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## 1 Introduction

### 1.1 ACCEPTANCE OF TERMS

- 1.1.1 The client agree to rely upon the clients own judgment as to the suitability of the Services for the clients purposes. The studio will perform the Services with reasonable skill and care.
- 1.1.2 Any dates that the studio agree for the performance of the Services (or any part of them) shall be estimates only and time shall not be of the essence for the performance of the Services.
- 1.1.3 The client acknowledge that in instructing Sustainable Planning Design Studio Ltd. (SPD Studio) to commence the services described in SPD Studios Project Proposal and or Fee Letter (the 'services' and or 'Project Proposal' or 'Fee Letter' respectively) the client agrees to these terms and conditions governing the contractual relationship between SPD Studio (whether or not the client have countersigned SPD Studios Project Proposal and or Fee Letter).
- 1.1.4 These terms and conditions form the basis on which the studio are prepared to do business with the client and shall apply to the exclusion of any other terms or conditions that have been proposed or may be proposed.
- 1.1.5 The contract between SPD Studio shall comprise the Project Proposal, any communications clarifying the Project Proposal and or Fee Letter, the clients instruction to commence the Services and these terms and conditions.
- 1.1.6 Any advice given by SPD Studio during the performance of the Services is solely for the clients benefit and for the purposes of the project to which it relates.
- 1.1.7 The studio will not be liable for any loss or damage resulting from the use of or reliance on SPD Studios advice for any other purpose or by any other person.
- 1.1.8 The studio agree to perform SPD Studios obligations under the Contract in accordance with all applicable laws and regulatory requirements in force from time to time.

### 1.2 DEFINITIONS

- 1.2.1 "Business Day" - a day other than a Saturday, Sunday, or public holiday in England
- 1.2.2 "Contract" - The contract between SPD Studio and the client for the supply of the Services, formed in accordance with clause 2 and subject to these Terms and Conditions.
- 1.2.3 "Data Protection Legislation" - Any applicable laws relating to the protection of personal data and the privacy of individuals, as applicable to either party or the Services under this Contract, including the UK GDPR and the Data Protection Act 2018 (all as amended, updated, or re-enacted from time to time).
- 1.2.4 "Deliverables" - The drawings, reports, specifications, typologies, models and digital models and any other documents which the studio produce for the client as part of the Services.
- 1.2.5 "Intellectual Property Rights" - Copyright and related rights, trademarks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all renewals and extensions of the same, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.2.6 "Agreement" - The written Project Proposal and or Fee Letter and confirmation of instructions (including the annexes) signed by SPD Studio and provided to the client.
- 1.2.7 "Personal Data" - The meaning set out in the Data Protection Legislation in relation to data Processed under the Contract.
- 1.2.8 "Processed" and "Processing" - Have the same meaning as in the Data Protection Legislation.
- 1.2.9 "Services" - The services to be supplied as specified in the Project Proposal and or Fee Letter.

# CONDITIONS OF AGREEMENT



- 1.2.10 "Terms and Conditions" - The standard terms and conditions of business set out in this document, together with any special terms agreed in writing between the client and SPD Studio.
  - 1.2.11 "UK GDPR" - Means the UK GDPR as defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.
  - 1.2.12 "The studio" - Referring to Sustainable Planning Design Studio Limited. (SPD Studio), a company duly registered and existing under English laws. The term "studio" is used throughout this document to refer to Sustainable Planning Design Studio Ltd. and may be interchangeably used with the studio's full name or other terms such as "SPD Studio." SPD Studio is registered in England and Wales under company number 9716226. Registered Office: Unit 1&2 Tollgate Business Park, Stanway, Colchester, Essex, CO38AB
  - 1.2.13 "The Client"- The person(s) or organisation(s) who purchases the Services from the Studio under the Contract, identified as the client in the Project Proposal and or Fee Letter.
- 1.3 SCOPE OF SERVICES
- 1.3.1 The studio will carry out the Services in accordance with the Project Proposal and or Fee Letter. The studio will not be responsible for any failure to advise on any matter that falls outside the scope of SPD Studios' instructions.



## 2 Client Responsibilities

### 2.1 OBLIGATIONS

- 2.1.1 The client shall ensure that the details set out in the Project Proposal and or Fee Letter (including the scope of the Services) are complete and accurate.
- 2.1.2 Cooperate with the Studio and SPD Studios representatives in all matters relating to the Services.
- 2.1.3 Provide us with such information as the studio may reasonably require in order to supply the Services and ensure that such information is accurate in all material respects.
- 2.1.4 Comply with all applicable laws and regulatory requirements in force from time to time and SPD Studios policies and standards in force from time to time and provided by us to the client.

