met, KPDL shall have the opportunity to request any reasonable additional information that it requires from WHHT in relation to the Qualifying Services Requirements in order to enable KPDL to produce an outline proposal in accordance with clause 4.7.

4.7 Within 15 Business Days of receipt of all outstanding information requested from WHHT by KPDL pursuant to clause 4.6, KPDL shall respond to the WHHT Representative in writing with an outline proposal as to how the Qualifying Services Requirements could be met and such proposal will include:

4.7.1 KPDL's capabilities to deliver the Qualifying Services Requirements (including relevant experience);

4.7.2 details of any proposed sub-contractor;

4.7.3 a resource plan including CVs of key personnel responsible for delivery;

4.7.4 a statement of methodology and approach for delivery;

4.7.5 an indicative programme for delivery, showing key milestones and decision points;

4.7.6 the proposed basis on which a fee quotation will be provided based on the relevant basis detailed in Schedule 2 and indicative fees including an explanation of how value for money will be demonstrated;

4.7.7 confirmation of the proposed form of contract based on the relevant form(s) detailed in Schedule 2; and

4.7.8 indicative details of any proposed liability caps and liability exclusions

(the "Outline Qualifying Services Proposal").

4.8 Within 10 Business Days of receipt of the Outline Qualifying Services Proposal, the WHHT Representative shall confirm at its discretion whether or not it wishes to proceed with the Qualifying Services Requirements on the basis of the Outline Qualifying Services Proposal and indicate areas that should be covered in further detail in the Qualifying Services Proposal.

4.9 Where the WHHT Representative confirms pursuant to clause 4.8 that it wishes to proceed with the Qualifying Services Requirements on the basis of the Outline Qualifying Services Proposal, within 20 Business Days of receipt of such confirmation, the KPDL Representative shall respond to the WHHT Representative in writing with a detailed proposal as to how the Qualifying Services Requirements could be met and such proposal will be provided by way of an update to the Outline Qualifying Services Proposal and will include:

4.9.1 confirmation of the resource plan (including CVs of key personnel responsible for delivery)

4.9.2 details of any proposed sub-contractor;

4.9.3 performance and delivery specifications;

- 4.9.4 a detailed programme for delivery, showing key milestones, decision points and completion dates;
- 4.9.5 a fully costed fee quotation based on the relevant basis detailed in Schedule 2;
- 4.9.6 confirmation of the proposed form of contract based on the relevant form(s) detailed in Schedule 2; and
- 4.9.7 details of any proposed liability caps and liability exclusions

(the "Qualifying Services Proposal").

- 4.10 The WHHT Representative and the KPDL Representative will use reasonable endeavours to agree and finalise the details of the Qualifying Services Proposal as soon as reasonably practicable, and in any event within 3 months of the Qualifying Services Proposal (or such longer period as the Parties may agree), in order to produce agreed terms on which the Qualifying Services should be carried out (the "Agreed Terms").
- 4.11 Upon the specifications of the Qualifying Services Proposal having been agreed pursuant to clause 4.10, WHHT shall use all reasonable endeavours to promptly obtain all Consents in order to allow KPDL (or a Contractor appointed by KPDL) to carry out the Qualifying Services on behalf of WHHT.
- 4.12 Upon the specifications of the Qualifying Services Proposal having been agreed pursuant to clause 4.10 and all Consents having been obtained the Parties shall enter into all necessary ancillary contracts in respect of the delivery of the Qualifying Services in accordance with the scope of the Agreed Terms.
- 4.13 Where:
 - 4.13.1 the KPDL Representative confirms pursuant to clause 4.5 (or it is deemed pursuant to clause 4.5) that KPDL does not wish to put forward a proposal as to how the Qualifying Services Requirements could be met;
 - 4.13.2 the WHHT Representative confirms pursuant to clause 4.7 that it does not wish to proceed with the Qualifying Services Requirements on the basis of the Outline Qualifying Services Proposal;
 - 4.13.3 KPDL fails to put forward an Outline Qualifying Services Proposal within the timescale required pursuant to clause 4.6;
 - 4.13.4 KPDL fails to put forward a Qualifying Services Proposal within the timescale required pursuant to clause 4.9; or
 - 4.13.5 the Parties have not entered Agreed Terms within the period referred to in clause 4.10,

WHHT shall be entitled to pursue (or not to pursue) those Qualifying Services Requirements as it sees fit.

- 4.14 All timing requirements set out in this clause 4 shall apply unless otherwise agreed in writing between the Parties.

5. OBLIGATIONS AND DUTIES OF KPDL

General

- 5.1 KPDL shall at all times use all reasonable skill and care and take such actions as are to be expected of a properly qualified, experienced and competent private sector service delivery partner so as to work to implement the requirements of WHHT and in carrying out its obligations pursuant to this Agreement.
- 5.2 In the performance of the Qualifying Services, KPDL shall:-
- 5.2.1 devote such time and attention as may be necessary for the proper performance of the Qualifying Services and shall perform its obligations under this Agreement in accordance with Good Industry Practice;
 - 5.2.2 act in good faith towards WHHT;
 - 5.2.3 notwithstanding any other provision of this Agreement (and unless prior written consent has been obtained from WHHT to extend its authority) ensure that KPDL acts in accordance with its permitted authorities and the Consents (provided that reasonable notice setting out details of the Consents and any related requirements have been provided to KPDL in writing by WHHT) and within all reasonable and proper instructions of WHHT;
 - 5.2.4 not knowingly cause WHHT to be in breach of any law, or of any regulation or condition imposed by any statutory undertaker;
 - 5.2.5 give such general advice and assistance to WHHT as may lie within the field of KPDL's qualifications, competence and experience and as WHHT may from time to time reasonably request;
 - 5.2.6 at all times exercise its discretion and business judgment fairly and properly; and
 - 5.2.7 shall use reasonable endeavours to procure that any contractor appointed pursuant to clause 8 shall not, knowingly do or knowingly omit to do anything in connection with the provision of the Qualifying Services or in the course of its or their activities, which brings the standing of WHHT into serious disrepute or attracts continuous material adverse publicity to WHHT save that this clause 5.2.7 shall not apply where KPDL or any relevant third party asserts a claim against WHHT provided that such claim is not frivolous or vexatious. In this clause 5.2.7 "serious" and "material" shall be construed such that a consequence shall only be deemed to be serious or material where such consequence has an adverse and direct impact on WHHT's business and where a reasonable person would consider the act or omission which caused such consequence to be the sole reason as to why such serious disrepute or material adverse publicity has occurred.