### 2.2 SUPPLY OF INFORMATION AND APPOINTMENT OF OTHER PROFESSIONALS

- 2.2.1 The client will supply the Studio with and all necessary and relevant data and information to provide the client proposal that is in the client possession or in the possession of any other professional advisers or the clients contractors, and all instructions, decisions, consents, or approvals in a timely manner to avoid delay or disruption to SPD Studios performance of the Services. Failure to comply with this obligation may result in the suspension of SPD Studios performance of the Services in accordance with clause 2.3.1.1.
- 2.2.2 The client will be responsible for the appointment of the other professional consultants and the contractors for the Project. The client will engage them in good time, having due regard to any agreed program for the Project unless otherwise specified by SPD Studio
- 2.2.3 Both parties acknowledge that during the Services, the client may request the Studio to engage with certain other consultants, professional advisers and/or service providers ("third-party consultants").
- 2.2.4 Upon receipt of a request, the studio may agree to, on the client's behalf, instruct, liaise with or co-ordinate advice from the third-party consultants.
- 2.2.5 The client agree that the studio shall have no liability for:
  - 2.2.5.1 the accuracy or appropriateness of the advice given, or work undertaken by those third-party consultants.
  - 2.2.5.2 Payment of the fees and other charges of third-party consultants (except to the extent that the client have paid the Studio, and the studio have duly received any disbursements payable in respect of third-party consultants' fees); and;
  - 2.2.5.3 The acts and omissions of a third-party consultant (including its employees and agents) except to the extent that any loss or damage suffered by the client results from the acts or omissions of the Studio.
  - 2.2.5.4 The Fees include payment to cover the cost of all SPD Studios disbursements unless listed separately for reimbursement in the Project Proposal and or Fee Letter.
- 2.2.6 The client acknowledges and agrees that the client is responsible at all times for the payment of the third-party consultant's fees and shall make prompt payment to the Studio of such fees.
- 2.2.7 In respect of any work or service in connection with the project by any person other than SPD Studio (including by Contractors or third-party consultants), the Client shall;
  - a) Hold such persons and not SPD Studio responsible for the competence and performance of such work and services;
  - b) Require such person to co-operate with SPD Studio, including to provide SPD Studio with designs and other information necessary for the proper and timely performance of the Services;
  - c) Require that such persons shall, when requested by SPD Studio, consider, and provide comments on the work of SPD Studio such that SPD Studio can properly integrate their own work with that of such persons.



2.2.8 The Client shall hold any Contractor or third-party consultants and not SPD Studio responsible for its management and operational methods and for the proper carrying out and completion of the Works in compliance with the relevant building contract and for compliance with health and safety requirements on the Site.

## 2.3 CLIENT DEFAULT

2.3.1 If the performance of any of SPD Studio's obligations under the Contract is prevented or delayed by any act or omission by the client or the client's representatives, or if the client fails to pay any amount due to the Studio when due, then:

2.3.1.1 Without limiting SPD Studios' other rights and remedies, the studio may suspend the performance of the Services until the client remedies the default.

2.3.1.2 The studio will not be liable for any costs, loss, or damage incurred by the client as a direct or indirect result of SPD Studio's failure or delay to perform any of SPD Studio's obligations which the studio is prevented or delayed from performing, or which the studio suspends the performance of.

2.3.1.3 The client will reimburse us, on written demand, for any costs, expenses, loss, or damage incurred by us as a direct or indirect result of the client's default.

## 2.4 PROVISION OF INFORMATION

2.4.1 The provided information should be accurate, complete, and up to date to ensure the effective delivery of the Services.

2.4.2 Failure to provide the necessary information within a reasonable timeframe may result in delays or additional costs; the client shall bear full responsibility for any resulting delays or additional costs incurred by SPD Studio, for which the studio shall not be held responsible.

2.4.3 The client acknowledges that SPD Studio relies on the accuracy and completeness of the information provided by the client and shall not be liable for any consequences resulting from inaccurate or incomplete information.

## 2.5 TIMELY DECISIONS

2.5.1 The client shall make timely decisions and provide necessary approvals or consents in a prompt manner to enable SPD Studio to proceed with the Services.

2.5.2 Any delays in decision-making or failure to provide timely approvals may impact project timelines and incur additional costs, for which the client shall be responsible.

2.5.3 SPD Studio shall not be held liable for any delays or disruptions caused by the client's failure to make timely decisions.



## 3. Service Agreement

### 3.1 SERVICE DESCRIPTION

- 3.1.1 The Service Description shall outline the specific services to be provided by SPD Studio, including deliverables, milestones, and any additional requirements.
- 3.1.2 The studio operates on the basis that it is primarily SPD Studios collective reputation and expertise, not the qualifications or experience of any individual, this is fundamental to the advice the studio give. SPD Studios consultants will provide expert advice for the service outlined in the Project Proposal and or Fee Letter and instructed accordingly by the client. They are not responsible for advice relating to other disciplines.
- 3.1.3 The studio will not be held liable for any costs caused or incurred by the client as a result of unauthorised works that the client may undertake or instruct.
- 3.1.4 The client acknowledges and agrees to the Service Description as the basis for the provision of Services.

### 3.2 PROJECT TIMELINES

- 3.2.1 SPD Studio shall provide estimated project timelines based on the agreed scope of work and available information at the time.
- 3.2.2 Any timelines provided are estimates and are subject to change based on project requirements, client responsiveness, and unforeseen circumstances.
- 3.2.3 The client shall provide prompt feedback, approvals, and necessary information to ensure timely progress of the project. Failure to comply with this obligation may result in the suspension of SPD Studios' services in accordance with clause 2.3.1.1, thereby potentially causing further delays.
- 3.2.4 Where under this Agreement, an action is required within a specific period of 30 days or from a particular date, that period shall begin immediately after that date but shall not include Bank Holidays under the Banking and Financial Dealings Act 1971.

### 3.3 MODIFICATIONS AND AMENDMENTS

- 3.3.1 Any modifications or amendments to the Service Agreement, including changes to the scope of work or deliverables, shall be agreed upon in writing by both parties.
- 3.3.2 SPD Studio shall provide the client with a written proposal outlining any proposed modifications, including associated costs and timeline adjustments.
- 3.3.3 The client shall review and provide written acceptance or request further modifications within a reasonable timeframe.
- 3.3.4 Modifications to the project scope may result in changes to project timelines and costs. Any such modifications shall be agreed upon by both parties in writing through an SPD Studio Issued Change Order Form or under the mechanism of the contract entered into (i.e. JCT, ICE, NEC 3+4, FIDIC). In the event that changes cannot be agreed upon, the project shall continue under the original scope, and if necessary, termination provisions as outlined in this Agreement shall apply.

### 3.4 VISITS TO SITE

- 3.4.1 SPD Studio shall, in providing the Services, make such visits to the Site and/or the works as is provided for in Project Proposal and or Fee Letter or if not so provided for, then as SPD Studio at the date of the Agreement reasonably expects to be necessary.



## 4 Fees and Payments

### 4.1 FEE STRUCTURE

- 4.1.1 The fees for the Services provided by SPD Studio shall be outlined in the Project Proposal and/or Fee Letter or as otherwise agreed in writing between the parties.
- 4.1.2 The fee structure may include a breakdown of costs, hourly rates, fixed fees, or other applicable pricing arrangements.
- 4.1.3 Any changes to the fee structure shall be agreed upon in writing by both parties.
- 4.1.4 The Fees for the performance of the normal services including for any additional or other services, shall be calculated and charged as specified in Project Proposal and or Fee Letter;
- A percentage of the Construction Cost calculated and /or (4.1.5)
  - A lump sum(s) and/or (4.1.6)
  - A time-based fee and/or (4.1.7)
  - Another agreed method.
- 4.1.5 Percentage Fees
- 4.1.5.1 Where a percentage fee applies, the percentage stated in this document shall be applied to the construction cost. Until the final construction cost has been ascertained, interim fee calculations shall be based on:
- Before tenders are obtained, the current professionally prepared estimate of the construction cost,
  - After tenders have been obtained, the lowest acceptable tender,
  - After the building contract is let, the current professionally prepared estimate of the construction cost.
  - After the final/last account has been issued, the actual construction cost.
- 4.1.5.2 If the Client instructs a reduction in the Brief during the performance of the Services, the percentage Fee up to the date of the instruction shall be calculated on the basis that the current professionally prepared estimate of the Construction Cost or the lowest acceptable tender (whichever is later) is based on the Brief prior to the instruction.
- 4.1.6 Lump Sum(s)
- 4.1.6.1 Where a lump sum Fee applies the Fee shall be calculated as set out in Project Proposal and or Fee Letter. The lump sum Fee shall be adjusted in accordance with this document if changes are made to the Brief and/or the Construction Cost and/or the Timetable.
- 4.1.7 Time Based Fees
- 4.1.7.1 Where a time-based Fee applies, the Fee shall be ascertained by multiplying the time reasonably spent in the performance of the Services by the relevant hourly rate set out in Project Proposal and or Fee Letter. Time 'reasonably spent' shall include the time spent in connection with performance of the Services in travelling from and returning to SPD Studio's offices.
- 4.1.8 Revision of Fees and other rates
- 4.1.8.1 Lump sums Fees and rates for time-based fees complying with this document and charges for mileage and printing carried out by SPD Studio's offices shall be revised every 12 months in accordance with changes in the Retail Price Index\*. Each 12-month period shall commence on the anniversary of the Effective Date of the Agreement, or the date of calculation of the lump sum Fees, whichever is the later. \*The Retail Price Index Price is set out in Project Proposal and or Fee Letter (All items) in Labor Market Trends published by the Office for National Statistics or any successor body.



## 4.2 PAYMENT TERMS

- 4.2.1 The client shall make payments to SPD Studio as specified in the agreed payment terms, which may include milestones or invoicing schedules.
- 4.2.2 Payments under this Agreement shall become due to SPD Studio on the date of issue of SPD Studio's accounts. The final date for payment of any amount due to SPD Studio shall be 30 days from the date of issue of an account.
- 4.2.3 The studio reserves the right to re-charge legal costs and administration fees concerning the preparation or inspection of any legal documentation required by the client (including but not limited to matters relating to copyright license requests, project contracts, issue of letters of reliance and collateral warranty requests).
- 4.2.4 All payments shall be made in the currency specified in the Agreement and in accordance with the agreed payment method.
- 4.2.5 SPD Studio's accounts shall be issued at intervals of not less than one month and should include any additional Fees, expenses or disbursements and the basis of calculation of the amounts due.
- 4.2.6 Fee instalments shall be calculated on the basis of SPD Studio's estimate of the percentage of completion of the Work Stage or other Services, or such other method specified in Project Proposal and or Fee Letter.
- 4.2.7 The Client shall not withhold payment of any amount due to SPD Studio under this Agreement unless the amount has been agreed with SPD Studio or has been decided by any form of legal Termination as not being due to SPD Studio subject to this, all rights of set-off at common law or in equity which the Client would otherwise be entitled to exercise are expressly excluded.