Service Delivery

- 5.3 In the performance of the Qualifying Services, KPDL shall:-
- 5.3.1 co-operate in good faith with any consultants or professionals appointed by WHHT in so far as is required to fulfil its obligations under this Agreement;
 - 5.3.2 where WHHT provides funds to KPDL to enable KPDL to fulfil its duties and obligations under this Agreement, to use such funds in a prudent manner in order to carry out the Qualifying Services only, having due regard to the nature of the Qualifying Services and the requirement to provide the Qualifying Services as a whole;
 - 5.3.3 procure, at all times during the continuance of this Agreement, that KPDL shall employ and/or engage a sufficient number of suitably skilled and

qualified persons to provide the Qualifying Services and to enable KPDL to comply with the terms of this Agreement;

- 5.3.4 use reasonable endeavours to comply with such reasonable timescales as may be agreed with WHHT in relation to the provision of the Qualifying Services from time to time.

Reporting and Progress Monitoring

5.4 In the performance of the Qualifying Services, KPDL shall:-

- 5.4.1 keep WHHT regularly informed of progress on all Qualifying Services in which KPDL is engaged under this Agreement and shall provide all such information in relation to the Qualifying Services as WHHT shall reasonably request from time to time; and
- 5.4.2 allow WHHT (and its employees, agents and advisers), on reasonable prior notice, access to inspect and/or take copies of any such documents or records as may be necessary or appropriate for the purpose of or in connection with the Qualifying Services and/or the business of WHHT and for the purpose of monitoring KPDL's performance of the Qualifying Services in accordance with this Agreement.

6. REMUNERATION

6.1 In consideration for the provision of the Qualifying Services to WHHT, WHHT shall pay to KPDL:-

- 6.1.1 the Qualifying Services Fee (plus expenses) which shall be payable to KPDL in accordance with the Agreed Terms;
- 6.1.2 any Consultancy Fee (plus expenses) which shall be payable within 10 Business Days of the provision of Consultancy Advice by KPDL to WHHT;
- 6.1.3 any Abort Fee which shall be payable in accordance with the provisions of clause 7; and
- 6.1.4 any third party fee which KPDL has incurred on behalf of WHHT in the carrying out of its duties, the terms of which have been included in the Agreed Terms.

7. ABORT FEES

7.1 In the event that:

- 7.1.1 KPDL develops a Qualifying Services Proposal at the request of WHHT; and
- 7.1.2 WHHT has confirmed pursuant to clause 4.7 that it wishes to proceed with the Qualifying Services Requirements on the basis of the Outline Qualifying Services Proposal and subsequently decides that it no longer wishes to pursue the requirement for those particular Qualifying Services or WHHT fails to use reasonable endeavours to agree and finalise the details of the Qualifying Services Proposal in accordance with the provisions of clauses 4.10 to 4.12 (an "Abort Event"); and
- 7.1.3 KPDL serves written notice on WHHT stating that it believes that an Abort Event has occurred (an "Abort Event Notice"),

WHHT shall be liable to reimburse the costs incurred by KPDL in developing that Qualifying Services Proposal (the "Abort Fee").

7.2 In the event that KPDL believes that an Abort Fee is payable pursuant to clause 7.1 , it shall serve an Abort Event Notice on WHHT within 20 Business Days of an Abort Event occurring setting out details of the Abort Fees Payable.

7.3 Abort Fees demanded in accordance with clauses 7.1 and 7.2 shall be payable by WHHT to KPDL within 10 Business Days of the date of the Abort Event Notice.

8. THE WORKS/SERVICES CONTRACT

8.1 KPDL may sub-contract the Qualifying Services (or part thereof) provided always that KPDL:-

8.1.1 identifies a Contractor in the Outline Qualifying Services Proposal and the Qualifying Services Proposal;

8.1.2 sub-contracts the Qualifying Services to a member of KPDL's Group;

8.1.3 selects a Contractor that is appropriately qualified to undertake the task for which it has been appointed;

8.1.4 exercises reasonable supervision of the performance of such Contractor;

8.1.5 places obligations and liabilities on the Contractor (where appropriate) which are no less onerous than the obligations and liabilities placed on KPDL under this Agreement in respect of the Qualifying Services which are the subject of the sub-contract taking into account the nature of the services required under that arrangement;

8.1.6 ensures that any Contractors have adequate insurance (including but not limited to professional indemnity insurance); and

8.1.7 shall be responsible for the costs and fees of such sub-contract unless notified in writing to WHHT as part of the Qualifying Services Proposal (including all costs incurred by KPDL as a result of any sub-contract).

8.2 KPDL shall use reasonable endeavours and exercise the rights available to it to procure that the Contractor complies in all material respects with the terms of the Works/Services Contract.

9. RELATIONSHIP WITH OTHER AGREEMENTS

9.1 In the event of any conflict between this Agreement and a Works/Services Contract, the provisions of this Agreement shall take precedence and in the event of any conflict between this Agreement and the Agreed Terms, the provisions of the Agreed Terms shall take precedence.

Termination of the Works/Services Contract

9.2 If any Works/Services Contract shall terminate for any reason, KPDL shall use reasonable endeavours to appoint a replacement Contractor in which case the provisions of clause 8 shall apply to the procurement and appointment of the replacement contractor as if he were the Contractor.