## 4.3 LATE PAYMENTS

- 4.3.1 Any sums due and remaining unpaid at the expiry of 30 days after the date of issue of an account from SPD Studio shall bear interest in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, where the Act applies over the Bank of England Base Rate current at the date of issue of the account.
- 4.3.2 For the avoidance of doubt, SPD Studio's entitlement to interest at the specified rate shall also apply in respect of any amounts that are awarded to SPD Studio in adjudication, arbitration, or legal proceedings.
- 4.3.3 The client shall indemnify SPD Studio In respect of all costs reasonably incurred by SPD Studio (including costs of SPD Studio's time) in recovering.
- 4.3.4 Notices
  - 4.3.4.1 A written notice from the Client to SPD Studio may be given within 5 days of the date of issue of an account specifying the amount the Client proposes to pay and the basis on which that amount is calculated; and
  - 4.3.4.2 Shall be given, not later than 5 days before the final date for payment of any amount due to SPD Studio, if the Client intends to withhold payment of any part of that amount and the notice should state in detail the amount proposed to be withheld and the ground or grounds for doing so and the amount attributable to each ground. It shall not be sufficient for the notice to refer to a global amount(s).
  - 4.3.4.3 If no such notice is required, the amount due for payment shall be the amount stated as due in the relevant account. In any event, the Client shall not withhold payment of any undisputed part of an account.

## 4.4 RECOVERY OF COSTS

- 4.4.1 Any amounts not paid when properly due and/or recovering interest arising and/or in relation to any claim (or any part) made by the client which SPD Studio successfully defends or which the client abandons.





## 4.5 PAYMENT ON SUSPENSION OR TERMINATION

- 4.5.1 If the client or SPD Studio Suspends or determines performance of the services, SPD Studio Shall be entitled to issue an account or accounts, and shall be entitled to payment of:
- 4.5.1.1 Any part of the fee or other amounts due at the date of suspension or Termination; and;
  - 4.5.1.2 Any loss and/or damage caused to SPD Studio By the suspension and by any resumption or the Termination together with any licence fee due if the notice of suspension or Termination is given.
  - 4.5.1.3 By the client, except where the suspension or Termination arises from a material breach of the Agreement by SPD Studio; or
  - 4.5.1.4 By SPD Studio, because of a breach of the Agreement by the client.

## 4.6 INCOMPLETE SERVICES

- 4.6.1 Where for any reason SPD Studio provides only part of the Services specified in Project Proposal and or Fee Letter, SPD Studio shall be entitled to Fees calculated as follows:
- 4.6.1.1 For completed individual services: fees calculated as described for those services in Project Proposal and or Fee Letter;
  - 4.6.1.2 For completed work stages: fees as apportioned for those work stages in Project Proposal and or Fee Letter;
  - 4.6.1.3 For services or work stages not competed, fees proportionate to that described or apportioned in Project Proposal and or Fee Letter based on SPD Studio's reasonable estimate of the percentage of completion.
- 4.6.2 If SPD Studio consents to enter into any third-party agreement (e.g., collateral warranty) the form or the beneficiary of which had not been agreed by SPD Studio at the date of the Agreement, SPD Studio shall be entitled to payment of SPD Studio's reasonable costs of assuming such additional liability, including but not limited to legal advice and obtaining any additional professional indemnity insurance required.
- 4.6.3 The Client shall procure legal advice required regarding the Project at their own cost (whether on their own account or where SPD Studio reasonably requires such advice for the proper performance of the Services) and provide such information and evidence as is required for the resolution of any dispute between the Client and any other parties in connection with the Project.

## 4.7 ADDITIONAL EXPENSES

- 4.7.1 In addition to the fees for the Services, the client shall reimburse SPD Studio for any reasonable and necessary expenses incurred in the provision of the Services.
- 4.7.2 Examples of additional expenses may include, but are not limited to, travel expenses, accommodation, printing, and other out-of-pocket costs directly related to the project.
- 4.7.3 SPD Studio shall provide supporting documentation or receipts for any additional expenses claimed for reimbursement.
- 4.7.4 The Client shall reimburse SPD Studio's expenses at net cost plus the handling charge stated in Project Proposal and or Fee Letter. Any disbursements incurred on the Client's behalf shall be reimbursed at net cost plus any handling charge stated in Project Proposal and or Fee Letter.
- 4.7.5 If SPD Studio, for reasons beyond their control, is involved in extra work or incurs extra expense for which they will not otherwise be remunerated, SPD Studio shall be entitled to additional Fees, calculated on a time basis as set out in Project Proposal and or Fee Letter unless agreed otherwise. Reasons for such an entitlement include but shall not be limited to:
- 4.7.5.1 The scope of the Services or the Timetable or the Brief or the period specified for any individual Service is varied by the Client (including if there is a reduction in the scope of the Services).
  - 4.7.5.2 The nature of the Project requires that substantial parts of the design cannot be completed or must be specified provisionally or approximately before construction commences;



- 4.7.5.3 SPD Studio is required to vary any item of work commenced or completed pursuant to the Agreement or to provide a new design after the Client has authorised SPD Studio to develop an approved design;
- 4.7.5.4 Delay or disruption by others;
- 4.7.5.5 Prolongation of any building contract(s) relating to the Project;
- 4.7.5.6 SPD Studio consents to enter into any third-party Agreement (e.g., collateral warranty) the form or the beneficiary of which had not been agreed with SPD Studio at the date of the Agreement;
- 4.7.5.7 The cost of any work designed by SPD Studio, or the cost of special equipment is excluded from the Construction Cost.
- 4.7.5.8 Work carried out as listed in Project Proposal and or Fee Letter: Other Services unless agreed that these shall be included in the percentage or lump sum Fee(s).
- 4.7.5.9 SPD Studio shall inform the Client as soon as reasonably practical on becoming aware that this will apply. This will not apply to additional work or expenses which arise solely due to a breach of this Agreement by SPD Studio.