10. CONFIDENTIALITY

10.1 The Parties acknowledge that Confidential Information will pass between them pursuant to this Agreement. The parties agree that a Recipient Party shall:-

- 10.1.1 keep confidential all Confidential Information disclosed by a Disclosing Party or otherwise coming into the possession of a Recipient Party during the course of this Agreement;
 - 10.1.2 not disclose Confidential Information to third parties without the express prior written consent of the Disclosing Party;
 - 10.1.3 disclose Confidential Information which is provided by the Disclosing Party for the purposes of this Agreement only to those persons necessary for the purposes of this Agreement and only to the extent necessary for the proper performance of their duties;
 - 10.1.4 procure that the obligations in clauses 10.1.1 to 10.1.3 are observed by its employees, officers and agents and any other party who is engaged for the purposes of this Agreement at the instigation of the Recipient Party.
- 10.2 The Recipient Party shall notify the Disclosing Party immediately if it becomes aware of any disclosure in breach of the obligations in this clause 10. At the request of the Disclosing Party the Recipient Party will take all such reasonable steps as are necessary to prevent further disclosure.
- 10.3 The provisions of this clause 10 shall not apply to:-
- 10.3.1 any information which is in the public domain at the Effective Date or which subsequently comes into the public domain other than by breach of this Agreement or any other confidentiality agreement; or
 - 10.3.2 any information already in the possession of the Recipient Party at the Effective Date, other than under an obligation of confidentiality;
 - 10.3.3 any information which is required to be disclosed by law (including the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations (2004) ("EIRs")) or a regulatory body or a Government department;
 - 10.3.4 any information obtained without any obligation of confidence from a third party that is not in breach of a confidentiality agreement with the Disclosing Party concerning the information obtained; or
 - 10.3.5 any information which KPDL need to disclose to its advisors as part of its accounts, audit or company valuation process or through stock market announcements.
- 10.4 The provisions of this clause 10 shall be deemed effective from the date first contacts were established between the parties with respect to this Agreement and shall remain in full force and effect without limit of period unless otherwise agreed in writing between the parties.

11. CORPORATE POWERS AND OTHER UNDERTAKINGS AND WARRANTIES

- 11.1 Each of the Parties hereby represents and warrants to the other as follows:-
- 11.1.1 that it has full corporate power and has taken all necessary corporate action to enable it effectively to enter into and perform its obligations under this Agreement;
 - 11.1.2 that this Agreement, when executed by all parties, will create obligations which are valid and binding on it, and enforceable in accordance with their terms; and

11.1.3 it does not require the consent, approval or authority of any other persons to enter into or perform its obligations under this Agreement and its entry into and performance of this Agreement will not constitute any breach of or default under any contractual, governmental or public obligation binding upon it as at the Effective Date.

12. DISPUTES

12.1 If any dispute or difference arises in relation to this Agreement which is not resolved by the Parties within 20 Business Days (or such longer period as the Parties may mutually agree) of the dispute or difference first arising, either Party shall be entitled to refer such matter to an Expert for determination where it considers (acting reasonably) that such matter is capable of determination by an Expert.

12.2 The Expert shall have due regard to the provisions of this Agreement and shall act as an Expert and not as an arbitrator. The Expert shall allow both Parties to make representations and counter-representations within a reasonable period and shall give his decision as soon as reasonably practicable.

12.3 The decision of the Expert shall be notified in writing to both Parties, together with the reasons for and any evidence on which he has relied in coming to such decision. The Expert's decision shall be final and binding upon them in the absence of manifest error or fraud and the costs of the determination shall be borne as the Expert shall determine is fair and reasonable in all the circumstances.

12.4 If the Expert shall relinquish his or her appointment or die or if it shall become apparent that for any reason he or she will be unable to complete his or her duties hereunder then any Party may apply to the appropriate President (or the next the most senior available officer) of the Royal Institution of Chartered Surveyors or the Law Society or the Institute of Chartered Accountants in England and Wales for a substitute to be appointed in his or her place which procedure may be repeated as many times as necessary.

13. LIABILITY

Subject to any remuneration liabilities arising pursuant to clause 6 of this Agreement and/or any abort fee liabilities arising pursuant to clause 7 of this Agreement (and except as otherwise expressly agreed between the Parties) neither Party shall be liable to the other whether in contract, tort (including negligence) or otherwise for any liability which arises pursuant to or in connection with this Agreement.

14. TERM AND TERMINATION

14.1 This Agreement shall commence on the Effective Date and, subject to clauses 14.2, 14.2A, 14.4 and 15.2 shall continue until terminated in accordance with this clause 14.

14.2 Either party may terminate this Agreement immediately by written notice to the other if the other commits a Material Breach of this Agreement.

14.2A WHHT may terminate this Agreement immediately by written notice to KPDL in the event of a winding up of the LABV following a Termination Event (as defined in the Members' Agreement) within clause 34.1.2 of the Members' Agreement where the PSP (as defined in the Members' Agreement) is the Defaulting Member (as defined in the Members' Agreement).

14.3 This Agreement will terminate with the unanimous written agreement of the Parties.

14.4 This Agreement shall terminate immediately upon:-

- 14.4.1 either Party being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 14.4.2 an administrative receiver, receiver, administrator, liquidator or similar officer is appointed in respect of the entirety of either Party's assets or undertaking;
 - 14.4.3 a floating charge crystallising over either Party's material assets and the holder of such floating charge successfully takes steps to enforce such security;
 - 14.4.4 a distress, distraint, charging order, attachment, execution or other process is levied against any of its assets and remains undischarged;
 - 14.4.5 a meeting of either Party's creditors, or any class of them, is held or summoned or a proposal is made for a moratorium, composition or arrangement in relation to any of its debts, or for a voluntary arrangement under Part 1 of the Insolvency Act 1986; and/or
 - 14.4.6 anything analogous to any of the events set out in clauses 14.4.1 to 14.4.5 (inclusive) shall occur in respect of either Party in any jurisdiction.
- 14.5 On the expiry or termination of this Agreement for any reason, each party shall immediately and at its own expense safely return to the other all property and information of that other party then in its possession or control.
- 14.6 Termination or expiry shall be without prejudice to the accrued rights of either party at the termination or expiry date. The provisions of clause 10 and clause 14 shall survive termination of this Agreement, however arising.
- 14.7 For the avoidance of doubt, subject to clause 14.2A, in the event of a winding up of the LABV following a Termination Event (as defined in the Members' Agreement) under the Member's Agreement and/or a termination of the Development Agreement occurring and/or termination of the Campus Agreement occurring, the Parties agree that this Agreement shall continue.
- 14.8 Unless otherwise agreed by the Parties this Agreement shall terminate no later than the 10th anniversary of the Effective Date.
15. **FORCE MAJEURE**
- 15.1 Neither party shall be liable for any delay in performing or for failure to perform its obligations under this Agreement if the delay or failure results from any cause or circumstance beyond its reasonable control, including any breach or non-performance of this Agreement by the other party ("**Force Majeure Event**"), provided that the same arises without the fault or negligence of such party.
- 15.2 If a Force Majeure Event occurs, the date(s) for performance of the obligation affected shall be post-poned for as long as is made necessary by the Force Majeure Event, but if such Force Majeure Event continues for a period of or exceeding three months, either party may terminate this Agreement immediately by written notice to the other party in which case the provisions of clauses 14.3 to 14.6 of this Agreement shall apply.
- 15.3 Each party shall use its reasonable endeavours to minimise the effects of any Force Majeure Event.
16. **FREEDOM OF INFORMATION**
- 16.1 KPDL acknowledges that WHHT is subject to the requirements of the FOIA and the EIR and it shall facilitate WHHT's compliance with its Information disclosure

requirements pursuant to the FOIA and EIR in accordance with the provisions of this clause 16. For the purpose of this clause 16, Information has the meaning given under section 84 of the FOIA ("Information").

16.2 Where WHHT receives a request for Information, it will be entitled to disclose all Information to the extent necessary to respond to that request in accordance with FOIA and/or EIR, save that in relation to any such Information that is Confidential Information of KPDL, WHHT will, as soon as reasonably practicable, consult with KPDL, allow KPDL to make representations in relation to disclosing the requested Information and will take into account those representations in responding to the request for Information. For the avoidance of doubt, the decision to withhold or disclose Information requested under the FOIA or EIR shall be at the sole discretion of WHHT.

16.3 Where WHHT receives a request for Information in relation to Information that KPDL is holding on its behalf WHHT shall transfer to KPDL the request for Information as soon as practicable and in any event within five Business Days of receiving the request for Information and KPDL shall:-

16.3.1 provide WHHT with a copy of all such Information in the form that WHHT requires as soon as reasonably practicable and in any event within ten Business Days (or such other period as WHHT may acting reasonably specify) of the receipt of the request for Information form WHHT; and

16.3.2 provide all necessary assistance as reasonably requested by WHHT in connection with any such Information, to enable WHHT to respond to a request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

16.4 Following notification under clause 16.3 and up until such time as KPDL has provided WHHT with all the Information specified in clause 16.3.1 KPDL may make representations to WHHT as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that WHHT shall be responsible for determining at its absolute discretion:-

16.4.1 whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;

16.4.2 whether the Information is to be disclosed in response to a request for Information;

and in no event shall KPDL respond directly to a request for Information unless expressly authorised to do so by WHHT.

16.5 KPDL shall as soon as practicable, and in any event within 5 business days of receipt of a request from WHHT under clause 16.3, inform WHHT of its estimated costs of complying with the request to the extent these would be recoverable if incurred by WHHT under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the WHHT's own such costs in respect of such request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in the Fees Regulations WHHT shall inform KPDL in writing whether or not it still requires KPDL to comply with the request and where it does require KPDL to comply with the request the ten business days period for compliance shall be extended by such number of additional days for compliance as WHHT is entitled to under section 10 of the FOIA. In such case, WHHT shall notify KPDL of such additional days as soon as practicable after becoming aware of them and shall reimburse KPDL for such costs as KPDL incurs in complying with the request to the extent WHHT is itself entitled to reimbursement of such costs in accordance with the FOIA and its own FOIA policy from time to time.

17. ASSIGNMENT AND SUB-CONTRACTING

Subject to clause 8, this Agreement is personal to the parties who, except as expressly provided in this Agreement may not, without the prior written consent of the other party, novate, assign, sub-license, sub-contract, transfer or charge this Agreement or any part of it, provided that in the case of an assignment or novation to a successor body undertaking materially the same functions, such consent shall not be unreasonably withheld or delayed.

18. RELATIONSHIP OF PARTIES

The relationship of the parties is that of independent contractors dealing at arm's length and nothing in this Agreement shall be construed so as to constitute a partnership arrangement.

19. NOTICES

19.1 Any notice required to be given under this Agreement may be delivered personally or sent by post, courier or transmitted by fax to the other party at the address given at the beginning of this Agreement or by sending it by electronic means to the party concerned set out in this clause (subject to the original notice or communication being sent by post on the same day in the manner specified above):

1. WHHT

Email: Louise.Gaffney@whht.nhs.uk (Attention: Louise Gaffney);

2. KPDL

Email: Leigh.Thomas@kier.co.uk (Attention: Leigh Thomas) and Email: Alastair.gordon-stewart@kier.co.uk (Attention: Alastair Gordon-Stewart).

19.2 Any notice so sent shall be deemed to have been duly given:-

19.2.1 if sent by personal delivery or courier, upon delivery at the address of the relevant party;

19.2.2 if sent by post, two days after the date of posting;

19.2.3 if sent by fax, upon confirmation of transmission; and

19.2.4 if sent by electronic means (subject to the original notice or communication being sent by post) on the same day in the manner specified in clause 19.1.

19.3 If a notice is given or deemed given at a time or on a date which is not a Business Day, it shall be deemed to have been given on the next Business Day.

20. VARIATION

Any variation of or amendment to this Agreement shall only be effective if it is in writing and signed by both parties.

21. WAIVER

Failure of either party to enforce or exercise, at any time or for any period, any term of this Agreement, does not constitute, and shall not be construed as, a waiver of such term and shall not affect any future right to enforce such term or any other term in this Agreement.

22. GOVERNING LAW AND JURISDICTION

22.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

22.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

23. SEVERANCE

The invalidity or unenforceability of any term of or any right arising pursuant to this Agreement shall not adversely affect the validity or enforceability of the remaining terms and rights.

24. ENTIRE AGREEMENT

24.1 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing except and only to the extent that such other agreements are expressly referred to in this Agreement.

24.2 No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement.

24.3 Neither party shall have any remedy in respect of any untrue statement made to it on which it has relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that party's only remedy shall be for breach of contract as provided in this Agreement.

24.4 In respect of any Qualifying Services where there are Agreed Terms relating to such Qualifying Services, in the event of any inconsistency between any of the terms of this Agreement and the Agreed Terms, the provisions of the Agreed Terms shall prevail.

25. SURVIVAL

Provisions of this Agreement which are either expressed to survive its termination or, from their nature or context, are apparently intended to survive such termination (including but not limited to those listed in clause 11) shall remain in full force and effect notwithstanding termination.

26. FURTHER ASSURANCE

The parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by this Agreement.