## 4.8 RECORDS

- 4.8.1 SPD Studio shall maintain records of time regarding, services payable on a time charge basis and of any expenses and disbursements to be reimbursed. These records shall be made available to the Client on reasonable request.



## 5 Confidentiality

### 5.1 NON-DISCLOSURE

- 5.1.1 Both parties agree to maintain strict confidentiality of any confidential information disclosed during the course of the Services, except as otherwise provided in this Agreement.
- 5.1.2 Confidential information includes, but is not limited to, project details, technical information, proprietary data, trade secrets, and any other information identified as confidential by either party.
- 5.1.3 The client agrees not to disclose any confidential information to third parties without the prior written consent of SPD Studio, except where disclosure is necessary to advisors, employees, or as required by law.
- 5.1.4 All parties shall use the confidential information solely for the purpose of performing and providing their obligations under the Agreement and shall take reasonable measures to protect its confidentiality. Confidential information shall not be disclosed to any third-party without the prior written consent of the disclosing party.
- 5.1.5 The obligations of confidentiality shall continue even after the completion or termination of the Services, unless otherwise agreed in writing by the parties.

### 5.2 DATA PROTECTION

- 5.2.1 Both parties agree to comply with all applicable data protection laws and regulations, including the Data Protection Legislation mentioned in the Definitions and Interpretations section.
- 5.2.2 Each party shall take appropriate technical and organisational measures to protect any Personal Data processed during the provision of the Services.
- 5.2.3 The Studio, when entering into an agreement with individuals, shall only process Data for the purposes specified in the Agreement and in accordance with our privacy policy, which can be found on the studio's website and upon request from the studio.
- 5.2.4 If any party acts as a Data Processor on behalf of the other party, they shall comply with the additional terms and conditions related to data processing and protection as outlined in a separate Data Processing Agreement, if applicable.



## 6 Liability and insurance

### 6.1 LIMITATIONS OF RESPONSIBILITY

#### 6.1.1 SPD Studio does not warrant:

- a) That the Project will be completed in accordance with the Timetable or within any budget for the Project (including the Construction Cost);
- b) That any approvals, consents, or permissions relating to the Project (whether statutory or otherwise), such as planning permission, will be granted;
- c) The solvency, services, performance, work, or products of parties other than SPD Studio, whether or not such parties were appointed on the advice of SPD Studio;
- d) And SPD Studio shall not be liable for any matters concerning the Project relating to asbestos or toxic mould.

#### 6.1.2 Time limit for action or proceedings

- a) No action or proceedings whatsoever for any breach of this Agreement or arising out of or in connection with this Agreement, whether in contract, tort, statutory duty or otherwise, shall be commenced after the expiry of the 6-year period from the date of the last Services performed under the Agreement or, if earlier, practical completion of the construction of the Project or such earlier date as prescribed by law.

#### 6.1.3 Limit of Liability

- 6.1.3.1 SPD Studio's Liability for the loss or damage in respect of any one occurrence or series of occurrences arising out of one event (including any liability for costs) shall be limited to the sum stated in Project Proposal and or Fee Letter and in this document or the net contribution, whichever is the lesser sum.
- 6.1.3.2 In the event of any breach of this contract by the Studio, the remedies of the Client shall be limited to direct damages only. SPD Studio shall have no liability for any indirect or consequential loss, loss of profit (direct or indirect), loss of contracts or anticipated savings.
- 6.1.3.3 No employee of SPD Studio, including any officer or director of the studio or any agent of SPD Studio, shall be personally liable to the Client for any negligence, default or any other liability whatsoever arising from the performance of the Services.
- 6.1.3.4 The extent of any liability for any breach that does not result in death or serious injury is limited to the value of this studio's Professional Indemnity Insurance, providing that the insurers are notified of the relevant claim or claims as required by the terms of such insurance.
- 6.1.3.5 SPD Studio shall not be liable for any breach of this contract if the relevant action in respect of that breach is commenced more than 6 years after the completion of SPD Studios Services in respect of any commission.
- 6.1.3.6 No advice or service provided to the client by an individual director, employee, or other representative of SPD Studios is provided by them in their individual capacity, and no personal duty is owed to the client by them.

### 6.2 EXCLUSION OF DAMAGES

6.2.1 To the fullest extent permitted by law, SPD Studio shall not be liable for any loss of profits, loss of sales or business, loss of agreement or contracts, loss of anticipated savings, loss or damage to goodwill or any indirect, consequential, losses arising out of or in connection with the Services.

6.2.2 SPD Studio's liability for any direct damages shall be limited to the total fees paid by the client for the specific Services that gave rise to the claim.