27. RIGHTS OF THIRD PARTIES

27.1 No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

27.2 Notwithstanding that any term of this Agreement may be or become enforceable by a person who is not a party to it, the terms of this Agreement or any of them may be varied, amended or modified or this Agreement may be suspended, cancelled or terminated by Agreement in writing between the parties or this Agreement may be rescinded (in each case) without the consent of any such third party.

THIS AGREEMENT has been entered into and delivered as a deed on the date stated at the beginning of it and shall be effective from the Effective Date.

SCHEDULE 1

1. DEVELOPMENT AND PROJECT MANAGEMENT

1.1 THE PROFESSIONAL TEAM

- 1.1.1 Before the commencement of any development works on the Areas, KPDL will enter into the appointment of the Professional Team on behalf of WHHT or facilitate the appointment of the Professional Team on WHHT's behalf and deliver to WHHT certified copies of the appointments.
- 1.1.2 Before the appointment of any member of the Professional Team, obtain and deliver to WHHT details of the professional indemnity insurance cover of the body in question and confirmation from its insurance brokers or underwriters that the insurance remains in force.
- 1.1.3 Ensure that the terms of appointment of the members of the Professional Team together cover all design and contract administration services necessary for the proper completion of the Qualifying Services.
- 1.1.4 Diligently take all reasonable steps necessary to procure the due performance and observance of the obligations and duties of each member of the Professional Team.
- 1.1.5 Not do anything which, nor omit to do anything the omission of which, would entitle a member of the Professional Team to treat his contract of appointment in connection with Qualifying Services as terminated by breach.
- 1.1.6 Not terminate the appointment of any member of the Professional Team without the approval of WHHT.
- 1.1.7 If necessary, commission site and soil investigations, land surveys, traffic surveys, environmental investigations, surveys of existing buildings and similar reports that may be required, on behalf of WHHT and subject to the WHHT approval of the consultants to be appointed and their appointment, terms and fees.
- 1.1.8 If necessary, commission space audits, lifecycle modelling, energy modelling and similar such works that may be necessary in support of WHHT.

1.2 DESIGN OF THE DEVELOPMENT AND THE APPROVED PLANS

- 1.2.1 Advise as to the design of the Qualifying Services and review designs for the Qualifying Services with reference to considerations of commercial viability, efficiency, economy and suitability for redevelopment, sale or lease.
- 1.2.2 Ensure that in relation to the design and programming of the Qualifying Services it procures that the Professional Team prepare detailed specifications and drawings showing the development of the Qualifying Services in accordance with the Masterplan and any Planning Conditions.
- 1.2.3 Thereafter throughout the course of the provision of the Qualifying Services procure that the Professional Team prepare such further detailed specifications and drawings as may be necessary or appropriate to illustrate in all material respects the design, content and quality of the Qualifying Services as they progress in accordance with the Planning Conditions and WHHT's Strategy.

1.3

THE CONSENTS

- 1.3.1 On WHHT's behalf apply for (or where appropriate arrange for other members of the Professional Team to apply for) and use reasonable endeavours to obtain any Consents from time to time as may be appropriate before commencement of and throughout the course of the development works, the form and content of all applications and all supporting documentation having first been approved by WHHT, provided that such approval shall be deemed to be given where no response is given to KPDL within 5 Business Days of KPDL requesting approval.
- 1.3.2 If a Consent is refused, on WHHT's behalf and subject to their approval help appeal against the refusal or take such other action as may be appropriate in order to proceed with the Qualifying Services.
- 1.3.3 If conditions are unacceptable to WHHT (acting reasonably) and if so requested by WHHT on their behalf make or join in making such appeals, objections or representations as WHHT may require.
- 1.3.4 Negotiate and document the terms of agreements with the owners and occupiers of neighbouring property for the acquisition of additional land or rights, the release of rights of way, light and air or otherwise and the extinguishment of interests in, over or with respect to the Qualifying Services to the extent that such additional land or rights are required for the Qualifying Services or such rights and interests would be infringed by the Qualifying Services or would prevent or impede the carrying out or progress of the Qualifying Services or its use and enjoyment.
- 1.3.5 Help procure the grant to WHHT of all rights necessary for any works which are required to be executed outside the boundaries of WHHT owned land to facilitate their redevelopment plans.
- 1.3.6 Negotiate and document any necessary rights of light agreements, party wall agreements or awards, schedules of condition and agreements relating to the use and maintenance of any areas to be used in common with adjoining owners and occupiers, subject to the approval by the WHHT of the final terms of such agreements.
- 1.3.7 On behalf of WHHT apply for and use all reasonable endeavours to obtain any necessary orders for the stopping up or diversion of highways or footpaths to the extent that they may be required to enable any redevelopment works to be carried out on the Areas.

1.4

THE CONTRACTOR

- 1.4.1 On the redevelopment of the Areas advise (in conjunction with the Professional Team) as to what design documents and other documents and information should be in the tender package and as to the form of the tender documents.
- 1.4.2 On behalf of WHHT carry out financial checks and make other appropriate enquiries as to the repute, competence and suitability with respect to the Qualifying Services of any proposed Contractor and devise and undertake appropriate pre-tender qualification procedures.
- 1.4.3 In conjunction with the Professional Team examine, assess, report and advise on all tenders received and the vetting of the Contractor and specialist sub-contractors and suppliers, and make recommendations in relation to the foregoing.

- 1.4.4 In conjunction with the Professional Team advise as to the form of documentation to be adopted in relation to sub-contractors (both as between the Contractor and the sub-contractors and between the sub-contractors and WHHT).
- 1.4.5 In selecting (or advising WHHT in the selection of) the Contractor act in good faith on an arm's length basis and without regard to any arrangements or relationship which KPDL may have with any prospective contractor which do not relate to or are not relevant to the redevelopment of the Areas.
- 1.4.6 Facilitate that WHHT and the Contractor select execute and enter into the Building Contract before commencement of the Qualifying Services and supply a certified copy to WHHT, together with any drawings referred to in it.
- 1.4.7 Help WHHT procure that the Contractor's obligations under the Building Contract are adequately secured.
- 1.4.8 Take all reasonable steps necessary to procure the due performance and observance of the obligations and duties of the Contractor under the Building Contract on the redevelopment of the Areas on behalf of WHHT.
- 1.4.9 Not do anything nor omit to do anything which would entitle the Contractor to treat the Building Contract as terminated by breach.
- 1.4.10 Use all reasonable endeavours to apply and collect all liquidated and ascertained damages demandable from and payable by the Contractor under the Building Contract on behalf of WHHT.
- 1.4.11 Notify WHHT of any perceived shortfall in performance of the Contractor and any dispute arising pursuant to the Building Contract or any sub-contract.
- 1.4.12 Not terminate the Contractor's appointment under the Building Contract without the approval of the WHHT.

1.5 PROGRAMME

- 1.5.1 Helping establish an overall detailed programme for all activities connected with the Qualifying Services and revise it as often as necessary.
- 1.5.2 Monitor and expedite all activities connected with the Qualifying Services with a view to maintaining progress in accordance with the programme.
- 1.5.3 As soon as becoming aware of any actual or potential delay to the progress of the Qualifying Services supply to WHHT written details of the reasons for the delay and of the expected effects.
- 1.5.4 Use all reasonable endeavours to avoid delays to the Qualifying Services and, if they cannot reasonably be avoided, to mitigate their effect, including (where required by WHHT) accelerating works so as to overcome delays.

1.6 EXECUTION OF THE QUALIFYING SERVICES

- 1.6.1 Issue instructions and directions to the Contractor and the members of the Professional Team as necessary to carry out the Qualifying Services.
- 1.6.2 Keep under continuous review the performance of the members of the Professional Team and instruct them and co-ordinate their activities as necessary with a view to achieving the satisfactory completion of the Qualifying Services.

1.6.3 Closely monitor the provision of the Qualifying Services with respect to compliance with the programme.

1.6.4 Use all reasonable endeavours to procure that the Qualifying Services are carried out:

- (a) in a good and workmanlike manner and in accordance with good building practice generally accepted at the date of their execution;
- (b) with new and suitable good quality materials of their several kinds according to good building practice generally accepted at the date of their execution;
- (c) in accordance with the agreed plans and the Consents;
- (d) in compliance with the Planning Conditions and any Statutory Requirements regulating the Qualifying Services; and
- (e) in compliance with all statutes, statutory orders, and regulations made under or deriving validity from them, and any requirements and codes of practice of local authorities and competent authorities affecting the Qualifying Services.

1.6.5 Manage the issue of Practical Completion.

1.7 **SITE SECURITY AND ADVERTISEMENTS**

1.7.1 Ensure temporary secure enclosures are erected where necessary on behalf of WHHT to the reasonable satisfaction of WHHT and maintained in good condition.

1.7.2 Procure the removal of all such enclosures upon Practical Completion.

1.8 **OUTGOINGS**

Notify WHHT of any demands for payment of rates, taxes, outgoing, duties, charges, assessments or other impositions assessed upon, or payable by WHHT in respect of the Areas.

1.9 **UTILITIES**

1.9.1 Procure that during the execution of the Qualifying Services proper arrangements are made with the supply authorities for the provision of temporary utilities services required for the carrying out of the Qualifying Services.

1.9.2 Advise on and structure efficient and economic long-term arrangements to be made with suppliers for the provision of utilities to WHHT and in consultation with the Professional Team and WHHT's solicitors use all reasonable endeavours to ensure that all necessary legal formalities (including substation and transformer chamber leases or transfers).

1.10 **ENCROACHMENTS**

Notify WHHT of any new or additional easement being acquired or any physical encroachment being made by any third party which affects the Qualifying Services and on WHHT's behalf take all steps reasonably required by WHHT to prevent any such easement or encroachment.

1.11 MEETINGS AND COMMUNICATIONS

- 1.11.1 Arrange, chair and minute periodic meetings of the Contractor and the Professional Team to discuss, monitor and expedite the progress of the Campus Development and attend all other periodic and ad hoc meetings related to the Campus Development.
- 1.11.2 Keep full and proper records of all meetings and negotiations attended or conducted by KPDL and on request provide copies to WHHT if required.
- 1.11.3 Establish and maintain lines of communication for the exchange of information between the members of the Professional Team, the Contractor and sub-contractors and others concerned in the Campus Development.

1.12 PROVISION OF INFORMATION TO WHHT

- 1.12.1 Keep WHHT informed of:
 - (a) all material measures taken and stages reached by KPDL in performing its obligations; and
 - (b) the progress of the Qualifying Services and any material problems or delays affecting the Qualifying Services.
- 1.12.2 Supply to WHHT on its request such information as WHHT may reasonably require to satisfy itself that KPDL is complying with its obligations under this Agreement.
- 1.12.3 Supply promptly to WHHT copies of any relevant notices, drawings, calculations, specifications, reports, certificates, programmes and other similar items relevant to the Qualifying Services received from the Contractor or any member of the Professional Team or from any local or other competent authority or statutory undertaker or other third party.

1.13 COST CONTROL

- 1.13.1 Advise upon the comparative cost of alternative designs and methods of construction.
- 1.13.2 Agree a budget and cash flow plan for the Qualifying Services and establish cost monitoring and cost control procedures and report to WHHT monthly upon such matters.

1.14 INSPECTION AND TESTS

In conjunction with the Employer's Representative (if appointed) review and report to WHHT and the Professional Team on the quality of execution and the progress of the Qualifying Services.

1.15 INSURANCE

- 1.15.1 Submit to WHHT for approval recommendations as to the appropriate responsibilities of all concerned in relation to the insurance of the Qualifying Services with a view to ensuring that responsibility for effecting all appropriate insurances is clearly defined.
- 1.15.2 Where insurance is to be the responsibility of the Contractor, on an annual basis, monitor the insurance and in the event of it being allowed to lapse

arrange for the alternative insurance of the Qualifying Services in accordance with such powers as may exist under the Building Contract.

- 1.15.3 Effect and maintain such insurances as are to be the responsibility of KPDL at the agreed levels unless otherwise agreed.
- 1.15.4 Where KPDL is undertaking the development apply all proceeds of insurance effected by KPDL in reinstating the insured damage (if possible) and procure that the Contractor and all other third parties comply with their obligations in relation to reinstatement of any Qualifying Services destroyed or damaged by an insured risk, report on any non-compliance and take such steps as are approved by WHHT as a result.