### 6.3 INDEMNIFICATION

#### 6.3.1 Indemnification Responsibility



- 6.3.1.1 The client agrees to indemnify, defend, and hold SPD Studio harmless from any claims, damages, losses, liabilities, costs, or expenses (including reasonable legal fees) arising out of or in connection with:
  - a) Any breach of the Agreement by the client;
  - b) The client's use of the Deliverables or Services in violation of applicable laws or regulations;
  - c) Any third-party claims related to the client's actions, omissions, or negligence.
- 6.3.2 Intellectual Property
  - 6.3.2.1 The client acknowledges that all Intellectual Property Rights, created, developed, or related to the Deliverables provided by SPD Studio shall be owned and remain the property of SPD Studio unless otherwise agreed in writing.
  - 6.3.2.2 The client shall not use or disclose any Intellectual Property Rights owned by SPD Studio without prior written consent, except as necessary for the purposes specified in the Agreement.
- 6.3.3 Morality and Artificial intelligence (AI) copyright
  - 6.3.3.1 SPD Studio recognises the importance of considering the ethical and moral implications associated with artificial intelligence technologies. While SPD Studio strives to deliver designs and deliverables in line with ethical standards, the client must acknowledge and understand the following:
    - a) While SPD Studio does not currently use artificial intelligence (AI) technologies in the scope and design, the studio acknowledges AI's growing presence and importance in various fields. The studio continuously monitors advancements in AI and may explore its integration in the future to enhance SPD Studios' capabilities.
    - b) Copyright of AI models, algorithms, programmes, and related components, if used in the future by the studio, shall remain the property of SPD Studio. The client agrees not to reproduce, distribute, modify, or create derivative works based on any AI technologies employed by SPD Studio unless otherwise expressly agreed in writing.
    - c) The client acknowledges AI algorithms and models as a developing technology. If AI technologies are used in the future, SPD Studio will strive for fair and ethical outcomes. The client will evaluate the suitability, fairness, and ethical implications of using AI-powered deliverables in the specific context.
    - d) The client agrees to indemnify and hold SPD Studio harmless from any claims, damages, or liabilities arising from future AI, including but not limited to claims related to moral or ethical concerns.
    - e) SPD Studio retains the right to refuse or discontinue the provision of Deliverables if, in its sole discretion, it determines that the use of AI technology, if implemented in the future, may violate ethical standards, laws, or regulations.
- 6.3.3 Ownership
  - 6.3.3.1 The client acknowledges that SPD Studio retains ownership of all Intellectual Property Rights in the Deliverables, including but not limited to drawings, reports, specifications, and any other documents provided as part of the Services.
  - 6.3.3.2 The client shall not use or disclose any Intellectual Property Rights owned by SPD Studio without prior written consent except as necessary for the purposes specified in the Agreement.
  - 6.3.3.3 The client shall not acquire any rights, title, or interest in the Intellectual Property Rights of the Deliverables except as expressly stated in the Agreement.
  - 6.3.3.4 Any intellectual property created or developed by SPD Studio during the provision of the Services shall be owned by SPD Studio unless otherwise agreed in writing.
- 6.3.4 License



- 6.3.4.1 SPD Studio grants the client a non-exclusive, non-transferable license to use the Deliverables solely for the purposes identified in the Agreement.
- 6.3.4.2 The client may not reproduce, modify, distribute, or create derivative works from the Deliverables without the prior written consent of SPD Studio unless expressly permitted in the Project proposal.
- 6.3.4.3 Any use of the Deliverables beyond the scope of the Agreement or without obtaining the necessary permissions may infringe upon the Intellectual Property Rights of SPD Studio.

## 6.4 INSURANCE AND INDEMNIFICATION

### 6.4.1 Insurance Coverage

- 6.4.1.1 The studio shall maintain professional indemnity insurance with a limit of indemnity of not less than the sum stated in the Project Proposal and or Fee Letter and, if none is stated, in a sum of £10 Million (Ten Million Pounds), with £5 million (Five Million Pounds) per any one claim, provided that such insurance is available at commercially reasonable rates and terms and subject to all the exceptions, exclusions and limitations to the scope of cover that are commonly included in such insurance policies. Upon reasonable request, the studio will provide a broker's letter confirming that such insurance is being maintained. SPD Studio shall maintain appropriate and adequate insurance coverage throughout the duration of the Services.
- 6.4.1.2 SPD Studio shall maintain until at least the expiry period of the period specified in clause 6.1.3.5 professional indemnity insurance with a limit of indemnity of not less than the amount or amounts specified in clause 6.4.1.1 provided such insurance continues to be offered on commercially reasonable terms to SPD Studio at the time when the insurance was taken out or renewed.
- 6.4.1.3 The specific types and limits of insurance coverage required shall be outlined in the Project Proposal and or Fee Letter or as otherwise agreed in writing between the parties Such insurance shall be:
  - a) Limited to the amounts (if any) specified in clause 6.4.1.4 as in the aggregate of any year of insurance; and
  - b) Subject only to such other limitations, exceptions, and exclusions as are commonly included in such policies.
- 6.4.1.4 SPD Studio, when reasonably requested by the Client, shall produce for inspection a broker's letter or certificate confirming that such insurance is being maintained.
- 6.4.1.5 SPD Studio shall inform the Client if such insurance ceases to be available at commercially reasonable terms or subsequent to the date of this Agreement, an aggregate limit applies to any matters other than those specified in this Agreement in order that SPD Studio and the Client can discuss the best means of protecting their respective positions.