1.16 VACANT POSSESSION AND TENANT LIAISON

- 1.16.1 Help procure vacant possession of all properties in the Area in accordance with a strategy approved by WHHT (acting reasonably) as soon as possible.
- 1.16.2 Negotiate the terms of such agreements as are required with the tenant of any properties on the Site to enable the Qualifying Services to be implemented, including for the variation of any rights and reservations in the leases of any adjoining land.
- 1.16.3 In so far as KPDL is able to ensure that the Qualifying Services are planned and carried out in such a way as to avoid or minimise disruption to occupiers of adjoining land and its visitors and to maintain access and all facilities to which it is entitled.
- 1.16.4 So far as practicable take account of the concerns and representations of occupiers of the adjoining land, and keep WHHT fully and regularly informed of any dissatisfaction expressed by any tenant during the progress of the Qualifying Services.

1.17 PRACTICAL COMPLETION

- 1.17.1 At Practical Completion co-ordinate handover and see that all appropriate inspections and tests are made.
- 1.17.2 If a Certificate of Practical Completion is issued subject to a snagging list of items remaining to be completed or remedied, use all reasonable endeavours to procure that those items are completed or remedied (as the case may be) as soon as practicable following the issue of the Certificate of Practical Completion.
- 1.17.3 As soon as reasonably practicable (and in any event no later than 20 Business Days) after the date of the Certificate of Practical Completion (or in respect of the last section to reach Practical Completion) provide WHHT (if requested) with:
 - (a) 3 copies each of all technical specifications and maintenance and operating manuals in relation to all installations and services comprised in the Qualifying Services certified as being complete and correct by the Employer's Representative;
 - (b) 3 complete hard copy sets of all relevant plans, sections, elevations and drawings (together with further reproducible sets in an industry standard electronic format on CD-Rom or an equally convenient and accessible medium) showing the Campus Development as built;

- (c) the originals or copies of all Consents, together with all material or relevant correspondence and documentation relating to the obtaining of them and copies of all associated drawings and plans and copies of all applications relative to them;
- (d) evidence that all Consents have been obtained and complied with in full or evidence that all reasonable endeavours have been used to obtain or comply with such Consents;
- (e) copies of all test and commissioning certificates for all plant and equipment where relevant; and
- (f) a copy of the relevant completion certificate issued by the relevant authority under the building regulations if available.

1.18 DEFECTS

- 1.18.1 Monitor the progress of remedial works during the defects liability period and the making good of defects and enforce the defects liability provisions in the Building Contract.
- 1.18.2 Procure that the Employer's Representative shall before the expiry of the defects liability period under the Building Contract inspect the works and prepare a schedule of defects itemising defects, shrinkages, and other faults due to materials or workmanship not in accordance with this Agreement and the standards specified in the Building Contract, or to frost occurring before Practical Completion.

1.19 CLAIMS

Comply with the reasonable requirements of WHHT in relation to the prosecution of claims, including the conduct of proceedings before any adjudicator, arbitrator, tribunal, or Court pursuant to any claim or action against the Contractor or any sub-contractor or the Professional Team and keep WHHT fully informed of progress and all material steps taken.

1.20 LETTING/SALE

Undertake the letting and sale of sites within the Area in agreement with WHHT.

1.21 GENERAL DUTIES

- 1.21.1 Co-operate generally with WHHT, the Contractor, the Professional Team and all other consultants and contractors engaged in connection with the Qualifying Services.
- 1.21.2 Give such general advice and assistance to WHHT as may lie within the field of KPDL's qualifications, including but without limitation development advice.
- 1.21.3 Provide property development services.

1.22 LETTING OF THE PROPERTY

- 1.22.1 As soon as practicable KPDL shall use all reasonable endeavours to negotiate the letting of any property.
- 1.22.2 The letting agents approved by WHHT shall be appointed by KPDL on the terms approved by KPDL (acting reasonably).

- 1.22.3 As soon as practicable after the letting agents have been appointed KPDL shall market the letting of any property.
- 1.22.4 After receipt by KPDL of offers from prospective tenants or buyers it shall submit to WHHT details of the offer it recommends is accepted and thereafter provide all other information reasonably required by WHHT in relation to such offers (to the extent that such information is in KPDL's possession).
- 1.22.5 When a letting or sale has been approved by WHHT they shall instruct their solicitors to negotiate and prepare for exchange an agreement for lease or sale agreement to give effect to the letting or sale as quickly as reasonably practicable and KPDL shall provide all such assistance as WHHT and their solicitors may reasonably require in relation to the legal negotiations.

2. CHANGE MANAGEMENT

2.1 Help appoint a change manager to work with the WHHT stakeholders during the design and delivery phases and to support staff as they move into new working environments. The change manager's role will include but not be limited to:

- 2.1.1 collate and interpret the information needed to inform the design of WHHT's new administrative hub to deliver new and more agile ways of working;
- 2.1.2 design and deliver an implementation programme for agile working; and
- 2.1.3 contribute to discussions on the design and budget, fit out and procurement processes as they affect WHHT staff and to act at all times within the parameters and budget of the project.

2.2 Phase One – Human Resources and IT

- 2.2.1 Undertake a gap analysis in relation to the detail provided in the Office Accommodation Viability Study, with reference to numbers, working practices, adjacencies and needs of the appropriate departments.
- 2.2.2 Develop an understanding of the current relations between management and staff and agree with the WHHT human resources team their approach to the changes and understand what their requirements are for discussions/negotiations with trade unions and staff representatives.
- 2.2.3 Agree the information and communications technology ("ICT") scope to produce the greatest possible agile working styles within ICT strategy and budgets.