### 6.4.2 Supplementary Agreements

- 6.4.2.1 Upon request that SPD Studio will enter into a collateral warranty or warranties in respect of funders, purchasers or first tenants and the terms of the warranty together with the names or categories of other parties who will sign such Agreements are appended to this Agreement, SPD Studio shall enter into such Agreement or Agreements within a reasonable period of being requested to do so by the Client, providing that such warranties give no greater benefit to the beneficiaries than is given to the Client under this Agreement and all fees and other amounts properly due to SPD Studio have been paid;
- 6.4.2.2 That a third-party Rights Schedule in favour of funders, purchasers or first tenants is applicable and appended to this Agreement, the rights of such third-parties shall come into effect on the date of receipt by SPD Studio of a notice from the Client stating the name of each interested party and the nature of the interest in the Project; and/or



- 6.4.2.3 That a supplementary Agreement is applicable under which SPD Studio is to provide services to a contractor to complete the design and construction of the Project and such Agreement is appended to this Agreement, SPD Studio shall enter into such Agreement with the Client and the contractor appointed to complete the design and construction of the Project within a reasonable period of having been requested to do so by the Client, providing that all fees and other amounts due have been paid.

## 6.5 RIGHTS OF THIRD PARTIES

### 6.5.1 No third-party Beneficiaries

6.5.1.1 Except for the rights conferred by clause 6, nothing in this Agreement shall confer or is intended to confer any right to enforce any of its terms on any person who is not a party to it other than lawful assignees.

6.5.1.2 The rights and obligations of the parties to this Agreement are solely intended for the benefit of the parties and do not confer any rights on behalf of any third parties.

### 6.5.2 Exceptions

6.5.2.1 Notwithstanding clause, the parties may agree in writing to confer rights or benefits on specific third parties as permitted by applicable law.

6.5.2.2 Any such Agreement shall be documented in writing and signed by all parties involved, including the intended third-party beneficiary.

## 6.6 COPYRIGHT AND USE OF INFORMATION

6.6.1 Copyright in the Deliverables, including any original creative works, shall be owned by SPD Studio unless expressly transferred or licensed in writing.



## 7 Dispute Resolution

### 7.1 MEDIATION

- 7.1.1 In the event of any dispute, controversy, or claim arising out of or relating to this Agreement, the parties agree to first attempt to resolve the matter through good-faith negotiations and mediation.
- 7.1.2 If the parties are unable to reach a resolution through mediation within a reasonable period of time, either party may proceed with other dispute resolution options as outlined in this section.
- 7.1.3 In the event of any dispute or difference arising out of, in connection with this Agreement ("Dispute") the Client and SPD Studio may attempt to settle such Dispute by using the mediation services of the RIBA Mediation Service or such other mediation service as they may agree upon.
- 7.1.4 Any Dispute arising out of or in connection with this Agreement may be referred to adjudication by the Client or SPD Studio at any time to adjudication, the adjudicator nominating body to be the Royal Institute of British Architects (RIBA),
- 7.1.5 The adjudication procedures and the Agreement for the appointment of an Adjudicator shall be as set out in the 'Model Adjudication Procedure' published by the Construction Industry Council current at the date of the reference, subject to clause 29 of the Model Adjudication procedure being deleted and replaced as follows: *'The adjudicator in deciding shall have discretion to direct the payment of legal costs and expenses of one party by another. The adjudicator may determine the amount of costs to be paid or may delegate the task to an independent costs' expert.'*

### 1.1 ARBITRATION

- 1.1.1 If mediation does not result in a resolution, any unresolved disputes shall be referred to and finally resolved by arbitration in accordance with the rules of the relevant professional institution. (i.e., RIBA, RICS, RTPI)
- 1.1.2 The number of arbitrators, the seat of arbitration, and the language of the arbitration proceedings shall be determined by mutual Agreement between the parties.
- 1.1.3 The decision of the arbitrator(s) shall be final and binding on both parties, and judgment on the award rendered may be entered in any court of competent jurisdiction.
- 1.1.4 Where both the Client and SPD Studio so agree, and notwithstanding the right of adjudication, the dispute may be referred to arbitration, the arbitrator nominating body being all the relevant professional institutions applicable, provided that:
  - 1.1.4.1 The Client or SPD Studio may refer to the court any claim for a pecuniary remedy which does not exceed £5,000 or such other sum as is provided by statute pursuant to section 91 of the Arbitration Act 1996;
    - 1.1.4.2 In such arbitration, the Construction Industry Model Arbitration Rules (CIMAR) current at the date of the reference shall apply;
    - 1.1.4.3 The arbitrator shall not have the power referred to in Section 38(3) of the Arbitration Act 1996.

### 1.2 GOVERNING LAW AND JURISDICTION

- 1.2.1 This Agreement shall be governed by and construed in accordance with the laws of England.
- 1.2.2 Any legal action, suit, or proceeding arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of England.





## 8 Suspension and Termination

### 8.1 SUSPENSION

- 8.1.1 SPD Studio reserves the right to suspend the provision of Services under this Agreement in the event of:
- a) Non-payment of fees or expenses by the client in accordance with the agreed-upon payment terms;
  - b) Breach of any material terms or obligations under this Agreement by the client;
  - c) 'Force Majeure' events or circumstances beyond the reasonable control of SPD Studio that hinder or prevent the provision of Services.
- 8.1.2 SPD Studio shall provide written notice to the client specifying the reasons for the suspension and any remedial actions required to lift the suspension.

### 8.2 TERMINATION

- 8.2.2 Termination by either party
- 8.2.2.1 Either party may terminate this Agreement by giving written notice to the other party in accordance with the notice provisions specified in this Agreement.
- 8.2.3 Termination by client
- 8.2.3.1 The client may terminate this Agreement by providing written notice to SPD Studio in the following circumstances.
- a) Material Breach: If SPD Studio commits a material breach of any provision of this Agreement and fails to remedy such breach within a specified period after receiving written notice from the client.
  - b) Convenience: If the client wishes to terminate this Agreement for any reason upon providing written notice to SPD Studio in accordance with the notice period specified in this Agreement.
- 8.2.4 Termination by SPD Studio
- 8.2.4.1 SPD Studio may terminate this Agreement by providing written notice to the client in the following circumstances:
- a) Material Breach: If the client commits a material breach of any provision of this Agreement and fails to remedy such breach within a specified period of time after receiving written notice from SPD Studio.
  - b) Non-Payment: If the client fails to make payment of fees or expenses in accordance with the agreed-upon payment terms and fails to remedy the non-payment within a specified period of time after receiving written notice from SPD Studio.

### 8.3 EFFECTS OF TERMINATION

- 8.3.1 Upon termination, the client shall pay SPD Studio for any completed services and any reasonable costs incurred up to the termination date.
- 8.3.2 The parties shall fulfil any post-termination obligations as specified in this Agreement.
- 8.3.3 Upon termination, the client shall immediately cease using any Deliverables or materials provided by SPD Studio, and SPD Studio shall have the right to retrieve any such materials in the possession of the client.
- 8.3.4 Termination of this Agreement shall not affect any rights, remedies, or obligations that have accrued prior to the termination.



## 9 General Provisions

### 9.1 COMPLAINTS

- 9.1.1 If the client has any complaints or concerns regarding the Services provided by SPD Studio, the client should notify SPD Studio in writing as soon as reasonably practicable. SPD Studio will make reasonable efforts to address and resolve the complaint in a timely manner.
- 9.1.2 SPD Studio operates a formal complaints-handling procedure and shall provide the Client with a copy of said complaints-handling procedure immediately upon request.
- 9.1.3 The Client shall make any written complaint to; SPD Studio Unit 5 Tollgate Business Park, Stanway, Colchester, Essex, CO3 8AB.

### 9.2 FORCE MAJEURE

- 9.2.1 SPD Studio shall not be liable for any failure, delay, or default in performing its obligations due to any act of 'Force Majeure'. This includes Acts of God, war, terrorism, riot, strike, lockout, industrial action, fire, flood, failure of energy sources or transport network, breakdown of plant or machinery, malicious damage, drought, tempest, storms, natural disasters or extreme adverse weather conditions, or other event beyond its reasonable control (which, by its nature, could not have been foreseen and was unavoidable).
- 9.2.2 Neither party shall be liable for any delays or failure to perform any of its obligations under the Contract because of an event beyond its reasonable control ("Force Majeure"). In the event of Force Majeure, both parties shall use reasonable endeavours to overcome any difficulties arising as a result and resume their respective obligations as soon as is reasonably possible.

### 9.3 ENTIRE AGREEMENT

- 9.3.1 This Agreement, including any attachments or appendices hereto, and the referenced Project Proposal and or fee letter, constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, agreements, or understandings, whether oral or written.

### 9.4 SEVERABILITY

- 9.4.1 If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect to the fullest extent permitted by law. The parties agree to replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the intended economic and commercial result of the invalid or unenforceable provision.

### 9.5 AMENDMENTS

- 9.5.1 No amendment or modification of this Agreement shall be valid or binding unless it is in writing and duly executed by authorised representatives of both parties.
- 9.5.2 Other than in the case of an emergency, SPD Studio shall not make material alterations or additions to, or omissions from, the Services or the approved design without the Client's consent. The details of all material alterations, additions or omissions shall be confirmed by SPD Studio to the Client.

### 9.6 WAIVER

- 9.6.1 No failure or delay by either party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

# CONDITIONS OF AGREEMENT



## 9.7 ASSIGNMENT

9.7.1 Neither party shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party, except in the case of an assignment to an affiliate or successor in connection with a merger, acquisition, or similar corporate transaction.

## 9.8 NOTICES

9.8.1 Any notices or communications required or permitted to be given under this Agreement shall be in writing and delivered personally, sent by registered mail, or transmitted by email or other electronic means to the addresses specified in this Agreement or as subsequently notified by the parties.

## 9.9 SURVIVAL

9.9.1 The provisions of this Agreement that by their nature extend beyond the termination or expiration of this Agreement shall survive and remain in effect, including but not limited to confidentiality obligations, intellectual property rights, and limitations of liability.