2.3 Phase Two – Change Programme

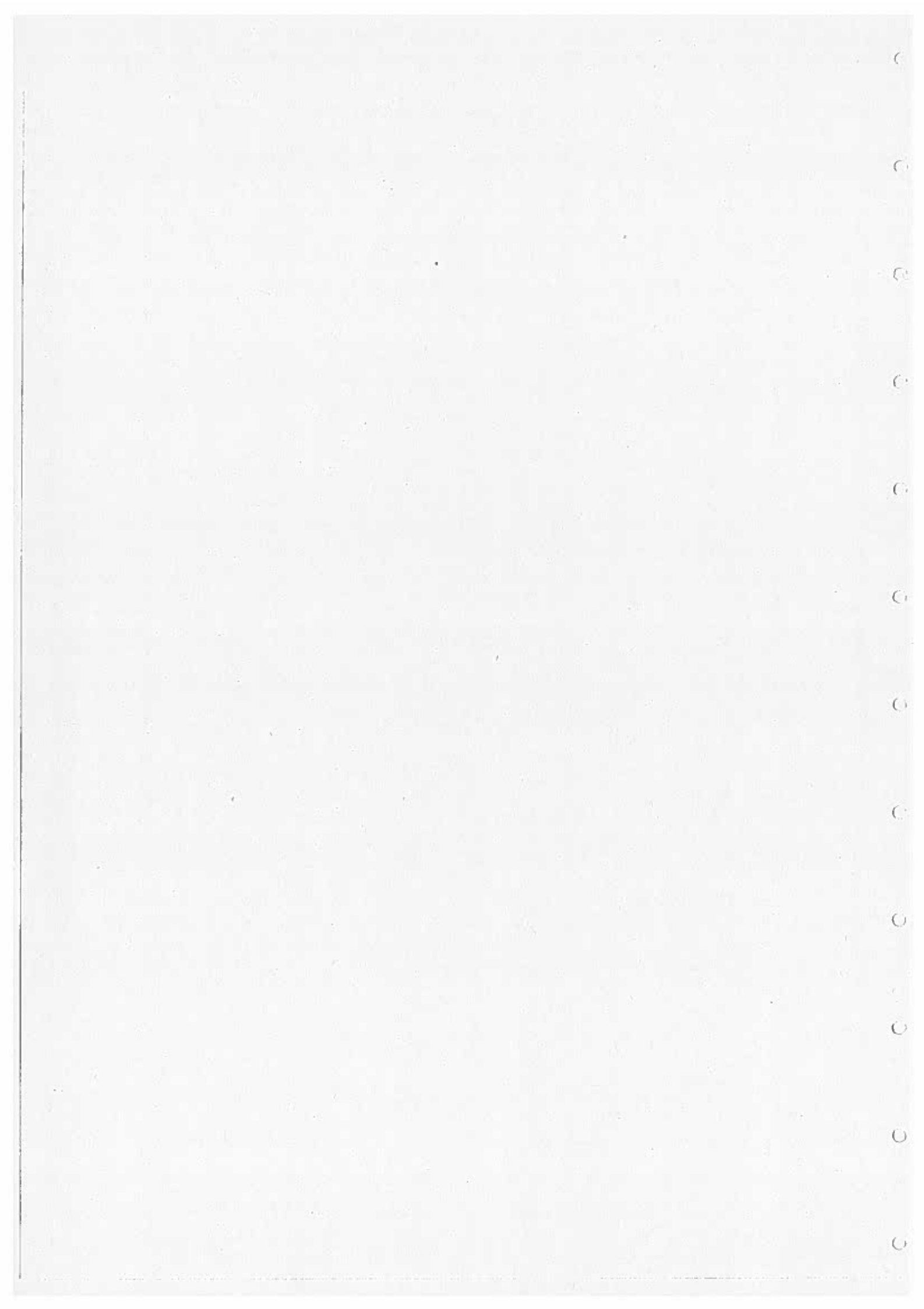
- 2.3.1 Establish change champions within each relevant team or group.
- 2.3.2 Hold regular meetings with groups and individuals to develop their understanding of agile working and the benefits of such and to address people's concerns, including understanding staff travel arrangements and other requirements.
- 2.3.3 Develop a detailed communication structure for all staff to understand the programme and to report on progress.
- 2.3.4 Develop a public relations/press strategy to demonstrate that these changes are not taking money from frontline care and will have tangible benefits to service users.

3. FM PROCUREMENT

3.1 Assist WHHT with the procurement of facilities management services including, but not limited to:

- 3.1.1 repair and maintenance services; security; cleaning, waste & pest control; portage; mailroom; grounds maintenance; room booking; taxi booking; and facilities management helpdesk.
- 3.1.2 In conjunction with the Professional Team, advise as to what scope and performance documents and other documents and information should be in the tender package and as to the form of the tender documents.
- 3.1.3 Carry out financial checks and make other appropriate enquiries as to the repute, competence and suitability with respect to the Qualifying Services of any proposed Contractor and devise and undertake appropriate pre-tender qualification procedures.
- 3.1.4 In conjunction with the Professional Team examine, assess, report and advise on all tenders received and the vetting of the Contractor and specialist sub-contractors and suppliers, and make recommendations in relation to the foregoing.
- 3.1.5 In conjunction with the Professional Team advise as to the form of documentation to be adopted in relation to sub-contractors (both as between the Contractor and the sub-contractors and between the sub-contractors and WHHT).
- 3.1.6 In selecting the Contractor act in good faith on an arm's length basis and without regard to any arrangements or relationship which the Manager may have with any prospective contractor which do not relate to or are not relevant to the Campus Development.
- 3.1.7 Ensure that KPDL and the Contractor select execute and enter into a facilities management contract if required in carrying out before commencement of the Qualifying Services and supply a certified copy to WHHT.
- 3.1.8 Procure that the Contractor's obligations under the facilities management contract are adequately secured.

3.2 Any other services that the parties may reasonably agree.



SCHEDULE 2

Qualifying Services	Form of contract	Fee basis
Development and project management	NEC3 Professional Services Contract	Director: £110/hr Associate Director/ Financial Controller / Change Manager: £90/hr Senior Development Manager / Senior Project Manager / Senior Accountant: £65/hr Project Manager / Development Manager / Accountant: £45/hr Graduate / support staff: £25/hr
FM procurement	NEC3 Professional Services Contract	Director: £110/hr Associate Director/ Financial Controller / Change Manager: £90/hr Senior Development Manager / Senior Project Manager / Senior Accountant: £65/hr Project Manager / Development Manager / Accountant: £45/hr Graduate / support staff: £25/hr

The fee rates set out in this Schedule shall be subject to annual indexation in accordance with the retail price index published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such adjustments to the index as the Parties may agree.

Executed as a deed by
**WEST HERTFORDSHIRE HOSPITALS
NATIONAL HEALTH SERVICE TRUST**
whose corporate common seal was
hereunto affixed in the presence of:

)
)
)
)

Authorised signatory Em. Hasan

Authorised signatory SGJ —

Executed as a deed by
KIER PROPERTY DEVELOPMENTS LIMITED

)
)
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)

Director Ahmed Sui

Director/Secretary Mark Thomas